

BRONSTER FUJICHAKU ROBBINS

A Law Corporation

MARGERY S. BRONSTER #4750

ROBERT M. HATCH #7724

NOELLE E. CHAN #11280

1003 Bishop Street, Suite 2300

Honolulu, Hawai'i 96813

Telephone: (808) 524-5644

Email: mbronster@bfrhawaii.com

rhatch@bfrhawaii.com

nchan@bfrhawaii.com

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MILBERG COLEMAN BRYSON

PHILLIPS GROSSMAN PLLC

GARY M. KLINGER (*Admitted Pro Hac Vice*)

227 W. Monroe Street, Suite 2100

Chicago, IL 60606

Telephone: (866) 252-0878

Email: gklinger@milberg.com

CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP

Nickolas J. Hagman (*admitted pro hac vice*)

135 S. LaSalle, Suite 3210

Chicago, IL 60606

T: 312.782.4880

nhagman@caffertyclobes.com

Attorneys for Plaintiffs and the Proposed Class

IN THE CIRCUIT COURT FOR THE FIRST CIRCUIT

STATE OF HAWAI'I

JOSEPH SMITH AND TONY LEE,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

HAWAIIUSA FEDERAL CREDIT UNION,

Defendant.

Case No.: 1CCV-24-0000154

**UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; DECLARATION
OF NOELLE E. CHAN; EXHIBITS
"1 and 2"; NOTICE OF HEARING;
CERTIFICATE OF SERVICE**

(caption continued)

HEARING:

Date: April 24, 2024

Time: 2:30 p.m.

Judge: The Honorable Karin L. Holma

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

Plaintiffs Joseph Smith and Tony Lee (“Plaintiffs”), individually and on behalf of all others similarly situated, hereby moves this Court to:

1. Preliminarily approve the Settlement¹ described in the Settlement Agreement and Release (“Settlement Agreement”) between Plaintiffs and Defendant HawaiiUSA Federal Credit Union (“HawaiiUSA” or “Defendant” and together with Plaintiffs, the “Parties”), attached to Plaintiffs’ Memorandum of Points and Authorities In Support of Unopposed Motion for Preliminary Approval of Class Action Settlement (“Memorandum”) as **Exhibit 1**, and the attachments thereto, including the Notice, the [Proposed] Order Granting Preliminary Approval and the [Proposed] Order Granting Final Approval, attached thereto, as fair, adequate, reasonable, and within the range of possible approval.

2. Approve the Parties’ proposed Notice program;

3. Confirm that the Notice in the form substantially the same as that attached as **Exhibits B and C** to the Settlement Agreement, is appropriate and satisfies due process;

4. Direct Notice to be sent to the Settlement Class Members in the form and manner proposed as set forth in the Settlement Agreement;

5. Appoint Postlethwaite & Netterville, APAC (“P&N”) as Claims Administrator;

¹ Unless otherwise indicated, the defined terms herein shall have the same definitions as set forth in the Settlement Agreement.

6. Provisionally appoint Plaintiffs Joseph Smith and Tony Lee as Class Representatives;

7. Provisionally appoint Milberg Coleman Bryson Phillips Grossman, PLLC, Cafferty Clobes Meriwether & Sprengel, LLP, and Bronster Fujichaku Robbins as Class Counsel;

8. Provisionally certify the Class for settlement purposes only;

9. Set a hearing date for consideration of Class Counsel's Motion for Attorneys' Fees, Costs, Expenses, and Enhancement Award as set forth in the Settlement Agreement; and

10. Set a date for a Final Fairness Hearing.

This Notice of Motion and Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion") is based upon: (1) this Motion; (2) the Memorandum; (3) the Declaration, and the attached Exhibits including the records, pleadings, and papers filed in this Litigation; and upon such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of this Motion.

Dated: April 2, 2024.

Respectfully submitted,

/s/ Robert M. Hatch

Margery S Bronster (#4750)

Robert M. Hatch (#7724)

BRONSTER FUJICHAKU ROBBINS

A Law Corporation

1003 Bishop Street, Suite 2300

Honolulu, HI 96813

Tel.: (808) 524-5644

Fax: (808) 599-1881

mbronster@bfrhawaii.com

rhatch@bfrhawaii.com

MILBERG COLEMAN BRYSON

PHILLIPS GROSSMAN, PLLC

Gary M. Klinger (*Admitted Pro Hac Vice*)

227 West Monroe Street, Suite 2100

Chicago, IL 60606

T: 866.252.0878

gklinger@milberg.com

**CAFFERTY CLOBES MERIWETHER &
SPRENGEL LLP**

Nickolas J. Hagman (admitted *pro hac vice*)

135 S. LaSalle, Suite 3210

Chicago, IL 60606

T: 312.782.4880

nhagman@caffertyclobes.com

Attorneys for Plaintiffs and the Putative Class

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**IN THE CIRCUIT COURT FOR THE FIRST CIRCUIT
STATE OF HAWAII**

JOSEPH SMITH AND TONY LEE,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

HAWAIIUSA FEDERAL CREDIT UNION,

Defendant.

Case No.: 1CCV-24-0000154

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I. INTRODUCTION

Plaintiffs Joseph Smith and Tony Lee (collectively, “Plaintiffs”) submit this Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum of Points and Authorities. Defendant HawaiiUSA Federal Credit Union (“HawaiiUSA” or “Defendant,” and, together with Plaintiffs, the “Parties”) does not oppose certification for settlement purpose only and does not oppose Plaintiffs’ request for preliminary approval of the class action settlement. Plaintiffs strongly believe the Settlement is fair, reasonable and adequate, and that the Court should grant preliminary approval and notice should be distributed to Class Members.

II. STATEMENT OF FACTS

On or about March 6, 2023, HawaiiUSA became aware that, on or about December 12, 2022, the sensitive personal and/or financial data of current and former employees and consumers was compromised when unauthorized actors were able to breach an employee’s email account on Defendant’s network and access certain files (the “Data Incident”). Defendant notified Plaintiffs and the Settlement Class about the Data Incident on or about April 7, 2023.

In response, Plaintiffs allege they spent hours responding to the Data Incident, including by monitoring their accounts, reviewing their credit reports, and researching credit monitoring

options. As a result of these losses, on April 28, 2023, Plaintiff Tony Lee (“Lee”) filed a putative class action complaint against HawaiiUSA in the Circuit Court of the First Circuit, State of Hawaii, asserting claims allegedly arising out of the Data Incident. On May 2, 2023, Plaintiff Joseph Smith (“Smith”) filed a putative class action complaint against Hawaii USA in the United States District Court for the District of Hawaii. On June 2, 2023, HawaiiUSA timely removed the *Lee* Action to the United States District Court for the District of Hawaii. On June 26, 2023, the Parties filed a Joint Motion to Consolidate the *Lee* and *Smith* Actions into a single, consolidated action. The Court granted that Joint Motion on June 28, 2023.

On July 26, 2023, Plaintiffs Smith and Lee filed their amended consolidated class action complaint in the United States District Court for the District of Hawaii. Following meet-and-confer discussions between counsel for HawaiiUSA and counsel for Plaintiffs, including discussions about Article III standing, the parties agreed, as a condition of settlement, that Plaintiffs would dismiss their action filed in the United States District Court for the District of Hawaii, and would refile their complaint in the Circuit Court of the First Circuit, State of Hawaii. On January 30, 2024, Plaintiffs Smith and Lee refiled their complaint in the Circuit Court of the First Circuit, State of Hawaii. That case is titled *Smith, et al. v. Hawaii USA Federal Credit Union*, Case No. 1CCV-24-0000154 (Haw. Cir. Ct., 1st Cir.) (the “Litigation”).

From the onset of the Litigation, and over the course of several months, the Parties engaged in settlement negotiations. On December 1, 2023, the Parties participated in a full-day mediation before Jill Sperber of Judicate West. Although the Parties were not able to reach a resolution at the mediation, the Parties continued to negotiate following the mediation. Eventually, Ms. Sperber made a mediator’s proposal, which each side accepted, resulting in a settlement that is memorialized in the settlement agreement (“Settlement Agreement” or “SA”) attached to this memorandum as **Exhibit 1**.

III. THE SETTLEMENT TERMS

A. Proposed Settlement Class

The Settlement provides relief for the following Settlement Class: “All persons in the United States to whom HawaiiUSA mailed a notification that their information may have been impacted in the Data Incident.” *See* S.A. ¶ 1.25. The Settlement Class contains approximately 21,441 individuals.

B. Settlement Benefits

Settlement Class Members shall have the opportunity to submit a Claim for Settlement benefits on or before the Claims Deadline. All Settlement Class Members are eligible to claim Extraordinary Losses and Identity Theft Protection. In addition to Extraordinary Losses and Identity Theft Protection, Settlement Class Members may also make a claim for *either* Ordinary Losses and Lost Time *or* an Alternative Cash Payment.

Ordinary Expense Reimbursement: Settlement Class Members may submit a Claim for reimbursement of documented out-of-pocket losses incurred as a result of the Data Incident, up to a maximum of \$400 per person. Ordinary Expense Reimbursement Claims will include reimbursement for:

- i) (i) unreimbursed bank fees; (ii) unreimbursed card reissuance fees; (iii) unreimbursed overdraft fees; (iv) unreimbursed charges related to unavailability of funds; (v) unreimbursed late fees; (vi) unreimbursed over-limit fees; (vii) long distance telephone charges; (viii) cell minutes (if charged by minute), Internet usage charges (if charged by the minute or by the amount of data usage and incurred solely as a result of the Data Incident), and text messages (if charged by the message and incurred solely as a result of the Data Incident); (ix) unreimbursed charges from banks or credit card companies; (x) interest on payday loans due to card cancellation or due to over-limit situation incurred solely as a result of the Data Incident; (xi) costs of credit report(s), credit monitoring, and/or other identity theft insurance products purchased by members of the Settlement Class between December 12, 2022 and the date of the Claims Deadline; and (xii) other losses incurred by Settlement Class Members determined by the Settlement Administrator to be fairly traceable to the Data Incident, including, but not limited to, the cost of postage and gas for local travel.
- ii) Compensation for lost time of up to four (4) hours at \$20 per hour, for a maximum of up to \$80 per person. Class members may submit claims for up to four (4) hours of lost time with an attestation that they spent the claimed

time responding to issues raised by the Data Security Incident. This payment shall be included in the per person cap for Compensation for Ordinary Losses.

S.A. ¶ 2.2(a).

Alternative Cash Payment: In lieu of making a claim for Ordinary Expense Reimbursement, members of the Settlement Class may submit a Valid Claim using the Claim Form to receive a \$50 cash payment. Total Valid Claims for Alternative Cash Payments shall not exceed \$150,000. To the extent that the total Valid Claims for Alternative Cash Payments do exceed \$150,000, each Valid Claim for Alternative Cash Payment shall be reduced, on a *pro rata* basis, until the total Valid Claims for Alternative Cash Payments equals or is less than \$150,000. S.A. ¶ 2.2(b).

Extraordinary Expense Reimbursement: Settlement Class Members who were the actual victim of identity theft may also make a claim for up to \$4,000 in proven monetary loss if:

- (i) The loss is an actual, documented, and unreimbursed monetary loss;
- (ii) The loss was more likely than not caused by the Data Incident;
- (iii) The loss occurred between December 12, 2022 and the Claims Deadline;
- (iv) The loss is not already covered by one or more of the normal reimbursement categories in SA ¶ 2.2; and
- (v) The Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.

S.A. ¶ 2.1(b).

Identity Theft Protection: All members of the Settlement Class who submit a Valid Claim using the Claim Form are eligible for 24 months of free identity-theft protection, called “Identity Defense Total 3-Bureau Service” (“ID Total”). For members of the Settlement Class who opted to receive the credit monitoring initially offered by HawaiiUSA, “ID Total” shall be in addition to that year. S.A. ¶ 2.1(a).

1. Class Notice and Settlement Administration

The costs of Settlement Administration will be paid for by Defendant. S.A. ¶ 2.6. No later than 45 days after the entry of the Preliminary Approval Order, Notice will be given to the Settlement Class via individual direct notice by either email, for all Settlement Class Members for whom HawaiiUSA is in possession of an email address, or via U.S. Mail to all Class Members for whom HawaiiUSA does not have a valid email address, including those for whom emails were returned as undeliverable. S.A. ¶ 3.3(c).

The Claims Administrator will also establish a Settlement Website to inform the Settlement Class Members of the terms of the Settlement Agreement, their rights, dates and deadlines, and other important information. S.A. ¶ 3.3(b). The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) the Settlement Agreement; (v) the operative Complaint filed in the Litigation; and (vi) any other materials agreed upon by the Parties and/or required by the Court. *Id.* The Settlement Website shall also provide Class Members with the ability to complete and submit the Claim Form electronically. *Id.* The notice documents are clear and concise and directly apprise Class Members of all the information they need to know to make a claim, or to opt-out or object to the Settlement. Finally, the Claims Administrator will maintain a toll-free telephone number and PO Box by which Settlement Class Members can seek additional information. S.A. ¶ 3.3(e).

Moreover, the Parties have agreed upon Postlethwaite & Netterville, APAC (“P&N”), a nationally recognized and well-regarded class action settlement administrator, to serve as Settlement Administrator, subject to the Court’s approval. *See* Declaration of Gary M. Klinger in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (“Counsel Decl.”), attached hereto as **Exhibit 2**, ¶ 36.

2. Attorneys’ Fees and Expenses

Plaintiffs will separately seek, and HawaiiUSA has agreed not to object to, an award of attorneys’ fees not to exceed two hundred and fifty thousand dollars (\$250,000.00). S.A. ¶ 7.2. Plaintiffs and Class Counsel will submit a fulsome attorneys’ fee motion supporting the fee request in advance of the objection and opt-out date.

3. Service Awards to Named Plaintiffs

Plaintiffs in this case have been vital in litigating this matter, including providing their personal information to proposed Class Counsel. Plaintiffs have been personally involved in the case and support the Settlement. Counsel Decl., ¶ 29, 31. Plaintiffs will separately petition the Court for service awards of \$1,500 each (\$3,000 total) in recognition of the time, effort, and expense they incurred pursuing claims that benefited the Settlement Class. *See* S.A. ¶ 7.3.

The amount requested here is presumptively reasonable and commonly awarded in settled class action cases. *See, e.g., In re Pauley*, No. 2:13-CV-08011-RGK-CW, 2020 WL 5809953, at *4 (Granting “class representative enhancement fees in the amount of \$5,000 each to Plaintiffs,” and finding that amount to be “presumptively reasonable”); *Yahoo Mail Litig.*, No. 13-CV-4980, 2016 WL 4474612, at *11 (N.D. Cal. Aug. 25, 2016) (“The Ninth Circuit has established \$5,000.00 as a reasonable benchmark [for service awards].”).

4. Release

Upon entry of the Final Approval Order, Plaintiffs and the Settlement Class will be deemed to have released Defendant and its Related Entities from any and all claims or causes of action, whether known or unknown, that concern, refer or relate to (a) the Data Incident; and (b) all other claims arising out of the Data Incident that were asserted, or that could have been asserted, in the Lawsuit.

IV. LEGAL AUTHORITY

Plaintiffs bring this motion pursuant to Hawai‘i Rules of Civil Procedure (“HRCP”) Rule 23(e), under which court approval is required to finalize a class action settlement. The language of HRCP 23(e) mirrors the 2003 federal rule. *Public Access Trails Hawai‘i v. Haleakala Ranch Company*, 153 Hawai‘i 1, 32, 526 P.3d 526 (2023).² Courts typically utilize a three-step procedure for approval of class action settlements: (1) preliminary approval of the proposed settlement followed by (2) dissemination of court-approved notice to the class and (3) a final fairness hearing at which class members may be heard regarding the settlement and at which evidence may be heard regarding the fairness, adequacy, and reasonableness of the settlement. Manual for Complex

² Courts in Hawaii may consider federal law when interpreting the Hawai‘i Rules of Civil Procedure, including Rule 23. *See e.g. Kalima v. State*, 148 Hawai‘i 129, 144, 468 P.3d 143, 158 (2020), accordingly, Plaintiffs cite to both Hawaii state law and federal in support of their Motion.

Litigation (Fourth) (2004) § 21.63.

Here, Plaintiffs request the Court take the first step, and grant preliminary approval of the proposed Settlement Agreement.

V. ARGUMENT

Courts strongly favor and encourage settlements, particularly in class actions and other complex matters where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the “strong judicial policy that favors settlements, particularly where complex class action litigation is concerned”); 4 Newberg on Class Actions § 11.41 (4th ed. 2002) (citing cases). More traditional means of handling claims like those at issue here—individual litigation—would unduly tax the court system, require massive expenditures of resources, and given the relatively small value of the claims of the individual class members, would be impracticable. Thus, a settlement—and specifically the Settlement Agreement proposed here—provides the best vehicle for Settlement Class Members to receive the relief to which they are entitled in a prompt and efficient manner.

The Manual for Complex Litigation (Fourth) advises that in cases presented for both preliminary approval and class certification, the “judge should make a preliminary determination that the proposed class satisfies the criteria.” Manual Complex Lit. (4 ed.), § 21.632. Because a court evaluating certification of a class action that settled is considering certification only in the context of settlement, the court’s evaluation is somewhat different than in a case that has not yet settled. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In some ways, the court’s review of certification of a settlement-only class is lessened: as no trial is anticipated in a settlement-only class case, the case management issues inherent in the ascertainable class determination need not be confronted. *Id.* Other certification issues, however, such as “those designed to protect absentees by blocking unwarranted or overbroad class definitions,” require heightened scrutiny in the settlement-only class context “for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.” *Id.*

Plaintiffs seek certification of a Settlement Class consisting of: “all persons in the United States to whom HawaiiUSA mailed a notification that their information may have been impacted in the Data Incident.” S.A. ¶ 1.25. Excluded from the Settlement Class are: (i) HawaiiUSA and its

respective officers and directors; (ii) all members of the Settlement Class who timely and validly request exclusion from the Settlement Class; (iii) the Judge and Magistrate Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads nolo contendere to any such charge. *Id.* For the reasons set forth below, the Court should certify the Class for settlement purposes and preliminarily approve the Settlement.

A. The Settlement Satisfies Rule 23(a).

Hawai'i Rules of Civil Procedure Rule 23(a) provides that “one or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.” Haw. R. Civ. P. 23(a).

Plaintiffs satisfied all of Rule 23(a)'s requirements.

1. The proposed Class is sufficiently numerous.

“Rule 23(a)(1) requires that the class be so numerous that the joinder of all members would be impracticable. While many state courts have held numerosity to be a number exceeding one hundred, the requirement has been satisfied by as few as thirteen potential individuals who may be included in a class.” *Life of the Land v. Burns*, 59 Haw. 244, 253, 580 P.2d 405, 411 (1978) (internal citations omitted). Numbering approximately 21,441 individuals, the proposed Settlement Class easily satisfies Rule 23's numerosity requirement, as joinder of all Settlement Class Members is clearly impracticable.

2. The Settlement Class Satisfies the Commonality Requirement.

Rule 23(a)(2) also requires that the Court find that there be “questions of law or fact common to the class.” *Life of the Land v. Land Use Commission*, 63 Haw. 166, 182, 623 P.2d 431, 444 (1981) (“[T]he pertinent criterion is the presence of common claims or defenses extending throughout the class.”). Commonality requires that class members' claims “depend upon a common contention,” of such a nature that “determination of its truth or falsity will resolve an issue that is central to the validity of each [claim] in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

Here, as in most data breach cases, “[t]hese common issues all center on [Defendant’s] conduct, satisfying the commonality requirement.” *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-MD-02583-TWT, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016). “[T]he class is a ‘cohesive group of individuals [who] suffered the same harm in the same way because of the [defendant’s] conduct.’” *In re Google LLC St. View Elec. Commc’ns Litig.*, No. 10-MD-02184-CRB, 2020 WL 1288377, at *5 (N.D. Cal. Mar. 18, 2020) (quoting *In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 559 (9th Cir. 2019)). Common questions include, *inter alia*, whether HawaiiUSA engaged in the wrongful conduct alleged; whether Class Members’ Private Information was compromised in the Data Incident; whether HawaiiUSA owed a duty to Plaintiffs and Class members; and whether HawaiiUSA breached its duties.

Thus, Plaintiffs met the commonality requirement of Rule 23(a).

3. Plaintiffs’ Claims and Defenses are Typical of the Settlement Class.

The Rule 23(a)(3) requirement that representative plaintiffs’ claims be typical is satisfied where there is no conflict of interest between the claims of the representative plaintiff and the claims of the class. *See Life of the Land*, 63 Haw. at 183, 623 P.2d at 445 (“Reading the third and fourth preconditions together, we too equate typicality with the absence of conflict of interest.”). Plaintiffs satisfy the typicality requirement of Rule 23 because Plaintiffs’ claims, which are based on Defendant’s alleged failure to protect the Private Information of Plaintiffs and all members of the Class, are “typical of the claims or defenses of the class.” *See* Haw. R. Civ. P. 23(a)(3). Plaintiffs allege their Private Information was compromised, and that they were therefore impacted by the same allegedly inadequate data security that they allege harmed the rest of the Settlement Class. *See Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017) (“[I]t is sufficient for typicality if the plaintiff endured a course of conduct directed against the class.”).

4. Plaintiffs will Adequately Protect the Interests of the Settlement Class.

The adequacy requirement of Rule 23 is satisfied where (1) there are no antagonistic or conflicting interests between named plaintiffs and their counsel and the absent class members; and (2) the named plaintiffs and their counsel will vigorously prosecute the action on behalf of the class. *See Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

Here, Plaintiffs have no conflicts of interest with the members of the Settlement Class, are subject to no unique defenses, and they and their counsel have and continue to vigorously prosecute this case on behalf of the Settlement Class. Plaintiffs are members of the Settlement Class who allegedly experienced the same injuries and seek, like other Settlement Class Members, compensation for HawaiiUSA's alleged data security shortcomings. As such, their interests and the interests of their counsel are consistent with those of other Settlement Class Members.

Further, Settlement Class Counsel have decades of combined experience as vigorous class action litigators and are well suited to advocate on behalf of the Class. *See* Counsel Dec. ¶¶ 2-23. *See also* Firm Resumes attached to the Declaration as Exhibits A, B, and C. Thus, Plaintiffs satisfy the requirement of adequacy.

5. Common Issues Predominate.

The predominance requirement “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623 (citing *Wright, et al.*, Fed. Prac. and Proc. § 1777, p. 518-19 (2d ed. 1986)). “If common questions ‘present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication,’ then ‘there is clear justification for handling the dispute on a representative rather than on an individual basis,’ and the predominance test is satisfied.” *See Keegan v. Am. Honda Motor Co.*, 284 F.R.D. 504, 526 (C.D. Cal. 2012) (quoting *Hanlon*, 150 F.3d at 1022. To satisfy this requirement, “common issues need only predominate, not outnumber individual issues.”). *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013) (quotations omitted).

As discussed above, Plaintiffs allege that common questions predominate over any questions affecting only individual members. Classwide resolution is the only practical method of addressing the alleged violations at issue in this case. There are thousands of Settlement Class Members with only modest individual claims, most of whom likely lack the resources necessary to seek individual legal redress. *See Local Joint Exec. Bd. of Culinary/ Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001) (cases involving “multiple claims for relatively small individual sums” are particularly well suited to class treatment); *see also Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (“Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification.”).

Because the claims are being certified for purposes of settlement, there are no issues with manageability, and resolution of thousands of claims in one action is far superior to individual lawsuits and promotes consistency and efficiency of adjudication. *See* Haw. R. Civ. P. 23(b)(1); *Malta v. Fed. Home Loan Mortg. Corp.*, 2013 WL 444619, at *3 (S.D. Cal. 2013) (superiority met where “considerations of judicial economy favor litigating a predominant common issue once in a class action instead of many times in separate lawsuits” and the “small individual claims of class members” made it “unlikely that individual actions will be filed”). For these reasons, certification of the Settlement Class for purposes of settlement only is appropriate.

B. The Requirements of Rule 23(b)(3) Are Met for Purposes of Settlement.

In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class certification must also show that the action is maintainable under Haw. R. Civ. P. 23(b). Here, Plaintiffs allege that the Settlement Class is maintainable for purposes of settlement under Rule 23(b)(3), as common questions predominate over any questions affecting only individual members and class resolution is superior to other available methods for a fair and efficient resolution of the controversy.

Rule 23(b)(3) requires that a court determine that “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Haw. R. Civ. P. 23(b)(3). In determining whether the “superiority” requirement is satisfied, a court may consider: (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action. *Id.*

Plaintiffs’ claims depend, first and foremost, on whether HawaiiUSA used reasonable data security measures to protect Settlement Class Members’ Private Information. That question can be resolved, for purposes of settlement only, using the same evidence for all Settlement Class Members, and thus is precisely the type of predominant question that makes a class-wide settlement worthwhile. *See, e.g., Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (“When ‘one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under [federal] Rule 23(b)(3)’”) (citation omitted)).

Additionally, for purposes of settlement, a class action is the superior method of adjudicating consumer claims arising from the Data Incident—just as in other data breach cases where class-wide settlements have been approved. *See, e.g., In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 5:16-md-02752-LHK (N.D. Cal. July 20, 2019); *Parsons v. Kimpton Hotel & Rest. Group, LLC*, No. 3:16-cv-05387-VC (N.D. Cal. Jan. 9, 2019); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 316-17 (N.D. Cal. 2018); *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 585 (N.D. Cal. 2015). Adjudicating individual actions here is impracticable: the amount in dispute for individual class members is too small, the technical issues involved are too complex, and the required expert testimony and document review too costly. *See Just Film*, 847 F.3d at 1123.

Also, because Plaintiffs seek to certify a class in the context of a settlement only, this Court need not consider any possible management-related problems as it otherwise would. *See Amchem Prods.*, 521 U.S. at 620 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, see Fed. R. Civ. P. 23(b)(3)(D), for the proposal is that there be no trial.”).

In any event, no one member of the Settlement Class has an interest in controlling the prosecution of this action because Plaintiffs’ claims and the claims of the members of the Settlement Class are the same. Alternatives to a class action are either no recourse for thousands of individuals, or a multiplicity of suits resulting in an inefficient and possibly disparate administration of justice. Classwide resolution is the only practical method of addressing the alleged violations at issue in this case. There are over twenty thousand class members with modest individual claims, most of whom likely lack the resources necessary to seek individual legal redress. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001) (cases involving “multiple claims for relatively small individual sums” are particularly well suited to class treatment); *see also Wolin*, 617 F.3d at 1175 (“Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification.”). A class action is therefore superior to other methods for the fair and efficient adjudication of the claims of Plaintiffs and the Settlement Class.

C. The Settlement Should Be Preliminarily Approved Pursuant to Rule 23(e).

Rule 23(e) provides that a proposed class action shall not be dismissed or compromised without approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Court directs.

“In evaluating a proposed settlement at the preliminary approval stage, some district courts . . . have stated that the relevant inquiry is whether the settlement ‘falls within the range of possible approval’ or ‘within the range of reasonableness.’” *Bykov v. DC Trans. Services, Inc.*, No. 2:18-cv-1692 DB, 2019 WL 1430984, at *2 (E.D. Cal. Mar. 29, 2019). That is, “preliminary approval of a settlement has both a procedural and a substantive component.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007).

As to the procedural component, “a presumption of fairness applies when settlements are negotiated at arm’s length, because of the decreased chance of collusion between the negotiating parties.” *Gribble v. Cool Transports Inc.*, No. CV 06-4863 GAF (SHx), 2008 WL 5281665, at *9 (C.D. Cal. Dec. 15, 2008). Likewise, “participation in mediation tends to support the conclusion that the settlement process was not collusive.” *Ogbuehi v. Comcast of Cal./Colo./Fla./Or., Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014).

With respect to the substantive component, “[a]t this preliminary approval stage, the court need only ‘determine whether the proposed settlement is within the range of possible approval.’” *Murillo v. Pacific Gas & Elec. Co.*, 266 F.R.D. 468, 479 (E.D. Cal. 2010) (quoting *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982)).

In sum, “the purpose of the preliminary approval process is to determine whether there is any reason not to notify the class members of the proposed settlement and to proceed with a fairness hearing.” *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006). In any event, while a complete fairness evaluation is unnecessary at this early juncture, Plaintiffs’ and their counsel strongly believe that the resolution reached here is in the Settlement Class’s best interests.

Here, the Court should examine the factors identified by the Ninth Circuit for consideration when analyzing the fairness, reasonableness, and adequacy of a class settlement: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the views of counsel; (7) the presence of a governmental participant; (8) the reaction of the class members

to the proposed settlement and; (9) whether the settlement is a product of collusion among the parties. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011); *see also Hanlon*, 150 F.3d at 1026.

In applying these factors, this Court should be guided foremost by the general principle that courts “favor the resolution of controversies through compromise or settlement rather than by litigation.” *Boskoff v. Yano*, 217 F. Supp. 2d 1077, 1085 (D. Haw. 2001) (citing *State Farm Fire & Cas. Co. v. Pacific Rent-All, Inc.*, 90 Haw. 315, 323, 978 P.2d 753, 761 (1999)); *See also Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989) (“It hardly seems necessary to point out that there is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits”). Here, the relevant factors support the conclusion that the negotiated settlement is fundamentally fair, reasonable, and adequate, and should be preliminarily approved.

1. The Strength of Plaintiffs’ Case

Plaintiffs believe they have built a strong case for liability and that they would be able to prove that HawaiiUSA data security was inadequate. If they establish that central fact, Defendant is likely to be found liable under at least some of the liability theories and statutory and common law Plaintiffs pled in their complaint.

While Plaintiffs believe they have strong claims and would be able to prevail, their success is not guaranteed. It is “plainly reasonable for the parties at this stage to agree that the actual recovery realized and risks avoided here outweigh the opportunity to pursue potentially more favorable results through full adjudication.” *Dennis v. Kellogg Co.*, No. 09-cv-1786-L(WMc), 2013 WL 6055326, at *3 (S.D. Cal. Nov. 14, 2013). “Here, as with most class actions, there was risk to both sides in continuing towards trial. The settlement avoids uncertainty for all parties involved.” *Chester v. TJX Cos.*, No. 5:15-cv-01437-ODW(DTB), 2017 WL 6205788, at *6 (C.D. Cal. Dec. 5, 2017). Given the heavy obstacles and inherent risks Plaintiffs face with respect to the novel claims in data breach class actions, including class certification, summary judgment, and trial, the substantial benefits the Settlement provides favors preliminary approval of the Settlement. Counsel Decl., ¶ 30.

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

While Plaintiffs believe their case is strong, all cases, including this one, are subject to substantial risk. This case involves a proposed class of over 21,000 individuals, a complicated and technical factual background, and a sympathetic and motivated Defendant that already has provided some relief to its potentially affected customers.

Although nearly all class actions involve a high level of risk, expense, and complexity—undergirding the strong judicial policy favoring amicable resolutions, *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)—this is a particularly complex class due the constant standing challenges plaintiffs face in data breach class actions. Historically, data breach cases face substantial hurdles in surviving even the pleading stage. *See, e.g., Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060 (RMB) (RLE), 2010 U.S. Dist. LEXIS 71996, at *2-4 (S.D.N.Y. June 25, 2010) (collecting cases). Even cases of similar wide-spread notoriety and implicating data far more sensitive than at issue here have been found wanting by courts throughout the country. *In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017) (“The Court is not persuaded that the factual allegations in the complaints are sufficient to establish . . . standing.”), *reversed in part*, 928 F.3d 42 (D.C. Cir. June 21, 2019) (holding that plaintiff had standing to bring a data breach lawsuit).

To the extent the law has gradually accepted this relatively new type of litigation, the path to a class-wide monetary judgment remains unforged, particularly in the area of damages. For now, data breach cases are among the riskiest and uncertain of all class action litigation, making settlement the more prudent course when a reasonable one can be reached. The damages methodologies, while theoretically sound in Plaintiffs’ view, remain untested in a disputed class certification setting and unproven in front of a jury. And as in any data breach case, establishing causation on a class-wide basis is rife with uncertainty.

Each risk, by itself, could impede the successful prosecution of these claims at trial and in an eventual appeal—which would result in zero recovery to the class. This factor favors approval.

3. The Risk of Maintaining Class Action Status Through Trial

At this stage in the litigation, the Parties have not briefed, and the Court has not certified, any class treatment of this case. If they were to proceed to litigate their claims through trial, Plaintiffs would encounter risks in obtaining and maintaining certification of the class. A class has not been certified, and Defendant will certainly oppose certification if the case proceeds. Thus,

Plaintiffs “necessarily risk losing class action status.” *Grimm v. American Eagle Airlines, Inc.*, No. LA CV 11-00406 JAK(MANx), 2014 WL 1274376, at *10 (C.D. Cal. Sept. 24, 2014).

4. The Amount Offered in Settlement

In light of the substantial risks and uncertainties presented by data breach litigation generally and this litigation specifically, the value of the Settlement strongly favors approval. The Settlement makes significant relief available to Settlement Class Members, in the form of out-of-pocket expense reimbursements, compensation for lost time, and credit monitoring protection.

This settlement is a strong result for the Settlement Class, and is in line with other settlements in cases involving data breaches of similar scope. Because the settlement amount here is similar to other settlements reached and approved in similar cases, this factor reflects that the Settlement is fair. *See Calderon v. Wolf Firm*, No. SACV 16-1622-JLS(KESx), 2018 WL 6843723, at *7-8 (C.D. Cal. Mar. 13, 2018) (comparing class settlement with other settlements in similar cases). In light of the difficulties and expenses Settlement Class Members would face to pursue individual claims, and the likelihood that they might be unaware of their claims, this Settlement is appropriate. *See id.* Accordingly, this factor favors approval.

