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*Attorneys for Plaintiff and  
Proposed Class Counsel*

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO**

HARLEY SEEGER, individually, on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

P.F. CHANG'S CHINA BISTRO, INC., a  
Delaware Corporation; and DOES 1 through 20,  
inclusive,

Defendant.

Case No: 37-2017-00016131-CU-MC-CTL

**[E-FILE]**

**CLASS ACTION**

**DECLARATION OF TODD D.  
CARPENTER IN SUPPORT OF  
UNOPPOSED MOTION FOR  
ATTORNEYS' FEES, COSTS, AND  
INCENTIVE AWARD**

Date: July 12, 2019

Time: 1:30 p.m.

Dept.: C-69

Judge: Hon. Katherine Bacal

I, Todd D. Carpenter, declare:

1. I am an attorney duly admitted to practice law before all courts of the State of California, and I am a shareholder in the law firm of Carlson Lynch LLP, for Plaintiff and the Class herein. I make this declaration in support of Plaintiff's Unopposed Motion for Attorneys' Fees, Costs, and Incentive Award. If called as a witness, I could and would competently testify to the following:

2. I have personally been involved in the investigation and prosecution of this class action from its inception through to the present. I oversaw the investigation into several locations of the Defendant's restaurants. I directed the investigation through the use of my paralegals and reviewed their entries accordingly. I was also actively involved in the management of the litigation. I assigned litigation tasks to my associates, but performed the high level negotiation of the settlement and oversaw the approval process law & motion work.

3. The law firm of Carlson Lynch LLP has expended a substantial amount of time and effort in prosecuting this action and achieving an adequate benefit for the Class. The requested fee is reasonable and appropriate based on the risks of litigation, Class Counsel's refusal of alternative employment opportunities with guaranteed payment, and the benefit obtained for the Class.

4. I have spent 110.6 hours in prosecuting this case at the rate of \$750.00 per hour, on behalf of the Class through the date of this declaration. I have established my billable rate through an annual, informal survey of similarly experienced consumer class action attorneys in the Southern California legal market. I expect to spend another ten to fifteen hours to conclude this action, including preparing for and attending the Final Fairness Hearing. Further, my firm has spent \$8,614.00, in un-reimbursed expenses incurred in connection with this case. A breakdown of my firm's additional costs incurred in this action is set forth below:

**COSTS**

No.	General Description	Cost:	
1.	Mediation	\$6,000	

2.	Court fees	\$1467.00	
3.	Electronic research	\$715.00	
4.	Scanning, photocopying, printing, and other office related costs	\$432.00	
	<b>Total:</b>	\$8,614.00	

**TOTAL: \$8,614.00**

5. My lodestar billing time records are available if required by the Court. A general summary of my firm's billing time is as follows:

No.	General Description	Hours	Rate	Lodestar
1.	<b>Pre-filing investigation; Complaint:</b> Initial contacts and meeting with client; Designed Pre-filing investigation, including observational transactions at various P.F. Chang's locations; determining appropriate entity; stores owned by appropriate entity, interviewing confidential sources, updated research file regarding Song Beverly Credit Card Act Section 1747.08; research to determine approximate settlement value;	17.3	\$750	\$12,975
2.	<b>Oversaw Investigation; Investigation Time (Paralegal)</b>	27.6	\$125	\$3,450.00
3.	<b>Reviewed Discovery:</b>	5.3	\$750	\$3,975
4.	<b>Communication / Evaluation of Experts:</b> Conference calls with Mike Dennis regarding open ended survey questions; recall bias issues for consumer survey; ;Conference calls with Leora Davis at OnPoint Analytics; Research to identify data broker expert to determine the use, sale, lease and dissemination of customer information; Research and development of consumer survey questionnaire regarding consumer impressions of preprinted form; Research regarding data brokering; the use, sale, lease and transfer of PII and rewards club related data	18.2	\$750	\$13,650
5.	<b>Settlement Agreement:</b> Made Revisions to Settlement Agreement; Notices; additional revisions to Amended Settlement Agreement.	9.2	\$750	\$6,900

6.	<b>Motions for Settlement Approval:</b> Made revisions to motion for Preliminary Approval; drafted supporting declarations; met with client.	5.3	\$750	\$3,975
7.	<b>General Case Management Issues:</b> Drafting Complaint; drafting joint prosecution agreement; revisions to both; correspondence with co-counsel regarding joint prosecution of matter. Attendance at Case Management Conferences; periodic teleconferences and three in person meetings with client re: keeping informed about status of case; review of the documents; deposition prep; Correspondence with co-counsel regarding case management; strategy and settlement	18.2	\$750	\$13,650
8.	<b>Law and Motion:</b> Research in support of and evaluation of the Proposed Factors in assessing the penalty (Williams-Sonoma briefing – relevant to issue of penalties in the case at bar) to be addressed in determining penalties.	8.3	\$750	\$6,225
9.	<b>Mediation:</b> Preliminary Settlement discussions and negotiations; evaluated mediation brief, provided comments and revisions; attended mediation	17.1	\$750	\$12,825
10.	<b>Motion for Attorneys' Fees:</b> Evaluated and provided revisions to motion for attorneys' fees; conference with co-counsel regarding same	8.2	\$750	\$6,150
11.	<b>Attendance at and preparation for Final Approval Hearing (Prospective):</b>	3.5	\$750	\$2,625
		110.6	x	\$82,950
	<b>Partner Attorney Total:</b>		\$750	
	<b>Investigation (Paralegal) Total:</b>	27.6	\$125	\$3,450

6. Plaintiff Seegert maintained continued involvement in the litigation, including reviewing initial pleadings and communicating with Class Counsel on the status of the action.

7. I agreed to accept Plaintiff Seegert's case on a pure contingency fee basis.



1           8.       My hourly rate of \$750.00 per hour is in line with comparable hourly rates charged by other  
2 law firms that handle class action litigation in Southern California. My previous hourly rate of \$650.00  
3 per hour was recently approved in 2017 by Judge Judith Hayes on an unopposed fee application in a  
4 similar Song-Beverly Credit Card Act case, *Manner v. Summit Pizza West, LLC*, Case No. 37-2015-5909-  
5 CU-MC-CTL. My rate has increased over the last two years commiserate with other plaintiff's class action  
6 practitioners in Southern California with my level of experience and success. My rate was recently  
7 approved on April 5, 2019 in an \$8,000,000 all cash, FACTA Settlement in *Mocek, Varoz, et al v. AllSaints*  
8 *USA Limited* (Case No. 2016-CH-10056; Circuit Court of Cook County, Illinois; County Dept. Chancery  
9 Div.).

10           9.       I have extensive experience in class actions. During the course of my career, I have taken  
11 and defended over 100 depositions in personal injury, complex and class action cases. I have successfully  
12 participated in mediations resulting in more than \$50,000,000 in settlements or awards in class action  
13 cases. I have drafted, filed, and argued multiple motions in complex consumer class actions, including all  
14 forms of discovery, dispositive and certification motions. My practice focuses exclusively on consumer  
15 class action and complex litigation, representing plaintiff classes in major insurance fraud, unfair business  
16 practices, false and deceptive advertising, product liability and anti-trust violations.

17           10.       I have represented plaintiffs in numerous class action proceedings in California and  
18 throughout the country, in both state and federal courts. I have represented thousands of purchasers of  
19 consumer products, food, food supplements and over the counter drugs in state and federal courts  
20 throughout the United States in cases arising out of various false advertising claims made by  
21 manufacturers and retailers, including: Proctor & Gamble, General Mills, Bayer, Clorox, WD-40, Dean  
22 Foods, Botanical Laboratories, Inc., Irwin Naturals, Inc. General Nutrition Corporation and Pharmavite.  
23 As a shareholder, I was also counsel of record at my prior firm in the MDL proceeding, *In re: Hydroxycut*  
24 *Marketing and Sales Practices Litigation*, No. 09-02087 (S.D. Cal.), wherein my previous firm was  
25 designated as co-lead counsel for the class. I was also class counsel for the Settlement Class in "FACTA"  
26 cases against Hugo Boss, U.S.A. Inc. in the Southern District of California; *Travis Benware v. Hugo Boss,*  
27 *U.S.A., Inc.*, Case No. 3:12-cv-01527-L-MDD and Southwest Airlines (*Lumos v. Southwest Airlines, Co.*,  
28

Case No. C-13-1429-CRB) and *Mocek, Varoz, et al v. AllSaints USA Limited* (Case No. 2016-CH-10056; Circuit Court of Cook County, Illinois; County Dept. Chancery Div.)