5. The Extent of Discovery Completed and the Stage of Proceedings

Before entering into settlement discussions on behalf of class members, counsel should have “sufficient information to make an informed decision.” *Linney*, 151 F.3d at 1239. Here, Plaintiffs vigorously and aggressively gathered all of the information that was available regarding Defendant and the Data Incident—including publicly-available documents concerning announcements of the Data Incident and notice of the Data Incident to its customers. Counsel Decl., ¶ 26. The Parties also informally exchanged non-public information concerning the Data Incident and the size of the Class in preparation for mediation. Counsel Decl., ¶ 27. This litigation has certainly proceeded to the point where “the parties have sufficient information to make an informed decision about settlement,” including an informed and realistic assessment of the strengths and weakness of their respective cases. *See Linney*, 151 F.3d at 1239.

Class Counsel’s collective experience in similar types of privacy and data protection practices provided substantive knowledge on the subject to enable Class Counsel to represent Plaintiffs’ and Settlement Class Members’ interests without expending hundreds of hours and substantial financial resources to come up to speed on the subject area. Counsel Decl., ¶ 28.

Accordingly, Plaintiffs are well informed about the strengths and weaknesses of this case.

6. The Experience and Views of Counsel

Class Counsel initiated this lawsuit shortly after HawaiiUSA announced the data breach, which, based upon publicly-available information, potentially impacted approximately 21,441 consumers. Class Counsel have substantial experience litigating complex class cases of various types, including data breach cases such as this one. *See* Counsel Decl., ¶ 3-26, Ex. A, B, C. Having worked on behalf of the putative class since the Data Incident was announced, evaluated the legal and factual disputes, and dedicated significant time and monetary resources to this litigation, proposed Class Counsel fully endorse the Settlement. *Id.*, ¶ 30. A great deal of weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation. *See, e.g., Norton*, 2017 WL 1424636, at *6; *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). Thus, this factor supports approval.

7. Governmental Participants.

There is no governmental participant in this matter. This factor is neutral.

8. The Reaction of the Class Members to the Proposed Settlement.

Because notice has not yet been given, this factor is not yet implicated; however, Plaintiffs support the Settlement. Counsel Decl., ¶ 29.

9. Lack of Collusion Among the Parties

The parties negotiated a substantial, multifaceted Settlement, as described above, with the assistance of Jill Sperber of Judicate West, who presided over a full day mediation. Class Counsel and Defendant's counsel are well-versed in handling data breach class actions such as this one and fully understand the values recovered in similar cases. The assistance of a respected third-party mediator also is evidence of no collusion. Therefore, the Court can be assured that the negotiations were not collusive.

D. The Court Should Approve the Proposed Notice Program

Rule 23 requires that before final approval, "notice of the dismissal or compromise shall be given to all members of the class in such a manner as the court directs." Haw. R. Civ. P. 23(e). For classes certified under Rule 23(b)(3), "the court shall direct to members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Haw. R. Civ. P. 23(c)(2).

Courts have established that “best practicable notice” means “individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). To satisfy due process, notice to class members must be the best practicable, and reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Class settlement notices must present information about a proposed settlement simply, neutrally, and understandably. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019). Notice is adequate if it generally describes the terms of the class action settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard. *Id.*

Here, and after a competitive bid process, the parties have agreed to a robust notice program to be administered by a well-respected third-party class administrator—P&N—which will use all reasonable efforts to provide direct and individual notice to each potential Settlement Class Member via direct U.S. mail. The costs of administering the Settlement will be paid by HawaiiUSA. S.A. ¶ 2.6. The Notice and Claim Forms negotiated by the Parties are clear and concise and inform Settlement Class Members that the court will exclude the member from the class if the member so requests by a specified date, that the judgment will include all members who do not request exclusion, and that any member who does not request exclusion may, if the member desires, enter an appearance through counsel. Haw. R. Civ. P. 23(c)(2). S.A. Exs. A, B, and C.

In addition to the direct notice, the Settlement Administrator will also establish a dedicated Settlement Website and will maintain and update the website throughout the Claims Period, with the forms of Short Notice, Long Notice, and Claim Forms approved by the Court, as well as the Settlement Agreement. S.A. ¶ 3.3(b). The Settlement Administrator is also authorized and required to provide copies of the forms of Short Notice, Long Notice, and Claim Forms approved by the Court, as well as the Settlement Agreement, upon request. S.A. ¶ 3.3(e).

Plaintiffs negotiated a notice program that is reasonably calculated under all the circumstances to apprise Class Members of the pendency of the action and afford them an opportunity to present their objections. Class Members provided their contact information in conjunction with their employment with, or utilizing the services of, Defendant. It is not known to be a particularly transient class, thus direct notice via mail is the best practicable. *Compare Roes*

1-2 v. SFBSC Management LLC, 944 F.3d 1035, 1046 (9th Cir. 2019). Notice programs providing notice by mail are regularly approved by courts. *See, e.g., In re Online DVD-Rental Antitrust Litigation*, 779 F. 3d 934, 946 (9th Cir. 2015) (finding notice provided initially by email, and then by mail to individuals whose emails bounced back was sufficient under both the U.S. Constitution and Rule 23).

Because the notice plan ensures that Settlement Class Members’ due process rights are amply protected, it should be approved by this Court. *See Hartranft v. TVI, Inc.*, No. 15-01081-CJC-DFM, 2019 WL 1746137, at *3 (C.D. Cal. Apr. 18, 2019) (“The Court finds that the Class Notice and the manner of its dissemination described in Paragraph 7 above and Section VIII of the Agreement constitutes the best practicable notice under the circumstances and is reasonably calculated, under all the circumstances, to apprise Settlement Class Members of the pendency of this action, the terms of the Agreement, and their right to object to or exclude themselves from the Settlement Class.”); *see also Spencer v. #1 A LifeSafer of Ariz., LLC*, No. CV-18-02225-PHX-BSB, 2019 WL 1034451, at *3 (D. Ariz. Mar. 4, 2019) (preliminarily approving class action settlement and finding “that the proposed notice program is clearly designed to advise the Class Members of their rights.”).

E. Appointment of the Settlement Administrator

In connection with implementation of the Notice Program and administration of the settlement benefits, the Parties request that the Court appoint P&N to serve as the Settlement Administrator. P&N has a trusted and proven track record of supporting class action administrations. Counsel Decl. ¶ 36.

VI. CONCLUSION

Plaintiffs negotiated a fair, adequate, and reasonable Settlement that will provide Settlement Class Members with both significant monetary and equitable relief. The Settlement is likely to be approved, and as such, Notice should be ordered to issue to the class. For all the above

reasons, Plaintiffs respectfully request this Court to grant Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

Dated: April 2, 2024

Respectfully submitted,

/s/ Robert M. Hatch

Margery S Bronster

Robert M. Hatch

BRONSER FUJICHAKU ROBBINS

A Law Corporation

1003 Bishop Street, Suite 2300

Honolulu, HI 96813

Tel.: (808) 524-5644

Fax: (808) 599-1881

mbronster@bfrhawaii.com

rhatch@bfrhawaii.com

MILBERG COLEMAN BRYSON

PHILLIPS GROSSMAN, PLLC

Gary M. Klinger (*Admitted Pro Hac Vice*)

227 West Monroe Street, Suite 2100

Chicago, IL 60606

T: 866.252.0878

gklinger@milberg.com

**CAFFERTY CLOBES MERIWETHER &
SPRENGEL LLP**

Nickolas J. Hagman (*admitted pro hac vice*)

135 S. LaSalle, Suite 3210

Chicago, IL 60606

T: 312.782.4880

nhagman@caffertyclobes.com

Attorneys for Plaintiff and the Putative Class

**IN THE CIRCUIT COURT FOR THE FIRST CIRCUIT
STATE OF HAWAI'I**

JOSEPH SMITH AND TONY LEE,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

HAWAIIUSA FEDERAL CREDIT UNION,

Defendant.

Case No.: 1CCV-24-0000154

DECLARATION OF NOELLE E. CHAN

DECLARATION OF NOELLE E. CHAN

I, NOELLE E. CHAN, declare as follows:

1. I am a Hawai'i licensed attorney with the law firm of Bronster Fujichaku Robbins, and am co-counsel for Plaintiff Joseph Smith and Tony Lee ("Plaintiffs") in this lawsuit. I am competent to testify as to the matters set forth herein. Except where indicated that a statement is made on information and belief, I make the following statements based on my personal knowledge.

2. Gary M. Klinger ("Mr. Klinger") is an attorney with Milberg Coleman Bryson Phillips Grossman, PLLC ("Milberg"). Mr. Hagman is one of the lead attorneys for Plaintiffs and licensed to practice in the State of Illinois. Mr. Klinger is fully qualified to represent Plaintiffs herein.

4. Attached as Exhibit "1" is a true and correct copy of the Class Action Settlement Agreement, including the attachments thereto, the Notice, the [Proposed] Order Granting Preliminary Approval and the [Proposed] Order Granting Final Approval, along with its attachments, referenced as exhibits A - E.

5. Attached as Exhibit “2” is a copy of the Declaration of Gary M. Klinger in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement Class Counsel, attaching the Firm resumes of Class Counsel referencing exhibits a, b and c, respectively.

I declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 2nd day of April 2024, at Honolulu, Hawai‘i.

/s/ Noelle E. Chan
NOELLE E. CHAN

**IN THE CIRCUIT COURT FOR THE FIRST CIRCUIT
STATE OF HAWAI'I**

JOSEPH SMITH AND TONY LEE,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

HAWAIIUSA FEDERAL CREDIT UNION,

Defendant.

Case No.: 1CCV-24-0000154

NOTICE OF REMOTE HEARING

NOTICE OF REMOTE HEARING

NOTICE IS HEREBY GIVEN that the **UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** shall come on for hearing before the Honorable Karin L. Holma, Judge of the Above-Entitled court, via ZOOM video conferencing on **Wednesday, April 24, 2024, at 2:30 p.m.**, or as soon thereafter as the matter can be heard.

If you fail to appear at the hearing, the relief requested may be granted without further notice to you.

All parties are directed to appear at least 10 minutes prior to the scheduled start time. The Zoom meeting ID is: 466 798 4465. No password is required.

Self-represented parties unable to appear by video may call 888-788- 0099 (U.S. toll-free) or 646-558- 8656 to participate by telephone. You must enter the above noted Zoom meeting ID when prompted. You must also notify the assigned judge's chambers that you intend to participate by telephone at least 48 hours before the hearing and you must provide the court with the telephone number that you will be using to dial-in for the hearing.

Attorneys and self-represented parties must enter a user name that sets forth their full name, otherwise you will not be admitted into the hearing. Attorneys must also include the suffix “Esq.”

All attorneys and parties shall dress appropriately for the hearing. Recording court proceedings is strictly prohibited unless permission is granted by the court. The court may impose sanctions for failure to comply with this notice.

Dated: April 2, 2024.

Respectfully submitted,

/s/ Robert M. Hatch

Margery S Bronster

Robert M. Hatch

BRONSTER FUJICHAKU ROBBINS

A Law Corporation

1003 Bishop Street, Suite 2300

Honolulu, HI 96813

Tel.: (808) 524-5644

Fax: (808) 599-1881

mbronster@bfrhawaii.com

rhatch@bfrhawaii.com

MILBERG COLEMAN BRYSON

PHILLIPS GROSSMAN, PLLC

Gary M. Klinger (*Admitted Pro Hac Vice*)

227 West Monroe Street, Suite 2100

Chicago, IL 60606

T: 866.252.0878

gklinger@milberg.com

**CAFFERTY CLOBES MERIWETHER &
SPRENGEL LLP**

Nickolas J. Hagman (*admitted pro hac vice*)

135 S. LaSalle, Suite 3210

Chicago, IL 60606

T: 312.782.4880

nhagman@caffertyclobes.com

Attorneys for Plaintiffs and the Putative Class

EXHIBIT 1

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

JOSEPH SMITH and TONY LEE,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

HAWAIIUSA FEDERAL CREDIT UNION,
Defendant.

Case No. 1CCV-24-0000154

**CLASS ACTION SETTLEMENT
AGREEMENT**

1 This Settlement Agreement, dated as of March _____, 2024, is made and entered into
2 by and among the following Settling Parties (as defined below): Joseph Smith and Tony Lee
3 (collectively, “Plaintiffs”), individually and on behalf of the Settlement Class (as defined below),
4 by and through their counsel of record (“Proposed Settlement Class Counsel,” as defined below),
5 and HawaiiUSA Federal Credit Union (“HawaiiUSA” or “Defendant,” and, together with
6 Plaintiffs, the “Parties”), by and through its counsel of record, Matthew D. Pearson of Baker &
7 Hostetler LLP. The Settlement Agreement (as defined below) is subject to Court approval and is
8 intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the
9 Released Claims (as defined below), upon and subject to the terms and conditions hereof.

10 **I. THE LITIGATION**

11 Plaintiffs allege that on or around December 12, 2022, HawaiiUSA’s current and former
12 employees’ and consumers’ sensitive personal and/or financial data was potentially compromised
13 when unauthorized actors were able to breach an employee’s email account on HawaiiUSA’s
14 network and access files containing personally identifying information (“PII”) and financial
15 account information (with PII, “Private Information”) for approximately 21,441 individuals (“Data
16 Incident” or “Data Security Incident”). Plaintiffs further claim that the Private Information
17 impacted in the Data Incident included, but was not limited to, names, Social Security numbers,
18 financial account numbers, credit and debit card numbers, and consumer financial account
19 information including security codes, access codes, passwords, or PINs.

20 After discovering the Data Incident, HawaiiUSA notified approximately 21,441 individuals
21 of the Data Incident.

22 On April 28, 2023, Plaintiff Tony Lee (“Lee”) filed a putative class action complaint against
23 HawaiiUSA in the Circuit Court of the First Circuit, State of Hawaii, asserting claims allegedly
24 arising out of the Data Incident. On May 2, 2023, Plaintiff Joseph Smith (“Smith”) filed a putative
25 class action complaint against HawaiiUSA in the United States District Court for the District of
26 Hawaii, asserting claims allegedly arising out of the Data Incident. On June 2, 2023, HawaiiUSA
27 timely removed the *Lee* Action to the United States District Court for the District of Hawaii. On
28

1 June 26, 2023, the Parties filed a Joint Motion to Consolidate the *Lee* and *Smith* Actions into a
2 single, consolidated action. The Court granted that Joint Motion on June 28, 2023.

3 On July 26, 2023, Plaintiffs Smith and Lee filed their amended consolidated class action
4 complaint in the United States District Court for the District of Hawaii. Following meet-and-confer
5 discussions between counsel for HawaiiUSA and counsel for Plaintiffs, including discussions about
6 Article III standing, the parties agreed, as a condition of settlement, *see infra* Paragraph 3.1, that
7 Plaintiffs would dismiss their action filed United States District Court for the District of Hawaii,
8 and would refile their complaint in the Circuit Court of the First Circuit, State of Hawaii. On
9 January 30, 2024, Plaintiffs Smith and Lee refiled their complaint in the Circuit Court of the First
10 Circuit, State of Hawaii. That case is titled *Smith, et al. v. HawaiiUSA Federal Credit Union*, Case
11 No. 1CCV-24-0000154 (Haw. Cir. Ct., 1st Cir.) (the “Litigation”).

12 From the onset of the Litigation, and over the course of several months, the Parties engaged
13 in settlement negotiations. On December 1, 2023, the Parties participated in a full-day mediation
14 before Jill Sperber of Judicate West. Although the Parties were not able to reach a resolution at the
15 mediation, the Parties continued to negotiate following the mediation. Eventually, Ms. Sperber
16 made a mediator’s proposal, which each side accepted, resulting in a settlement that is
17 memorialized in this settlement agreement (“Settlement Agreement”).

18 Pursuant to the terms set out below, this Settlement Agreement provides for the resolution
19 of all claims and causes of action asserted, or that could have been asserted, against HawaiiUSA
20 and the Released Persons (as defined below) relating to the Data Incident, by and on behalf of
21 Representative Plaintiffs and the Settlement Class (as defined below).

22 **II. CLAIMS OF REPRESENTATIVE PLAINTIFFS AND BENEFITS OF SETTLING**

23 Plaintiffs believe the claims asserted in the Litigation, as set forth in their complaint, have
24 merit. Plaintiffs and Proposed Settlement Class Counsel recognize and acknowledge, however, the
25 expense and length of continued proceedings necessary to prosecute the Litigation against
26 HawaiiUSA through motions practice, trial, and potential appeals. They have also considered the
27 uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in
28 such litigation, especially in complex class actions. Proposed Settlement Class Counsel are highly

1 experienced in class action litigation and very knowledgeable regarding the relevant claims,
2 remedies, and defenses at issue generally in such litigation and in this Litigation. They have
3 determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and
4 adequate, and in the best interests of the Settlement Class.

5 **III. DENIAL OF WRONGDOING AND LIABILITY**

6 HawaiiUSA denies each and all of the claims and contentions alleged against it in the
7 Litigation. HawaiiUSA denies all charges of wrongdoing or liability as alleged, or which could be
8 alleged, in the Litigation. Nonetheless, HawaiiUSA has concluded that further conduct of the
9 Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and
10 finally settled in the manner and upon the terms and conditions set forth in this Settlement
11 Agreement. HawaiiUSA has considered the uncertainty and risks inherent in any litigation.
12 HawaiiUSA has, therefore, determined that it is desirable and beneficial that the Litigation be
13 settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

14 **IV. TERMS OF SETTLEMENT**

15 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among
16 Plaintiffs, individually and on behalf of the Settlement Class; Proposed Settlement Class Counsel;
17 and HawaiiUSA that, subject to the approval of the Court, the Litigation and the Released Claims
18 shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed
19 with prejudice as to the Settling Parties and the Settlement Class, except those members of the
20 Settlement Class who lawfully opt-out of the Settlement Agreement, upon and subject to the terms
21 and conditions of this Settlement Agreement, as follows:

22 **1. Definitions**

23 As used in the Settlement Agreement, the following terms have the meanings specified
24 below:

25 1.1 “Agreement” or “Settlement Agreement” means this agreement.

26 1.2 “Claims Administration” means the processing and payment of claims received
27 from members of the Settlement Class by the Claims Administrator.
28

1 1.3 “Claims Administrator” means Postlethwaite & Netterville, APAC (“P&N”), a
2 company experienced in administering class action claims generally and specifically those of the
3 type provided for and made in data breach litigation.

4 1.4 “Claims Deadline” means the postmark and/or online submission deadline for Valid
5 Claims submitted pursuant to ¶¶ 2.1 and 2.2, which shall occur ninety (90) days after the Notice
6 Commencement Date (as defined below).

7 1.5 “Claim Form” means the claim form to be used by members of the Settlement Class
8 to submit a Settlement Claim, either through the mail or online through the Settlement Website,
9 substantially in the form as shown in **Exhibit A** to this Settlement Agreement.

10 1.6 “Costs of Claims Administration” means all actual costs associated with or arising
11 from Claims Administration.

12 1.7 “Court” means the Circuit Court of the First Circuit, State of Hawaii.

13 1.8 “Data Incident” means the criminal cyberattack that was perpetrated on HawaiiUSA
14 in or around December 2022.

15 1.9 “Dispute Resolution” means the process for resolving disputed Settlement Claims
16 as set forth in this Agreement.

17 1.10 “Effective Date” means the first date by which all of the events and conditions
18 specified in ¶ 1.11 herein have occurred and been met.

19 1.11 “Final” means the occurrence of all of the following events: (i) the settlement
20 pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a
21 Judgment (as that term is defined herein); and (iii) the time to appeal or seek permission to appeal
22 from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the
23 Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be
24 taken, and such dismissal or affirmance has become no longer subject to further appeal or review.
25 Notwithstanding the above, any order modifying or reversing any attorneys’ fee award or service
26 award made in this case shall not affect whether the Judgment is “Final” as defined herein or any
27 other aspect of the Judgment.

28 1.12 “Judgment” means a judgment rendered by the Court.

1 1.13 “Long Notice” means the long form notice of settlement posted on the Settlement
2 Website, substantially in the form as shown in **Exhibit C** to this Settlement Agreement.

3 1.14 “Notice Commencement Date” means thirty days following entry of the Preliminary
4 Approval Order. The Notice Commencement Date shall be used for purposes of calculating the
5 Claims Deadline, Opt-Out Date and Objection Date deadlines, and all other deadlines that flow
6 from the Notice Commencement Date.

7 1.15 “Objection Date” means the date by which members of the Settlement Class must
8 mail to Proposed Settlement Class Counsel and counsel for HawaiiUSA or, in the alternative, file
9 with the Court, their objection to the Settlement Agreement for that objection to be effective. The
10 postmark date shall constitute evidence of the date of mailing for these purposes.

11 1.16 “Opt-Out Date” means the date by which members of the Settlement Class must
12 mail their requests to be excluded from the Settlement Class for that request to be effective. The
13 postmark date shall constitute evidence of the date of mailing for these purposes.

14 1.17 “Person” means an individual, corporation, partnership, limited partnership, limited
15 liability company or partnership, association, joint stock company, estate, legal representative,
16 trust, unincorporated association, government or any political subdivision or agency thereof, and
17 any business or legal entity, and their respective spouses, heirs, predecessors, successors,
18 representatives, or assignees.

19 1.18 “Preliminary Approval Order” means the order preliminarily approving the
20 Settlement Agreement and ordering that notice be provided to the Settlement Class. The Settling
21 Parties’ proposed form of Preliminary Approval Order will be attached as an Exhibit to Plaintiffs’
22 Unopposed Motion for Preliminary Approval of the Class Action Settlement.

23 1.19 “Proposed Settlement Class Counsel” means Milberg Coleman Bryson Phillips
24 Grossman PLLC; Cafferty Clobes Meriwether & Sprengel LLP; and Bronster Fujichaku Robbins.

25 1.20 “Related Entities” means HawaiiUSA’s past or present parents, subsidiaries,
26 divisions, and related or affiliated entities, and each of their respective predecessors, successors,
27 directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes,
28 without limitation, any Person related to any such entity who is, was, or could have been named as

1 a defendant in any of the actions in the Litigation, other than any Person who is found by a court
2 of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting
3 the Data Incident or who pleads *nolo contendere* to any such charge.

4 1.21 “Released Claims” shall collectively mean any and all past, present, and future
5 claims and causes of action including, but not limited to, any causes of action arising under or
6 premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any
7 country, state, province, county, city, or municipality, including 15 U.S.C. §§ 45 *et seq.*, and all
8 similar statutes in effect in any states in the United States as defined below; violations of Hawaii’s
9 Unfair Deceptive Acts or Practices Statute, Haw. Rev. Stat. §§ 480-2(a), 480-13(b), 481A-2, 481A-
10 3(a), 481A03(a)(4), 481A-3(a)(7), 481A-3(a)(12), *et seq.* and all similar state consumer-protection
11 statutes; violations of the California Consumer Protection Act of 2018, Cal. Civ. Code § 1798, *et*
12 *seq.* and all similar state privacy-protection statutes; violations of Hawaii’s Security Breach of
13 Personal Information Statute, Haw. Rev. Stat. § 487N-2(b), *et seq.* and all similar notification
14 statutes in effect in any states in the United States; negligence; negligence *per se*; breach of contract;
15 breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy;
16 fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment;
17 wantonness; failure to provide adequate notice pursuant to any breach notification statute or
18 common law duty; and including, but not limited to, any and all claims for damages, injunctive
19 relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees and expenses, pre-judgment
20 interest, credit monitoring services, the creation of a fund for future damages, statutory damages,
21 punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a
22 receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or
23 contingent, direct or derivative, and any other form of legal or equitable relief that either has been
24 asserted, was asserted, or could have been asserted, by any member of the Settlement Class against
25 any of the Released Persons based on, relating to, concerning or arising out of the Data Incident and
26 alleged theft of other personal information or the allegations, transactions, occurrences, facts, or
27 circumstances alleged in or otherwise described in the Litigation. Released Claims shall not include
28 the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the

1 settlement contained in this Settlement Agreement, and shall not include the claims of members of
2 the Settlement Class Members who have timely excluded themselves from the Settlement Class.

3 1.22 “Released Persons” means HawaiiUSA and its Related Entities and each of their
4 past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their
5 respective predecessors, successors, directors, officers, employees, principals, agents, attorneys,
6 insurers, and reinsurers.

7 1.23 “Plaintiffs” and “Representative Plaintiffs” mean Joseph Smith and Tony Lee.

8 1.24 “Settlement Claim” means a claim for settlement benefits made under the terms of
9 this Settlement Agreement.

10 1.25 “Settlement Class” means all persons in the United States to whom HawaiiUSA
11 mailed a notification that their information may have been impacted in the Data Incident. The
12 Settlement Class specifically excludes: (i) HawaiiUSA and its respective officers and directors; (ii)
13 all members of the Settlement Class who timely and validly request exclusion from the Settlement
14 Class; (iii) the Judge and Magistrate Judge assigned to evaluate the fairness of this settlement; and
15 (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of
16 initiating, causing, aiding, or abetting the Data Incident or who pleads *nolo contendere* to any such
17 charge.

18 1.26 “Settlement Class Member(s)” means all persons meeting the definition of the
19 Settlement Class.

20 1.27 “Settlement Website” means a website, the URL for which shall be mutually
21 selected by the Settling Parties, that will inform Settlement Class Members of the terms of this
22 Settlement Agreement, their rights, dates and deadlines and related information, as well as provide
23 the Settlement Class Members with the ability to submit a Settlement Claim online.

24 1.28 “Settling Parties” means, collectively, HawaiiUSA and Plaintiffs, individually and
25 on behalf of the Settlement Class.

26 1.29 “Short Notice” means the short form notice of the proposed class action settlement,
27 substantially in the form as shown in **Exhibit B** to this Settlement Agreement. The Short Notice
28 will direct recipients to the Settlement Website and inform members of the Settlement Class of,

1 among other things, the Claims Deadline, the Opt-Out and Objection Deadlines, and the date of the
2 Final Fairness Hearing (if set prior to the Notice Commencement Date (as defined above)).

3 1.30 “Unknown Claims” means any of the Released Claims that either Plaintiff does not
4 know or suspect to exist in his favor at the time of the release of the Released Persons that, if known
5 by him, might have affected his settlement with, and release of, the Released Persons, or might
6 have affected his decision not to object to and/or to participate in this Settlement Agreement. With
7 respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the
8 Effective Date, Plaintiffs intend to and expressly shall have waived the provisions, rights, and
9 benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and
10 benefits conferred by any law of any state, province, or territory of the United States (including,
11 without limitation, California Civil Code §§ 1798.80 *et seq.*, Montana Code § 28-1-1602; North
12 Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar,
13 comparable, or equivalent to California Civil Code § 1542, which provides:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
15 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
16 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
17 THE TIME OF EXECUTING THE RELEASE, AND THAT, IF
18 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
19 AFFECTED HIS OR HER SETTLEMENT WITH THE
20 DEBTOR OR RELEASED PARTY.

21 Plaintiffs may hereafter discover facts in addition to, or different from, those that they, and
22 any of them, now know or believe to be true with respect to the subject matter of the Released
23 Claims, but Plaintiffs expressly shall have, upon the Effective Date, fully, finally and forever settled
24 and released any and all Released Claims. The Settling Parties acknowledge that the foregoing
25 waiver is a material element of the Settlement Agreement of which this release is a part.

26 1.31 “United States” as used in this Settlement Agreement includes the District of
27 Columbia and all territories.

28 1.32 “Valid Claims” means Settlement Claims in an amount approved by the Claims
Administrator or found to be valid through the claims processing and/or Dispute Resolution
process.

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2. Settlement Benefits

2.1 Available to the Entire Settlement Class.

a) **Identity-Theft Protection.** All members of the Settlement Class who submit a Valid Claim using the Claim Form are eligible for 24 months of free identity-theft protection, called “Identity Defense Total 3-Bureau Service” (“ID Total”) by CyEx by Pango Group. For members of the Settlement Class who opted to receive the credit monitoring initially offered by HawaiiUSA, “ID Total” shall be in addition to that year. “ID Total” includes, at least, the following, or similar, services:

- Up to \$1 Million Dollars reimbursement insurance through AIG covering losses due to identity theft and stolen funds;
- 3 Bureau real-time credit monitoring, providing immediate notifications (via alerts, both text and email) to any Settlement Class Member whose credit profile has changed due to a recent inquiry or event;
- Monthly credit reports to measure the credit health and worthiness of Settlement Class Members;
- Continuous monitoring for high-risk transactions, including payday loans, wire transfers, and account openings, that involve the Settlement Class Member’s personal information;
- Notification of attempts to use the Settlement Class Member’s Social Security Number as part of an identity verification event, such as requesting a replacement credit or debit card; filing an insurance claim; updating personal information on an existing account; and/or opening a new account;
- Dark web monitoring for Settlement Class Members’ personal information found on the dark web;

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- Fictitious identity monitoring, which notifies the Settlement Class Member when his or her Social Security Number is being used in association with someone else’s name and/or address;
- Online tax fraud monitoring and alerts, which monitors online income tax filings through TurboTax and alerts the Settlement Class Member if a tax return is filed using his or her Social Security Number;
- Customer support and victim assistance, providing Settlement Class Members with access to experienced customer care representatives to help fix an identity event or to answer any questions the Settlement Class Members may have;
- Credit security freeze assistance, which provides the Settlement Class Member a central location to link to nine different consumer reporting agencies to freeze and unfreeze his or her credit files;
- Lost wallet protection, which provides a customer support line where the Settlement Class Member can receive help in canceling and replacing lost credit cards; and
- Insight and tips newsfeed, which provides Settlement Class Members with interesting stories and new threats in a centralized location.

b) Extraordinary Expense Reimbursement. All members of the Settlement Class who have suffered a proven monetary loss and who submit a Valid Claim using the Claim Form are eligible to claim up to \$4,000 if: (1) the loss is an actual, documented and unreimbursed monetary loss; (2) the loss was more likely than not caused by the Data Incident; (3) the loss occurred between December 12, 2022 and the Claims Deadline; (4) the loss is not already covered by one or more of the reimbursement categories listed in ¶ 2.2; and (5) the member of the Settlement Class made reasonable efforts to avoid, or seek reimbursement for, the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance.

1 Members of the Settlement Class seeking reimbursement under ¶ 2.1(b) (Extraordinary
2 Expense Reimbursement) must complete and submit a Claim Form to the Claims Administrator,
3 postmarked or submitted online on or before the 90th day after the Notice Commencement Date.
4 The notice to the class will specify this deadline and other relevant dates described herein. The
5 Claim Form must be verified by the member of the Settlement Class with a statement that his or
6 her claim is true and correct, to the best of his or her knowledge and belief, and is being made under
7 penalty of perjury. Notarization shall not be required. The member of the Settlement Class must
8 submit reasonable documentation that the out-of-pocket expenses and charges claimed were both
9 actually incurred and plausibly arose from the Data Incident. Failure to provide supporting
10 documentation of the out-of-pocket expenses referenced above, as requested on the Claim Form,
11 shall result in denial of a claim. Disputes as to claims submitted under this paragraph are to be
12 resolved pursuant to the provisions stated in ¶ 2.3.

13 2.2 Alternative Claims. In addition to the claims listed in ¶ 2.1 above (Extraordinary
14 Expense Reimbursement and Credit Monitoring), all members of the Settlement Class will have
15 the option to submit a Valid Claim using the Claim Form for either: (1) ordinary expense
16 reimbursement, including lost time (as described below) or (2) a cash payment (as described
17 below). Settlement Class Members cannot make a claim for both.

18 a) **Ordinary Expense Reimbursement**. All members of the Settlement Class
19 who submit a Valid Claim using the Claim Form are eligible to make a claim for reimbursement of
20 the following documented out-of-pocket expenses, not to exceed \$400 per member of the
21 Settlement Class, that were incurred as a result of the Data Incident: (i) unreimbursed bank fees;
22 (ii) unreimbursed card reissuance fees; (iii) unreimbursed overdraft fees; (iv) unreimbursed charges
23 related to unavailability of funds; (v) unreimbursed late fees; (vi) unreimbursed over-limit fees;
24 (vii) long distance telephone charges; (viii) cell minutes (if charged by minute), Internet usage
25 charges (if charged by the minute or by the amount of data usage and incurred solely as a result of
26 the Data Incident), and text messages (if charged by the message and incurred solely as a result of
27 the Data Incident); (ix) unreimbursed charges from banks or credit card companies; (x) interest on
28 payday loans due to card cancellation or due to over-limit situation incurred solely as a result of the

1 Data Incident; (xi) costs of credit report(s), credit monitoring, and/or other identity theft insurance
2 products purchased by members of the Settlement Class between December 12, 2022 and the date
3 of the Claims Deadline; and (xii) other losses incurred by Settlement Class Members determined
4 by the Settlement Administrator to be fairly traceable to the Data Incident, including, but not limited
5 to, the cost of postage and gas for local travel. To receive reimbursement for any of the above-
6 referenced out-of-pocket expenses, Settlement Class Members must submit (i) their name and
7 current address; (ii) supporting documentation of such out-of-pocket expenses; and (iii) a
8 description of the loss, if not readily apparent from the documentation.

9 Members of the Settlement Class who submit a Valid Claim using the Claim Form for
10 Ordinary Expense Reimbursement are also eligible to receive up to four hours of lost time spent
11 dealing with issues arising out of the Data Incident (calculated at the rate of \$20 per hour).
12 Members of the Settlement Class must attest on the Claim Form to the time spent. No
13 documentation other than a description of their actions shall be required for members of the
14 Settlement Class to receive compensation for attested time. Claims made for lost time can be
15 combined with claims made for out-of-pocket expenses and, together with the out-of-pocket
16 expenses, are subject to the \$400 cap for each member of the Settlement Class.