11. I have represented thousands of consumer credit cardholders against several major retailers arising from violations of the Song-Beverly Credit Card Action section 1747.08 and have achieved excellent results, including, but not limited to a class benefit of a retail gift valued between \$40 and \$120 in a class action settlement with Gucci America, Inc. I have also represented thousands of consumer debit card holders against major commercial banks, including assuming a leadership role as prosecuting counsel in *In re: Checking Account Overdraft Litigation, Larsen v. Union Bank* and *Dee v. Bank of the West*, MDL No. 2036 (S.D. Fl.). I have filed similar actions against several other banks and credit unions across the country, alleging that each institution manipulated the processing of customer debit card purchases to maximize overdraft fees, including actions against Northwest Savings Bank, (*Toth v. Northwest Savings Bank*, Case No. GD-12-8014, In the Court of Common Pleas of Allegheny County, Pittsburgh, Pennsylvania), Pinnacle National Bank (*John Higgins v. Pinnacle Bank*, Case No. 11-C4858, in the Circuit Court for the State of Tennessee, Twentieth Judicial District in Nashville) and Mission Federal Credit Union (*Taylor v. Mission Federal Credit Union*, Case No. 37-2012-00092073-CU-BT-CTL, San Diego Superior Court, Department 75, San Diego, California).

12. I was also appointed class counsel in *Plantier, et al. v. Ramona Municipal Water District*, San Diego, Superior Court Case No. 37-2014-00083195-CU-BT-CTL, and *Mendoza v. The Gar Wood Restaurant, LLP*, Placer County Case No. SCV 0034158.

13. I have been recognized as a semi-finalist as a “Top Corporate Litigation Attorney,” by the San Diego Daily Transcript in 2012, and I have been named a San Diego “Super Lawyer” in 2015, 2016, 2017, 2018 and 2019.

14. Attached hereto as Exhibit A is a true and correct copy of Carlson Lynch’s firm resume.

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
2 true and correct, and that this declaration was executed on June 19, 2019, in San Diego, California.

3  
4 Dated: June 19, 2019

**CARLSON LYNCH LLP**

5  
6   
7 Todd D. Carpenter (CA 234464)  
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9 1350 Columbia St., Ste. 603  
10 San Diego, CA 92101

*Attorneys for Plaintiff and the Proposed Class*

# **EXHIBIT A**

**CARLSON LYNCH SWEET KILPELA & CARPENTER LLP**

**FIRM RESUME**

**JUNE 2018**

## CARLSON LYNCH SWEET KILPELA & CARPENTER LLP

### FIRM SUMMARY<sup>1</sup>

For the last decade, the attorneys of Carlson Lynch Sweet Kilpela & Carpenter LLP (“Carlson Lynch”) have litigated complex class-action matters involving financial fraud (including securities fraud, derivative actions, and mortgage fraud), antitrust, data breach, privacy, consumer fraud, labor and employment, disability access, and wage and hour, in federal and state courts throughout the country. Litigation prosecuted by Carlson Lynch has resulted in substantial monetary recoveries and injunctive benefits on behalf of class members, described in more detail below. In addition, Carlson Lynch cases have generated seminal legal authority in both trial and appellate courts.

Carlson Lynch was founded in 2004 by Bruce Carlson and Gary Lynch, who started the firm to merge and build upon their collective experiences litigating complex class action matters. In 2014, Carlson Lynch expanded its practice and scope through the addition of named partners Benjamin Sweet and Ed Kilpela. In 2015, the firm continued to grow with the addition of named partner Todd Carpenter, who manages Carlson Lynch’s San Diego office.

Carlson Lynch represents plaintiffs in numerous additional consolidated and individual data breach actions, described in more detail below.

### NOTABLE CASES

#### PRIVACY/DATA BREACH

***In re Equifax, Inc. Customer Data Security Breach Litig.***, MDL 2800 (N.D. Ga.). Carlson Lynch was appointed co-lead counsel for financial institution plaintiffs in multidistrict litigation related to the notorious 2017 Equifax data breach, which is potentially the largest and most damaging data breach of all time. More than 400 lawsuits filed by consumers and financial institutions are consolidated in the MDL, which is in the early pretrial stages.

***In re Home Depot Customer Data Breach Litig.***, 1:14-md-02583, MDL 2583 (N.D. Ga.). Carlson Lynch represents five different financial institutions in litigation related to the major data breach at the retailer which continued for almost six months in 2014 and resulted in the compromise of approximately 56 million payment card accounts. Gary Lynch was appointed by Judge Thrash to be one of three lead counsel managing the financial institution track of the litigation. Over forty financial institutions and seventeen credit union associations filed a consolidated complaint in May 2015. Judge Thrash denied the majority of Home Depot’s motion to dismiss on May 18, 2016. In September 2017, the Court granted final approval to a comprehensive settlement that provides over \$27 million in relief to the class.

***In re Target Corporation Customer Data Breach Litig.***, 0:14-md-02522, MDL 2522 (D.

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<sup>1</sup> This Firm Resume is intended to be representative and is not comprehensive. Carlson Lynch has prosecuted, and continue to prosecute, many substantial cases that are not identified.

Minn.). Carlson Lynch represents nine different financial institutions in consolidated multidistrict litigation related to the massive data breach that occurred in late 2013. Gary Lynch is on the five-member Plaintiffs' Executive Committee that is managing this litigation on behalf of all Plaintiffs. A settlement agreement which provides \$10 million to affected individual customers was granted final approval in November 2015. A separate settlement providing approximately \$39 million in relief to plaintiff financial institutions was given final approval in May 2016.

***First Choice Federal Credit Union v. The Wendy's Company et al***, 2:16-cv-0506, (W.D. Pa.). Gary Lynch was appointed co-lead counsel in a group of consolidated cases brought by financial institutions against the Wendy's fast food chain in the aftermath of a late 2015 data breach that exposed customers' credit card information. Magistrate Judge Maureen P. Kelly recommended the denial of Wendy's motion to dismiss in February 2017, and that report and recommendation was adopted by District Judge Nora Barry Fischer in March 2017. The case is still in litigation.

***In re Anthem, Inc. Customer Data Security Breach Litig.***, No. 5:15-md-02617, MDL 2617 (N.D. Cal.). Carlson Lynch represents customers of a national health insurer which experienced a data breach involving the personal information, including social security numbers, of up to an estimated 80 million customers. The case was consolidated and transferred to the Northern District of California in June 2015. Carlson Lynch participated in discovery related to Highmark, the Pennsylvania-based member of the Blue Cross Blue Shield Association and a co-defendant in the MDL. The parties reached a proposed settlement valued at \$117 million which received preliminary approval in August 2017. If the settlement is given final approval, it would be the largest data breach settlement on record.

***Gennock v. Facebook, Inc. and Cambridge Analytica, LLC***, 3:18-cv-1891 (N.D. Cal.). Carlson Lynch filed one of the earliest cases against Facebook and Cambridge Analytica in the wake of public disclosures in March 2018 that Cambridge Analytica extensively mined data from Facebook users for purposes of political and psychological manipulation. Carlson Lynch alleged claims under the Stored Communications Act and the common law doctrines of invasion of privacy and intrusion upon seclusion. Cases related to this unprecedented and unusual breach of trust are likely to be consolidated in an MDL following the JPML's May 2018 hearing in Chicago.

***In re Community Health Systems, Inc., Customer Data Security Breach Litigation***, 2:15-cv-00222, MDL 2595 (N.D. Ala.). Gary Lynch serves as a member of the plaintiffs' steering committee in consolidated multidistrict litigation stemming from a 2014 data breach involving one of the nation's largest hospital chains. The breach affected over 200 hospitals, and the sensitive personal information of approximately 4.5 million patients was compromised.

***Greater Chatauqua Federal Credit Union et al v. Kmart Corporation et al***, No. 15-cv-02228 (N.D. Ill.). Gary Lynch served as a member of the plaintiffs' executive committee in a consolidated case in which financial institutions are seeking recovery for losses sustained as a result of a 2014 data breach at one of the nation's largest discount retail chains. A settlement was reached and approved in June 2017.

***In re SuperValu, Inc. Customer Data Security Breach Litig.***, 0-14-md-02586, MDL 2586 (D. Minn.). In April 2015, Ed Kilpela of Carlson Lynch was appointed as interim co-lead counsel in this consolidated case. The litigation stems from a 2014 data breach that compromised the sensitive personal and financial information of customers of approximately 1,000 grocery stores operating under a variety of brand names in over a dozen states. The case is on appeal to the 8th Circuit.