17 b) **Alternative Cash Payment.** In lieu of making a claim under ¶ 2.2(a)
18 (Ordinary Expense Reimbursement), members of the Settlement Class may submit a Valid Claim
19 using the Claim Form to receive a \$50 cash payment. Total Valid Claims for Alternative Cash
20 Payments shall not exceed \$150,000. To the extent that the total Valid Claims for Alternative Cash
21 Payments do exceed \$150,000, each Valid Claim for Alternative Cash Payment shall be reduced,
22 on a *pro rata* basis, until the total Valid Claims for Alternative Cash Payments equals or is less than
23 \$150,000.

24 2.3 Dispute Resolution for Claims.

25 2.3.1 The Claims Administrator, in its sole discretion to be reasonably
26 exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant
27 has provided all information needed to complete the Claim Form, including any documentation that
28 may be necessary to reasonably support the out-of-pocket expenses described in ¶¶ 2.1(b) and

1 2.2(a); and (3) the information submitted could lead a reasonable person to conclude that more
2 likely than not the claimant has suffered the claimed losses as a result of the Data Incident. The
3 Claims Administrator may, at any time, request from the claimant, in writing, additional
4 information as the Claims Administrator may reasonably require in order to evaluate the claim,
5 e.g., documentation requested on the Claim Form, information regarding the claimed losses,
6 available insurance and the status of any claims made for insurance benefits, and claims previously
7 made for identity theft and the resolution thereof. For any such Claims that the Claims
8 Administrator determines to be implausible, the Claims Administrator will submit those Claims to
9 the Settling Parties. If the Settling Parties do not agree with the Claimant's Claim, after meeting
10 and conferring, then the Claim shall be referred for resolution to the claim referee, to be selected
11 by the Parties if needed. Any costs associated with work performed by the claims referee shall be
12 paid by HawaiiUSA.

13 2.3.2 Upon receipt of an incomplete or unsigned Claim Form or a Claim
14 Form that is not accompanied by sufficient documentation to determine whether the claim is
15 facially valid, the Claims Administrator shall request additional information and give the claimant
16 thirty (30) days to cure the defect before rejecting the claim. If the defect is not cured, then the
17 claim will be deemed invalid and there shall be no obligation to pay the claim.

18 2.3.3 Following receipt of additional information requested by the Claims
19 Administrator, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser
20 amount, or reject each claim. If, after review of the claim and all documentation submitted by the
21 claimant, the Claims Administrator determines that such a claim is facially valid, then the claim
22 shall be paid. If the claim is not facially valid because the claimant has not provided all information
23 needed to complete the Claim Form and evaluate the claim, then the Settlement Administrator may
24 reject the claim without any further action. If the claim is rejected in whole or in part, for other
25 reasons, then the claim shall be referred to the claims referee.

26 2.3.4 Settlement Class Members shall have thirty (30) days from receipt of
27 the offer to accept or reject any offer of partial payment received from the Claims Administrator.
28 If a Settlement Class Member rejects an offer from the Claims Administrator, the Claims

1 Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a
2 final determination. If the claimant approves the final determination, then the approved amount
3 shall be the amount to be paid. If the claimant does not approve the final determination within
4 thirty (30) days, then the dispute will be submitted to the claims referee within an additional ten
5 (10) days.

6 2.3.5 If any dispute is submitted to the claims referee, the claims referee
7 may approve the Claims Administrator’s determination by making a ruling within fifteen (15) days.
8 The claims referee may make any other final determination of the dispute or request further
9 supplementation of a claim within thirty (30) days. The claims referee’s determination shall be
10 based on whether the claims referee is persuaded that the claimed amounts are reasonably supported
11 in fact and were more likely than not caused by the Data Incident. The claims referee shall have
12 the power to approve a claim in full or in part. The claims referee’s decision will be final and non-
13 appealable. Any claimant referred to the claims referee shall reasonably cooperate with the claims
14 referee, including by either providing supplemental information as requested or, alternatively,
15 signing an authorization allowing the claims referee to verify the claim through third-party sources,
16 and failure to cooperate shall be grounds for denial of the claim in full. The claims referee shall
17 make a final decision within thirty (30) days of receipt of all supplemental information requested.

18 2.4 Business Practices Changes. Plaintiffs have received assurances that HawaiiUSA
19 has implemented or will implement certain reasonable steps to adequately secure its systems and
20 environments presently and in the future.

21 2.5 Confirmatory Discovery. HawaiiUSA has provided or will provide reasonable
22 access to confidential confirmatory discovery regarding the number of Settlement Class Members
23 and state of residence, the facts and circumstances of the Data Incident and HawaiiUSA’s response
24 thereto, and the changes and improvements that have been made or are being made to further protect
25 Settlement Class Members’ Private Information.

26 2.6 Settlement Expenses. All costs for notice to the Settlement Class as required under
27 ¶¶ 3.2 and 3.3, Costs of Claims Administration under ¶¶ 8.1, 8.2, and 8.3, and the costs of Dispute
28 Resolution described in ¶ 2.3, shall be paid by HawaiiUSA.

1 2.7 Settlement Class Certification. The Settling Parties agree, for purposes of this
2 settlement only, to the certification of the Settlement Class. If the settlement set forth in this
3 Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated
4 or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and
5 the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall
6 proceed as though the Settlement Class had never been certified, without prejudice to any Person’s
7 or Settling Party’s position on the issue of class certification or any other issue. The Settling
8 Parties’ agreement to the certification of the Settlement Class is also without prejudice to any
9 position asserted by the Settling Parties in any other proceeding, case or action, as to which all of
10 their rights are specifically preserved.

11 **3. Order of Preliminary Approval and Publishing of Notice of Fairness Hearing**

12 3.1. Preliminary and final approval of the Settlement Agreement shall be sought in the
13 Circuit Court of the First Circuit, State of Hawaii. Plaintiffs agreed to and have voluntarily
14 dismissed without prejudice the action pending before the United States District Court for the
15 District of Hawaii and refiled the Litigation in the Circuit Court of the First Circuit, State of Hawaii.

16 3.2. As soon as practicable after the execution of the Settlement Agreement, Proposed
17 Settlement Class Counsel and counsel for HawaiiUSA shall jointly submit this Settlement
18 Agreement to the Court, and Proposed Settlement Class Counsel will file a motion for preliminary
19 approval of the settlement with the Court requesting entry of a Preliminary Approval Order in the
20 form to be agreed upon by the Parties, or an order substantially similar to such form in both terms
21 and cost, requesting, among other things:

- 22 a) certification of the Settlement Class for settlement purposes only pursuant
- 23 to ¶ 2.7;
- 24 b) preliminary approval of the Settlement Agreement as set forth herein;
- 25 c) appointment of Proposed Settlement Class Counsel as Settlement Class
- 26 Counsel;
- 27 d) appointment of Plaintiffs as Class Representatives;
- 28

- 1 e) approval of a customary form of Short Notice to mailed to Settlement Class
- 2 Members in a form substantially similar to the one attached as Exhibit B to
- 3 this Settlement Agreement;
- 4 f) approval of the Long Notice to be posted on the Settlement Website in a
- 5 form substantially similar to the one attached as Exhibit C to this Settlement
- 6 Agreement, which, together with the Short Notice, shall include a fair
- 7 summary of the Parties’ respective litigation positions, the general terms of
- 8 the settlement set forth in the Settlement Agreement, instructions for how
- 9 to object to or opt-out of the settlement, the process and instructions for
- 10 making claims to the extent contemplated herein, and the date, time and
- 11 place of the Final Fairness Hearing; and
- 12 g) appointment of P&N as the Claims Administrator.

13 The Short Notice and Long Notice have been reviewed and approved by the Claims
14 Administrator but may be revised as agreed upon by the Settling Parties prior to submission to the
15 Court for approval.

16 3.3. HawaiiUSA shall pay for providing notice to the Settlement Class in accordance
17 with the Preliminary Approval Order, and the costs of such notice, together with the Costs of Claims
18 Administration. Attorneys’ fees, costs, and expenses of Settlement Class Counsel, and service
19 awards to Class Representatives, as approved by the Court, shall be paid by HawaiiUSA as set forth
20 in ¶ 7 below. Notice shall be provided to Settlement Class Members by the Claims Administrator
21 as follows:

- 22 a) *Class Member Information*: No later than fourteen (14) days after entry of
- 23 the Preliminary Approval Order, HawaiiUSA shall provide the Claims
- 24 Administrator with the name, email address (where available), and last
- 25 known physical address of each Settlement Class Member (collectively,
- 26 “Class Member Information”) that HawaiiUSA possesses.
 - 27 • The Class Member Information and its contents shall be
 - 28 used by the Claims Administrator solely for the purpose

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of performing its obligations pursuant to this Settlement Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Settlement Agreement, or provide all data and information in its possession to the Settling Parties upon request, the Claims Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.

b) *Settlement Website:* Prior to the dissemination of the Class Notice, the Claims Administrator shall establish the Settlement Website that will inform Settlement Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines and related information. The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Settlement Agreement; (v) the operative complaint filed in the Litigation; and (vi) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall provide Class Members with the ability to complete and submit the Claim Form electronically.

c) *Short Notice:* Within thirty (30) days after the entry of the Preliminary Approval Order and to be substantially completed not later than forty-five (45) days after entry of the Preliminary Approval Order, and subject to the requirements of this Agreement and the Preliminary Approval Order, the Claims Administrator will provide notice to the Settlement Class as follows:

- To all Settlement Class Members for whom HawaiiUSA is in possession of an email address, via email to the email

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address provided to the Claims Administrator by HawaiiUSA;

- To all class members for whom HawaiiUSA does not have in its possession a valid email address (including email addresses that were returned as undeliverable), via mail to the postal address provided to the Claims Administrator by HawaiiUSA. Before any mailing under this Paragraph occurs, the Claims Administrator shall run the postal addresses of Settlement Class Members through the United States Postal Service (“USPS”) National Change of Address database to update any change of address on file with the USPS;
- in the event that a mailed Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Claims Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of receiving the returned Short Notice;
- in the event that subsequent to the first mailing of a Short Notice, and at least fourteen (14) days prior to the Opt-Out and Objection Deadline, a Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, *i.e.*, the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Claims Administrator shall perform a standard skip trace, in the manner that the Claims Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the

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particular Settlement Class Member in question and, if such an address is ascertained, the Claims Administrator will re-send the Short Notice within seven (7) days of receiving such information. This shall be the final requirement for mailing.

- d) Publishing, on or before the Notice Commencement Date, the Short Notice, Claim Form, and Long Notice on the Settlement Website, as specified in the Preliminary Approval Order, and maintaining and updating the website throughout the claim period;
- e) A toll-free help line shall be made available to provide Settlement Class Members with additional information about the settlement. The Claims Administrator also will provide copies of the forms of Short Notice, Long Notice, and paper Claim Form, as well as this Settlement Agreement, upon request; and
- f) Contemporaneously with seeking final approval of the Settlement, Proposed Settlement Class Counsel and HawaiiUSA shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice.

3.4. The Short Notice, Long Notice, and other applicable communications to the Settlement Class may be adjusted by the Claims Administrator, in consultation and agreement with the Settling Parties, as may be reasonable and not inconsistent with such approval. The notice program shall commence within thirty (30) days after entry of the Preliminary Approval Order and shall be completed within forty-five (45) days after entry of the Preliminary Approval Order.

3.5. Proposed Settlement Class Counsel and HawaiiUSA’s counsel shall request that after notice is completed, the Court hold a hearing (the “Final Fairness Hearing”) and grant final approval of the settlement set forth herein.

1 **4. Opt-Out Procedures**

2 4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and
3 timely submit written notice of such intent to the designated Post Office box established by the
4 Claims Administrator. The written notice must clearly manifest a Person’s intent to opt-out of the
5 Settlement Class. To be effective, written notice must be postmarked no later than sixty (60) days
6 after the Notice Commencement Date.

7 4.2 All Persons who submit valid and timely notices of their intent to opt-out of the
8 Settlement Class, as set forth in ¶ 4.1 above, referred to herein as “Opt-Outs,” shall not receive any
9 benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within
10 the definition of the Settlement Class who do not opt-out of the Settlement Class in the manner set
11 forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Judgment entered
12 thereon.

13 4.3 In the event that within ten (10) days after the Opt-Out Date as approved by the
14 Court, there have been more than 100 timely and valid Opt-Outs submitted, HawaiiUSA may, by
15 notifying Proposed Settlement Class Counsel and the Court in writing, void this Settlement
16 Agreement. If HawaiiUSA voids the Settlement Agreement pursuant to this paragraph,
17 HawaiiUSA shall be obligated to pay all settlement expenses already incurred, excluding any
18 attorneys’ fees, costs, and expenses of Proposed Settlement Class Counsel and service awards.

19 **5. Objection Procedures**

20 5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall
21 submit a timely written notice of his or her objection by the Objection Date. Such notice shall state:
22 (i) the objector’s full name and address; (ii) the case name and docket number – *Smith, et al. v.*
23 *HawaiiUSA Federal Credit Union*, Case No. 1CCV-24-0000154 (Haw. Cir. Ct., 1st Cir.); (iii) a
24 written statement of all grounds for the objection, accompanied by any legal support for the
25 objection the objector believes applicable; (iv) the identity of any and all counsel representing the
26 objector in connection with the objection; (v) a statement whether the objector and/or his or her
27 counsel will appear at the Final Fairness Hearing; and (vi) the objector’s signature or the signature
28 of the objector’s duly authorized attorney or other duly authorized representative (if any)

1 representing him or her in connection with the objection. To be timely, written notice of an
2 objection in the appropriate form must be mailed, with a postmark date no later than sixty days
3 from the Notice Commencement Date, to the Claims Administrator, as well as to Proposed
4 Settlement Class Counsel, Gary M. Klinger, Milberg Coleman Bryson Phillips Grossman PLLC,
5 227 W. Monroe Street, Suite 2100, Chicago, IL 60606; and counsel for HawaiiUSA, Matthew D.
6 Pearson, Baker & Hostetler, LLP, 600 Anton Boulevard, Suite 900, Costa Mesa, CA 92626-7221.
7 The objector or his or her counsel may also file Objections with the Court, with service on Proposed
8 Settlement Class Counsel and HawaiiUSA's counsel. For all objections mailed to Proposed
9 Settlement Class Counsel and counsel for HawaiiUSA that are not otherwise filed with the Court,
10 Proposed Settlement Class Counsel will file them with the Court as an exhibit to the Motion for
11 final approval of the Settlement.

12 5.2 Any Settlement Class Member who fails to comply with the requirements for
13 objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear separately
14 and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement
15 Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means
16 for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1. Without
17 limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this
18 Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to
19 appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

20 **6. Releases**

21 6.1 Upon the Effective Date, each Settlement Class Member, including Plaintiffs, shall
22 be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released,
23 relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the
24 fullest extent permitted by law, each Settlement Class Member, including Plaintiffs, shall, either
25 directly, indirectly, representatively, as a member of or on behalf of the general public, or in any
26 capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in
27 any recovery in any action in this or any other forum (other than participation in the settlement as
28 provided herein) in which any of the Released Claims is asserted.

1 6.2 Upon the Effective Date, HawaiiUSA shall be deemed to have, and by operation of
2 the Judgment shall have, fully, finally, and forever released, relinquished, and discharged,
3 Representative Plaintiffs, each and all of the Settlement Class Members, Proposed Settlement Class
4 Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution,
5 prosecution, assertion, settlement, or resolution of the Litigation, except for enforcement of the
6 Settlement Agreement. Any other claims or defenses HawaiiUSA may have against such Persons
7 including, without limitation, any claims based upon or arising out of any retail, banking, debtor-
8 creditor, contractual, employment, or other business relationship with such Persons that are not
9 based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of
10 the Litigation are specifically preserved and shall not be affected by the preceding sentence.

11 6.3 Notwithstanding any term herein, neither HawaiiUSA nor its Related Entities shall
12 have or shall be deemed to have released, relinquished or discharged any claim or defense against
13 any Person other than Representative Plaintiffs, each and all of the Settlement Class Members, and
14 Proposed Settlement Class Counsel.

15 **7. Plaintiffs’ Counsel’s Attorneys’ Fees, Costs, and Expenses; Service Award to**
16 **Representative Plaintiffs**

17 7.1 The Settling Parties did not discuss the payment of attorneys’ fees, costs, expenses
18 and/or service award to Plaintiffs, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms
19 of the settlement had been agreed upon, other than that HawaiiUSA would pay reasonable
20 attorneys’ fees, costs, expenses, and a service award to Plaintiffs as may be agreed to by
21 HawaiiUSA and Proposed Settlement Class Counsel and/or as ordered by the Court, or in the event
22 of no agreement, then as ordered by the Court. HawaiiUSA and Proposed Settlement Class Counsel
23 then negotiated and agreed to the payment described in ¶ 7.2.

24 7.2 Proposed Settlement Class Counsel will seek, and HawaiiUSA has agreed not to
25 oppose, an order from the Court awarding \$250,000.00 to Proposed Settlement Class Counsel for
26 attorneys’ fees, inclusive of any costs and expenses of the Litigation. Proposed Settlement Class
27 Counsel, in their sole discretion, shall allocate and distribute the amount of attorneys’ fees, costs,
28 and expenses awarded by the Court.

1 7.3 Proposed Settlement Class Counsel will seek, and HawaiiUSA has agreed not to
2 oppose, an order from the Court awarding \$1,500 in service awards to each of the Class
3 Representatives.

4 7.4 If awarded by the Court, HawaiiUSA shall pay the attorneys' fees, costs, expenses,
5 and service awards to Plaintiffs, as set forth above in ¶¶ 7.2 and 7.3, within 30 days after the
6 Effective Date. Service awards to Class Representatives and attorneys' fees, costs, and expenses
7 will be wired to Gary M. Klinger, Milberg Coleman Bryson Phillips Grossman PLLC, 227 W.
8 Monroe Street, Suite 2100, Chicago, IL 60606. Proposed Settlement Class Counsel shall thereafter
9 distribute the award of attorneys' fees, costs, and expenses among Plaintiffs' Counsel and service
10 awards to Plaintiffs consistent with ¶¶ 7.2 and 7.3.

11 7.5 The amount(s) of any award of attorneys' fees, costs, and expenses, and the service
12 award to Plaintiffs, are intended to be considered by the Court separately from the Court's
13 consideration of the fairness, reasonableness, and adequacy of the settlement. These payments will
14 not in any way reduce the consideration being made available to the Settlement Class as described
15 herein. No order of the Court, or modification or reversal or appeal of any order of the Court,
16 concerning the amount(s) of any attorneys' fees, costs, expenses, and/or service award ordered by
17 the Court to Proposed Settlement Class Counsel or Plaintiffs shall affect whether the Judgment is
18 Final or constitute grounds for cancellation or termination of this Settlement Agreement.

19 **8. Administration of Claims**

20 8.1 The Claims Administrator shall administer and calculate the claims submitted by
21 Settlement Class Members under ¶¶ 2.1 – 2.3. Proposed Settlement Class Counsel and counsel for
22 HawaiiUSA shall be given reports as to both claims and distribution, and have the right to review
23 and obtain supporting documentation and challenge such reports if they believe them to be
24 inaccurate or inadequate. The Claims Administrator's and claims referee's, as applicable,
25 determination of whether a Settlement Claim is a Valid Claim shall be binding, subject to the
26 Dispute Resolution process set forth in ¶ 2.3. All claims agreed to be paid in full by HawaiiUSA
27 shall be deemed valid.
28

1 8.2 Checks for Valid Claims shall be mailed and postmarked within sixty (60) days of
2 the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is
3 later.

4 8.3 All Settlement Class Members who fail to timely submit a claim for any benefits
5 hereunder within the time frames set forth herein, or such other period as may be ordered by the
6 Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits
7 pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by,
8 the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

9 8.4 No Person shall have any claim against the Claims Administrator, claims referee,
10 HawaiiUSA, Proposed Settlement Class Counsel, Plaintiffs, and/or HawaiiUSA’s counsel based on
11 distributions of benefits to Settlement Class Members.

12 **9. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

13 9.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of
14 the following events:

- 15 a) the Court has entered the Preliminary Approval Order and Publishing of Notice of
16 a Final Fairness Hearing, as required by ¶ 3.2;
- 17 b) HawaiiUSA has not exercised its option to terminate the Settlement Agreement
18 pursuant to ¶ 4.3;
- 19 c) the Court has entered the Judgment granting final approval to the settlement as set
20 forth herein; and
- 21 d) the Judgment has become Final, as defined in ¶ 1.11.

22 9.2 If all conditions specified in ¶ 9.1 hereof are not satisfied, the Settlement Agreement
23 shall be canceled and terminated subject to ¶ 9.4 unless Proposed Settlement Class Counsel and
24 HawaiiUSA’s counsel mutually agree in writing to proceed with the Settlement Agreement.

25 9.3 Within seven (7) days after the Opt-Out Date, the Claims Administrator shall
26 furnish to Proposed Settlement Class Counsel and to HawaiiUSA’s counsel a complete list of all
27 timely and valid requests for exclusion (the “Opt-Out List”).
28

1 9.4 In the event that the Settlement Agreement or the releases set forth in paragraphs
2 6.1, 6.2, and 6.3 above are not approved by the Court or the settlement set forth in the Settlement
3 Agreement is terminated in accordance with its terms, (a) the Settling Parties shall be restored to
4 their respective positions in the Litigation and shall jointly request that all scheduled Litigation
5 deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or
6 Settling Party’s counsel, and (b) the terms and provisions of the Settlement Agreement shall have
7 no further force and effect with respect to the Settling Parties and shall not be used in the Litigation
8 or in any other proceeding for any purpose, and any judgment or order entered by the Court in
9 accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.
10 Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court
11 or modification or reversal on appeal of any order reducing the amount of attorneys’ fees, costs,
12 expenses, and/or service awards shall constitute grounds for cancellation or termination of the
13 Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to
14 the contrary, HawaiiUSA shall be obligated to pay amounts already billed or incurred for costs of
15 notice to the Settlement Class, Claims Administration, and Dispute Resolution pursuant to ¶ 2.3
16 above and shall not, at any time, seek recovery of same from any other party to the Litigation or
17 from counsel to any other party to the Litigation.

18 **10. Miscellaneous Provisions**

19 10.1 The Settling Parties (i) acknowledge that it is their intent to consummate this
20 Settlement Agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate
21 and implement all terms and conditions of this Settlement Agreement, and to exercise their best
22 efforts to accomplish the terms and conditions of this Settlement Agreement.

23 10.2 The Settling Parties intend this settlement to be a final and complete resolution of
24 all disputes between them with respect to the Litigation. The settlement compromises claims that
25 are contested and shall not be deemed an admission by any Settling Party as to the merits of any
26 claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith
27 by the Settling Parties, and reflects a settlement that was reached voluntarily after consultation with
28 competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such

1 Party determines to be appropriate, any contention made in any public forum that the Litigation
2 was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall
3 have any liability to any other Party as it relates to the Litigation, except as set forth herein.

4 10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act
5 performed or document executed pursuant to or in furtherance of the Settlement Agreement or the
6 settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the
7 validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the
8 Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence
9 of, any fault or omission of any of the Released Persons in any civil, criminal or administrative
10 proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may
11 file the Settlement Agreement and/or the Judgment in any action that may be brought against them
12 or any of them in order to support a defense or counterclaim based on principles of *res judicata*,
13 collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of
14 claim preclusion or issue preclusion or similar defense or counterclaim.

15 10.4 The Settlement Agreement may be amended or modified only by a written
16 instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

17 10.5 This Agreement contains the entire understanding between HawaiiUSA and
18 Plaintiffs regarding the payment of the settlement and supersedes all previous negotiations,
19 agreements, commitments, understandings, and writings between HawaiiUSA and Plaintiffs in
20 connection with the payment of the settlement. Except as otherwise provided herein, each Party
21 shall bear its own costs.

22 10.6 Proposed Settlement Class Counsel, on behalf of the Settlement Class, is expressly
23 authorized by Plaintiffs to take all appropriate actions required or permitted to be taken by the
24 Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are
25 expressly authorized to enter into any modifications or amendments to the Settlement Agreement
26 on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this
27 Settlement Agreement and to ensure fairness to the Settlement Class.
28

1 10.7 Each counsel or other Person executing the Settlement Agreement on behalf of any
2 Party hereto hereby warrants that such Person has the full authority to do so.

3 10.8 The Settlement Agreement may be executed in one or more counterparts. All
4 executed counterparts and each of them shall be deemed to be one and the same instrument. A
5 complete set of original executed counterparts shall be filed with the Court.

6 10.9 The Settlement Agreement shall be binding upon, and inure to the benefit of, the
7 successors and assigns of the Parties hereto.

8 10.10 The Court shall retain jurisdiction with respect to implementation and enforcement
9 of the terms of the Settlement Agreement, and all Parties hereto submit to the jurisdiction of the
10 Court for purposes of implementing and enforcing the settlement embodied in the Settlement
11 Agreement.

12 10.11 As used herein, “he” means “he, she, or it;” “his” means “his, hers, or its,” and
13 “him” means “him, her, or it.”

14 10.12 All dollar amounts are in United States dollars (USD).

15 10.13 Cashing a settlement check is a condition precedent to any Settlement Class
16 Member’s right to receive settlement benefits. All settlement checks shall be void ninety (90) days
17 after issuance and shall bear the language: “This check must be cashed within ninety (90) days,
18 after which time it is void.” If a check becomes void, the Settlement Class Member shall have until
19 six months after the Effective Date to request re-issuance. If no request for re-issuance is made
20 within this period, the Settlement Class Member will have failed to meet a condition precedent to
21 recovery of settlement benefits, the Settlement Class Member’s right to receive monetary relief
22 shall be extinguished, and HawaiiUSA shall have no obligation to make payments to the Settlement
23 Class Member for expense reimbursement under ¶¶ 2.1 or 2.2 or any other type of monetary relief.
24 The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued
25 for any reason more than one hundred eighty (180) days from the Effective Date, requests for re-
26 issuance need not be honored after such checks become void.

27 10.14 All agreements made and orders entered during the course of the Litigation relating
28 to the confidentiality of information shall survive this Settlement Agreement.

1 IN WITNESS WHEREOF, the Parties hereto have caused the Settlement Agreement to be
2 executed, by their duly authorized attorneys.

3 **BAKER & HOSTETTLER LLP**

4 Dated: March 8, 2024

5 /s/ 

6 Matthew D. Pearson
7 600 Anton Boulevard, Suite 900
8 Costa Mesa, CA 92626
9 Telephone: (714) 966-8892
10 Fax: (714) 754-661
11 California Bar No.: 294302
12 mpearson@bakerlaw.com

13 Sarah A. Ballard
14 1801 California Street
15 Denver, CO 802020
16 Telephone: (303) 861-0600
17 Fax: (303) 861-7805
18 sballard@bakerlaw.com

19 *Attorneys for Defendant*
20 HAWAIIUSA FEDERAL CREDIT UNION

21 **HAWAIIUSA FEDERAL CREDIT UNION**

22 Dated: March 8, 2024

23 /s/ 

24 Name: **Greg Young**
25 Position: **President & CEO**

26 *On behalf of Defendant*
27 HAWAIIUSA FEDERAL CREDIT UNION
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Dated: March 8, 2024

/s/ Gary M. Klinger
Gary M. Klinger
**Milberg Coleman Bryson Phillips Grossman
PLLC,**
227 W. Monroe Street, Suite 2100
Chicago, IL 60606
Phone : (866) 252-0878
Email : glkinger@milberg.com

Daniel O. Herrera
**Cafferty Clobes Meriwether & Sprengel
LLP**
135 S. LaSalle, Suite 3210
Chicago, Illinois 6063
Phone : (312) 782-4880
Email : dherrera@caffertyclobes.com

Robert E. Hatch
Bronster Fujichaku Robbins
1003 Bishop Street, Suite 2300
Honolulu, Hawaii 96813
Phone : (808) 524-5644
Email : rhatch@bfrhawaii.com

Attorneys for Plaintiffs
JOSEPH SMITH and TONY LEE

EXHIBIT A

Your claim must be submitted online or postmarked by: **MONTH DD, 2024**

CLAIM FORM FOR HAWAIIUSA FEDERAL CREDIT UNION DATA SECURITY INCIDENT SETTLEMENT

HawaiiUSA Federal Credit Union

Smith, et al. v. HawaiiUSA Federal Credit Union
Case No. 1CCV-24-0000154

USE THIS FORM IF YOUR PRIVATE INFORMATION WAS IMPACTED IN A DECEMBER 2022 DATA SECURITY INCIDENT AFFECTING HAWAIIUSA FEDERAL CREDIT UNION TO MAKE A CLAIM FOR IDENTITY THEFT PROTECTION AND CREDIT MONITORING SERVICES AND/OR COMPENSATION FOR UNREIMBURSED LOSSES

SAVE TIME BY SUBMITTING YOUR CLAIM ONLINE AT [SETTLEMENTWEBSITE].COM

GENERAL INSTRUCTIONS

If you were notified that your information may have been impacted in a cyberattack perpetrated against HawaiiUSA Federal Credit Union (“HawaiiUSA”) in December of 2022 (the “Data Incident” or “Data Security Incident”) you are eligible to request compensation for lost time and unreimbursed, documented, out-of-pocket expenses up to \$400.00 (“Ordinary Expense Reimbursement”), and compensation for unreimbursed monetary losses up to \$4,000 (“Extraordinarily Expense Reimbursement”). You are also eligible for 24 months of identity protection and credit monitoring service free of charge.

Please read the Claim Form carefully and answer all questions. Failure to provide required information could result in a denial of your claim.

This Claim Form may be submitted electronically *via* the Settlement Website at **URL** or completed and mailed to the address below. Please type or legibly print all requested information, in blue or black ink. Mail your completed Claim Form, including any supporting documentation, by U.S. mail to:

[Insert Claims Administrator Address]

I. CLASS MEMBER NAME AND CONTACT INFORMATION

Provide your name and contact information below. You must notify the Claims Administrator if your contact information changes after you submit this form.

First Name

Last Name

Street Address

City

State

Zip Code

Email Address

Telephone Number

II. PROOF OF CLASS MEMBERSHIP

- Check this box to certify that you are or were an employee or customer of HawaiiUSA on or before December 12, 2022.

Enter the Claim ID Number provided on your notice:

Claim ID Number

III. IDENTITY THEFT PROTECTION

All Settlement Class Members are eligible to receive two (2) years of free identity-theft protection services, called "Identity Defense Total 3-Bureau Service" provided by CyEx by Pango Group, regardless of whether they also submit a claim for Ordinary Expense Reimbursement, Compensation for Lost Time, Extraordinary Expense Reimbursement or the Alternative Cash Payment.

- Check this box if you wish to sign up for Identity Theft Protection Services.

IV. ORDINARY EXPENSE REIMBURSEMENT

All members of the Settlement Class who submit a Valid Claim using this Claim Form are eligible for reimbursement of the following documented out-of-pocket expenses, not to exceed \$400 per member of the Settlement Class, that were incurred as a result of the Data Incident. To receive an Ordinary Expense Reimbursement, the loss must be an actual, documented, and unreimbursed monetary loss that is fairly traceable to the Data Incident; and have occurred between December 12, 2022 and **{the close of the claims period}**.

Self-prepared documents, such as handwritten receipts, are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation.

Cost Type (Fill all that apply)	Approximate Date of Loss	Amount of Loss
<input type="radio"/> Out-of-pocket losses include bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel.	<input type="text"/> / <input type="text"/> / <input type="text"/> (mm/dd/yy)	\$ <input type="text"/> . <input type="text"/>
Examples of Supporting Documentation: <i>Phone bills, gas receipts, postage receipts; detailed list of locations to which you traveled (i.e., police station, IRS office), indication of why you traveled there (i.e., police report or letter from IRS re: falsified tax return) and number of miles you traveled.</i>		
<input type="radio"/> Fees for credit reports, credit monitoring, or other identity theft insurance product purchased on or after December 12, 2022 through {the preliminary approval date} .	<input type="text"/> / <input type="text"/> / <input type="text"/> (mm/dd/yy)	\$ <input type="text"/> . <input type="text"/>
Examples of Supporting Documentation: <i>Receipts or account statements reflecting purchases made for Credit Monitoring or Identity Theft Insurance Services.</i>		

Questions? Go to [URL](#) or call 1-XXX-XXX-XXXX.

V. COMPENSATION FOR LOST TIME

All members of the Settlement Subclass who have spent time dealing with the Data Incident may claim up to 4 hours for lost time at a rate of \$20.00 per hour. Any payment for lost time is included in the \$400 cap per Settlement Class member (no documentation is required).

Hours claimed (up to 4) 1 Hour (\$20) 2 Hours (\$40) 3 Hours (\$60) 4 Hours (\$80)

I attest and affirm to the best of my knowledge and belief that any claimed lost time was spent related to the Cyberattack between December 12, 2022 and the **[Claims Deadline]**.

VI. ALTERNATIVE CASH PAYMENT (In Lieu of Ordinary Expense Reimbursement and Compensation for Lost Time)

In lieu of Ordinary Expense Reimbursement (Section IV, above) or Compensation for Lost Time (Section V, above), all members of the Settlement Class who submit a Valid Claim using this Claim Form are eligible to receive a \$50 cash payment which may be subject to a *pro rata* reduction.

Check this box if you wish to receive a \$50 cash payment (in lieu of compensation under Sections IV and V).

VII. EXTRAORDINARY EXPENSE REIMBURSEMENT

All members of the Settlement Class who submit a Valid Claim using this Claim Form are eligible for reimbursement of the following extraordinary expenses, not to exceed \$4,000 per member of the Settlement Class, that were incurred as a result of the Data Incident: To receive Extraordinary Expense Reimbursement, the loss must be an actual, documented, and unreimbursed monetary loss that is more likely than not caused by the Data Incident; and have occurred between December 12, 2022 and **{the Claims Deadline}**; for which the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement.

Cost Type (Fill all that apply)	Approximate Date of Loss	Amount of Loss																					
<input type="radio"/> Other monetary losses incurred as a result of the Data Incident.	<table border="1"><tr><td> </td><td> </td><td> </td><td>/</td><td> </td><td> </td><td> </td><td>/</td><td> </td><td> </td></tr></table> (mm/dd/yy)				/				/			\$ <table border="1"><tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td>.</td><td> </td><td> </td></tr></table>									.		
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Examples of Supporting Documentation: *Invoices or statements reflecting payments made for professional fees/services.*

VII. PAYMENT SELECTION

Please select **one** of the following payment options:

PayPal - Enter your PayPal email address: _____

Venmo - Enter the mobile number associated with your Venmo account: _____ - _____ - _____

Zelle - Enter the mobile number or email address associated with your Zelle account:

Mobile Number: _____ - _____ - _____ or Email Address: _____

Virtual Prepaid Card - Enter your email address: _____

Physical Check - Payment will be mailed to the address provided above.

Questions? Go to **URL** or call 1-**XXX-XXX-XXXX**.

VII. ATTESTATION & SIGNATURE

I swear and affirm under the laws of my state that the information I have supplied in this Claim Form is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

Signature

Printed Name

Date

EXHIBIT B

CLAIM ID [REDACTED]

Why am I receiving this notice? A class action settlement in the case entitled *Smith, et al. v. HawaiiUSA Federal Credit Union*, Case No. 1CCV-24-0000154 in the Circuit Court for the First Circuit, State of Hawai'i, has been reached between the plaintiffs and the defendant HawaiiUSA Federal Credit Union ("HawaiiUSA"). The case concerns a Data Security Incident against HawaiiUSA in December of 2022 (the "Data Incident" or "Data Security Incident"). You are receiving this notice because HawaiiUSA's records show that your personally identifying information ("PII") and/or financial information (with PII, "Private Information") was potentially compromised as a result of the Data Incident.

Who's Included in the Settlement Class? The Settlement Class includes all persons whose Private Information may have been compromised as a result of the Data Incident.

What are the settlement terms? The settlement provides for 24 months of free credit monitoring services for all members of the Settlement Class to all Settlement Class members who submit a Claim Form for credit monitoring services. Settlement Class Members who incurred documented out-of-pocket expenses as a result of, or spent time dealing with, the Data Incident are eligible to receive up to \$400 in reimbursement ("Ordinary Expense Reimbursement"). Additionally, Settlement Class Members who incurred unreimbursed monetary losses not covered by one of the Ordinary Expense Reimbursement categories as a result of the Data Incident are also eligible to receive up to \$4,000 in compensation for those losses ("Extraordinary Expense Reimbursement"). Please visit [URL](#) for a full description of settlement benefits and more information on how to submit a Claim Form and redeem your free credit monitoring services. The deadline to submit a Claim Form is **Month DD, 2024**.

What are my other options? If you **stay in** the Settlement Class, you will be legally bound by the settlement's terms and you will release your claims against HawaiiUSA, regardless of whether you file a claim. If you do not want to be legally bound by the settlement, you must **opt out** of the settlement by **Month DD, 2024**. If you opt out, you will not be entitled to any relief, but you will retain the ability to file your own claim against HawaiiUSA. If you do not opt out, you may **object** to the settlement by **Month DD, 2024**. The Long Notice available on the Settlement Website explains how to opt out or object.

The Court's Final Fairness Hearing. The Court will hold a Final Fairness Hearing on **Month DD, 2024**, to consider whether to approve the settlement and a request for attorneys' fees and expenses for plaintiffs' counsel. You may appear at the hearing, either yourself or through an attorney hired by you, but you don't have to. For more information, visit the Settlement Website.

Do I have a lawyer in the case? The Court appointed the following Settlement Class Counsel to represent the Settlement Class in this Litigation: **Cafferty Clobes Meriwether & Sprengel LLP**, 135 S. LaSalle, Ste. 3210, Chicago, IL 60603, (312) 782-4880; **Milberg Coleman Bryson Phillips Grossman PLLC**, 227 W. Monroe Street, Suite 2100, Chicago, IL 60606, (866) 252-0878; and **Bronster Fujichaku Robbins**, 1003 Bishop Street, Suite 2300, Honolulu, Hawai'i 96813, (808) 524-5644.

For more information, please visit [URL](#) or call toll-free **XXX-XXX-XXXX**

NOTICE ID: _____

EXHIBIT C

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A NOTICE OF A LAWSUIT AGAINST YOU OR A SOLICITATION FROM A LAWYER.

PLEASE READ THIS NOTICE CAREFULLY

To: All persons in the United States to whom HawaiiUSA Federal Credit Union (“HawaiiUSA”) mailed a notification that their information may have been impacted in a cyberattack that was perpetrated against HawaiiUSA in December of 2022 (the “Data Incident” or “Data Security Incident”), referred to herein as the “Settlement Class”;

A proposed settlement has been reached in a class action lawsuit against HawaiiUSA, captioned *Smith, et al. v. HawaiiUSA Federal Credit Union*, Case No. 1CCV-24-0000154, in the Circuit Court for the First Circuit, State of Hawai‘i.

If you are a member of the Settlement Class, you have the following options:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM BY _____, 2024	You must submit a Valid Claim form to receive credit-monitoring services from the settlement and reimbursement for unreimbursed expenses.
DO NOTHING	You will receive no benefits from the settlement and will no longer be able to sue the Released Persons, ¹ including HawaiiUSA over the claims resolved in the settlement.
EXCLUDE YOURSELF FROM THE SETTLEMENT BY _____, 2024	You will receive no benefits from the settlement, but you will retain your legal claims against the Released Persons.
OBJECT BY _____, 2024	Write to the Court about why you do not like the settlement. You must remain in the Settlement Class to object to the settlement.
GO TO A HEARING ON _____, 2024	Ask to speak in Court about the fairness of the settlement.

No payments or other settlement benefits will be issued until after the Court gives final approval to the settlement and any appeals are resolved.

¹ The Released Persons are HawaiiUSA and its Related Entities and each of their past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers.

Please review this notice carefully. You can learn more about the settlement by visiting [URL](#) or by calling [1-XXX-XXX-XXXX](#).

Further Information about this notice and the Litigation

1. Why was this notice issued?

You received this notice because you may be a member of the Settlement Class eligible to receive benefits from a proposed settlement of the class action lawsuit *Smith, et al. v. HawaiiUSA Federal Credit Union*, Case No. 1CCV-24-0000154, in the Circuit Court for the First Circuit, State of Hawai'i (the "Litigation"). The Court overseeing the Litigation authorized this notice to advise Settlement Class Members about the proposed settlement that will affect their legal rights. The notice explains certain legal rights and options you have in connection with that settlement.

2. What is the Litigation about?

The Litigation is a proposed class action lawsuit brought on behalf of all persons whose personally identifiable information was potentially compromised as a result of the cyberattack against HawaiiUSA in December of 2022.

3. Why is the Litigation a class action?

In a class action, one or more representative plaintiffs bring a lawsuit for others who are alleged to have similar claims. Together, these people are the "class" and each individually is a "class member." There are two Plaintiffs (or Representative Plaintiffs) in this case: Joseph Smith and Tony Lee.

4. Why is there a settlement?

The Plaintiffs in the Litigation, through their attorneys, investigated the facts and law relating to the issues in the Litigation. The Plaintiffs and Class Counsel believe that the settlement is fair, reasonable, and adequate and will provide substantial benefits to the Settlement Class. The Court has not decided whether the Plaintiffs' claims or HawaiiUSA's defenses have any merit, and it will not do so if the proposed settlement is approved. By agreeing to settle, both sides avoid the cost and risk of a trial, and people who submit Valid Claims will receive benefits from the settlement. The settlement does not mean that HawaiiUSA did anything wrong, or that the Plaintiffs and/or the Settlement Class would, or would not, win the case if it were to go to trial.

By order of: Hon. Dean E. Ochiai, of the Circuit Court for the First Circuit, State of Hawai'i.

Terms of the Proposed Settlement

5. Who is in the Settlement Class?

The Settlement Class is defined as all persons in the United States to whom HawaiiUSA mailed a notification that their information may have been impacted in the Data Incident.

Excluded from the Settlement Class are: (a) HawaiiUSA's officers and directors; (b) any entity in which HawaiiUSA has a controlling interest; and (c) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of HawaiiUSA. Also excluded are members of the judiciary to whom this case is assigned, their families and members of their staff.

6. What are the settlement benefits?

Identity Protection and Credit Monitoring Services

The proposed Settlement provides 24 months of credit monitoring service free of charge to Settlement Class Members.

Compensation for Unreimbursed Ordinary Expenses and Extraordinary Losses

The settlement also provides compensation for the following unreimbursed out-of-pocket expenses, up to a total of \$400 per member of the Settlement Class:

1. Out-of-pocket expenses incurred as a result of the Data Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel;
2. Fees for credit reports, credit monitoring, or other identity theft insurance product purchased between December 12, 2022 and **{the Claims Deadline}**; and
3. Up to 4 hours of lost time at a rate of \$20.00 per hour for time spent dealing with the Data Incident.

The settlement further provides compensation for the following unreimbursed extraordinary losses, not covered by one of the Ordinary Expense Reimbursement categories, up to a total of \$4,000 per member of the Settlement Class:

1. Monetary losses relating to fraud or identity theft, professional fees including attorneys' fees, accountants' fees, and fees for credit repair services, incurred as a result of the Data Incident.

By order of: Hon. Dean E. Ochiai, of the Circuit Court for the First Circuit, State of Hawai'i.

Compensation for such expenses and losses (except for lost time), shall be paid only if:²

1. The loss is an actual, documented, and unreimbursed monetary loss;
2. The loss was more likely than not caused by the Data Incident;
3. The loss occurred between December 12, 2022 and **{the Claims Deadline}**;
4. The Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance; and
5. Documentation of the claimed losses is not “self-prepared.” Self-prepared documents, such as handwritten receipts, are, by themselves, insufficient to receive reimbursement.

New Practices

HawaiiUSA has implemented or will implement reasonable steps to ensure that its systems and environments are adequately secured.

7. What claims are Settlement Class Members giving up under the settlement?

Settlement Class Members who do not validly exclude themselves from the settlement will be bound by the Settlement Agreement and Release (“Settlement Agreement”), and any final judgment entered by the Court, and will give up their right to sue the Released Persons for the claims being resolved by the settlement.

The claims that are being released and the persons and entities being released from those claims are described in the Settlement Agreement. To view the Settlement Agreement, please visit **URL**.

Your Options as a Settlement Class Member

8. If I am a Settlement Class Member, what options do I have?

If you are a Settlement Class Member, you do not have to do anything to remain in the settlement. You will receive 24 months of free credit monitoring services. However, if you want to request compensation for unreimbursed expenses and losses, you **must** complete and submit a Claim Form postmarked or submitted online by **Month DD, 2024**. You may download or submit a Claim Form online at **URL**.

² Compensation for lost time requires an attestation that any claimed lost time was spent related to the Data Incident between December 12, 2022 and **{the Claims Deadline}**.

By order of: Hon. Dean E. Ochiai, of the Circuit Court for the First Circuit, State of Hawai‘i.

If you do not want to give up your right to sue the Released Persons about the Data Incident or the issues raised in this case, you must exclude yourself (or “opt out”) from the Settlement Class. See Question 12 below for instructions on how to exclude yourself.

If you object to the settlement, you must remain a Settlement Class (*i.e.*, you may not also exclude yourself from the Settlement Class by opting out) and file a written objection in this case with the Court. (*See* Question 20 below.) If you object, you must still submit a claim if you want compensation for unreimbursed expenses and losses.

9. What happens if I do nothing?

If you do nothing, you will no benefits from this settlement. Unless you exclude yourself, after the settlement is granted final approval and the judgment becomes final, you will be bound by the judgment and you will never be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Released Persons related to the claims released by the settlement.

10. How do I submit a claim?

You may complete the Claim Form online at **URL**. You may also obtain a paper Claim Form by downloading it at **URL** or by calling the claims administrator at **1-XXX-XXX-XXXX**. If you choose to complete a paper Claim Form, you may either submit the completed and signed Claim Form and any supporting materials electronically at **URL** or mail them to:

HawaiiUSA Claims Administrator
{Administrator Mailing Address}
{Administrator City/State/Zip}

11. Who decides my settlement claim and how do they do it?

The Claims Administrator will initially decide whether a Claim Form is complete and valid and includes all required documentation. The Claims Administrator may require additional information from any claimant. Failure to timely provide all required information will invalidate a claim and it will not be paid.

12. How do I exclude myself from the settlement?

You must make a signed written request that (i) clearly states that you wish to exclude yourself from the Settlement Class in this Litigation, and (ii) include your name, address and phone number. You must send your request by **Opt-Out Deadline** to this address:

HawaiiUSA Claims Administrator
Attn: Exclusions
{Administrator Mailing Address}
{Administrator City/State/Zip}

By order of: Hon. Dean E. Ochiai, of the Circuit Court for the First Circuit, State of Hawai'i.

13. If I exclude myself, can I receive a benefit from this settlement?

No. If you exclude yourself, you will not be entitled to any settlement benefits. However, you will also not be bound by any judgment in this Litigation.

14. If I do not exclude myself, can I sue the Released Persons for the Data Incident later?

No. Unless you exclude yourself, you give up any right to sue the Released Persons for the claims that this settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form requesting a benefit from this settlement.

15. How do I object to the settlement?

All Settlement Class Members who do not request exclusion from the Settlement Class have the right to object to the settlement or any part of it. You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement benefits will be sent out and the lawsuit will continue.

Any objection to the proposed settlement must be in writing and it and any supporting papers must be filed with the Court and mailed to Class Counsel and HawaiiUSA's Counsel.

Court	Class Counsel	HawaiiUSA's Counsel
First Circuit Court Ka'ahumanu Hale 777 Punchbowl St. Honolulu, HI 96813	Nickolas J. Hagman Cafferty Clobes Meriwether & Sprengel LLP 135 S. LaSalle, Ste. 3210, Chicago, IL 60603	Matthew D. Pearson Baker & Hostetler LLP 600 Anton Boulevard, Suite 900 Costa Mesa, CA 92626

Objections must be filed or postmarked no later than **Objection Deadline**.

To be considered by the Court, your objection must include: (a) the title of the case; (b) your name, address, and telephone number; (c) all legal and factual bases for your objection; and (d) copies of any documents that you want the Court to consider.

Should you wish to appear at the Final Fairness Hearing, you must so state, and must identify any documents or witnesses you intend to call on your behalf.

If you fail to object in this manner, you will be deemed to have waived and forfeited any and all rights you may have to appear separately and/or to object to the Settlement Agreement, and you shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions set forth in this paragraph. Without limiting the foregoing, any challenge to the Settlement Agreement, the final judgment and order approving this Settlement Agreement, or the judgment to be entered upon final approval shall be pursuant to appeal under the Hawai'i Rules of Appellate Procedure and not through a collateral attack.

By order of: Hon. Dean E. Ochiai, of the Circuit Court for the First Circuit, State of Hawai'i.

Court Approval of the Settlement

16. How, when and where will the Court decide whether to approve the settlement?

The Court will hold a Final Fairness Hearing to decide whether to approve the settlement. That hearing is scheduled for **Month DD, 2024**, at **XX:XX A.M./P.M.**, at Ka'ahumanu Hale 777 Punchbowl St., Honolulu, HI 96813. At the Final Fairness Hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are timely objections, the Court will consider them and will listen to people who have properly requested to speak at the hearing. The Court may also consider Plaintiffs' request for attorneys' fees and costs, and Plaintiffs' request for service awards for the Representative Plaintiffs. After the hearing, the Court will decide whether to approve the settlement.

It is possible the Court could reschedule the hearing to a different date or time without notice, so it is a good idea before the hearing to check **URL** to confirm the schedule if you wish to attend.

17. Do I have to attend the hearing?

No. You do not need to attend the hearing unless you object to the settlement and wish to appear in person. It is not necessary to appear in person to make an objection; the Court will consider any written objections properly submitted according to the instructions in Question 15. You or your own lawyer are welcome to attend the hearing at your expense, but are not required to do so.

18. What happens if the Court approves the settlement?

If the Court approves the Settlement, there may still be appeals. If an appeal is taken, it is possible the settlement could be disapproved on appeal. We do not know how long this process may take.

19. What happens if the Court does not approve the settlement?

If the Court does not approve the settlement, there will be no settlement benefits available to Settlement Class Members, Class Counsel, or the Plaintiffs, and the case will proceed as if no settlement had been attempted.

By order of: Hon. Dean E. Ochiai, of the Circuit Court for the First Circuit, State of Hawai'i.

Lawyers for the Settlement Class and HawaiiUSA

20. Who represents the Settlement Class?

The Court has appointed the following Class Counsel to represent the Settlement Class in this Lawsuit:

Cafferty Clobes Meriwether & Sprengel LLP

135 S. LaSalle, Ste. 3210, Chicago, IL 60603

Milberg Coleman Bryson Phillips Grossman PLLC

227 W. Monroe Street, Suite 2100, Chicago, IL 60606

Bronster Fujichaku Robbins

1003 Bishop Street, Suite 2300, Honolulu, Hawai'i 96813

Settlement Class Members will not be charged for the services of Class Counsel; Class Counsel will be paid by HawaiiUSA, subject to Court approval. However, you may hire your own attorney at your own expense to advise you in this matter or represent you in making an objection or appearing at the Final Fairness Hearing.

21. How will the lawyers for the Settlement Class be paid?

Plaintiffs will seek an order from the Court requesting that attorneys' fees be awarded to Class Counsel in the amount of \$250,000 inclusive of any costs and expenses of the Litigation (the "Class Counsel Payment").

Plaintiffs will also seek an order from the Court requesting that a service award in the amount of \$1,500 be awarded to each the Representative Plaintiff for their time and effort expended on behalf of the Settlement Class in the Litigation.

If the Court awards the Class Counsel Payment or the Service Award described above, the Court's award(s) will not affect any benefits provided to Settlement Class Members, or Plaintiffs.

22. Who represents HawaiiUSA in the Litigation?

HawaiiUSA is represented by the following lawyers:

Matthew D. Pearson

Baker & Hostetler LLP

600 Anton Boulevard, Suite 900

Costa Mesa, CA 92626

By order of: Hon. Dean E. Ochiai, of the Circuit Court for the First Circuit, State of Hawai'i.

For Further Information

23. What if I want further information or have questions?

For additional information, please visit [URL](#). You may also contact the Claims Administrator by mail, email or phone:

Mail:

HawaiiUSA Claims Administrator

{Administrator Mailing Address}

{Administrator City/State/Zip}

Email:

EMAIL ADDRESS

Phone:

XXX-XXX-XXXX

**PLEASE DO NOT CONTACT THE COURT OR HAWAIIUSA'S COUNSEL FOR
INFORMATION REGARDING THIS SETTLEMENT.**

By order of: Hon. Dean E. Ochiai, of the Circuit Court for the First Circuit, State of Hawai'i.

Page 9 of 9

QUESTIONS? VISIT [\[SETTLEMENT WEBSITE\]](#) OR CALL TOLL FREE [1-XXX-XXXX](#).

EXHIBIT D

**BRONSTER FUJICHAKU ROBBINS
A Law Corporation**

MARGERY S. BRONSTER #4750
ROBERT M. HATCH #7724
NOELLE E. CHAN #11280
1003 Bishop Street, Suite 2300
Honolulu, Hawai'i 96813
Telephone: (808) 524-5644
Email: mbronster@bfrhawaii.com
rhatch@bfrhawaii.com
nchan@bfrhawaii.com

**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**

GARY M. KLINGER (*Admitted Pro Hac Vice*)
227 W. Monroe Street, Suite 2100
Chicago, IL 60606
Telephone: (866) 252-0878
Email: gklinger@milberg.com

CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP

Nickolas J. Hagman (*admitted pro hac vice*)
135 S. LaSalle, Suite 3210
Chicago, IL 60606
T: 312.782.4880
nhagman@caffertyclobes.com

Attorneys for Plaintiffs and the Proposed Class

IN THE CIRCUIT COURT FOR THE FIRST CIRCUIT

STATE OF HAWAI'I

JOSEPH SMITH AND TONY LEE,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

HAWAIIUSA FEDERAL CREDIT UNION,

Defendant.

Case No.: 1CCV-24-0000154

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

HEARING:

Date:

Time:

Judge: The Honorable Karin L. Holma

[PROPOSED] PRELIMINARY APPROVAL ORDER

This matter coming before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion"). The Court, having considered the Motion, the supporting memorandum of law, the parties' Settlement Agreement dated March 19, 2024 (the "Agreement"), the proposed forms of notice to the Settlement Class, the pleadings and other papers filed in this Action, and the statements of counsel and the parties, has determined that the proposed Settlement satisfies the criteria for preliminary approval, the proposed Settlement Class is preliminarily certified, and the proposed notice program is approved. Accordingly, good cause appearing in the record, Plaintiffs' Motion is **GRANTED** as follows:

1. Unless defined herein, all defined terms in this order shall have the respective meanings ascribed to the same terms in the Agreement.

2. The Court has conducted a preliminary evaluation of the settlement set forth in the Agreement. Based on this preliminary evaluation, the Court finds that the Agreement meets all applicable requirements of Hawai'i Rule of Civil Procedure 23 for settlement purposes only, including that the Settlement Class is sufficiently numerous, that there are questions of law and fact common to members of the Settlement Class that predominate, that the representative parties fairly and adequately protect the interests of the class and that class treatment is an appropriate method for the fair and efficient adjudication of the controversy.

3. The Court further finds that: (i) there is a good cause to believe that the settlement is fair, reasonable, and adequate, (ii) the Agreement has been negotiated at arm's length between experienced attorneys familiar with the legal and factual issues of this case, and (iii) the settlement warrants notice of its material terms to the Settlement Class for their consideration and reaction. Therefore, the Court grants preliminary approval of the settlement.

Provisional Certification of the Settlement Class

4. Pursuant to Hawai'i Rule of Civil Procedure 23, and for settlement purposes only, the Court certifies the following Settlement Class:

All persons in the United States to whom HawaiiUSA mailed a notification that their information may have been impacted in the Data Incident.

Excluded from the Settlement Class: (i) HawaiiUSA and its respective officers and directors; (ii) all members of the Settlement Class who timely and validly request exclusion from the Settlement Class; (iii) the Judge and Magistrate Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads *nolo contendere* to any such charge.

5. Subject to final approval of the Settlement, the Court finds and concludes for settlement purposes only that the prerequisites to a class action, set forth in Hawai'i Rule of Civil Procedure 23(a) and (b), are satisfied in that:

- A. the Settlement Class is so numerous that joinder of all members is impracticable;
- B. there are questions of law or fact common to the Settlement Class;
- C. Plaintiffs and Settlement Class Counsel (each defined below) fairly and adequately represent the Settlement Class;
- D. the claims of Plaintiffs are typical of those of Settlement Class Members;
- E. common issues predominate over any individual issues affecting the members of the Settlement Class;

- F. Plaintiffs fairly and adequately protect and represent the interests of all members of the Settlement Class, and Plaintiffs' interests are aligned with the interests of all other members of the Settlement Class; and
- G. settlement on a class action basis is superior to other means of resolving this matter.

6. For settlement purposes only, the Court hereby approves the appointment of Plaintiffs Joseph Smith and Tony Lee as Settlement Class Representatives.

7. For settlement purposes only, the Court hereby approves the appointment of Cafferty Clobes Meriwether & Sprengel LLP, Milberg Coleman Bryson Phillips Grossman, PLLC, and Bronster Fujichaku Robbins as Settlement Class Counsel and finds that they are competent and capable of exercising the responsibilities of Settlement Class Counsel.

Preliminary Approval of the Class Action Settlement

8. On _____, _____ at _____m. (*i.e.*, 120 days after the entry of this Order), this Court will hold a Final Fairness Hearing on the fairness, adequacy and reasonableness of the Agreement and to determine whether: (a) final approval of the Agreement should be granted and (b) Settlement Class Counsel's application for attorneys' fees and expenses and an incentive award to the Settlement Class Representative should be granted.

9. No later than _____, _____ (*i.e.*, 14 days prior the deadline for Settlement Class Members to exclude themselves or object), Plaintiffs must file any papers in support of Settlement Class Counsel's application for attorneys' fees and the service awards to the Settlement Class Representatives, and no later than _____, _____ (*i.e.*, 14 days before the Final Fairness Hearing) Plaintiffs must file any papers in support of final approval of the Agreement and in response to any objections.

10. Pursuant to the Agreement, Postlethwaite & Netterville, APAC (“P&N”) is hereby appointed as the Claims Administrator and shall be required to perform all of the duties of the Claims Administrator as set forth in the Agreement and this Order.

11. Pursuant to the Agreement, should the need arise as set forth therein, the parties shall agree upon and appoint a Claims Referee (the “Claims Referee”). The Claims Referee shall be responsible for deciding certain claims that may be rejected by the Claims Administrator, upon request of the Settlement Class Member submitting such Claims, as described in the Settlement Agreement.

12. The Court approves the proposed notices of settlement attached to the Agreement (Exhibits A, B, and C), and the proposed plan for giving notice to the Settlement Class, via direct notice in the U.S. Mail and/or by email, as fully described in the Agreement. The plan for giving notice, in form, method and content, fully complies with the requirements of Hawai’i Rule of Civil Procedure 23(e) and due process and is due and sufficient notice to all persons entitled thereto.

13. The Court hereby directs the parties to commence the notice program set forth in the Settlement Agreement no later than _____, _____ (*i.e.*, 30 days after entry of this Order, the “Notice Commencement Date”).

14. All persons who meet the definition of the Settlement Class and who wish to exclude themselves from the Settlement Class must submit their request for exclusion in writing no later than the Objection/Opt-Out deadline of _____, _____ (*i.e.*, 60 days after the Notice Commencement Date). Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. The written notice must clearly manifest a Person’s intent to opt-out of the Settlement Class. A request for exclusion that does not include all of the foregoing

information, or that is sent to an address other than the one designated in the Class Notice, or that is not mailed by the deadline will be invalid, and the person submitting the request will remain a Settlement Class Member. A Settlement Class Member who submits a valid Settlement Class Claim Form is not eligible for exclusion, and any subsequent request for exclusion will be invalid. All persons who submit valid, timely notices of their intent to opt out of the Settlement Class shall not receive any benefits of and/or be bound by the terms of the Settlement Agreement. All persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner described in this Paragraph shall be bound by the terms of the Settlement Agreement.

15. Any Settlement Class Member who objects to the settlement may appear in person or through counsel, at his or her own expense, at the Final Fairness Hearing to present any relevant evidence or argument. No Settlement Class Member will be heard and no papers submitted by any Settlement Class Member will be considered unless, no later than [REDACTED], [REDACTED] (*i.e.*, no later than 60 days from the Notice Commencement Date), the Settlement Class Member mails to the Claims Administrator, Settlement Class Counsel, and Defendant's counsel written objections that include: (i) the objector's full name and address; (ii) the case name and docket number – *Smith, et al. v. HawaiiUSA Federal Credit Union*, Case No. 1CCV-24-0000154 (Haw. Cir. Ct., 1st Cir.); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; and (vi) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection.

16. Any Settlement Class Member who fails to object in this manner will be deemed to have waived and forfeited any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and the Settlement Class Member shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in this Lawsuit. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions set forth in this Paragraph. Without limiting the foregoing, any challenge to the Settlement Agreement, the Final Judgment and Order approving this Settlement Agreement, or the judgment to be entered upon final approval shall be pursuant to appeal under the Hawai'i Rules of Appellate Procedure and not through a collateral attack.

14. Class Members who wish to participate in the settlement and receive their share of the settlement proceeds shall complete and submit a Claim Form in accordance with the terms and conditions of the Agreement , (*i.e.*, no later than 90 days after the Notice Commencement Date). The Claims Administrator shall accept and process Claim Forms in accordance with the Agreement.

16. The certification of the Settlement Class shall be binding only with respect to the Settlement of the Litigation. In the event that the Agreement fails to become effective, is overturned on appeal or does not become final for any reason whatsoever, the parties shall be restored to their respective positions in the Litigation as of the date of the signing of the Agreement, and no reference to the Settlement Class, the Agreement or any documents, communications or negotiations related in any way thereto shall be made for any purpose.

17. Pending the final determination of the fairness, reasonableness and adequacy of the Settlement, no Settlement Class Member may prosecute, institute, commence or continue any

lawsuit (individual action or class action) with respect to the Released Claims against any of the Released Parties.

18. A “Final Fairness Hearing” shall be held before the Court on _____, _____ at

_____ for the following purposes:

- A. to finally determine whether the applicable prerequisites for settlement class action treatment under Hawai'i Rule of Civil Procedure 23 have been met;
- B. to determine whether the settlement is fair, reasonable and adequate and should be approved by the Court;
- C. to determine whether the Judgment as provided under the Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing claims released in the Agreement;
- D. to consider the application for an award of attorneys' fees, costs and expenses of Settlement Class Counsel;
- E. to consider the application for a service award to the Class Representatives;
- F. to consider the distribution of court-approved attorneys' fees and any service award, as well as any settlement funds to claiming class members pursuant to the Agreement; and
- G. to rule upon such other matters as the Court may deem appropriate.

19. The Final Fairness Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At or following the Final Fairness Hearing, the Court may enter a judgment approving the Agreement and a Final Approval Order in accordance with the Agreement that adjudicates the rights of all Settlement Class Members.

20. Settlement Class Members do not need to appear at the Final Fairness Hearing or take any other action to indicate their approval.

21. All discovery and other proceedings in the Litigation as between Plaintiffs and Defendant are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Agreement and this Order.

22. For clarity, the deadlines set forth above and in the Agreement are as follows:

Notice Commencement Date: 30 Days after Preliminary Approval – _____, _____

Motion for Final Approval: 14 Days before Final Fairness Hearing – _____, _____

Motion for Service Award, Attorneys' Fees and Costs: 14 Days before the deadline for Class Members to Opt-Out or Object – _____, _____

Opt-Out Date: 60 Days after Notice Commencement Date – _____, _____

Objection Date: 60 Days after Notice Commencement Date – _____, _____

Replies in Support of Final Approval, Service Award and Fee Requests: 7 Days before Final Fairness Hearing – _____, _____

Claims Deadline: 90 Days after Notice Commencement Date – _____, _____

IT IS ORDERED.

ENTERED: _____

JUDGE: _____

EXHIBIT E

BRONSTER FUJICHAKU ROBBINS

A Law Corporation

MARGERY S. BRONSTER #4750

ROBERT M. HATCH #7724

NOELLE E. CHAN #11280

1003 Bishop Street, Suite 2300

Honolulu, Hawai'i 96813

Telephone: (808) 524-5644

Email: mbronster@bfrhawaii.com

rhatch@bfrhawaii.com

nchan@bfrhawaii.com

MILBERG COLEMAN BRYSON

PHILLIPS GROSSMAN PLLC

GARY M. KLINGER (*Admitted Pro Hac Vice*)

227 W. Monroe Street, Suite 2100

Chicago, IL 60606

Telephone: (866) 252-0878

Email: gklinger@milberg.com

CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP

Nickolas J. Hagman (*admitted pro hac vice*)

135 S. LaSalle, Suite 3210

Chicago, IL 60606

T: 312.782.4880

nhagman@caffertyclobes.com

Attorneys for Plaintiffs and the Proposed Class

IN THE CIRCUIT COURT FOR THE FIRST CIRCUIT

STATE OF HAWAI'I

JOSEPH SMITH AND TONY LEE,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

HAWAIIUSA FEDERAL CREDIT UNION,

Defendant.

Case No.: 1CCV-24-0000154

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS SETTLEMENTN**

HEARING:

Date:

Time:

Judge: The Honorable Karin L. Holma

[PROPOSED] ORDER
GRANTING FINAL APPROVAL OF CLASS SETTLEMENT

Before the Court is Plaintiffs' Motion requesting that the Court enter an Order granting final approval of the class action settlement involving Plaintiffs Joseph Smith and Tony Lee, individually and on behalf of all others similarly situated ("Plaintiffs" or "Settlement Class Representatives"), and Defendant HawaiiUSA Federal Credit Union ("Defendant") as fair, reasonable and adequate, awarding attorneys' fees and costs to Class Counsel as outlined herein, and awarding service awards to Plaintiffs as detailed below.

Having reviewed and considered the Settlement Agreement and the motion for final approval of the settlement, an award of attorneys' fees and costs, and service awards to the Plaintiffs and having conducted a Final Fairness Hearing, the Court makes the following findings and grants the relief set forth below approving the settlement upon the terms and conditions set forth in this Final Order and Judgment.

THE COURT not being required to conduct a trial on the merits of the case or to determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

THE COURT makes the findings and conclusions hereinafter set forth for the limited purpose of determining whether the settlement should be approved as being fair, reasonable, adequate under Hawai'i Rule of Civil Procedure 23, and in the best interests of the Settlement Class;

IT IS ON THIS ____ day of _____, 2024,

ORDERED that:

1. The settlement involves allegations set forth in Plaintiffs' Class Action Complaint that Defendant failed to adequately safeguard the private information of individuals saved in its

systems from the Data Incident that may have resulted in the compromise of certain of their personal information.

2. The settlement does not constitute an admission of liability by Defendant, and the Court expressly does not make any finding of liability or wrongdoing by Defendant.

3. Unless otherwise noted, words spelled in this Order with initial capital letters have the same meaning as set forth in the Settlement Agreement.

4. On [REDACTED], this Court entered an Order which among other things: (a) approved the notice to the Settlement Class, including approval of the form and manner of notice under the notice program set forth in the Settlement Agreement; (b) provisionally certified a class in this matter, including defining the class, appointed Plaintiffs as the Settlement Class Representatives, and appointed Settlement Class Counsel; (c) preliminarily approved the settlement; (d) set deadlines for opt-outs and objections; (e) approved and appointed the Claims Administrator and (f) set the date for the Final Fairness Hearing.