***In re Ashley Madison Customer Data Security Breach Litig.***, MDL No. 2669 (E.D. Mo.). Carlson Lynch represents individuals whose highly sensitive account information was leaked from a social media company. The case was consolidated and transferred to the Eastern District of Missouri in December 2015. A class settlement was given final approval in November 2017.

***In re Vizio, Inc. Consumer Privacy Litig.***, MDL No. 2693 (C.D. Cal.). Carlson Lynch represents individuals who purchased Vizio “Smart TVs,” which contained software that collected information about the users in a manner that allegedly violates numerous consumer protection statutes. The case was consolidated and transferred to the Central District of California in April 2016, and Gary Lynch was appointed to the plaintiffs’ interim steering committee. In March 2017, District Judge Staton granted in part and denied in part a motion to dismiss, leaving the most significant claims intact and granting plaintiffs leave to re-plead the dismissed counts. After plaintiffs filed a second consolidated amended complaint, a second motion to dismiss was denied in July 2017. Vizio’s attempt to certify an interlocutory appeal was denied in October 2017.

***Dittman et al v. UPMC d/b/a The University of Pittsburgh Medical Center and UPMC McKeesport***, (Allegheny Cty., Pa. No. GD-14-003285). Carlson Lynch is representing several employees of the health care group UPMC in a class action stemming from a breach of UPMC’s personnel files. Hundreds of employee files were compromised and numerous fraudulent tax returns were filed using the stolen data. The case is on appeal, and the Pennsylvania Supreme Court accepted review of the case to determine whether Pennsylvania law recognizes a duty on the part of employers to protect their employees’ personal information. Oral argument was heard in April 2018.

***Storm et al. v. Paytime, Inc.***, No. 1:14-cv-011380-JEJ (M.D. Pa.). Carlson Lynch is representing individuals whose sensitive personal and financial information was stolen from the systems of a Pennsylvania payroll processing company. The case was appealed to the Third Circuit and the parties are currently in settlement negotiations.

***Sullivan v. Wenner Media LLC***, No. 1:16-cv-960 (M.D. Mich.). Carlson Lynch is co-lead counsel for plaintiffs who brought claims against the publisher of *Rolling Stone* magazine. Plaintiffs allege that *Rolling Stone* sold subscriber information to marketing partners without the subscriber’s consent, in violation of Michigan state privacy laws. The parties reached a proposed settlement including a \$1.1 million settlement fund and alternative forms of relief. A final approval fairness hearing is scheduled for May 2018.

***Additional Data Breach/Privacy Cases.*** In addition to the foregoing, Carlson Lynch represents plaintiffs in several other similar pending data breach and privacy-related actions, including:



- *Friske v. Bonnier Corp.*, 2:16-cv-12799 (E.D. Mich.).
- *In re Arby's Restaurant Group*, 1:17-mi-55555 (N.D. Ga.).
- *Bellwether Community Credit Union v. Chipotle Mexican Grill, Inc.*, 1:17-cv-1102 (D. Colo.).
- *Gulf Coast Bank & Trust Co. v. Intercontinental Hotels Group, PLC*, 1:18-cv-411 (N.D. Ga.).
- *Veridian Credit Union v. Eddie Bauer LLC*, 2:17-cv-356 (W.D. Wash.).
- *In re Premara Blue Cross Customer Data Security Breach Litig.*, No. 3:15-md-2633-SI, MDL 2633 (D. Or.).

**FACTA Litigation.** Carlson Lynch has been counsel for Plaintiffs in numerous class actions alleging a violation of the Fair and Accurate Credit Transaction Act. In addition to more than 20 settled FACTA cases, Carlson Lynch recently obtained a significant denial of a motion to dismiss on standing grounds. In *Gennock v. Kirkland's Inc.*, 2:17-cv-356 (W.D. Pa.), Magistrate Judge Mitchell and District Judge Cercone both agreed with Carlson Lynch that plaintiffs had standing to pursue their claim, distinguishing several recent unfavorable district and circuit court opinions. The case is currently stayed while the Third Circuit decides an appeal in a case raising similar issues.