5. In the Order Granting the Motion for Preliminary Approval of Class Settlement Agreement, for settlement purposes only, the Court certified the Settlement Class, defined as follows:

All persons in the United States to whom HawaiiUSA mailed a notification that their information may have been impacted in the Data Incident.

Excluded from the Settlement Class are; (i) HawaiiUSA and its respective officers and directors; (ii) all members of the Settlement Class who timely and validly request exclusion from the Settlement Class; (iii) the Judge and Magistrate Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under

criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads nolo contendere to any such charge.

6. The Court, having reviewed the terms of the Settlement Agreement submitted by the parties, grants final approval of the Settlement Agreement and finds that the settlement is fair, reasonable and adequate and meets the requirements of Hawai'i Rule of Civil Procedure 23.

7. The terms of the Settlement Agreement are fair, reasonable and adequate and are hereby approved, adopted and incorporated by the Court. The Parties, their respective attorneys, and the Claims Administrator are hereby directed to consummate the settlement in accordance with this Order and the terms of the Settlement Agreement.

8. Notice of the Final Fairness Hearing, the proposed motion for attorneys' fees, costs and expenses, and the proposed service award payment to Plaintiffs have been provided to Settlement Class Members as directed by this Court's Orders, and an affidavit or declaration of the Claims Administrator's compliance with the notice program has been filed with the Court.

9. The Court finds that such notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due and sufficient notice to all Settlement Class Members in compliance with the requirements of Hawai'i Rule of Civil Procedure 23(e).

10. As of the final date for Settlement Class Members to submit a request for exclusion, potential Settlement Class Members have submitted a valid request to be excluded from the Settlement. The names of those persons are set forth in **Exhibit A** to this Order. Those persons are not bound by this Final Order and Judgment, as set forth in the Settlement Agreement.

11. The Court has considered all the documents filed in support of the settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the

Final Fairness Hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

12. Further to the Settlement Agreement, on the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, Plaintiffs and the Settlement Class Members release claims against Defendant and all Released Persons. The releases set forth in the Settlement Agreement are expressly incorporated herein in all respects. The releases are effective as of the Effective Date. Accordingly, this Court orders that, upon the Effective Date, and in consideration of the Settlement benefits described in the Settlement Agreement, each Settlement Class Member shall be deemed to have released, acquitted, and forever discharged Defendants and each of the Released Persons from any and all Released Claims.

13. Pursuant to the Settlement Agreement, and in recognition of their efforts on behalf of the Settlement Class, the Court approves payments to Plaintiffs in the amount of \$1,500 each as a service award for their efforts on behalf of the Settlement Class. Class Counsel shall make such payment in accordance with the terms of the Settlement Agreement.

14. The Court has appointed Cafferty Clobes Meriwether & Sprengel LLP, Milberg Coleman Bryson Phillips Grossman, PLLC, and Bronster Fujichaku Robbins as Class Counsel.

15. The Court, after careful review of the time entries and rates requested by Settlement Class Counsel and after applying the appropriate standards required by relevant case law, hereby grants Settlement Class Counsel's application for attorneys' fees and costs in the amount of \$ [REDACTED]. Payment shall be made pursuant to the terms of the Settlement Agreement.

16. The matter is hereby dismissed with prejudice and without costs except that the Court reserves jurisdiction over the consummation and enforcement of the Settlement.

17. In accordance with Hawai'i Rule of Civil Procedure 23, this Final Order and Judgment resolves all claims against all parties in this Litigation and is a final order.

18. There is no just reason to delay the entry of final judgment in this matter, and the Clerk is directed to file this Order as the final judgment in this matter.

DONE AND ORDERED THIS _____ DAY OF _____, 2024.

EXHIBIT A

EXHIBIT 2

1 **BRONSTER FUJICHAKU ROBBINS**

2 **A Law Corporation**

3 MARGERY S. BRONSTER #4750

4 ROBERT M. HATCH #7724

5 NOELLE E. CHAN #11280

6 1003 Bishop Street, Suite 2300

7 Honolulu, Hawai'i 96813

8 Telephone: (808) 524-5644

9 Email: mbronster@bfrhawaii.com

10 rhatch@bfrhawaii.com

11 nchan@bfrhawaii.com

12 **MILBERG COLEMAN BRYSON**

13 **PHILLIPS GROSSMAN PLLC**

14 GARY M. KLINGER (*Admitted Pro Hac Vice*)

15 227 W. Monroe Street, Suite 2100

16 Chicago, IL 60606

17 Telephone: (866) 252-0878

18 Email: gklinger@milberg.com

19 **CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP**

20 Nickolas J. Hagman (*admitted pro hac vice*)

21 135 S. LaSalle, Suite 3210

22 Chicago, IL 60606

23 T: 312.782.4880

24 nhagman@caffertyclobes.com

Attorneys for Plaintiffs and the Proposed Class

25 **IN THE CIRCUIT COURT FOR THE FIRST CIRCUIT**

26 **STATE OF HAWAI'I**

27 JOSEPH SMITH AND TONY LEE,
28 individually, and on behalf of all others
29 similarly situated,

30 Plaintiffs,

31 v.

32 HAWAIIUSA FEDERAL CREDIT UNION,

33 Defendant.

34 Case No.: 1CCV-24-0000154

**DECLARATION OF GARY M. KLINGER
IN SUPPORT OF UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

HEARING:

Date:

Time:

Judge: The Honorable Karin L. Holma

**DECLARATION OF GARY M. KLINGER IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

I, Gary M. Klinger, being competent to testify, make the following declaration:

1. I am currently a partner of the law firm of Milberg Coleman Bryson Phillips Grossman, PLLC (“Milberg”). I am one the lead attorneys for Plaintiffs and seek appointment as Class Counsel for the proposed Settlement Class. I submit this declaration in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so. A true and correct copy of the Settlement Agreement (“Agreement” or “Agr.”) is attached as **Exhibit 1**.

2. I have extensive experience in class action litigation generally and data breach class actions in particular. My experience, and that of my law firm, is described below.

3. Milberg Attorneys have served as Lead Counsel, Co-Counsel, or Class Counsel on hundreds of complicated and complex class actions. *See* Milberg Firm Resume, **Exhibit A**.

4. These cases recently include cutting-edge litigation, including: *In re Dealer Management Systems Antitrust Litigation*, Case No. 1:18-cv-00864 (N.D. Ill. 2018) (appointed co-lead counsel; partial settlement of \$29.5 million, case on-going); *In re Seresto Flea and Tick Collar Marketing, Sales Practices, and Products Liability Litigation*, Case No. 1:21-cv-04447 (N.D. Ill. 2021) (appointed co-lead counsel; case on-going); and *Carder v. Graco Children’s Products, Inc. et al.*, Case No. 2:20-cv-00137 (N.D. Ga. 2020) (appointed interim co-lead counsel; case on-going)

5. With respect to privacy cases, Milberg is presently litigating more than fifty (50) cases across the country involving violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., privacy violations, data breaches, and ransomware attacks. Milberg Attorneys have served as Lead Counsel, Co-Counsel, or Class Counsel on data breach and privacy litigations,

1 including *In re Blackbaud, Inc. Consumer Data Security Breach Litigation*, MDL 2972, Case No.
2 3:20-mn-02972 (D.S.C. 2020) (appointed co-lead counsel; case on-going).

3 6. Milberg Attorneys have also participated in other data breach and privacy litigation,
4 recently, which includes: *Veiga, et al. v. Respondus, Inc.*, Case No., 1:21-cv-02620 (N.D. Ill.
5 2021); *Dickerson v. CDPQ Colonial Partners, L.P., et. al*, Case No. 1:21-cv-02098 (N.D. Ga.
6 2021); *In re Wawa, Inc. Data Security Litigation*, 2:19-cv-06019 (E.D. Pa. 2019); *Whalen v.*
7 *Facebook, Inc.*, Case No.4:20-cv-06361 (N.D. Cal. 2020); and *K.F.C. v. Snap, Inc.*, No. 21-2247
8 (7th Cir. 2021).

9 7. I have been appointed by state and federal courts to act as Class Counsel for
10 millions of consumers and recovered hundreds of millions of dollars for consumers throughout the
11 country. Presently, I am lead or co-lead counsel in more than thirty (30) active class action lawsuits
12 pending in state and federal courts across the country.

13 8. Some of my notable successes include obtaining final approval of a class-wide
14 settlement for a major data breach class action involving more than six million consumers. *See*
15 *Carrera Aguallo v. Kemper Corp.*, Case No. 1:21-cv-01883 (N.D. Ill. Oct. 27, 2021) (where I, as
16 appointed co-lead counsel, obtained final approval of a \$17.6 million dollar settlement to resolve
17 similar data breach class action claims against Kemper Corporation in a case involving more than
18 six million class members)

19 9. I serve as one of two Court-appointed Lead Counsel in the data breach case, *In re*
20 *Canon U.S.A. Data Breach Litigation*, No. 1:20-cv-06239-AMD-SJB (S.D.N.Y. filed Dec. 23,
21 2020).

22 10. I was also appointed Co-Lead Counsel in the data breach case, *In re: Herff Jones*
23 *Data Breach Litigation*, Master File No. 1:21-cv-1329-TWP-DLP (S.D. Ind.), which involved
24 more than one million class members and was finally approved on a class-wide basis for a \$4.35
million settlement.

11. I served as co-lead counsel in the consolidated data breach litigation styled, *In Re:*
CaptureRx Data Breach Litigation, No. 5:21-cv-00523-OLG (W.D. Tex.), which involved more

1 than 2.4 million class members and was finally approved on a class-wide basis for a \$4.75 million
2 settlement.

3 12. I was appointed co-lead counsel to represent more than three million class members
4 in another major data breach class action in the Seventh Circuit. *See In re Arthur J. Gallagher*
5 *Data Breach Litig.*, No. 1:21-cv-04056 (N.D. Ill.).

6 13. I successfully litigated privacy class actions through class certification. In
7 *Karpilovsky v. All Web Leads, Inc.*, No. 17 C 1307, 2018 WL 3108884, at *1 (N.D. Ill. June 25,
8 2018), where he certified, over objection, a nationwide privacy class action involving more than
9 one million class members.

10 14. In a recent nationwide privacy class settlement hearing in the U.S. District Court
11 for the Northern District of California, Judge Richard Seeborg personally commended me for
12 having achieved “quite a substantial recovery for class members.” Judge Seeborg further stated he
13 could not recall any class action case where “the amounts going to each class member were as
14 substantial” as that obtained by me (and my co-counsel).

15 15. In addition to concentrating my practice on class action litigation involving
16 consumer, privacy, and product liability matters, I also make substantial efforts to stay apprised of
17 the current law on these issues. In recent years, he has attended various legal training seminars and
18 conferences, such as the dri™ conference for Class Actions, The Consumer Rights Litigation
19 Conference and Class Action Symposium, as well as attended various seminars offered by
20 Strafford on class action issues.

21 16. I am also a member of the International Association of Privacy Professionals and a
22 Certified Information Privacy Professional (CIPP/US).

23 17. I graduated from the University of Illinois at Urbana-Champaign in 2007 (B.A.
24 Economics), and from the University of Illinois College of Law in 2010 (J.D., cum laude). While
at the U of I College of Law, I was a member of, and ultimately appointed as the Executive Editor
for the Illinois Business Law Journal. My published work includes: The U.S. Financial Crisis: Is
Legislative Action the Right Approach ?, Ill. Bus. L. J. (Mar. 2, 2009).

1
2 18. I am presently pursuing a Master of Laws (LLM) in Data Privacy and Cybersecurity
3 from the University of Southern California Gould School of Law.

4 19. I became licensed to practice law in the State of Illinois in 2010 and am a member
5 of the Trial Bar for the Northern District of Illinois, as well as the U.S. Bankruptcy Court for the
6 Northern District of Illinois. Additionally, I am admitted to practice in federal courts across the
7 country, including, but not limited to, the U.S. District Courts for the District of Colorado, the
8 Central District of Illinois, the Northern District of Illinois, Northern District of Indiana, Southern
9 District of Indiana, Eastern District of Michigan, and the Eastern District of Texas.

10 20. It is noteworthy that in the past 3 years (since March 2020 through the present), I
11 (either individually, or as a member of the law firms in which I have been a partner during that
12 timeframe) have been appointed class counsel in a number of data breach and/or data privacy cases,
13 including, but not limited to, the following:

- 14 a. *Kenney et al. v. Centerstone of America, Inc.*, Case No. 3:20-cv-01007 (M.D. Tenn.)
15 (appointed co-class counsel in data breach class action settlement involving over
16 63,000 class members; final approval granted Aug. 2021);
- 17 b. *Baksh v. Ivy Rehab Network, Inc.*, Case No. 7:20-cv-01845-CS (S.D.N.Y.) (class
18 counsel in a data breach class action settlement; final approval granted Feb. 2021);
- 19 c. *Mowery et al. v. Saint Francis Healthcare System*, Case No. 1:20-cv-00013-SRC
20 (E.D. Mo.) (appointed class counsel; final approval granted Dec. 2020);
- 21 d. *Chatelain et al. v. C, L and W PLLC d/b/a Affordacare Urgent Care Clinics*, Case
22 No. 50742-A (42nd District Court for Taylor County, Texas) (appointed class
23 counsel; settlement valued at over \$7 million; final approval granted Feb. 2021);
- 24 e. *Jackson-Battle v. Navicent Health, Inc.*, Civil Action No. 2020-CV-072287 (Superior
Court of Bibb County, Georgia) (appointed class counsel in data breach case
involving 360,000 patients; final approval granted Aug. 2021);
- f. *Bailey v. Grays Harbor County Public Hospital District et al.*, Case No. 20-2- 00217-
14 (Grays Harbor County Superior Court, State of Washington) (appointed class
counsel in hospital data breach class action involving approximately 88,000 people;
final approval granted Sept. 2020);

- 1 g. *Richardson v. Overlake Hospital Medical Center et al.*, Case No. 20-2-07460-8 SEA
2 (King County Superior Court, State of Washington) (appointed class counsel in data
3 breach case, final approval granted September 2021);
- 4 h. *Klemm et al. v. Maryland Health Enterprises Inc.*, Case No. C-03-CV-20-022899
5 (Circuit Court for Baltimore County, Maryland) (appointed class counsel; final
6 approval granted November 2021);
- 7 i. *In re: GE/CBPS Data Breach Litigation*, 1:2020-cv-02903, Doc. 35 (S.D.N.Y.)
8 (appointed co-lead counsel in nationwide class action);
- 9 j. *Nelson, et al. v. Idaho Central Credit Union*, No. CV03-20-00831 (Bannock County,
10 Idaho) (appointed co-lead counsel in data breach class action involving 17,000 class
11 members; granted final approval of settlement valued at \$3.3 million);
- 12 k. *In Re: Canon U.S.A. Data Breach Litigation*, Master File No. 1:20-cv-06239- AMD-
13 SJB (E.D.N.Y.) (appointed co-lead counsel);
- 14 l. *Suren et al. v. DSV Solutions, LLC*, Case No. 2021CH000037 (Circuit Court for the
15 Eighteenth Judicial Circuit of DuPage County, Illinois) (appointed Settlement Class
16 Counsel, final approval granted Sept. 27, 2021);
- 17 m. *Chacon v. Nebraska Medicine*, Case No. 8:21-cv-00070-RFR-CRZ (D. Neb.)
18 (appointed class counsel in data breach settlement, final approval granted Sept.
19 2021);
- 20 n. *Aguallo et al v. Kemper Corporation et al.*, Case No. 1:21-cv-01883 (N.D. Ill.)
21 (appointed Co-lead Counsel, final approval granted of \$17.1 million class
22 settlement);
- 23 o. *In re: Herff Jones Data Breach Litigation*, Master File No. 1:21-cv-1329-TWP- DLP
24 (S.D. Ind.) (appointed co-lead counsel in data breach involving over 1 million
persons; preliminary approval of \$4.35 million settlement granted Jan. 2022);
- 25 p. *In Re: CaptureRx Data Breach Litigation*, No. 5:21-cv-00523-OLG (W.D. Tex.)
(appointed co- lead counsel in data breach case involving over 2.4 million class
members; preliminary approval of \$4.75 million settlement granted Feb. 2022);
- 26 q. *In re Arthur J. Gallagher Data Breach Litigation*, No. 1:21-cv-04056 (N.D. Ill.)
(appointed co- lead counsel in data breach case involving over 3 million class
members);
- 27 r. *Heath v. Insurance Technologies Corp.*, No. 21-cv-01444 (N.D. Tex.) (\$11 million
settlement for a major data breach involving more than 4 million consumers);
- 28 s. *Hough v. Navistar, Inc.*, Case No.: 2021L001161 (Ill. 18th Jud. Cir. Crt., DuPage
Cnty.); (appointed co-lead class counsel; final approval granted May 2022);

- 1 t. *Clark v. Mercy Hospital, et al*, Case No. CVCV082275 (Iowa Dist. Crt, Johnson
2 Cnty.) (appointed class counsel; final approval granted July 2022);
- 3 u. *Myschka, et al v. Wolfe Clinic, P.C. d/b/a Wolfe Eye Clinic*, (Iowa Dist. Crt., Marshall
4 Cnty.) (appointed class counsel; final approval granted June 2022);
- 5 v. *Devine, et al v. Health Aid of Ohio, Inc.*, (Ohio Court of Common Pleas, Cuyahoga
6 Cnty.) (appointed class counsel; final approval granted September 2022);
- 7 w. *Davidson v. Healthgrades Operating Company, Inc.*, Case No. 1:21-cv-01250- RBJ
8 (D. Colo.), (appointed class counsel; final approval granted August 2022);
- 9 x. *Bodie v. Capitol Wholesale Meats, Inc.*, Case No. 2022CH000020 (Ill. 18th Jud. Cir.
10 Crt., DuPage Cnty.) (appointed class counsel; final approval granted March 2022);
- 11 y. *Culp v. Bella Elevator LLC*, Case No. 2021-CH-00014 (Ill. 10th Jud. Cir. Crt., Peoria
12 Cnty.) (appointed class counsel; final approval granted May 2022);
- 13 z. *Cain, et al. v. OSF Healthcare*, Case No. 21-L-00231 (Circuit Court for the Tenth
14 Judicial Circuit of Peoria County, Illinois) (appointed settlement class counsel; final
15 approval granted January 2023);
- 16 aa. *Nelson, et al. v. Bansley & Kiener*, Case No. 2021-CH-06274 (Ill. Cir. Ct., Cook
17 Cnt’y) (appointed class counsel; final approval granted November 2022);
- 18 bb. *Steen v. The New London Hospital Association, Inc.*, Civil Action No. 217-2021- CV-
19 00281 (Merrimack Superior Court, New Hampshire) (appointed class counsel; final
20 approval granted January 2023);
- 21 cc. *Summers II v. Sea Mar Community Health Ctrs.*, Case No. 22-2-00773-7 SEA (Wash.
22 Sup. Ct., King Co.) (appointed class counsel; final approval granted December 2022);
- 23 dd. *In re Forefront Data Breach Litigation*, Master File No. 1:21-cv-00887-LA (E.D.
24 Wisc.) (appointed settlement class counsel; final approval granted March 2023);
- ee. *Engle v. Talbert House*, Case No.: A2103650 (Court of Common Pleas, Hamilton
County, Ohio) (appointed class counsel; final approval granted February 2023);
- ff. *Henderson et al. v. San Juan Regional Medical Center*, Case No. D-1116-CV- 2021-
01043 (11th Jud. Dist. Ct., County of San Juan, NM) (appointed class counsel; final
approval granted March 2023);
- gg. *Cathy Shedd v. Sturdy Memorial Hospital, Inc.*, Civ. Action No: 2173 CV 00498
(Mass. Sup. Ct. Dept.) (appointed class counsel; final approval granted February
2023);
- hh. *Hawkins et al. v. Startek, Inc.*, Case No. 1:22-cv-00258-RMR-NRN (USDC

1 CO)(appointed class counsel; final approval granted April, 2023);

2 ii. *McHenry v. Advent Health Partners, Inc.*, Case No. 3:22-cv-00287 (USDC MD TN)
3 (appointed settlement class counsel; final approval granted April 2023);

4 jj. *Beasley et al. v. TTEC Services Corporation*, Civil Action No. 22-cv-00097-PAB-
5 STV (USDC CO) (appointed class counsel; preliminary approval granted May 2023);

6 kk. *Boyd v. Public Employees Credit Union*, Case No. 1:22-cv-00825-LY (USDC WD
7 TX)(appointed class counsel; final approval granted June 9, 2023);

8 ll. *Charlie et al. v. Rehoboth McKinley Christian Healthcare Services*, Civil No 21-652
9 SCY/KK (USDC NM)(appointed class counsel; final approval granted July 2023);

10 mm. *Sharma et al. v. Accutech Systems Corporation*, Case No. 18C02-2210-CT-000135
11 (Delaware Circuit Court 2, Delaware County, Indiana) (appointed Class Counsel;
12 preliminary approval granted January 2023);

13 nn. *Simmons et al. v. Assistcare Home Health Services, LLC*, Index No. 511490/2021
14 (Supreme Court of the State of New York, County of Kings)(appointed settlement
15 class counsel; final approval granted August 2023);

16 oo. *Bailey et al. v. Alacrity Solutions Group, LLC*, Cause No. 29D03-2204-PL-002383
17 (Hamilton County (Indiana) Superior Court)(appointed class counsel; final approval
18 granted June 2023);

19 pp. *Retsky et al. v. Super Care, Inc d/b/a/ Supercare Health*, Case No. 22STCV16267
20 (Los Angeles County California Superior Court)(appointed class counsel; final
21 approval granted August 2023);

22 qq. *In re Medical Review Institute of America, LLC, Data Breach Litigation*, Civil No.
23 2:22cv0082-DAK-DAO (USDC UT)(appointed co-lead class counsel; final approval
24 granted August 2023);

rr. *Colon v. Creative Ventures Inc.*, Case Number 2023LA000177 (In the Circuit Court
of the Eighteenth Judicial Circuit, Dupage County, Illinois)(appointed settlement
class counsel; final approval granted September 2023);

ss. *Jones v. Horizon House, Inc.*, Case No. 01767, Control No. 23030116 (Court of
Common Pleas of Philadelphia County, First Judicial District of
Pennsylvania)(appointed class counsel; final approval granted Nov. 20, 2023);

tt. *Keefe, et al v. Froedtert Health, Inc.*, Case No. 2023CV001935 (Circuit Court of
Wisc., Milwaukee Cty.) (appointed settlement class counsel; final approval granted
September 29, 2023);

- 1 uu. *Reynolds, et al v. Marymount Manhattan College*, Case No. 1:22-cv-06846 (USDC
2 S.D.N.Y) (appointed settlement class counsel; final approval granted October 20,
3 2023);
- 4 vv. *Borre v. O'Hare Towing Systems, Inc.*, Case No. 2020-CH-02865 (Ill. Circ. Ct., Cook
5 County) (appointed settlement class counsel; final approval granted 10/25/2023);
- 6 ww. *In re: Novant Health, Inc.*, Case No. 1:22-cv-00697 (M.D.N.C.) (Appointed class
7 counsel; preliminary approval granted Nov. 6, 2023);
- 8 xx. *Lukis, et al v. OnePlus USA Corp.*, Case No. 2023LA000573 (Ill. Circ. Ct., DuPage
9 Cty.) (Appointed class counsel; preliminary approval granted Aug. 10, 2023);
- 10 yy. *Charitat v. Pape-Dawson Engineers, Inc.*, Case No. 2022C121570 (438th Judicial
11 District Court of Tex., Bexar Cnty.) (Appointed class counsel; final approval granted
12 Nov. 13, 2023);
- 13 zz. *Cline, et al v. Inline Network Integration LLC*, Case No. 2023LA000402 (Ill. Circ.
14 Ct., DuPage Cty.) (Appointed class counsel; final approval granted Dec. 13, 2023);
- 15 aaa. *Czarnionka v. The Epoch Times Association, Inc.*, Case No. 1:22-cv-06348-AKH
16 (U.S.D.C. N.Y.) (Appointed class counsel; preliminary approval granted Jan. 22,
17 2024);
- 18 bbb. *Sherwood, et al v. Horizon Actuarial Services, LLC*, Case No. 1:22-cv-01495-ELR
19 (USDC N.D. Ga.) (Appointed class counsel; preliminary approval granted Sept. 21,
20 2023);
- 21 ccc. *Prevost, et al v. Roper St. Francis Healthcare*, C.A. No. 2021-CP-10-01754 (9th Jud.
22 Cir. Ct. of S.C., Court of Common Pleas) (Appointed co-class counsel; preliminary
23 approval granted Jan. 18, 2024);
- 24 ddd. *Perry v. Bay & Bay Transportation Services*, Case No. 22-973-JRT/ECW (USDC D.
Minn.) (Appointed class counsel; final approval granted Jan. 23, 2024);
- eee. *In re C.R. England, Inc. Data Breach Litigation*, Case No. 2:22-cv-374-DAK-JCB
(USDC D. Utah) (Appointed class counsel; preliminary approval granted Sept. 19,
2023);
- fff. *Hoover v. Camping World Group, LLC, et al*, Case No. 2023LA000372 (18th Jud.
Circ. Ct. of Ill., DuPage Cty.) (Appointed class counsel; preliminary approval granted
Dec. 12, 2023);

- 1 ggg. *Guy v. Convergent Outsourcing, Inc.*, Case No. C22-1558-MJP (USDC W.D. Wash.)
2 (Appointed class counsel; preliminary approval partially granted Dec. 19, 2023);
- 3 hhh. *Farley, et al v. Eye Care Leaders Holdings, LLC*, Case No. 1:22-cv-468 (USDC
4 M.D.N.C.) (Appointed class counsel; preliminary approval granted Aug. 23, 2023);
- 5 iii. *Parris, et al v. Meta Platforms, Inc.*, Case No. 2023LA000672 (18th Jud. Cir. Ct of
6 Ill., DuPage Cty.) (Appointed class counsel; preliminary approval granted July 3,
7 2023);
- 8 jjj. *Kaether, Scott v. Metropolitan Area EMS Auth. d/b/a MedStar Mobile Healthcare*,
9 342nd Jud. Ct., Tarrant Cty. of Tex., Cause No. 342-339562-23 (Appointed class
10 counsel; preliminary approval granted Oct. 26, 2023);
- 11 kkk. *Medina, et al v. PracticeMax Inc.*, Case No. CV-22-01261-PHX-DLR (USDC D.
12 Ariz.) (Appointed class counsel; preliminary approval granted Oct. 27, 2023);
- 13 ll. *Julien, et al v. Cash Express, LLC*, Case No. 2022-CV-221 (Cir. Ct. for Putnam Cty.
14 of Tenn.) (Appointed class counsel; final approval granted Nov. 9, 2023);
- 15 mmm. *Forslund, et al v. R. R. Donnelley & Sons Co.*, Case no. 1:22-cv-04260-JJT (USDC
16 N.D. Ill.) (Appointed class counsel; preliminary approval granted Oct. 31, 2023);
- 17 nnn. *Stauber v. Sudler Property management*, Case No. 2023LA000411 (18th Jud. Circ.
18 Ct., DuPage Cty. Ill.) (Appointed class counsel; preliminary approval granted Sept.
19 19, 2023);
- 20 ooo. *Aragon v. Weil Foot and Ankle Institute, LLC*, Case No. 2021-CH-01437 (19th Jud.
21 Circ. Ct., Cook Cty. of Ill.) (Appointed class counsel; preliminary approval granted
22 Nov. 20, 2023);
- 23 ppp. *In Re Wright & Filippis, LLC Data Security Breach Litigation*, Case No. 2:22-cv-
24 12908-SFC (USDC E.D. Mich.) (Appointed class counsel; preliminary approval
granted Jan. 4, 2024);
- qqq. *Doe, et al v. Knox College*, Case No. 2023LA9, (9th Jud. Ct. of Knox Cty., Ill.)
(Appointed class counsel; final approval granted Jan. 19, 2024);
- rrr. *In Re Afni, Inc. Data Breach Litigation*, Case No. 1:22-cv-01287-JES-JEH (USDC
C.D. Ill.) (Appointed class counsel; final approval granted Sept. 26, 2023);

- 1 sss. *In Re Central Indiana Orthopedics Data Incident Litig.*, Cause No. 18C03-2203-PL-
2 000026 (Delaware Cty. Circ. Ct., State of Ind.) (Appointed class counsel; final
3 approval granted Aug. 18, 2023);
- 4 ttt. *Viruet v. Comm. Surgical Supply, Inc.*, Case No. OCN L-001215-23 (N.J. Sup. Ct. of
5 Ocean Cty.) (Appointed co-class counsel; final approval granted Nov. 17, 2023);
- 6 uuu. *K.B, et al v. East Tenn. Children’s Hosp. Assoc., Inc.*, Case No. C2LA0081
7 (Appointed co-class counsel; preliminary approval granted July 7, 2023);
- 8 vvv. *Johnson v. Filtration Group LLC*, Case No. 2020-CH-00138 (Ill. Circ. Ct of Cook
9 Cty.) (Appointed class counsel; final approval granted Dec. 22, 2023);
- 10 www. *Richardson, et al v. Gershman Investment Corp.*, Case No. 22SL-CC03085 (Mo.
11 Circ. Ct. of St. Louis Cty.) (Appointed class counsel; final approval granted Nov. 6,
12 2023);
- 13 xxx. *McNicholas v. Ill. Gastroenterology Group, PLLC*, Case No. 22LA00000173 (19th
14 Jud. Cir. Ct. of Lake Cty.) (Appointed class counsel; final approval granted June 23,
15 2023);
- 16 yyy. *Vandermark v. Mason Tenders’ Distr. Council Welfare Fund, et al*, Index No.
17 15336/2023 (N.Y. Supreme Ct., Cty of N.Y.) (Appointed class counsel; final
18 approval granted Oct. 11, 2023)
- 19 zzz. *Lhota, et al v. Mich. Ave. Immediate Care, S.C.*, Case No. 2022-CH-06616 (Ill. Cir.
20 Ct. of Cook Cty.) (Appointed class counsel; final approval granted Aug. 15, 2023);
- 21 aaaa. *Young, et al v. Military Advantage, Inc., et al*, Case No. 2023LA00535 (Ill. Cir. Ct.
22 of DuPage Cty.) (Appointed class counsel; final approval granted Nov. 2023);
- 23 bbbb. *Edri v. Brooklyn Premier Orthopedics and Pain Management PLLC d/b/a Brooklyn
24 Premier Orthopedics*, Case No. 1:23-cv-07943-HG (USDC E.D. New York)
(Appointed class counsel)

21. In addition to my personal qualifications, I bring the support and resources of Milberg to this case on behalf of the putative class. Milberg pioneered federal class action litigation and is widely recognized as a leader in defending the rights of victims of corporate and other large-scale wrongdoing, repeatedly taking the lead in landmark cases that have set groundbreaking legal precedents, prompting changes in corporate governance, and recovering over \$50 billion in verdicts and settlements.

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22. Milberg is and has been one of the nation’s most prominent class action law firms since its founding in 1965. Milberg continues to break new ground in cybersecurity and data privacy cases, including taking a co-lead counsel role in the high-profile *In re: Blaukbaud, Inc. Customer Data Security Breach Litigation* (MDL 2972) that has established pleading standards and Art. III standing guidelines for data breach cases. Milberg has and is litigating multiple class actions against other companies within the same industry as Creative Services.

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23. My experience and Milberg’s data breach experience compare favorably with that of any law firm in the country. The firm has ample resources (both financial and personnel, with over 100+ attorneys at the firm) to fully and adequately represent the interests of the proposed class here.

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24. I am, and my firm is, fully aware of the financial and human resources that will be required to bring this case to a successful conclusion and the Court should have no reservations that my firm has and is willing to commit those resources for the benefit of the Plaintiff’s class. I personally have never used third-party funding on any data breach case, nor failed to meet my assessment obligations in any case. Neither I nor Milberg intends to use any third-party litigation funding for this case.

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25. Plaintiffs request that the Court appoint Milberg Coleman Bryson Phillips Grossman, PLLC, Cafferty Clobes Meriwether & Sprengel LLP, and Bronster Fujichaku Robbins (collectively, “Class Counsel”) as Settlement Class Counsel. The Firm resumes of Class Counsel are attached to this declaration as **Exhibits A, B and C**, respectively.

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26. Class Counsel have invested considerable time and resources into the investigation of the facts underlying the claims and the prosecution of this action. Plaintiffs vigorously and aggressively gathered all of the information that was available regarding HawaiiUSA Federal Credit Union (“HawaiiUSA” or “Defendant”) and the Data Incident—including publicly-available documents concerning the Data Incident and notice sent to Settlement Class Members regarding the same.

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2 27. Since the outset of this litigation, the firms have cooperatively and effectively
3 collaborated to prosecute, and ultimately resolve, this case on behalf of our client and the Class.
4 They have performed work critical to achieving benefits for the Class, including by investigating
5 the facts surrounding the Data Incident, researching and analyzing legal claims under state and
6 federal law and common law, preparing and filing the Complaint and subsequent Consolidated
7 and Amended Complaints, substantial informal discovery, participating in meetings with defense
8 counsel to discuss the parties' respective positions, preparing for and participating in a formal
9 mediation, negotiating the proposed Settlement, and drafting this motion for preliminary approval.

10 28. As noted above, and as reflected in the respective firm resumes filed herewith, Class
11 Counsel are qualified, experienced, and able prosecute this litigation. Class Counsel have a wealth
12 of experience in litigating complex class action lawsuits similar to this one and have extensive
13 knowledge of the applicable law and sufficient resources to commit to the Settlement Class. Class
14 Counsel's collective experience in similar types of privacy and data protection practices provided
15 substantive knowledge on the subject to enable Class Counsel to represent Plaintiffs' and Class
16 Members' interests without expending hundreds of hours and substantial financial resources to
17 come up to speed on the subject area.

18 29. Throughout the pendency of this case, I and my co-counsel have maintained regular
19 contact with Plaintiffs to discuss with them the prosecution of the case. With the assistance of
20 counsel, Plaintiffs have been at the helm of this case and continue to be focused on the advancement
21 of the interests and claims of the Class over their own interests. Plaintiffs have always been
22 concerned about obtaining a result that was best for the Class. Plaintiffs have been personally
23 involved in the case and support the Settlement. Plaintiffs are adequate class representatives with
24 no conflicts of interest. Plaintiffs fully support this Settlement.

25 30. After investigating the facts and carefully considering applicable law, Plaintiffs and
26 Class Counsel have concluded that it is in the best interests of the Settlement Class Members to
27 enter into the Settlement in order to avoid the uncertainties of litigation and to assure meaningful
28 and timely benefits to the Settlement Class Members. I, along with Plaintiffs and other Class

1 Counsel, respectfully submit that the terms and conditions of this Settlement are fair, reasonable,
2 adequate, and in the best interests of all Settlement Class Members.

3 31. Throughout the settlement process, my co-counsel and I carefully weighed with the
4 Plaintiffs: (1) the benefits to the Class under the terms of this Settlement Agreement, which
5 provides significant relief to the Class; (2) the quantum of damages which might have been
6 sustained by individual Settlement Class Members, the likelihood that in the absence of a class
7 action consumers would not pursue individual claims, particularly due to the high cost and expense,
8 including the cost of cyber and damage experts to litigate these claims if pursued in individual
9 litigation, and the fact that the quantum of damages would not justify the retention of an attorney,
10 either on an hourly or contingent basis, to pursue the claims individually; (3) the difficulty in
11 proving and calculating those damages; (4) the attendant risks and uncertainty of litigation, as well
12 as the difficulties and delays inherent in such litigation including the challenges to certification of
13 a class; (5) Defendant's vigorous defense of the litigation and continued denial of the claims
14 contained in the Complaint; (6) the desirability of consummating the present Settlement Agreement
15 to ensure that the Class receives a fair and reasonable Settlement; and (7) providing Settlement
16 Class Members prompt relief.

17 32. In particular, it is my opinion that the Settlement Agreement provides significant
18 benefits to Settlement Class Members.

19 33. The relief provided by the Settlement is reasonable and adequate, particularly in
20 light of the risks and delay of trial and associated appeals.

21 34. Given the heavy obstacles and inherent risks Plaintiffs face with respect to the novel
22 claims involved in data breach class actions, including class certification, summary judgment, and
23 trial, the substantial benefits the Settlement provides favors preliminary approval of the Settlement.

24 35. This settlement was negotiated at arms'-length between highly competent counsel
for both the Plaintiffs and Defendant. The Parties participated in a formal mediation with a well-
regarded private mediator (Jill Sperber of Judicate West) which is evidence that the negotiations

1 were at arms'-length and non-collusive. This settlement was only achieved after months of hotly
2 contested negotiations.

3 36. The Parties have agreed upon Postlethwaite & Netterville, APAC ("P&N"), a
4 nationally recognized and well-regarded class action settlement administrator, to serve as
5 Settlement Administrator, subject to the Court's approval.

6 37. Given my extensive experience with class action settlements, it is my informed
7 opinion that the Notice Program, with all attendant forms and as outlined in the Settlement, makes
8 every effort to ensure that Class Members will be made aware of their right to a recovery under the
9 Settlement.

10 * * * * *

11 I declare under penalty of perjury that the foregoing is true and correct.

12 Executed this 22nd day of March, 2024, at Chicago, Illinois

14 /s/ Gary M. Klinger
15 Gary M. Klinger

EXHIBIT A



FIRM RESUME

Milberg Coleman Bryson Phillips Grossman PLLC (“Milberg”) is an AV-rated international law firm with more than 100 attorneys and offices across the United States, the European Union, and South America. Combining decades of experience, Milberg was established through the merger of Milberg Phillips Grossman LLP, Sanders Phillips Grossman LLC, Greg Coleman Law PC, and Whitfield Bryson LLP.

Milberg prides itself on providing thoughtful and knowledgeable legal services to clients worldwide across multiple practice areas. The firm represents plaintiffs in the areas of antitrust, securities, financial fraud, consumer protection, automobile emissions claims, defective drugs and devices, environmental litigation, financial and insurance litigation, and cyber law and security.

For over 50 years, Milberg and its affiliates have been protecting victims’ rights. We have recovered over \$50 billion for our clients. Our attorneys possess a renowned depth of legal expertise, employ the highest ethical and legal standards, and pride ourselves on providing stellar service to our clients. We have repeatedly been recognized as leaders in the plaintiffs’ bar and appointed to numerous leadership roles in prominent national mass torts and class actions.

Milberg challenges corporate wrongdoing through class action, mass tort, consumer and shareholder right services, both domestically and globally.

In the United States, Milberg currently holds more than 100 court-appointed full- and co-leadership positions in state and federal courts across the country. Our firm has offices in California, Chicago, Florida, Georgia, Illinois, Kentucky, Louisiana, Mississippi, New Jersey, New York, North Carolina, South Carolina, Tennessee, Washington, Washington D.C., and Puerto Rico. Milberg’s commitment to its clients reaches beyond the United States, litigating antitrust, securities, and consumer fraud actions in Europe and South America, with offices located in the United Kingdom, and the Netherlands. Milberg prides itself on providing excellent service worldwide.

The firm’s lawyers have been regularly recognized as leaders in the plaintiffs’ bar by the National Law Journal, Legal 500, Chambers USA, Time Magazine, and Super Lawyers, among others.

“A powerhouse that compelled miscreant and recalcitrant businesses to pay billions of dollars to aggrieved shareholders and customers.”
- THE NEW YORK TIMES

PRACTICE AREAS

Milberg maintains a robust practice, representing plaintiffs across numerous areas of law. Milberg attorneys have amassed a wealth of experience in the areas of antitrust and competition law, securities litigation, defective consumer product and automobile litigation, consumer services litigation, dangerous drugs and devices litigation, data breach and biometric data litigation, environmental and toxic tort litigation, finance and insurance litigation, state and local government litigation, and whistleblower and qui tam lawsuits. Milberg attorneys focus their practice among these groups to provide their clients with the best representation possible. Over decades, Milberg attorneys have developed expertise in handling class action lawsuits, leading and overseeing multidistrict litigation, and representing municipalities and other public and governmental clients. Based on their reputation and experience, Milberg attorneys have been assigned to leadership roles in class actions, mass torts litigation, and multidistrict litigation nationwide, across all of these practice areas.

SECURITIES FRAUD

Milberg pioneered the use of class action lawsuits to litigate claims involving investment products, securities, and the banking industry. Fifty years ago, the firm set the standard for case theories, organization, discovery, methods of settlement, and amounts recovered for clients. Milberg remains among the most influential securities litigators in the United States and internationally.

Milberg and its attorneys were appointed Lead Counsel and Co-Lead Counsel in hundreds of federal, state, and multidistrict litigation cases throughout its history.

EXEMPLAR CASES

[In re: Nortel Networks Corp. Securities Litigation](#)

U.S. District Court for the Southern District of New York

Milberg attorneys served as Lead Counsel for the class and the court-appointed lead plaintiff, the Trustees of the Ontario Public Service Employees' Union Pension Plan Trust Fund, in this federal securities class action. The court approved a settlement valued at more than \$1.14 billion.

[In re: Initial Public Offering Securities Litigation](#)

U.S. District Court for the Southern District of New York

Milberg represented investors in 310 securities class actions alleging a market manipulation scheme involving hundreds of initial public offerings and approximately 55 defendant investment banks. Plaintiffs alleged this scheme significantly contributed to the high-tech "bubble" of the late 1990s and early 2000s. In approving a \$586 million settlement, the court described the law firms on the Plaintiffs' Executive Committee as the "cream of the crop."

[In re: Zynga Inc. Sec. Litigation](#)

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

A class action in which Zynga misled investors by portraying the online gaming company as financially strong and withholding non-public information, which in turn allowed a select few within the company to reap the benefits from the company's IPO, before the stock's value eventually collapsed.

[In re: Merck & Co., Inc. Sec. Litigation](#)

U.S. District Court for the District of New Jersey

Milberg served as Co-Lead Counsel in this federal securities fraud class action, and after more than 12 years of hard-fought litigation, ultimately obtained a combined settlement totaling \$1.062 billion, the largest securities class action settlement ever against a pharmaceutical company. The court described the settlement as "a settlement which is fair and just and which, in fact, is the best settlement which possibly could have been achieved in this case."

[In re: Deutsche Telekom AG Sec. Litigation](#)

U.S. District Court for the Southern District of New York

Milberg attorneys served as Co-Lead Counsel in this class action on behalf of purchasers of American Depository Receipts. The plaintiffs alleged that Deutsche Telekom improperly failed to disclose plans to make a major corporate acquisition and overstated the value of real estate assets. Milberg attorneys played a pivotal role in achieving a \$120 million settlement.

[In re: Tyco Int'l Ltd., Sec. Litigation](#)

U.S. District Court for the District of New Hampshire

Milberg attorneys served as Co-Lead Counsel in this litigation, which involved federal securities claims against Tyco and its former CEO, CFO, general counsel, and certain former directors for insider trading and the overstatement of billions of dollars in income. Milberg attorneys played a crucial role in achieving a \$3.2 billion settlement.

[In re: Vivendi Universal, S.A. Securities Litigation](#)

U.S. District Court for the Southern District of New York

Milberg was one of two Lead Trial Counsel in this securities fraud case tried to a jury over four months. The jury found Vivendi liable for dozens of false or misleading statements and awarded damages valued at well over a billion dollars. Six months later, in an unrelated case, the Supreme Court ruled that purchasers on foreign securities exchanges could not recover under U.S. law. Milberg's case against Vivendi continued with post-verdict proceedings under the new standard, and damages have been distributed to U.S. class members totaling over \$100 million.

[In re: Washington Public Power Supply System Securities Litigation](#)

U.S. District Court for the District of Arizona

In this massive securities fraud litigation, Milberg served as Co-Lead Counsel for a class that obtained, after several months of trial, settlements totaling \$775 million, the largest securities fraud settlement at that time.

[In re: Lucent Technologies, Inc. Securities Litigation](#)

U.S. District Court for the District of New Jersey

Milberg served as Co-Lead Counsel in this securities action, which alleged that Lucent and its senior officers misrepresented the demand for Lucent products and improperly recognized hundreds of millions of dollars in revenues. The case settled for \$600 million.

[In re: Biovail Corp. Securities Litigation](#)

U.S. District Court for the Southern District of New York

Milberg, representing Local 282 Welfare Trust Fund and serving as Co-Lead Counsel, litigated this securities action alleging that defendants made misleading statements concerning Biovail's financial results and its drug, Cardizem LA. Following substantial discovery, including depositions across the U.S. and Canada, Milberg obtained a \$138 million settlement for the class, and Biovail agreed to institute significant corporate governance changes.

[In re: CVS Corp. Securities Litigation](#)

U.S. District Court for the District of Massachusetts

Milberg served as Co-Lead Counsel in this securities action on behalf of a class of purchasers of American Depository Receipts. The plaintiffs alleged that Deutsche Telekom improperly failed to disclose plans to make a major corporate acquisition and overstated the value of real estate assets. In 2005, following extensive discovery, including depositions in Germany, the court approved a \$120 million cash settlement.

[In re: CVS Corp. Securities Litigation](#)

U.S. District Court for the District of Massachusetts

Milberg served as Co-Lead Counsel in this securities class action alleging that defendants issued false and misleading statements, which artificially inflated the price of CVS stock. The court approved a \$110 million settlement.

[In re: American Express Financial Advisors Securities Litigation](#)

U.S. District Court for the Southern District of New York

This case involved allegations that American Express Financial Advisors violated securities laws by representing to class members that the company would provide tailored financial advice when the company actually provided "canned" financial plans and advice designed to steer clients into American Express and certain non-proprietary mutual funds. The case settled for \$100 million and required the company to adopt various remedial measures.

[Irvine v. ImClone Systems, Inc.](#)

U.S. District Court for the Southern District of New York

Milberg served as Co-Lead Counsel in this case, in which the court approved a \$75 million cash settlement. The plaintiffs alleged that ImClone misrepresented the likelihood that its drug, Erbitux, would be approved, thereby artificially inflating the price of ImClone stock.

ANTITRUST

For over fifty years, Milberg's Antitrust Practice Group has prosecuted complex antitrust class actions against defendants in the healthcare, technology, agriculture, and manufacturing industries engaged in price-fixing, monopolization and other violations of antitrust law and trade restraints.

EXEMPLAR CASES

[In re: Dealer Management Systems Antitrust Litigation](#)

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

Milberg is appointed Lead Counsel in this nationwide class action representing car dealerships. Plaintiffs allege that leading software providers entered into an unlawful agreement, monopolizing access to auto sales and service data in dealer management software used by dealers, thereby reducing competition and increasing prices. Milberg attorneys achieved a \$29.5 million settlement against one defendant and the case is proceeding against the remaining defendant.

[In re: ACTOS Antitrust Litigation](#)

U.S. District Court for the Southern District of New York

Milberg attorneys played a significant role in this litigation, including appointment to the MDL Discovery Committee, which accused Takeda Pharmaceuticals of failing to warn patients of the risks of bladder cancer, heart failure and other side effects associated with the Type 2 diabetes drug. In 2015, roughly 9,000 claims were settled for \$2.4 billion and significant injunctive relief.

[In re: Cathode Ray Tube \(CRT\) Antitrust Litigation](#)

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

Milberg represented indirect purchaser plaintiffs in this class action alleging an international conspiracy among defendants to keep prices for cathode ray tube (CRT) displays artificially high. Milberg had a significant discovery role in the prosecution of this class action with settlements exceeding \$580 million.

[Blessing v. Sirius XM Radio Inc.](#)

U.S. District Court for the Southern District of New York

Milberg served as Co-Lead Counsel in this case alleging that the merger of two U.S. satellite radio providers led to the monopolization of the satellite radio market and the elimination of competition.

[In re: Disposable Contact Lens Antitrust Litigation](#)

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

Milberg represented indirect purchasers in a class action alleging that defendants conspired to maintain artificially high prices for disposable contact lenses through policies that prevented resale of the subject contact lenses below a minimum price. Settlements exceeded \$118 million.

[In re: Liquid Aluminum Sulfate Antitrust Litigation](#)

U.S. District Court for the District of New Jersey

Milberg was appointed to the Plaintiffs Steering Committee in this class action alleging that manufacturers of a chemical essential to municipal water treatment engaged in price-fixing, bid-rigging and market allocation in violation of federal antitrust laws. Settlements were valued at \$92.5 million.

[Sandhaus v. Bayer AG](#)

Kansas State Court

Milberg served as Co-Lead Counsel in this case alleging that Bayer and several generic drug manufacturers entered into pay-for-delay agreements concerning an antibiotic marketed by Bayer, which caused the plaintiffs to continue paying supracompetitive prices for the drug throughout the class period. The case settled for \$9 million.

[In re: Fresh Process Potatoes Antitrust Litigation](#)

United States District Court, District of Idaho

Milberg served as Co-Lead Counsel for indirect purchaser plaintiffs in this class action alleging that potato growers, their cooperatives, processors, and packers violated federal antitrust laws by conspiring to manipulate the price and supply of potatoes. Milberg achieved a settlement for \$5.5 million and meaningful injunctive relief.

[In re: Google Play Consumer Antitrust Litigation](#)

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

Milberg is appointed part of a three-member Steering Committee in this consolidated class action alleging Google engaged in anticompetitive behavior through the Google Play Store, seeking injunctive relief and monetary damages on behalf of consumers forced to pay inflated prices for Play Store purchases.

[Series 17-03-615, a series of MSP Recovery Claims, Series LLC. v. Express Scripts, Inc.](#)

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

Milberg represents third-party payers in this class action alleging that defendants participated in a vertical price-fixing scheme and their monopolistic, anticompetitive behavior caused plaintiffs and the class to pay inflated prices for the drug, H.P. Acthar Gel.

[In re: Hard Disk Drive Assemblies Antitrust Litigation](#)

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

Milberg represents a class of indirect purchaser end user plaintiffs in a class action alleging that the two largest manufacturers of hard disk drive (HDD) suspension assemblies illegally conspired to fix prices of these component parts, thereby raising prices of products purchased by plaintiffs and the class.

[In re: Deere & Co. Repair Services Antitrust Litigation](#)

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

Milberg is appointed to the Plaintiffs Steering Committee in this class action alleging that John Deere illegally monopolized the repair and diagnostic services market for Deere brand agricultural equipment with onboard central computers known as engine control units, thereby inflating the prices of these services.

[Harley-Davidson Aftermarket Parts Marketing, Sales Practices and Antitrust Litigation](#)

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

Milberg represents a class of Harley-Davidson motorcycle owners in a case alleging that Harley-Davidson uses its monopoly power to force motorcycle owners to use its compatible branded parts for repairs or risk losing warranty coverage.

[In re: California Gasoline Spot Market Antitrust Litigation](#)

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

Milberg represents California consumers who were forced to pay supracompetitive prices for gasoline due to the manipulation of the California gasoline spot market.

FINANCIAL LITIGATION

For over five decades, Milberg has spearheaded litigation challenging unethical practices by some of the biggest financial and insurance institutions in the world and has been at the cutting edge of cases that directly impacted large banks, lenders, and insurers.

EXEMPLAR CASES

[In re: Prudential Insurance Co. Sales Practice Litigation](#)

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

Milberg attorneys were appointed Lead Counsel and recovered more than \$4 billion for certain policyholders in this landmark case challenging Prudential's insurance sales practices.

[In re: Raytheon Co. Securities Litigation](#)

U.S. District Court for the District of Massachusetts

Milberg served as Lead Counsel in this case, which alleged that a major defense contractor failed to properly write down assets on construction contracts. Raytheon and its auditor, PricewaterhouseCoopers LLP, settled for a total of \$460 million.

[In re: Chase Bank USA, N.A. "Check Loan" Contract Litigation](#)

U.S. District for the Northern District of California

Milberg served on the Executive Committee representing the class in this action against JP Morgan Chase & Co. The complaint alleged that Chase improperly increased the minimum monthly payment by 150% required for customers who entered into balance transfer loans with "fixed" interest rates that were guaranteed to remain so for the "life of the loan." Milberg and its Co-Counsel achieved a \$100 million settlement for the class.

[In re: General Electric Co. ERISA Litigation](#)

U.S. District Court for the Northern District of New York

Milberg, serving as Co-Lead Counsel, achieved a \$40 million settlement on behalf of current and former G.E. employees who claimed that G.E.'s 401(k) Plan fiduciaries imprudently invested more than two-thirds of the Plan's assets in company stock. The settlement included important structural changes to G.E.'s 401(k) plan valued at more than \$100 million.

[In re: Royal Dutch/Shell Transport ERISA Litigation](#)

U.S. District Court for the District of New Jersey

Milberg attorneys led this ERISA breach of fiduciary duty class action against the Royal Dutch/Shell Oil Group of Companies on behalf of certain of the companies' U.S. employee investment plan participants. The \$90 million settlement included important provisions regarding the monitoring and training of individuals appointed to be ERISA fiduciaries.

[Mason v. Medline](#)

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

Milberg successfully represented a healthcare worker in a False Claims Act case against his former employer, Medline Industries, Inc., one of the nation's largest suppliers of medical and surgical products, along with its charitable arm, The Medline Foundation. The suit alleged that Medline engaged in a widespread illegal kickback scheme targeting hospitals and other healthcare providers that purchase medical products paid for by federal healthcare programs. Milberg pursued the case on a non-intervened basis and recovered \$85 million on behalf of the federal government — one of the largest settlements of a False Claims Act case in which the government declined to intervene.

[In re: Converse Technology, Inc. Derivative Litigation](#)

U.S. Supreme Court for the State of New York, New York County

As Co-Lead Counsel, Milberg negotiated a \$62 settlement which was approved by the court. The settlement also resulted in significant corporate governance reforms, including the replacement of various directors and officers; the amendment of the company's bylaws to permit certain shareholders to propose in the company's proxy materials nominees for election as directors; and the requirement that all equity grants be approved by both the compensation committee and a majority of the non-employee directors.

CONSUMER PROTECTION

Milberg's Consumer Protection Practice Group focuses on improving product safety and protecting those who have fallen victim to deceptive marketing and advertising of goods and services and/or purchased defective products. Milberg attorneys have served as Lead Counsel and Co-Lead Counsel in hundreds of federal, state, and multidistrict litigation cases alleging the sale of defective products, improper marketing of products, and violations of consumer protection statutes.

EXEMPLAR CASES

[Cleveland v. Whirlpool Corp.](#)

U.S. District Court for the District of Minnesota

Milberg attorneys led this class action involving leaking and defective washing machines. Milberg attorneys were pivotal in achieving a settlement valued at approximately \$21 million, which included meaningful service plan benefits and reimbursement for out-of-pocket repair expenses.

[Berman et al. v. General Motors LLC](#)

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

Milberg attorneys held leadership roles in this class action involving excessive oil consumption in Chevrolet and GMC vehicles. Milberg attorneys played a pivotal role in achieving a nationwide settlement valued at over \$40 million, securing vehicle repairs and reimbursement for out-of-pocket repair costs.

[Chess v. Volkswagen Group of America, Inc.](#)

U.S. District Court for the Central District of California

Milberg attorneys were named Co-Lead Counsel in this class action involving Volkswagen vehicles with defective transmissions. Milberg attorneys secured a settlement that included up to full reimbursement for out-of-pocket repair expenses and significant injunctive relief.

[Hamm v. Sharp Electronics Corporation](#)

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

Milberg attorneys served as Co-Class Counsel in this class action involving defectively designed microwave drawers. Milberg attorneys were instrumental in achieving a settlement valued at more than \$100 million, which included meaningful extended service plan benefits and reimbursement for out-of-pocket repair expenses.

[In re: Allura Fiber Cement Siding Products Liability Litigation](#)

U.S. District Court for the District of South Carolina

Milberg attorneys were appointed Co-Lead Counsel and Steering Committee members by the court in this class action alleging defective fiber cement board siding. Milberg attorneys helped to secure a nationwide settlement for repair and replacement of homeowners' siding.

[In re: MI Windows and Doors, Inc., Products Liability Litigation](#)

U.S. District Court for the District of South Carolina

Milberg attorneys served as Co-Lead Counsel in this multidistrict class action litigation and helped to secure a nationwide class settlement for homeowners who purchased defectively designed windows.

[In re: Zurn Pex Plumbing Products Liability Litigation](#)

U.S. District Court for the District of Minnesota

Milberg attorneys served on the Executive Committee in this multidistrict class action involving leaking and defective plumbing systems. Milberg attorneys secured monetary benefits valued at \$100,000 per class settlement member, and plumbing repairs in value up to \$7,000 per class settlement member.

[Hobbie, et al. v. RCR Holdings II, LLC, et al.](#)

U.S. District Court for the District of Louisiana

Milberg attorneys served as Co-Lead Counsel in a multidistrict class action alleging improper usage of toxic and defective Chinese drywall. Milberg attorneys played an important role in securing a \$30 million settlement for remediation of 364-unit residential high-rise buildings constructed with the toxic drywall.

[In re: Chinese Manufactured Drywall Products Liability Litigation](#)

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

Milberg attorneys served on the Executive Committee in a multidistrict class action involving defective and toxic drywall.

[In re: Synthetic Stucco Litigation](#)

U.S. District Court for the Eastern District of North Carolina

Milberg attorneys were appointed to the Steering Committee and played a pivotal role in securing settlements with four exterior insulation finishing system manufacturers for homeowners valued at over \$50 million.

[Bridget Smith v. Floor and Decor Outlets of America, Inc.](#)

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

Milberg attorneys were appointed Co-Lead Counsel in this class action alleging undisclosed formaldehyde exposure from wood and laminate flooring. Milberg attorneys achieved a national class action settlement for homeowners who purchased unsafe laminate wood flooring.

[In re: Lumber Liquidators Chinese-Manufactured Flooring Products Marketing, Sales Practices and Products Liability Litigation](#)

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

Milberg attorneys were appointed Co-Lead Counsel in this class action alleging formaldehyde exposure and secured a \$36 million national class action settlement for members who purchased a certain type of laminate flooring.

[In re: Windsor Wood Clad Window Products Liability Litigation](#)

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

Milberg attorneys were appointed Lead Counsel in this class action alleging window defects. Milberg attorneys helped to secure a nationwide settlement for customers providing repairs, replacements, and compensation for out-of-pocket expenses.

[In re: Allura Fiber Cement Siding Products Liability Litigation](#)

U.S. District Court for the District of South Carolina

Milberg attorneys were appointed Co-Lead Counsel in this class action alleging defective cement board siding. Milberg attorneys helped to secure a nationwide settlement for customers providing repairs, replacements, and compensation for out-of-pocket expenses.

[Norman et al. v. Nissan North America](#)

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

Milberg attorneys were appointed Co-Lead Counsel in this class action alleging CVT transmission defects in Nissan vehicles. Milberg attorneys played a pivotal role in securing a nationwide settlement valued at approximately \$17 million for repairs, replacements, extended warranty, and cash benefits.

[In re: Horizon Organic Milk Plus DHA Omega-3 Marketing and Sales Practice Litigation](#)

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

Milberg attorneys were appointed Co-Lead Counsel in this class action alleging falsely advertised brain health benefits. Milberg attorneys were essential in securing a settlement valued at \$1.3 million for consumers.

[In re: Deva Concepts Products Liability Litigation](#)

U.S. District Court for the Southern District of New York

Milberg attorneys were appointed Co-Lead Counsel in this multidistrict class action alleging hair loss and scalp irritation caused by Deva's products. Milberg attorneys secured a nationwide settlement valued at \$5.2 million, including up to \$19,000 per class member.

[In re: All-Clad Metalcrafters, LLC, Cookware Marketing and Sales Practices Litigation](#)

U.S. District Court for the Western District of Pennsylvania

Milberg attorneys were appointed to leadership positions in this multidistrict class action involving All-Clad's false advertising that its stainless-steel cookware was dishwasher safe. Milberg attorneys secured a nationwide settlement valued at \$4 million, including replacement products, monetary benefits, partial reimbursements for purchases of the defective products, and discounts on future product purchases.

[Julian, et al., v. TTE Technology, Inc.](#)

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

Milberg attorneys were appointed Co-Lead Counsel in this litigation involving the false advertising of TCL televisions' refresh rates. Milberg attorneys played an important role in securing a class settlement valued at \$2.5 million in cash benefits to class members.

[Roberts et al. v. Electrolux Home Products Inc.](#)

U.S. District Court for the Central District of California

Milberg attorneys were named Co-Lead Counsel in this class action involving defective dryers manufactured by Electrolux. Milberg attorneys helped to obtain a settlement on behalf of more than one million class members, valued at over \$35 million.

[Tabak v. Apple Inc.](#)

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

Milberg attorneys brought this class action against Apple for a defect in the iPhone 7 and iPhone 7 Plus, which negatively impacted the audio quality of the phones. Milberg attorneys played a pivotal role in bringing the case, briefing, and discovery. The parties have agreed to a class settlement in principle, valued at \$35 million.

[Koenig v. VIZIO, Inc.](#)

Superior Court of Los Angeles County, California

Milberg attorneys litigated this class action involving the false advertising of Vizio televisions' refresh rates. Milberg attorneys played a pivotal role, including briefing, discovery, and handling all trial responsibilities. The parties have agreed to a class settlement in principle, valued at over \$40 million.

[In re: Outer Banks Power Outage Litigation](#)

U.S. District Court for the Eastern District of North Carolina

Milberg attorneys served as Co-Lead Counsel and secured a \$10.35 million settlement in a class action in which residents, businesses, and vacationers on Hatteras and Ocracoke Islands in North Carolina were impacted by a 9-day power outage.

[Elliott et al v. KB Home North Carolina Inc.](#)

North Carolina Superior Court

In this class action involving homeowners who purchased homes that were improperly built without weather-resistant barriers, Milberg attorneys played an essential role in securing a settlement valued at approximately \$6,500 to \$17,000 for each class member.

[In re: Allergan Biocell Textured Breast Implant Product Liability Litigation](#)

U.S. District Court for the District of New Jersey

Milberg attorneys were appointed to the Plaintiffs Steering Committee in this multidistrict class action against Allergan for breast implants that caused cancer. Milberg attorneys continue to play a pivotal role in this ongoing case.

[In re: Evenflo Co., Inc. Marketing, Sales Practices and Products Liability Litigation](#)

U.S. District Court for the District of Massachusetts

Milberg attorneys were appointed Co-Lead Counsel in this multidistrict litigation against Evenflo for deceptively marketing its child booster seats.

[Carder v. Graco Children's Safety products, Inc.](#)

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

Milberg attorneys were appointed to multiple leadership positions in this class action involving the deceptive marketing of child car seats.

[Coleman, et al, v. Britax Child Safety, Inc.](#)

U.S. District Court for the District of South Carolina

Milberg attorneys were appointed Co-Lead Counsel in this class action involving the deceptive marketing of child car seats.

[Yamasaki v. Zicam LLC](#)

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

Milberg attorneys brought claims against Zicam for false advertising of its cold medicine, which failed to warn consumers that the medicine could cause permanent loss of smell.

[In re: Seresto Flea and Tick Collar Marketing, Sales Practices And Products Liability Litigation](#)

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

Milberg attorneys were appointed Co-Lead Counsel in this multidistrict class action against the manufacturers of Seresto flea and tick collars, which were linked to numerous pet deaths. The litigation is ongoing.

DANGEROUS DRUGS & DEVICES

Milberg is a nationally renowned firm in mass torts, fighting some of the largest, wealthiest, and most influential pharmaceutical and device companies and corporate entities in the world. Our experienced team of attorneys has led or co-led numerous multidistrict litigations of defective drugs and medical devices.

EXEMPLAR CASES

[In re: Avandia Marketing, Sales Practices, and Products Liability Litigation](#)

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

Milberg attorneys were appointed to the Plaintiffs Steering Committee and served on the Discovery and Media Sub-Committees on behalf of thousands of patients who took the Type 2 diabetes drug Avandia, alleging the manufacturer failed to disclose the known and increased risk of heart attack and cardiac death. GlaxoSmithKline set aside \$3.4 billion in 2011 to settle lawsuits.

[In re: Benicar \(Olmesartan\) Products Liability Litigation](#)

U.S. District Court for the District of New Jersey

Milberg attorneys were appointed to the Plaintiffs Steering Committee and Common Benefit Fee Committee in this multidistrict litigation which alleged that Benicar manufacturer Daiichi Sankyo and co-promoter Forest Laboratories were responsible for serious gastrointestinal injuries. In 2017, the defendants agreed to a \$300 million settlement.

[In re: Chantix \(Varenicline\) Products Liability Litigation](#)

U.S. District Court for the Northern District of Alabama, Southern Division

Milberg attorneys served as Co-Lead Counsel in the Chantix Coordination in New York State Court and court-appointed member of the Plaintiffs Steering Committee in the MDL in Alabama.

[In re: Fluoroquinolone Products Liability Litigation](#)

U.S. District Court for the District of Minnesota

Milberg attorneys were appointed to the Plaintiffs Steering Committee in the MDL in Minnesota litigating the broad-spectrum antibiotic that resulted in severe tendon damage, particularly debilitating Achilles tendon ruptures.

[Fosamax Litigation \(I & II\)](#)

U.S. District Court for the District of New Jersey

Fosamax I: Milberg was appointed Lead Counsel in this New York MDL for ONJ cases and served on the Discovery Team in the Superior Court of New Jersey. Fosamax II: Milberg was appointed to Fosamax Femur MDL Plaintiffs Steering Committee for MDL in the District of New Jersey.

[In re: Fresenius Granuflo/NaturaLyte Dialysate Products Liability Litigation](#)

U.S. District Court for the District of Massachusetts

Milberg attorneys served on the Plaintiffs Steering Committee in the MDL. Granuflo and NaturaLyte were manufactured and marketed by Fresenius Medical for use in dialysis treatment to address kidney failure both chronic and acute, but also caused increased heart complications.

[In re: Incretin Mimetics Products Liability Litigation](#)

U.S. District Court for the Southern District of California (San Diego)

Milberg attorneys were appointed to the MDL Plaintiffs Steering Committee in California. Incretins are a class of Type 2 Diabetes drugs which result in a significant increase in gastric side effects.

[In re: Infusion Pump Cases \(JCCP 4615\)](#)

U.S. Ninth Circuit Court, Eastern District of California

Milberg attorneys were appointed Plaintiffs Liaison Counsel. Studies showed that pain pumps were associated with high failure rates when used appropriately and often mis-used leading to increased failure rates and resultant complications.

[Risperdal and Invega Product Liability Litigation \(JCCP 4775\)](#)

California Second District Court of Appeal, Division Three

Milberg attorneys were appointed Co-Lead Counsel in Risperdal/Invega Product Liability Litigation against Johnson & Johnson/Janssen regarding these anti-psychotic dopamine receptor blockers that cause hormonal changes in male users that can result in breast tissue growth.

[In re: Mirena IUD Levonorgestrel-Related Products Liability Litigation](#)

U.S. District Court for the Southern District of New York

Milberg attorneys were appointed to the Plaintiffs Steering Committee. Mirena, a hormone releasing IUD for contraception was intended for longer term placement, are prone to failure and breakage and resultant injuries.

[Propecia Finasteride Product Liability Litigation](#)

U.S. District Court for the Eastern District of New York

Milberg attorneys were appointed to the Plaintiffs Steering Committee. Another Milberg attorney was appointed Lead Counsel in the New Jersey Multi County Litigation in Middlesex County, New Jersey. These litigations centered on sexual dysfunction resulting from use of Merck's male pattern hair loss product, Propecia.