#### **FINANCIAL FRAUD**

**Rescap Bankruptcy**, (S.D.N.Y. Bkr.). On November 27, 2013, the Bankruptcy Court in the Southern District of New York granted final approval of a class settlement on behalf of in excess of 45,000 residential mortgage borrowers. Carlson Lynch is co-lead counsel for the class. The settlement is for an allowed claim amount of \$300 million dollars. There is a guaranteed payout of approximately \$36 million dollars. The debtor assigned its insurance rights to the class and insurance will potentially cover the difference between the \$36 million dollar guaranteed payout and the allowed claim amount of \$300 million. Upon signing the Order granting final confirmation of the bankruptcy plan, the judge stated that this was the most factually and legally complex matter that he had presided over since taking the bench.

**CitiMortgage SCRA Litigation**, (S.D.N.Y.). Carlson Lynch was tri-lead counsel in this class action against CitiMortgage on behalf of Sergeant Jorge Rodriguez in the Southern District of New York. This case alleges that CitiMortgage improperly foreclosed upon Mr. Rodriguez's home (and the homes of similarly situated individuals) while he was serving his country in Iraq, in violation of the Servicemembers Civil Relief Act. The case settled on a class basis, securing a total recovery of \$38.2 million. Court granted final approval of the settlement in October 2015.

**Pitts v. NovaStar Home Loans, Inc. et al.**, (S.D., Ga.). Carlson Lynch was co-lead counsel for plaintiffs in this national RESPA class action. The Southern District of Georgia was the MDL court for this litigation. After the Court denied defendant's motion to dismiss, after the court denied defendants' motion for summary judgment and granted plaintiffs' motion for class certification in a related Maryland state court action – where Carlson Lynch was also co-lead counsel, and after extensive discovery including the video depositions of several of defendants' top executives, the parties participated in multiple mediation sessions and ultimately arrived at a

national cash settlement on behalf of class members for \$17.3 million.

***In re Community Bank of Northern Virginia and Guaranty National Bank of Tallahassee Secondary Mortgage Loan Litigation***, (W.D. Pa./3d Cir.). Carlson Lynch was co-lead class counsel in this national litigation on behalf of second mortgage borrowers under the Real Estate Settlement Procedures Act. The class was certified by the district court, and affirmed by the Third Circuit, 795 F.3d 380 (2015). A class settlement was finalized in early 2017 and obtained a total recovery of \$24 million.

***Kaher v. Ameriquest Mortgage Co.***, (W.D. Pa./MDL N.D. Ill.). Carlson Lynch was counsel for plaintiff in connection with this consolidated group of class actions alleging the existence a kick-back scheme in violation of RESPA, along with numerous other unfair lending practices. The specific case being handled by Carlson Lynch created new law under RESPA. Specifically, Carlson Lynch filed this action as a test case to challenge what they viewed as a negative trend in the law regarding how federal trial courts were determining whether a consumer has standing to sue under RESPA, as well as the manner in which damages are calculated under RESPA. Every prior federal trial court to consider these issues had sided with defendants. In opposing the Ameriquest motion to dismiss that was filed in this case, Carlson Lynch argued that these other federal trial courts had fundamentally misinterpreted the legislative history of RESPA, to support their decisions to dismiss the prior cases. In a seminal decision, the United States District Court for the Western District of Pennsylvania departed from the holdings issued by these other federal courts, and agreed with the arguments of Carlson Lynch, denying the motion to dismiss. *See Kahrer v. Ameriquest Mortgage Co.*, 418 F.Supp.2d 748 (W.D. Pa. 2006) (Hay, J.). Multiple federal courts of appeal have adopted the *Kahrer* reasoning, including at least the Sixth and Third Circuits. This case was ultimately settled as part of MDL proceedings against Ameriquest in the Northern District of Illinois, and final approval of the settlement was granted.

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

***EFTA Litigation***. Beginning in late 2010, Carlson Lynch filed putative class actions on behalf of consumers in more than fifteen federal courts under the Electronic Fund Transfer Act. These cases alleged that various automated-teller machine ("ATM") operators (primarily financial institutions) violated mandatory ATM fee disclosure requirements, and therefore were not permitted to impose transaction fees on ATM users at their machines. Motions to dismiss were granted in two cases based upon EFTA's statutory safe harbor provision, and Carlson Lynch appealed the dismissals to the Third Circuit. The Third Circuit agreed with Carlson Lynch and reversed the orders granting the motions to dismiss, and both of those cases were remanded for further proceedings, eventually settling on a class basis. Class settlements were negotiated in at least twenty five additional cases to date. Some cases settled on an individual basis.