[In re: Reglan Litigation](#)

U.S. Superior Court of New Jersey, Law Division Atlantic County

Milberg attorneys were appointed Co-Lead Counsel in the Multi County Litigation in New Jersey State Court, Atlantic County. Reglan is often used for longer terms to address symptoms of GERD resulting in neurological injuries including Tardive Dyskinesia.

[Johnson & Johnson Talcum Powder Products Marketing, Sales Practices and Products Liability Litigation \(MDL 2738\)](#)

U.S. District Court for the District of New Jersey

Milberg attorneys were appointed to the Plaintiffs Steering Committee in the Johnson & Johnson Talcum Powder Litigation and served on the Science Committee and Bellwether Committee in the MDL in District Court New Jersey, as well as on the Science and Experts Committee of the PSC.

[In re: American Medical Systems, Inc., Pelvic Repair System Products Liability Litigation](#)

U.S. District Court for the Southern District of West Virginia

Milberg attorneys were appointed to the Plaintiffs Steering Committee in the AMS, Bard, Boston Scientific and Ethicon MDLs.

[In re: Vioxx Products Liability Litigation](#)

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

Milberg attorneys served as Liaison to the media for Vioxx Plaintiffs Steering Committee and Public Relations Committee in Louisiana and on the New Jersey Multi County Litigation Vioxx discovery team.

[In re: Zicam Cold Remedy Marketing, Sales Practices and Products Liability Litigation](#)

U.S. District Court for the District of Arizona

Milberg attorneys were appointed to the MDL Plaintiffs Steering Committee in Arizona in this case involving a homeopathic, over the counter common cold and allergy symptom product that left many with impaired ability to smell.

[In re: Zimmer Nexgen Knee, Implant Products Liability Litigation](#)

U.S. District Court for the Northern District of Illinois, Eastern Division

Milberg attorneys were appointed to the MDL Plaintiff's Steering Committee in Illinois as well as the Electronic Storage Information Committee. Zimmer manufactures multiple devices including knee devices which resulted in premature failure necessitating additional, painful, and costly surgeries.

[In re: Crestor Products Liability Cases \(JCCP 4713\)](#)

California Superior Court

Milberg attorneys served as Co-Lead Counsel in the JCCP in State Court California on this highly potent AstraZeneca "me too" cholesterol managing statin litigation where serious side effects included newly onset diabetes and liver damage as well as reactions with Coumadin.

EMPLOYMENT & CIVIL RIGHTS

Milberg's Employment & Civil Rights attorneys focus on class actions and individual cases nationwide arising from discriminatory banking and housing practices, unpaid wages and sales commissions, improperly managed retirement benefits, workplace discrimination, and wrongful termination.

EXEMPLAR CASES

[In re: Black Farmers Discrimination Litigation](#)

U.S. District Court for the District of Columbia

Milberg attorneys were appointed Lead Counsel and secured a \$1.25 billion settlement fund for black farmers who alleged the U.S. Department of Agriculture discriminated against them by denying farm loans.

[Kingston v. IBM](#)

U.S. District Court for the Western District of Washington

Milberg attorneys spearheaded a series of landmark cases against IBM alleging wrongful termination of software sales managers through a pattern of fraudulent conduct.

[Parry et al. v. Farmers Insurance Exchange, et al.](#)

Superior Court of Los Angeles County, California

Milberg attorneys were named Class Counsel and secured a \$75 million class-action settlement with Farmers Insurance on behalf of its agents alleging that Farmers Insurance misclassified its agents as independent contractors.

[Meek v. SkyWest, Inc.](#)

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

Milberg attorneys were Lead Counsel and secured a \$4.2 million class action settlement against SkyWest Airlines for allegedly failing to provide proper rest and meal breaks to its employees.

[Craig v. Rite Aid Corporation](#)

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

This FLSA collective action and class action settled for \$20.9 million.

[Stillman v. Staples, Inc.](#)

U.S. District Court for the District of New Jersey

This FLSA collective action had a Plaintiffs' trial verdict for \$2.5 million and a national settlement approved for \$42 million.

[Lew v. Pizza Hut of Maryland, Inc.](#)

U.S. District Court for the District of New Jersey

This FLSA collective action had a statewide settlement for managers-in-training and assistant managers, providing recompense of 100% of lost wages.

ENVIRONMENTAL LITIGATION & TOXIC TORTS

Milberg's Environmental Litigation & Toxic Torts Practice Group focuses on representing clients in mass torts, class actions, multi-district litigation, regulatory enforcement, citizen suits, and other complex environmental and toxic tort matters. Milberg and its attorneys have held leadership roles in all facets of litigation in coordinated proceedings, with a particular focus on developing the building blocks to establish general causation, which is often the most difficult obstacle in an environmental or toxic tort case.

EXEMPLAR CASES

[Nnadili, et al. v. Chevron U.S.A., Inc.](#)

U.S. District Court for the District of Columbia

Milberg attorneys were Lead Counsel in a \$6.2 million settlement for owners and residents of 200 properties located above underground plume of petroleum from former Chevron gas station.

[In re: Swanson Creek Oil Spill Litigation](#)

U.S. District Court for the District of Maryland

Milberg attorneys served as Lead Counsel and achieved a \$2.25 million settlement arising from the largest oil spill in history of State of Maryland.

[In re: Exxon Valdez](#)

U.S. District Court for the District of Alaska

Milberg was a member of the Plaintiffs' Coordinating Committee and co-chair of the Plaintiffs' Law Committee in this massive litigation resulting from the Exxon Valdez oil spill in Alaska. The plaintiffs obtained a jury verdict of \$5 billion, which, after years of appeals by Exxon, was reduced to approximately \$500 million by the United States Supreme Court. The United States Court of Appeals for the Ninth Circuit has since held that plaintiffs are entitled to post-judgment interest on the award in the amount of approximately \$470 million.

[Municipality of Bayamon, et al., v. Exxon Mobil Corp., et al.](#)

United States District Court for the District of Puerto Rico

More than a dozen municipalities of Puerto Rico have filed a class action lawsuit against fossil fuel companies for their alleged role in the deadly 2017 hurricane season that devastated the Commonwealth, causing billions in damages and leaving thousands of people dead. The first-of-its-kind lawsuit seeks financial compensation from oil and coal companies for marketing and selling carbon-based products that they intentionally misrepresented to the public and worked together to publicly conceal the climate risk changes of their products while internally acting on climate science to safeguard their own assets.

[Sharon Weatherly v. Eastman Chemical Co.](#)

Circuit Court of Sullivan County, Tennessee Second Judicial District

Milberg attorneys led the effort to bring justice for hundreds of injured workers and their families resulting from a steam explosion at the Eastman Chemical Company which released asbestos and other toxic materials. Milberg filed a class-action lawsuit, pursuing claims for public and private nuisance, trespass, negligence, and strict liability for ultra-hazardous activity.

STATE & LOCAL GOVERNMENTS

Milberg attorneys are dedicated to defending the Constitutional and statutory rights of individuals and businesses that are subjected to unlawful government exactions and fees by state and local governments or bodies.

EXEMPLAR CASES

[Daedalus, LLC, et al. v. City of Charlotte](#)

North Carolina Superior Court, Mecklenburg County

Milberg attorneys recovered a \$106 million class action settlement for property owners for unlawful water and sewer capacity fees and system development fees charged by the City of Charlotte, North Carolina as a condition of providing water and sewer service to property owners.

[Upright Builders, Inc., et al. v. Town of Apex](#)

North Carolina Superior Court, Wake County

Milberg attorneys recovered a \$15.3 million class action settlement for property owners for unlawful water and sewer capacity replacement fees and transportation impact fees charged by the Town of Apex, North Carolina as a condition of providing water and sewer service to property owners.

[Plantation Builders of Wilmington, Inc., et al. v. County of Brunswick](#)

North Carolina Superior Court, Brunswick County

Milberg attorneys recovered a \$15.25 million class action settlement for property owners for unlawful water and sewer capacity fees charged by Brunswick County, North Carolina as a condition of providing water and sewer service to property owners.

[Gerald Currin Builders, Inc. v. Town of Holly Springs](#)

North Carolina Superior Court, Wake County

Milberg attorneys recovered a \$7.9 million class action settlement for property owners for unlawful water and sewer capacity replacement fees charged by the Town of Holly Springs, North Carolina as a condition of providing water and sewer service to property owners.

[Meritage Homes of the Carolinas, Inc. v. Town of Holly Springs](#)

North Carolina Superior Court, Wake County

Milberg attorneys recovered a \$7.5 million class action settlement for property owners for unlawful parks and recreation fees in-lieu of land dedication charged by the Town of Holly Springs, North Carolina as a condition of granting development approval to residential subdivision developers.

[Plantation Building of Wilmington, Inc. v. Town of Leland](#)

North Carolina Superior Court, Brunswick County

Milberg attorneys recovered a \$6.2 million class action settlement for property owners for unlawful water and sewer impact fees charged by the Town of Leland, North Carolina as a condition of providing water and sewer service to property owners.

[Shenandoah Homes, LLC v. Town of Clayton](#)

North Carolina Superior Court, Johnston County

Milberg attorneys recovered a \$2.7 million class action settlement for property owners for unlawful water and sewer impact fees charged by the Town of Clayton, North Carolina as a condition of providing water and sewer service to property owners.

[Granite Land and Timber, LLC v. Town of Clayton](#)

North Carolina Superior Court, Johnston County

Milberg attorneys recovered a \$2.45 million class action settlement for property owners for unlawful parks and recreation fees in-lieu of land dedication charged by the Town of Clayton, North Carolina as a condition of granting development approval to residential subdivision developers.

[Mayfair Partners, LLC et al. v. City of Asheville](#)

North Carolina Superior Court, Buncombe County

Milberg attorneys recovered a \$1.85 million class action settlement for property owners for unlawful water and sewer impact fees charged by the City of Asheville, North Carolina as a condition of providing water and sewer service to property owners.

[Eastwood Construction, LLC, et. al v. City of Monroe](#)

North Carolina Superior Court, Union County

Milberg attorneys recovered a \$1.75 million class action settlement for property owners for unlawful water and sewer impact fees charged by the City of Monroe, North Carolina as a condition of providing water and sewer service to property owners.

[Larry Shaheen v. City of Belmont](#)

North Carolina Superior Court, Gaston County

Milberg attorneys recovered a \$1.65 million class action settlement for property owners for unlawful water and sewer impact fees charged by the City of Belmont, North Carolina as a condition of providing water and sewer service to property owners.

[Brookline Homes, LLC v. City of Mount Holly](#)

North Carolina Superior Court, Gaston County

Milberg attorneys recovered a \$483,468 class action settlement for property owners for unlawful water and sewer impact fees charged by the City of Mount Holly, North Carolina as a condition of providing water and sewer service to property owners.

INFORMATION TECHNOLOGY

Milberg is a leader in the fields of cyber security, data breach litigation, and biometric data collection, litigating on behalf of clients – both large and small – to change data security practices so that large corporations respect and safeguard consumers' personal data.

EXEMPLAR CASES

[In re: Google Buzz Privacy Litigation](#)

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

Milberg attorneys were appointed Lead Class Counsel and secured a \$8.5 million cy pres settlement.

[In re: Dept. of Veterans Affairs \(VA\) Data Theft Litigation](#)

U.S. District Court for the District of Columbia

Milberg attorneys were appointed Co-Lead Counsel representing veterans whose privacy rights were compromised by the theft of an external hard drive containing personal information of approximately 26.6 million veterans and their spouses; creation of a \$20 million fund for affected veterans and a cy pres award for two non-profit organizations.

[In re: Target Corporation Customer Data Security Breach Litigation](#)

U.S. District Court for the District of Minnesota

Milberg represented as many as 110 million Target customers whose personal information was compromised in this landmark data breach case. Milberg, together with Co-Counsel, achieved compensation of \$10 million, entitling individual consumers to recover losses of up to \$10,000. An appeal of the settlement has been remanded to the District Court of Minnesota and remains pending.

Consisting of former appellate judges, experienced appellate advocates, and former law clerks who understand how best to present compelling arguments to judges on appeal and secure justice for our clients beyond the trial courts, Milberg's Appellate Practice Group boasts an impressive record of success on appeal in both state and federal courts.

EXEMPLAR CASES

[Home Depot, U.S.A., Inc. v. Jackson](#)

United States Supreme Court

Milberg attorneys represented a consumer who was originally sued in a state court debt collection action. In response, Milberg attorneys filed third-party class action claims against Home Depot for deceptive trade practices regarding its store credit cards marketed to customers. Home Depot sought to remove the class action counterclaims, which were filed in the existing state court action, to federal court. Lengthy appeals followed, in which Milberg attorneys worked cooperatively with attorneys at Public Justice to represent the original consumer and class of consumers. Ultimately, the Supreme Court agreed with the consumers' position and held that a third-party counterclaim defendant may not remove state court claims either under the removal statute or under the Class Action Fairness Act. This decision represents a significant victory for consumer plaintiffs.

[Webb v. Injured Workers Pharmacy, LLC](#)

First Circuit Court of Appeals

Milberg attorneys scored a significant victory for plaintiffs in data breach and other federal tort cases. The decision animated the Supreme Court's decision in *TransUnion v. Ramirez*, by applying its standing analysis in a common sense and logically consistent manner to the real-world fact patterns posed by data breach cases. The decision demonstrates that federal court is still a viable forum for data breach cases based upon the material risk of future misuse, as well as actual misuse of data.

[Kingston v. Int'l Bus. Machines Corp.](#)

Ninth Circuit Court of Appeals

Milberg attorneys represented an IBM software sales manager who was fired for reporting racial discrimination and the unlawful capping of sales commissions. A jury awarded the plaintiff almost \$15 million. The Ninth Circuit affirmed the jury's finding of liability and most of the damages award, over a dissent.

[Fessler v. Int'l Bus. Machines Corp.](#)

Fourth Circuit Court of Appeals

Milberg attorneys represented an IBM software salesman whose sales commissions IBM had wrongly capped. The district court dismissed the salesman's claims. The Fourth Circuit reversed the dismissal, distinguishing a long line of older cases in which IBM had prevailed on the grounds that the new case was factually distinct and presented novel legal theories. The case was later resolved.

[Lytle v. Nutramax Labs., Inc.](#)

Ninth Circuit Court of Appeals

Milberg attorneys represented a class of consumers who purchased pet joint health supplements, which they claimed were deceptively marketed and labeled. The trial court granted class certification, and the defendant sought to appeal to the Ninth Circuit, which agreed to hear the appeal. Milberg attorneys argued that class certification was proper, and that the plaintiffs' proposed damages model—a conjoint analysis that surveyed consumers to determine the value of the product's deceptive statements—was valid for calculating classwide damages. The Ninth Circuit heard the parties' arguments in 2023, but has not yet ruled.

[Adkisson v. Jacobs Engineering Grp., Inc.](#)

Sixth Circuit Court of Appeals

Milberg attorneys represented a group of hundreds of workers and their families who were injured when cleaning up a large coal ash spill in Kingston, Tennessee. The workers alleged, among other things, that the defendant had denied them essential personal protection equipment. Following years of litigation and a trial on certain issues, the defendant raised a new defense based on a recent Supreme Court case, *Thacker v. Tennessee Valley Authority*. The defendant argued that it should be immune because it was acting as an agent of the federal government. The Sixth Circuit rejected this defense, finding that based upon the facts, the Tennessee Valley Authority—and, by extension, the defendant—were not immune, paving the way for future litigants to bring claims against the TVA and its agents. Following this ruling, the parties reached a settlement.

[Chisum v. Campagna](#)

North Carolina Supreme Court

Milberg attorneys represented a contractor who was wrongfully kicked out of several valuable real estate companies by his partners. The jury awarded the plaintiff millions of dollars, but the trial court granted judgment to the defendants on some of the claims. The North Carolina Supreme Court affirmed the jury's verdict while reversing the trial court's grant of judgment to the defendants. Following the reversal, the parties reached settlement, which was more lucrative for plaintiff than the original jury verdict.

[Plantation Bldg. of Wilmington, Inc. v. Town of Leland](#)

North Carolina Supreme Court

Milberg attorneys represented a class of contractors who sued a local government for charging illegal fees. The trial court certified the class, but the government appealed, raising a dangerous new legal theory that would have prevented class certification. The North Carolina Supreme Court rejected that new theory, after which the case settled for even more than the class had demanded before the appeal.

[Adkisson v. Jacobs Engineering Grp., Inc.](#)

Tennessee Supreme Court

Milberg attorneys represented a group of hundreds of workers and their families who were injured when cleaning up a large coal ash spill in Kingston, Tennessee. The workers alleged, among other things, that the defendant had denied them essential personal protection equipment. Following years of litigation and a trial on certain issues, the defendant argued that the plaintiffs' claims must be dismissed under the Tennessee Silica Claims Protection Act, and the trial court certified the question to the Tennessee Supreme Court. Milberg attorneys briefed the issues and argued on the workers' behalf that the TSCPA did not cover or require dismissal of their claims. Before the Tennessee Supreme Court could rule, the parties settled their claims.

LOCATIONS

PUERTO RICO

1311 Avenida Juan Ponce de León
San Juan, Puerto Rico 00907

CALIFORNIA

280 South Beverly Drive, Penthouse
Beverly Hills, California 90212

402 West Broadway, Suite 1760
San Diego, California 92101

FLORIDA

2701 South Le Jeune Road
Coral Gables, Florida 33134

ILLINOIS

227 W. Monroe Street, Suite 2100
Chicago, Illinois 60606

KENTUCKY

19 North Main Street
Madisonville, Kentucky 42431

LOUISIANA

5301 Canal Boulevard
New Orleans, Louisiana 70124

MICHIGAN

6905 Telegraph Road, Suite 115
Bloomfield Hills, Michigan 48301

NEW JERSEY

1 Bridge Plaza North, Suite 675
Fort Lee, New Jersey 07024

NEW YORK

100 Garden City Plaza, Suite 500
Garden City, New York 11530

405 E 50th Street
New York, New York 10022

NORTH CAROLINA

900 West Morgan Street
Raleigh, North Carolina 27603

SOUTH CAROLINA

825 Lowcountry Blvd, Suite 101
Mount Pleasant, South Carolina 29464

TENNESSEE

800 S. Gay Street, Suite 1100
Knoxville, Tennessee 37929

518 Monroe Street

Nashville, Tennessee 37208

WASHINGTON

1420 Fifth Ave, Suite 2200
Seattle, Washington 98101

17410 133rd Avenue, Suite 301
Woodinville, Washington 98072

WASHINGTON, D.C.

5335 Wisconsin Avenue NW, Suite 440
Washington, D.C. 20015-2052

NETHERLANDS

UNITED KINGDOM



EXHIBIT B



Cafferty Clobes
Meriwether & Sprengel LLP



Successful Solutions for Complex Litigation



Firm Overview

Cafferty Clobes Meriwether & Sprengel LLP 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 representative sampling of cases listed below demonstrates, 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.

Consumer Class Actions

- ***Skeen v. BMW of N. Amer., LLC, No. 13-cv-1531 (D.N.J.)***

CCMS served as co-lead counsel in an action brought on behalf of owners of certain MINI Cooper-brand vehicles that contained a latent defect in a part of the engine known as the “timing chain tensioner” which caused the part to fail prematurely, eventually requiring replacement of that part or the entire engine. Following extensive discovery and mediation, the parties reached a global settlement on behalf of a nationwide class of vehicle owners. The efforts of the firm and its co-lead counsel resulted in a settlement which significantly extended warranty coverage, and reimbursed vehicle owners for tens of millions of dollars in out-of-pocket expenses incurred for repair and/or replacement.

- ***Ponzo v. Watts Regulator Company, No. 1:14-cv-14080 (D. Mass.); Klug v. Watts Regulator Company, No. 15-cv-00061 (D. Neb.)***

These consumer class cases, first brought by CCMS (D. Mass.) addressed defective water heater and “Floodsafe” branded connectors. The plaintiffs in both cases alleged that the water heater connectors were made of a material that would break down during regular use, causing leaks and ruptures that flooded class members' homes. The efforts of the firm and its co-lead counsel resulted in a settlement that provides \$14 million to affected homeowners.



- ***Hough v. Navistar, Inc., No. 20-cv-00063 (D. Colo.)***
CCMS served as co-lead counsel in action arising out of a data breach of Navistar's computer systems that resulted in a settlement that provided \$1.25 million to affected current and former employees, as well as significant non-monetary compensation.
- ***Bromley v. SXS LLC, No. 20-cv-439 (W.D. Tex.)***
CCMS served as co-lead counsel in action securing an uncapped settlement entitling class members to refunds in connection with a canceled festival.
- ***Compo v. United Airlines, Inc., et al., No. 1:20-cv-02166 (N.D. Ill.)***
CCMS serves as interim co-lead counsel in action alleging United has wrongfully refused to issue refunds for flights cancelled as a direct and proximate result of the COVID-19 crisis.
- ***Traxler v. PPG Industries, Inc., No. 15-cv-00912 (N.D. Ohio)***
CCMS served as lead counsel in this action challenging defective deck resurfacing products. The products peeled, cracked, and damaged the surfaces to which they were applied. In February 2017 the parties reached an agreement in principle to settle the case on behalf of a nationwide class. The efforts of the firm and its co-counsel resulted in a settlement that provides \$6.5 million to affected homeowners.
- ***In re Apple iPhone/iPod Warranty Litig., No. 3:10-cv-01610 (N.D. Cal.)***
This case 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. CCMS helped negotiate and achieve a \$53 million settlement of the state and federal cases.
- ***In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Prod. Liability Litig., MDL No. 2672 (N.D. Cal.)***
CCMS worked closely with lead counsel and other class counsel in this class case challenging unlawful actions by the manufacturer defendants to mask the actual diesel emission levels in various vehicle makes and models. Judge Breyer approved a class settlement with defendants worth billions of dollars.



- ***In re Takata Airbag Prod. Liability Litig., MDL No. 2599 (S.D. Fla.)***
CCMS represents six named Class Plaintiffs and has been and continues to work closely with lead counsel on this multi-billion dollar case involving defective airbags installed in tens of millions of affected vehicles manufactured by most major manufacturers. Class settlements with Honda and BMW providing class members with hundreds of millions of dollars and substantial programmatic relief have been finally approved and are the subject of pending appeals.
- ***In re General Motors Corp. Air Conditioning Marketing and Sales Practices Litig., MDL No. 2818 (E.D. Mich.)***
After conducting a significant pre-suit investigation, CCMS filed the first class action in the Eastern District of Michigan seeking relief on behalf of owners of GM vehicles suffering from a defect in the air conditioning system which typically results in total system failure, necessitating significant repairs thereto. Since commencing the action, CCMS has communicated with dozens of affected consumers and worked with GM assess the scope and nature of an extended warranty program GM implemented in a purported effort to resolve the claims of certain vehicle owners. On April 11, 2018, the Court appointed CCMS co-lead counsel.
- ***Squires et al., v. Toyota Motor Corp., et al., No. 18-cv-00138 (E.D. Tex.)***
CCMS investigated, originated and filed the first and only consumer class action brought on behalf of owners of multi-model year Toyota Prius vehicles that suffer from a defect that causes windshields to crack and fail in ordinary and foreseeable driving conditions. Plaintiffs allege that Defendants have breached express and implied warranties, and have violated the consumer protection statutes of various States.
- ***Gonzalez, et al., v. Mazda Motor Corp., et al., No. 16-cv-2087 (N.D. Cal.)***
CCMS is lead counsel in a consumer class action brought on behalf of owners of Model Year 2010-15 Mazda3 vehicles with defective clutch assemblies that cause them to prematurely fail. Plaintiffs allege that Defendants have breached express and implied warranties, and have violated the consumer protection statutes of various states. See, e.g., *Gonzalez v. Mazda Motor Corp.*, No. 16-CV-02087-MMC, 2017 WL 345878 (N.D. Cal. Jan. 5, 2017) (denying and granting in part Defendants' motion to dismiss).



- ***Albright v. The Sherwin-Williams Company*, No. 17-cv-02513 (N.D. Ohio)**

CCMS is serving as Co-Lead Counsel in this class action concerning deck resurfacing products sold under the Duckback and SuperDeck brand names. Plaintiffs allege that defendants have breached express and implied warranties, and have violated the consumer protection statutes of various states.

- ***Anderson v. Behr Process Corp.*, No. 1:17-cv-08735 (N.D. Ill.)**

CCMS is serving as Co-Lead Counsel in this class action brought on behalf of purchasers of various deck coating products from 2012 through the present. After many months of mediation and settlement negotiations, and successfully opposing efforts by other plaintiffs and firms to have the JPML centralize pending cases, the parties have agreed to a proposed Class settlement which will provide substantial valuable monetary relief to Class members to refund the cost of product purchased as well as compensate them for damage to their decks and the costs of restoring and repairing the same.

- ***Bergman v. DAP Products, Inc.*, No. 14-cv-03205 (D. Md.)**

CCMS served as lead counsel in this class action on behalf of consumers who purchased various models of “XHose” garden hoses, which were flexible outdoor hoses that were predisposed to leaking, bursting, seeping, and dripping due to design defects. The court approved a nationwide settlement providing hundreds of thousands of consumer class members with the opportunity to recover a substantial portion of their damages.

- ***In re Midway Moving & Storage, Inc.’s Charges to Residential Customers*, No. 03 CH 16091 (Cir. Ct. Cook Cty., Ill.)**

A class action on behalf of customers of Illinois’ largest moving company. 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. The court 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.”



- ***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, the court granted final approval to a settlement of a class action brought on behalf of pharmacies that participated in U.S. Healthcare's capitation program seeking to recover certain required semi-annual payments. At the final approval hearing, the court found 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."

- ***Davitt v. American Honda Motor Co., Inc., No. 13-cv-381 (D.N.J.)***

CCMS served as plaintiffs' counsel in a class action brought on behalf of owners of 2007-09 Honda CRV vehicles that suffered from a defect that predisposed the door-locking mechanisms to premature failure. Following extensive dismissal briefing, discovery and mediation, the parties arrived at a global settlement that provided class members with extended warranty coverage for the defect and reimbursement of out-of-pocket expenses incurred in connection therewith.

- ***Sabol v. Ford Motor Company, No. 2:14-cv-06654 (E.D. Pa.)***

CCMS served as Lead Counsel in this class case brought on behalf of owners of various model 2010-2015 Ford, Volvo and Land Rover vehicles allegedly including a defect in certain Ecoboost engines. Defendant claimed it addressed and repaired the problem through a series of recalls and repairs. After briefing summary judgment and class certification, and several years of hard fought litigation, including substantial discovery, the parties entered into a settlement providing substantial monetary and other relief.

- ***Lax v. Toyota Motor Corp., No. 14-cv-1490 (N.D. Cal.)***

CCMS served as class counsel in an action brought on behalf of owners of certain Toyota-brand vehicles that contained a defect which caused vehicles to consume oil at accelerated rates, often resulting in catastrophic engine failure. Following extensive discovery and mediation, the parties reached a private settlement following Toyota's implementation of an extended warranty and reimbursement program for affected vehicles. ECF No. 82.

Antitrust Class Actions and Commodities Litigation

- ***In re Cattle Antitrust Litig., No. 19-cv-01222 (D. Minn.)***
CCMS is serving as Co-Lead counsel on behalf of a proposed class of cattle ranchers and industry trade groups alleging that some of the country's largest meatpacking companies, including Tyson, Cargill, JBS, and National Beef, have colluded to suppress the prices paid for cattle used in beef production. As discussed in a recent National Law Journal article, a successful outcome in this matter would ensure that cattle ranchers are paid what they deserve for their labor in raising live-fed cattle and bringing them to market.
- ***In re Deutsche Bank Spoofing Litig., No. 20-cv-03638 (N.D. Ill.)***
CCMS serves as interim co-lead counsel in this case involving alleged manipulation through spoofing of Treasury and Eurodollar Futures.
- ***In re Libor-Based Financial Instruments, No. 11-md-2262 (S.D.N.Y.)***
CCMS serves as class counsel for exchange trader plaintiffs in claims involving manipulation in violation of the Commodity Exchange Act against many of the world's largest financial institutions.
- ***Hershey/Kohen v. Pacific Investment Management Co. LLC, No. 05 C 4681 (N.D. Ill.)***
As liaison and class counsel in action arising from PIMCO's manipulation of 10-year treasury notes futures traded on the Chicago Board of Trade, CCMS helped secure a \$118 million settlement for the class.
- ***In re Crude Oil Commodity Futures Litig., No. 11-cv-03600 (S.D.N.Y.)***
As class counsel in action arising from manipulation of NYMEX West Texas Intermediate grade crude oil futures contracts, CCMS expended significant resources assisting the class with investigation and discovery. The collective efforts resulted in a \$16.5 million settlement for the class.



- ***In re Foreign Exchange Benchmark Rates Antitrust Litig.*, 13-cv-7789 (S.D.N.Y.)**
As class counsel in this action arising from manipulation of foreign exchange rates by international banks and others, CCMS has devoted significant resources toward investigation, discovery, and allocation of more than \$2 billion in settlements for the class.
- ***In re Sumitomo Copper Litig.*, 96 Civ. 4584(MP) (S.D.N.Y.)**
As class counsel in action arising out of manipulation of the world copper market, CCMS helped achieve settlements aggregating \$134.6 million. 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).
- ***In re Soybean Futures Litig.*, No. 89 C 7009 (N.D. Ill.)**
As class counsel in this action against Ferruzzi Finanziaria SpA and related companies for unlawfully manipulating the soybean futures market, CCMS helped recover a \$21.5 million settlement.
- ***Lawrence E. Jaffe Pension Plan v. Household International, Inc.*, No. 1:02-cv-05893 (N.D. Ill.)**
Securities fraud class action. CCMS served as local counsel and helped recover a settlement of approximately \$1.6 billion.
- ***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 Constructors, 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 Insurance Brokerage Antitrust Litig.*, MDL No. 1663 (D.N.J.)**
CCMS served as Co-Lead Counsel for plaintiffs in this class case alleging 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 2013 with final approval of the last of five separate settlements that, in total, exceeded \$270 million. Judge Cecchi observed that “Class counsel include notably skilled attorneys with experience in antitrust, class actions and RICO litigation.” *In re Insurance Brokerage Antitrust Litig.*, 297 F.R.D. 136, 153 (D.N.J 2013); see also *In re Insurance Brokerage Antitrust Litig.*, MDL No. 1663, 2007 WL 1652303, at *6 (D.N.J. June 5, 2007).
- ***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. The parties entered into settlement agreements that collectively provided for the payment of over \$3.3 billion, plus widespread reforms and injunctive relief.
- ***In Re 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. The parties entered into settlement agreements that collectively provided for the payment of over \$3.3 billion, plus widespread reforms and injunctive relief.
- ***In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-md-02541 (N.D. Cal.)**
CCMS represented a former Division 1 college basketball player in this antitrust litigation challenging the cap imposed by the NCAA on grant-in-aid packages. The efforts of the firm and its co-counsel resulted in certification of an injunctive class and a settlement of \$209 million.



- ***Kamakahi v. American Society for Reproductive Medicine, No. 3:11-cv-01781 (N.D. Cal.)***

CCMS served as Co-Lead Counsel in a cutting edge antitrust case challenging the legality of ethical guidelines promulgated by two professional associations that limited the compensation members were permitted to pay to women providing donor services for in-vitro fertilization. Without the benefit of a parallel government case or investigation, CCMS achieved a groundbreaking settlement that required defendants to eliminate the compensation caps and to refrain from imposing similar caps in the future.

- ***In re New Motor Vehicles Canadian Export Antitrust Litig., MDL No. 1532 (D. Me.)***

CCMS served as Class Counsel in multidistrict litigation alleging that automobile manufacturers and other parties conspired to prevent lower priced new motor vehicles from entering the American market thereby artificially inflating prices. The court approved a \$37 million settlement with Toyota and the Canadian Automobile Dealers' Association.

- ***In re TriCor Indirect Purchaser Antitrust Litig., No. 05-360 (D. Del)***

CCMS served as 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. The court approved to a \$65.7 million settlement (an amount that excludes an initial payment to opt-out insurance companies).

- ***In re Prandin Direct Purchaser Antitrust Litig., Civ. No. 10-12141 (E.D. Mich.)***

CCMS served as Co-Lead counsel for a plaintiff class of direct purchasers of the prescription drug repaglinide, which is manufactured and marketed by Novo Nordisk under the brand-name Prandin. Plaintiffs alleged that Novo Nordisk blocked FDA approval of generic versions of the drug by wrongfully manipulating the language of the "use code" filed with the FDA in connection with a method of use patent. The court approved a \$19 million settlement.



- ***In Re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litigation, MDL No. 2819 (E.D.N.Y)***
CCMS is a member of the Executive Committee representing a putative class of indirect purchasers of Restasis, an eye-drop used to treat dry-eye syndrome, and allege that Defendant Allergan engaged in various anticompetitive activities to illegally prolong the life of its patents over Restasis, and to otherwise forestall the entry of generic competition into the cyclosporine market.
- ***In re Disposable Contact Lens Antitrust Litigation, MDL No. 2626 (M.D. Fla.)***
CCMS served on the Defendant Discovery Committee, which was tasked with overseeing all aspects of discovery pertaining to Defendants, who are alleged to have conspired to implement retail price maintenance agreements intended to inflate the prices of disposable contact lenses to supracompetitive levels. The district court certified several horizontal and vertical nationwide antitrust classes, and settlements recovering \$118 million for consumers have been reached.
- ***In re Automotive Parts Antitrust Litig., MDL No. 2311 (E.D. Mich.)***
CCMS has served as a member of Plaintiffs' Executive Committee representing the end-payor class in one of the largest civil antitrust actions in US history. As a member of the Executive Committee, CCMS has played an important role in this groundbreaking litigation in which plaintiffs have recovered over \$1 billion on behalf of end-payor consumers and businesses who allege they purchased or leased new automobiles at prices that were artificially inflated as a result of automotive component manufacturers' anticompetitive conduct.
- ***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. The court approved a \$65 million class action settlement for the benefit of consumers and third-party payors who paid for Paxil.



- ***In re Relafen Antitrust Litig. No. 01-12239 (D. Mass.)***
The court approved 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.”).
- ***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. The Court approved a \$44.5 million settlement.
- ***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. Plaintiffs alleged that an agreement between the brand manufacturer and a generic manufacturer unlawfully stalled generic competition. The court approved an \$80 million settlement for the benefit of consumers, third-party payors and state attorneys general.
- ***In re Synthroid Marketing Litig., MDL No. 1182 (N.D. Ill.)***
This multidistrict action arose out of alleged unlawful activities with respect to the marketing of Synthroid, a levothyroxine product used to treat thyroid disorders. The court approved a consumer settlement in the amount of \$87.4 million.

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. 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 an experienced litigator in matters involving antitrust, securities, commodities, and the pharmaceutical industry. 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 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). Mr. Cafferty is admitted to the state bars of Michigan and Illinois, and holds several federal district and appellate court admissions. Mr. Cafferty has attained the highest rating, AV®, from Martindale-Hubbell and is a top rated SuperLawyer®.



BRYAN L. CLOBES is a 1988 graduate of the Villanova University School of Law and received his undergraduate degree from the University of Maryland. Mr. Clobes clerked for Judge Arlin M. Adams of the United States Court of Appeals for the Third Circuit, Judge Mitchell H. Cohen of the United States District Court for the District of New Jersey, and 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 in Washington, D.C. Mr. Clobes has served as lead counsel in many of the firm’s class cases covering all areas of the firm’s practice, and is widely recognized as an expert in class action litigation. Mr. Clobes has authored briefs filed with the Supreme Court in



a number of class cases, served as a panelist for class action, consumer and antitrust CLE programs, has sustained and maintained the highest rating, AV®, from Martindale-Hubbell, and has been named a “Super Lawyer” for the past twelve years. Mr. Clobes is admitted to the bar in New Jersey and Pennsylvania, and admitted to practice in several federal district and appellate court admissions.



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. Since joining CCMS, Mr. Herrera has successfully prosecuted a wide range of antitrust, consumer and commodities class action. Prior to

joining CCMS, Mr. Herrera was an associate in the trial practice of Mayer Brown LLP, a Chicago-based national law firm, 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 holds several federal district and appellate court admissions.



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. Ms. Meriwether is on the Board of Directors of the American Antitrust Institute (AAI), is Editorial Board Co-Chair of ANTITRUST, a publication by the section of Antitrust Law of the American Bar Association and serves as

Vice-Chair of the Board of Directors of the Public Interest Law Center, in Philadelphia. 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. She has been named a “Pennsylvania Super Lawyer” since 2005 and has attained the highest rating, “AV”, from Martindale-Hubbell. She is a frequent presenter on topics relating to complex, class action and antitrust litigation and has published a number of articles on subjects relating to class actions and antitrust litigation,



including, among others: “The Fiftieth Anniversary of Rule 23: Are Class Actions on the Precipice?,” *Antitrust*, (Vol. 30, No. 2, Spring 2016); “Motorola Mobility and the FTAIA: If Not Here, Then Where?,” *Antitrust*, Vo. 29, No.2 Spring 2015); “*Comcast Corp. v. Behrend*: Game Changing or Business as Usual?,” *Antitrust*, (Vol. 27, No. 3, Summer 2013). Links to these articles and others authored by Ms. Meriwether can be found on the firm’s website. Ms. Meriwether is admitted to the bar of Supreme Court of Pennsylvania and is admitted in a number of federal district court and appellate court jurisdictions.



NYRAN ROSE RASCHE received her undergraduate degree *cum laude* from Illinois Wesleyan University in 1995, was awarded a graduate teaching fellowship for law school, and earned her law degree from the University of Oregon School of Law in 1999. Following law school, Ms. Rasche served as a law 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) and *Market Allocation through Contingent Commission Agreements: Strategy and Results in In re Insurance Brokerage Antitrust Litigation* (with Ellen Meriwether), *The Exchange: Insurance and Financial Services Developments* (Spring 2015). Since joining CCMS, Ms. Rasche has successfully prosecuted a wide range of antitrust, consumer class, securities and commodities class actions. Ms. Rasche has been admitted to practice in the state courts of Oregon and Illinois, as well as the United States District Courts for the Northern District of Illinois, the Southern District of Illinois, and the District of Colorado. She is also a member of the American and Chicago Bar Associations.



JENNIFER WINTER SPRENGEL received her law degree from DePaul University College of Law, where she was a member of the DePaul University Law Review. Her undergraduate degree was conferred by Purdue University. Ms. Sprengel is an experienced litigator in matters involving commodities, antitrust, insurance and the financial industries. In addition, Ms. Sprengel is a committee member of the Seventh Circuit Electronic eDiscovery Pilot Program and is a frequent speaker regarding issues of discovery. Links to some of her presentations and articles can be found on the firm’s website. She also



serves as co-chair of the Antitrust Law subcommittee of the ABA Class Action and Derivative Suits committee. She is admitted to practice law in Illinois, holds several federal district and appellate court admissions, and has attained the highest rating, AV®, from Martindale-Hubbell. Ms. Sprengel serves as the managing partner of the Firm.



NICKOLAS J. HAGMAN received his undergraduate degree, *magna cum laude*, from the University of Minnesota in 2008. Mr. Hagman earned his law degree from Marquette University Law School, *cum laude*, in 2013, with a Certificate in Litigation. During law school, Mr. Hagman served as an associate editor of the Marquette Law Review, was a member of the Pro Bono Society, and worked as an intern for the late Wisconsin Supreme Court Justice N. Patrick Crooks, and current Wisconsin Supreme Court

Justice Rebecca Dallet. Following law school, Mr. Hagman served as a judicial clerk in the Milwaukee County Circuit Court for two years. Prior to joining CCMS in 2019, Mr. Hagman was an associate at a plaintiff-side consumer class action firm for five years. Mr. Hagman is licensed to practice in Illinois and Wisconsin, and before the United State District Courts for the Northern District of Illinois, the Eastern District of Wisconsin, the Eastern District of Michigan, and the District of Colorado. Mr. Hagman currently serves as the Vice Chair of the Chicago Bar Association Class Action Committee, having previously served on the board of the Class Action Committee.

ASSOCIATES



KAITLIN NAUGHTON received her law degree from the George Washington University Law School in 2019, where she served as managing editor for the *George Washington Journal of Energy & Environmental Law*. Ms. Naughton earned her bachelor's degree in political science and sociology with distinction from Purdue University in 2015. Ms. Naughton joined CCMS in 2019 and is resident in its Chicago, Illinois office. She is licensed to practice in Illinois and before the United State District Court for the Northern District of Illinois.



ALEXANDER SWEATMAN earned his law degree from the University of Notre Dame Law School in 2019, where he served as Managing Notes Editor for the *Notre Dame Journal of Legislation*. While in law school, Mr. Sweatman served as a judicial extern for the Honorable Thomas Donnelly in the Circuit Court of Cook County and participated in Notre Dame's Public Defender Externship where he represented juveniles in initial hearings, sentencing proceedings, and probation modification hearings. Mr. Sweatman graduated *summa cum laude* from Wheaton College in 2016. Mr. Sweatman joined CCMS in 2021. He is a member of the Chicago Bar Association and is involved in its Antitrust Law Section and Civil Practice and Procedure Committee. Mr. Sweatman is licensed to practice in Illinois.



ALEX LEE graduated *cum laude* from the University of Illinois College of Law in 2020. While at law school, he was a staff writer for the *Illinois Business Law Journal* and served in the Illinois Innocence Project where he worked to investigate and exonerate wrongfully convicted individuals in Illinois. Mr. Lee received his BA in political science from Boston College in 2017. While at university, Mr. Lee worked in special needs education for three years. Alex Lee joined Cafferty Clobes Meriwether Sprengel's Chicago office as an associate attorney in 2023. Prior to joining Cafferty Clobes, Mr. Lee worked at several law firms in Chicago and Champaign and worked on cases in consumer law, employment law, civil rights, commercial litigation, and complex litigation.



SENIOR 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 became counsel to the firm in October 1996.

EXHIBIT C

**MARGERY S. BRONSTER, ESQ.
FOUNDING PARTNER
BRONSTER FUJICHAKU ROBBINS**

Ms. Bronster is the former attorney General for the State of Hawai'i and is the founding partner of Bronster Fujichaku Robbins, a litigation boutique located in Honolulu, Hawai'i. Over the course of her legal career, Ms. Bronster has acted as lead counsel in dozens of trials in a variety of complex litigation matters. Ms. Bronster's experience also includes representing plaintiffs in federal multi-district litigation and numerous class actions in both Hawai'i and elsewhere. Ms. Bronster's accomplishments have been recognized by both international and domestic organizations, and she recently served as an expert witness on Hawai'i and United States law before the Supreme Court of Singapore.

Ms. Bronster was the Attorney General for the State of Hawai'i from 1995-1999. During her term, she won widespread acclaim for successfully leading a years-long investigation into abuses by the trustees of the Kamehameha Schools/Bishop Estate charitable trust, one of the largest private trusts in the country. Her efforts led to the forced resignation of four of the five trustees and a complete overhaul of the Trust's administration, ushering in a new era of accountability for the trustees. As Attorney General, Ms. Bronster also represented Hawai'i in the nationwide litigation against the tobacco companies in the late 1990s. She played a key role in the global settlement negotiations that resulted in the multi-billion-dollar Master Settlement Agreement, garnering \$1.3 billion for the State of Hawai'i. Ms. Bronster's hourly rate is \$800.

PROFESSIONAL EXPERIENCE

Bronster Fujichaku Robbins, a Law Corporation

Partner: December 1999 to Present

Attorney General – State of Hawaii

Attorney General: January 1995 – May 1999

Carlsmith Ball Wichman Murray Case & Ichiki

Partner: October 1988 – December 1994

Shearman & Sterling, New York, New York

Associate: October 1982 – October 1987

EDUCATION

Columbia University, J.D.

1982, Harlan Fisk Stone Scholar

Brown University; BA

1979, Chinese Language and History Major

ADMISSIONS

New York State Bar (1983)

Hawaii State Bar (1988)

United States Tax Court (1994)

United States District Court for the District of Hawaii (1988)

Southern and Eastern Districts of New York (1986)

Eleventh Circuit Court of Appeals (1986)

Ninth Circuit Court of Appeals (1989)

United States Court of Federal Claims (2023)

AWARDS & RECOGNITIONS

Recognized by the Litigation Counsel of America as a Senior Fellow (2015)

Profile And Courage Award from Conference of Western Attorneys General (2000)

Fellow of the Pacific Award from Hawaii Pacific University for Outstanding Service to the Community (2000)

Advocate of the Year - Hawaii Cancer Society (1999)

Kelley - Wyman Award for Outstanding Attorney General of the Year from the National Association of Attorneys General (1999)

Top Cop - State of Hawaii Law Enforcement Coalition of Police Officers and Security Personnel (1999)

Hawaii's Woman Lawyer of the Year (1998)

Tommy Holmes Award for work combating sexual assault from Sex Abuse Treatment Center (1999)

AV Designation by Martindale-Hubbell

Best Lawyer in America, "Hawaii Lawyer of the Year" in Honolulu, in the area of insurance litigation

PUBLICATIONS

14th Annual Advanced ALI-ABA Section of Taxation Course of Study Tax Exempt Charitable Organizations (Nov. 1999)

“Disqualification of Attorneys and Judges”, “Class Actions: Defendant’s Perspectives, Tactics and Problems” Co-Arthur, Civil Practice and Litigation in Federal and State Courts, ALI-ABA, 1987.

“The Foreign Sovereign Immunities Act of 1976 – An Overview” Co-Arthur. Presented to the Legal Committee of the US-USSR Trade and Economic Council, December 1986.

“Litigating The Class Action Lawsuit in Hawaii”, National Business Institute, May 22, 2001.

REPRESENTATIVE CASES

In re Gardasil Prods. Liab. Litig., MDL No. 3036 (W.D.N.C.) (member of plaintiffs’ executive committee)

In re Facebook Internet Tracking Litig., MDL No. 2314 (N.D. Cal.) (chair of the former attorneys general advisory committee to lead counsel in nationwide invasion of privacy class action)

In re Blue Cross Blue Shield Antitrust Litig., MDL No. 2406 (N.D. Ala.)

Caven v. Certified Mgt., Inc., No. 16-1-17787 JHA (Cir. Ct. 1st Cir. Haw.)

Bird v. State of Hawai‘i, 935 F.3d 738 (9th Cir. 2019) (per curiam)

Gregg v. Hawai‘i Dep’t of Pub. Safety, 870 F.3d 883 (9th Cir. 2017)

Johnson v. Inos, 619 F. App’x 651 (9th Cir. 2015) (as class counsel for a class of public employee pensioners negotiated a class settlement secured by a \$750 million default judgment to ensure long-term payment of pension benefits)

Arciero v. City & Cty. of Honolulu, 126 Hawai‘i 122, 267 P.3d 706 (App. Ct. 2011) (table)

Fratinaro v. Employees’ Retirement Sys. of the State of Hawai‘i, 121 Hawai‘i 462, 220 P.3d 1-43 (App. Ct. 2009)

Flores v. Rawlings Co., LLC, 117 Hawai'i 153, 177 P.3d 341, opinion amended on reconsideration, 119 Hawai'i 287, 196 P.2d 289 (2008)

ROBERT M. HATCH

PROFESSIONAL EMPLOYMENT

Bronster Fujichaku Robbins, a Law Corporation

Of counsel: February 2003 to Present

Bock, Hatch, & Oppenheim LLC

Attorney: 2005 to present

Diab & Bock (f/k/a Macey Chern & Diab)

Of Counsel: 2001 to 2005

Lovells

Partner: 1998 to 2001

Associate: 1995 to 1998

Sidley & Austin

Associate: 1990 to 1995

EDUCATION

Wayne State University

Degree: J.D., 1990

Honors: Cum Laude, Order of the Coif

University of Michigan

Degree: B.A., 1986

ADMISSIONS

Illinois, 1990

Hawaii, 2002

Michigan, 1992

United States Court of Appeals for the Seventh Circuit, 1996

United States Court of Appeals for the Ninth Circuit, 2013

United States Court of Appeals for the Eleventh Circuit, 2019

United States District Court for the Northern District of Illinois, 1990

United States District Court for the District of Hawai'i, 2002

United States District Court for the Eastern District of Michigan, 2016

United States Court of Federal Claims, 2023

PROFESSIONAL ORGANIZATIONS

Chicago Bar Association

Member: 1991 to 2001

Chair: Consumer Credit Committee 1999

Asian American Bar Association for the Greater Chicago Area

Member: 1991 to 2001

Chair: Legislative and Judicial Developments Committee 1992-94
Awards: Member of the Year Award 1993

PUBLICATIONS

“Survey of State Class Action Law” (Hawai‘i Section, ABA 2006-2022)

“RICO Theories, Cases and Strategies In Consumer Litigation: Strategies for Defending Section 1962 Claims,” 53 Consumer Finance Law Quarterly Report 140 (1999)

“*Taylor v. Quality Hyundai, Inc.*: Assignee Liability Under Section 1641(a) of the Truth in Lending Act,” 52 Consumer Finance Law Quarterly Report 354 (1998)

MULTIDISTRICT LITIGATION EXPERIENCE

In re Gardasil Prods. Liab. Litig., MDL No. 3036 (W.D.N.C.) (member of plaintiffs’ steering committee)

In re Facebook Internet Tracking Litig., MDL No. 2314 (N.D. Cal.)

In re Blue Cross Blue Shield Antitrust Litig., MDL No. 2406 (N.D. Ala.)

APPELLATE DECISIONS

Federal Appellate Court Decisions

First Circuit

Sparkle Hill, Inc. v. Interstate Mat Corp., 788 F.3d 25 (1st Cir. 2015)

Third Circuit

Fischbein v. Olson Research Grp., Inc., 959 F.3d 559 (3d Cir. 2020)

Robert W. Mauthe M.D., P.C. v. Spreemo, Inc., 806 F. App'x 151 (3d Cir. 2020)

Robert W. Mauthe, M.D., P.C. v. Optum Inc., 925 F.3d 129 (3d Cir. 2019)

Mauthe v. Nat'l Imaging Assocs., Inc., 767 F. App'x 246 (3d Cir. 2019)

City Select Auto Sales, Inc. v. David Randall Assocs., Inc., 885 F.3d 154 (3d Cir. 2018)

City Select Auto Sales, Inc. v. BMW Bank of N.A., Inc., 867 F.3d 434 (3d Cir. 2017)

Larson v. AT & T Mobility LLC, 687 F.3d 109 (3d Cir. 2012)

Sixth Circuit

Lyngaas v. Curaden AG, 992 F.3d 412 (6th Cir. Mar. 24, 2021)

Matthew N. Fulton, D.D.S., P.C. v. Enclarity, Inc., 962 F.3d 882 (6th Cir. 2020)

Compressor Eng'g Corp. v. Manufacturers Fin. Corp., 746 F. App'x 460 (6th Cir. 2018)

Bridging Communities Inc. v. Top Flite Fin. Inc., 843 F.3d 1119 (6th Cir. 2016)

Siding & Insulation Co. v. Alco Vending, Inc., 822 F.3d 886 (6th Cir. 2016)

Imhoff Investment, L.L.C. v. Alfoccino, Inc., 792 F.3d 627 (6th Cir. 2015)

Am. Copper & Brass, Inc. v. Lake City Indus. Products, Inc., 757 F.3d 540 (6th Cir. 2014)

Seventh Circuit

Robert L. Meinders, D.C. Ltd. v. United Healthcare Servs., Inc., 7 F.4th 555 (7th Cir. 2021)

Kaufman v. Am. Express Travel Related Servs. Co., Inc., 877 F.3d 276 (7th Cir. 2017)

Holtzman v. Turza, 701 F. App'x 506 (7th Cir. 2017)

Holtzman v. Turza, 828 F.3d 606 (7th Cir. 2016)

Paldo Sign & Display Co. v. Wagener Equities, Inc., 825 F.3d 793 (7th Cir. 2016)

Dr. Robert L. Meinders, D.C., Ltd. v. UnitedHealthCare, Inc., 800 F.3d 853 (7th Cir. 2015)

Chapman v. First Index, Inc., 796 F.3d 783 (7th Cir. 2015)

Americana Art China Co. v. Foxfire Printing & Packaging, Inc., 743 F.3d 243 (7th Cir. 2014)

Ira Holtzman, C.P.A. v. Turza, 728 F.3d 622 (7th Cir. 2013)

CE Design, Ltd. v. Cy's Crab House N., Inc., 731 F.3d 725 (7th Cir. 2013)

Sawyer v. Atlas Heating & Sheet Metal Works, Inc., 642 F.3d 560 (7th Cir. 2011)

Shlahtichman v. 1-800 Contacts, Inc., 615 F.3d 794 (7th Cir. 2010)

Bethea v. Robert J. Adams & Assocs., 352 F.3d 1125 (7th Cir. 2003)

Taylor v. Quality Hyundai, Inc., 150 F.3d 689 (7th Cir. 1998) (amicus)

Eighth Circuit

Nack v. Walburg, 715 F.3d 680 (8th Cir. 2013)

Ninth Circuit

Bird v. State of Hawai'i, 935 F.3d 738 (9th Cir. 2019)
(per curiam)

Supply Pro Sorbents, LLC v. RingCentral, Inc., 743 F. App'x 124 (9th Cir. 2018)

Gregg v. Hawaii, Dep't of Pub. Safety, 870 F.3d 883 (9th Cir. 2017)

Roberts v. Paypal, Inc., 621 F. App'x 478 (9th Cir. 2015)

Johnson v. Inos, 619 F. App'x 651 (9th Cir. 2015)

Eleventh Circuit

Arkin v. Pressman, Inc., 38 F.4th 1001, 1004 (11th Cir. 2022)

Med. & Chiropractic Clinic, Inc. v. Oppenheim, 981 F.3d 983, 985 (11th Cir. 2020)

Technology Training Assocs. Inc. v. Buccaneers Ltd., P'ship, 874 F.3d 692 (11th Cir. 2017)

Palm Beach Golf Ctr.-Boca, Inc. v. John G. Sarris, D.D.S., P.A., 781 F.3d 1245 (11th Cir. 2015)

Ewing Indus. Corp. v. Bob Wines Nursery, Inc., 795 F.3d 1324 (11th Cir. 2015)

State Appellate Court Decisions

Hawai'i

Arbles v. Merit Appeals Bd., 151 Hawai'i 400, 515 P.3d 217 (Haw. Ct. App. June 30, 2022), *as corrected* (July 21, 2022)

Flores v. Rawlings Co., LLC, 117 Hawai'i 153, 177 P.3d 341, *opinion amended on reconsideration*, 119 Hawai'i 287, 196 P.3d 289 (2008)

Fratinaro v. Employees' Ret. Sys. of State of Hawaii, 129 Hawai'i 107, 295 P.3d 977 (App. 2013)

Arciero v. City & Cty. of Honolulu, 126 Hawai'i 122, 267 P.3d 706 (App. 2011) (table)

Fratinaro v. Employees' Retirement Sys. of the State of Haw., 121 Hawai'i 462, 220 P.3d 1043 (App. 2009)

Illinois

Rosenbach v. Six Flags Entm't Corp., 2019 IL 123186, 129 N.E.3d 1197

Ballard RN Ctr., Inc. v. Kohll's Pharmacy & Homecare, Inc., 48 N.E.3d 1060 (Ill. 2015) (amicus)

Bridgeview Health Care Ctr., Ltd. v. State Farm Fire & Cas. Co., 10 N.E.3d 902 (Ill. 2014)

Standard Mut. Ins. Co. v. Lay, 989 N.E.2d 591 (Ill. 2013)

Italia Foods v. Sun Tours, Inc., 986 N.E.2d 551 (Ill. 2011)

Valley Forge Ins. Co. v. Swiderski Electronics, Inc., 860 N.E.2d 307 (Ill. 2006)

Martin v. Heinold Commodities, Inc., 643 N.E.2d 734 (Ill. 1994)

CE Design Ltd. v. C & T Pizza, Inc., 32 N.E.3d 150 (Ill. App. 2015)

G.M. Sign, Inc. v. Pennswood Partners, Inc., 40 N.E.3d 169 (Ill. App. 2015)

Cent. Mut. Ins. Co. v. Tracy's Treasures, Inc., 19 N.E.3d 1100 (Ill. App. 2014)

G.M. Sign, Inc. v. Swiderski Elecs., Inc., 16 N.E.3d 357 (Ill. App. 2014)

O'Leary v. Am. Online, Inc., 6 N.E.3d 872 (Ill. App. 2014)

Uesco Indus., Inc. v. Poolman of Wisconsin, Inc., 993 N.E.2d 97 (Ill. App. 2013)

Wellington Homes, Inc. v. West Dundee China Palace Restaurant, 984 N.E.2d 554 (Ill. App. 2013)

Pekin Ins. v. XData Solutions, Inc., 958 N.E.2d 397 (Ill. App. 2011)

Ins. Corp. of Hanover v. Shelborne Assocs., 905 N.E.2d 976 (Ill. App. 2009)

Treadway v. Nations Credit Fin. Servs. Corp., 892 N.E.2d 534 (Ill. App. 2008)

Chochorowski v. Home Depot U.S.A., Inc., 875 N.E.2d 682 (Ill. App. 2007)

Hall v. Sprint Spectrum L.P., 876 N.E.2d 1036 (Ill. App. 2007)

CE Design, Ltd. v. Mortg. Exch., Inc., 872 N.E.2d 1056 (Ill. App. 2007)

Eclipse Mfg. Co. v. U.S. Compliance Co., 886 N.E.2d 349 (Ill. App. 2007)

Valley Forge Ins. Co. v. Swiderski Elecs., Inc., 834 N.E.2d 562 (Ill. App. 2005), *aff'd*, 860 N.E.2d 307 (Ill. 2006)

P.J.'s Concrete Pumping Service v. Nextel Wireless, 803 N.E.2d 102 (Ill. App. 2004)

Sander v. Dow Chem. Co., 624 N.E.2d 1255 (Ill. App. 1993), *rev'd*, 166 Ill. 2d 48, 651 N.E.2d 1071 (Ill. 1995)

In re Marriage of Campbell, 624 N.E.2d 1230 (Ill. App. 1993)

Florida

Dewar v. Dough Boy Pizza, Inc., 184 So. 3d 1169 (Fla. Dist. Ct. App. 2015)

Kaner v. Robert R. Schiffman, D.C., P.C., 126 So. 3d 1134 (Fla. Dist. Ct. App. 2012)

Kolesov & Assocs., P.A. v. Dewar, 97 So. 3d 835 (Fla. Dist. Ct. App. 2012) (Table)

California

State Farm Gen. Ins. Co. v. JT's Frames, Inc., 181 Cal. App. 4th 429, 104 Cal. Rptr. 3d 573 (2010)

Missouri

Columbia Cas. Co. v. HIAR Holdings, LLC, 411 S.W.3d 258 (Mo. 2013)

New Jersey

Local Baking Prod., Inc. v. Kosher Bagel Munch, Inc., 421 N.J. Super. 268, 23 A.3d 469 (App. Div. 2011)

SUCCESSFULLY CONTESTED CLASS CERTIFICATIONS

A & L Industries, Inc. v. P. Cippollini, Inc., Civ. Action No. 12-07598, 2013 WL 5503303 (D.N.J. Oct. 2, 2013), *reconsideration denied*, 2013 WL 6145766 (D.N.J. Nov. 21, 2013), *pet. for leave to appeal denied*, 13-8094 (3rd Cir. Mar. 20, 2014).

A Aventura Chiropractic v. McCullem-Tankless, No. 2009 CA 023494 (15th Cir., Palm Beach Cnty. Fla. 2015).

All American Painting, LLC v. Chiropractic & Sports Injury Ctr. of Creve Coeur, P.C., No. 08SL-CC02116 (St. Louis Cnty., Mo. Aug. 15, 2011).

Am. Copper & Brass, Inc. v. Lake City Indus. Prods., Inc., Case No. 09-CV-1162, 2012 WL 3027953 (W.D. Mich., Jul. 24, 2012).

Amato v. Attorney's Nat'l Title Network, Inc., No. 01 CH 12616 (Cir. Ct. of Cook Cnty., Ill. Aug. 29, 2003).

Anderson Office Supply, Inc. v. Advanced Medical Assocs., P.A., et al., 09 CV 178 (Kan. Dist. Ct. Nov. 17, 2010), *affirmed*, *Anderson Office Supply, Inc. v. Advanced Medical Assocs., P.A.*, 273 P.3d 786, 800 (Kan. App. Ct. 2012).

Austria v. Option One Mortgage Corp., 01 CH 12615 (Cir. Ct. of Cook Cnty., Ill. Mar. 1, 2006).

Babb Real Estate LLC, v. Bennett & Olstad, 10-cv-119-wmc, (W.D. Wisc. Jul. 29, 2011).

BNS, Limited v. Redondo Family Chiropractic, Inc., P.S. No. 09-2-19352-5 SEA, (Super. Ct. of Wash., King Cnty. Jun. 9, 2010).

Bouschard v. Cingular Wireless, Inc., No. 01 MR 718 (Cir. Ct. of Lake Cnty., Ill. Apr. 26, 2002).

Bridgeview Health Care Ctr. Ltd. v. Clark, 09 C 5601, Memo. Op. and Order (N.D. Ill. Sept. 30, 2011).

Bridgeview Health Care Ctr. Ltd. v. Dr. Nathan Long, DDS, No. 09 CH 15983 (Cir. Ct. of Cook Cnty., Ill. Nov. 1, 2012).

CE Design v. Beaty Constr., Inc., Case No. 07-cv-3340, 2009 WL 192481 (N.D. Ill. Jan. 26, 2009).

CE Design Ltd. v. C&T Pizza, Inc. et al, No. 06 CH 27638 (Cir. Ct. of Cook Cnty. Cir. Apr. 4, 2013) (Novak, J.), *aff'd* *CE Design Ltd. v. C&T Pizza, Inc. et al*, 32 N.E.3d 150, 2015 IL App (1st) 131465 (Ill. Ct. App. May 8, 2015).

CE Design v. Cy's Crab House North, Inc., et al., 259 F.R.D. 135 (N.D. Ill., Kennelly, J.) *app. denied* (Sept. 9, 2009).

CE Design v. King Architectural Metals, Inc., No. 09 C 2057, 2010 WL 5146641, * 6 (N.D. Ill. Dec. 13, 2010), *reversed on other grounds*, *CE Design Limited v. King Architectural Metals, Inc.*, 637 F.3d 721, 723-24 (7th Cir. 2011).

CE Design v. Matrix LS, Inc., No. 05 L 269 (Cir. Ct. of Lake Cnty., Ill. Apr. 16, 2010)..

CE Design v. The Tradeshow Network Mktg. Grp., 03 CH K 964 (Cir. Ct. of Kane Cnty., Ill. Dec. 2, 2004).

City Select Auto Sales, Inc. v. David Randall Assocs., Inc., et al, 296 F.R.D. 299 (D.N.J. 2013), *pet. for leave to appeal denied*, 14-8001 (3rd Cir. Mar. 20, 2014).

Collins v. Locks & Keys of Woburn, Inc., No. 07-4207-BLS (Mass. Sup. Ct. Jul. 3. 2009).

Compressor Engineering Corp. v. Charles J. Thomas-Chicken Shack, No. 10-cv-10059 (E.D. Mich. 2015).

Coyne Appraisal Group, LLC v. Associated Physical Medicine, P.C., No. 1011-CV-11102 (Cir. Ct. of St. Charles Cnty., Mo. Aug 5, 2013).

Creative Montessori Learning Ctrs. v. Ashford Gear, LLC, No. 09 CV 3963, 2011 WL 3273078 (N.D. Ill. July 27, 2011) (Gettleman, J.) (certifying class), 662 F.3d 913 (7th Cir. 2011) (vacated and remanded), 2012 WL 3961307 (N.D. Ill. Sept. 10, 2012) (certifying class) (Gettleman, J.), *app. denied*, 12-8036, Order (October 11, 2012).

Critchfield Physical Therapy v. The Taranto Group, Inc., 263 P.3d 767, 2011 WL 4505794, **10-11 (Kan. Sup. Ct., Sept. 30, 2011).

Defrates v. Hollywood Video Entm't Corp., No. 02 L 707 (Cir. Ct. of St. Clair Cnty., Ill.).

Dewar v. Kolesov & Assocs., P.A., No. 09-CA-2724 (Cir. Ct. of Lee Cnty., Fla. Dec. 14, 2011).

Duenas v. Trend Techs., et al., 03 C 801 & 04 C 212 (N.D. Ill., Nov. 3, 2004) (Kennelly, J.).

Exclusively Cats Veterinary Hosp. v. Anesthetic Vaporizer Servs., Inc., No. 10-10620, 2010 WL 5439737 (E.D. Mich. Dec. 27, 2010).

Flashtric Sign, Inc. v. Georgia Printco, LLC, No. 08 CH 38639 (Cir. Ct. of Cook Cnty., Ill. Mar. 10, 2014).

Florida First Fin. Grp., Inc., v. Magnum Painting, Inc., No. 10-481 (Cir. Ct. of Hillsborough Cnty., Fla. Oct. 14, 2010).

G.M. Sign, Inc. v. 400 Freight Servs., Inc., No. 07 CH 2772 (Cir. Ct. of Lake Cnty., Ill. Jan. 7, 2010).

G.M. Sign, Inc. v. Finish Thompson, Inc., No. 07 CV 5953, 2009 WL 2581324 (N.D. Ill. Aug. 20, 2009).

G.M. Sign, Inc. v. Franklin Bank, S.S.B., 06 C 949 (N.D. Ill. Aug. 20, 2008).

Green v. Dahn Yoga & Health Ctrs., Inc., 07 CH 29482 (Cir. Ct. of Cook Cnty., Ill. Nov. 14, 2011).

Green v. Service Master On Location Servs. Corp., No. 07 C 4705, 2009 WL 1810769 (N.D. Ill. June 22, 2009).

Hall v. Sprint Spectrum L.P., 04 L 113 (Cir. Ct. of Madison Cnty, Ill.), affirmed, 376 Ill. App. 3d 822, 876 N.E.2d 1036 (5th Dist. 2007), petition for leave to appeal denied, 226 Ill. 2d 614 (Ill. 2008).

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IN THE CIRCUIT COURT FOR THE FIRST CIRCUIT
STATE OF HAWAII

JOSEPH SMITH AND TONY LEE,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

HAWAIIUSA FEDERAL CREDIT UNION,

Defendant.

Case No.: 1CCV-24-0000154

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certified that a filed marked copy of the foregoing document was duly served upon the parties listed below at the email below VIA JEFS:

HAWAIIUSA FEDERAL CREDIT UNION
1226 College Walk
Honolulu, Hawai'i 96817
Defendant

Dated: April 2, 2024.

Respectfully submitted,

/s/ Robert M. Hatch

Margery S Bronster

Robert M. Hatch

BRONSER FUJICHAKU ROBBINS

A Law Corporation

1003 Bishop Street, Suite 2300

Honolulu, HI 96813

Tel.: (808) 524-5644

Fax: (808) 599-1881

mbronster@bfrhawaii.com

rhatch@bfrhawaii.com

MILBERG COLEMAN BRYSON

PHILLIPS GROSSMAN, PLLC

Gary M. Klinger (*Admitted Pro Hac Vice*)

227 West Monroe Street, Suite 2100

Chicago, IL 60606

T: 866.252.0878

gklinger@milberg.com

**CAFFERTY CLOBES MERIWETHER &
SPRENGEL LLP**

Nickolas J. Hagman (admitted *pro hac vice*)

135 S. LaSalle, Suite 3210

Chicago, IL 60606

T: 312.782.4880

nhagman@caffertyclobes.com

Attorneys for Plaintiffs and the Putative Class