## **CONSUMER PROTECTION/PRODUCTS LIABILITY**

***Morrow v. Ann Inc.***, 16-cv-3340 (S.D.N.Y.). Carlson Lynch was co-class counsel in a case alleging deceptive pricing practices by a major national retail chain. After plaintiffs overcame a motions to dismiss, the case settled for \$6.1 million worth of class benefits. The settlement was approved in April 2018.

***Luca v. Wyndham Hotel Group, LLC***, 2:16-cv-746 (W.D. Pa.). Carlson Lynch is co-lead counsel in a class action against the Wyndham hotel companies for violations of New Jersey consumer protection statutes. Plaintiffs allege that Wyndham's websites deceptively mask the resort fees charged at certain hotels and force patrons to agree to illegal terms and conditions. In 2017, plaintiffs defeated a motion to dismiss filed by two of the primary operating subsidiaries, and the case is currently in the discovery phase.

***In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litig.***, MDL No. 2672 (N.D. Cal.). Carlson Lynch represents preowned auto dealers who suffered damages as a result of Volkswagen's false advertising and defective design with respect to vehicles marketed as "clean diesel." The case was consolidated before the Hon. Charles R. Breyer in December 2015.

***In re McCormick & Company, Inc., Pepper Products Marketing and Sales Practices Litig.***, MDL No. 2665 (D.D.C.). Carlson Lynch represents consumers who allege that they were misled by McCormick & Company's practice of "slack-filling" its opaque ground pepper containers. The case was consolidated before the Hon. Ellen Segal Huvelle in December 2015.

***Robert Brown, et al. v. Electrolux Home Products, Inc., d/b/a Frigidaire***, No. 15-11455 (11th Cir.). In July 2015, Carlson Lynch attorneys co-authored a brief on behalf of Public Justice, P.C.; the National Association of Consumer Advocates; U.S. PIRG (United States Public Interest Research Group); Consumer Action; and the Consumer Federation of California, appearing as *amici curiae* to the Eleventh Circuit and arguing in support of affirmance of a district court's certification of a class of purchasers of defective washing machines.

***Kobylanski v. Motorola Mobility, Inc., et al.***, No. 2:13-cv-1181 (W.D. Pa.). Carlson Lynch represented purchasers of MOTOACTV wearable fitness devices who alleged that the devices, although marketed as "sweat-proof" and "rain-resistant," were in fact susceptible to damage from even slight amounts of moisture. A settlement was reached which provided for full refunds for class members who had previously submitted a claim for water damage to Motorola but were denied a repair or replacement, and additional forms of relief for class members who had not previously complained of water damage. The settlement was approved in October 2014.

***Quinn et al. v. Walgreen Co., Wal-Mart Stores, Inc., Supervalu, Inc., and Perrigo Company of South Carolina, Inc.***, No. 7:12-cv-8187 (S.D.N.Y.). Carlson Lynch served as co-lead counsel on behalf of purchasers of glucosamine/chondroitin products manufactured by Perrigo and sold by various retailers. A settlement was reached in 2014 which provided for a total settlement fund of \$2.8 million and provided for full or partial refunds to class members who submitted valid claims. Final approval was granted in March 2015.

***In re Nutramax Cosamin Marketing and Sales Practices Litigation*** – MDL No. 2498, (D. Md.). Carlson Lynch represented several plaintiffs in nationwide litigation regarding Nutramax's false and misleading marketing of glucosamine/chondroitin supplements, which multiple studies have determined to be without efficacy for the conditions they purport to treat. After the cases were consolidated for pre-trial proceedings, Carlson Lynch partner Ed Kilpela was appointed to the Executive Committee overseeing the litigation.

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

“Class counsel have abundant experience as lead counsel in consumer class action litigation. Indeed, class counsel have frequently appeared before this Court. Other courts have routinely recognized class counsels' adequacy . . . . This Court readily agrees with these other courts, and finds that Bruce Carlson and Gary Lynch are more than adequate counsel, and indeed are capable and diligent class action attorneys.”

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

#### **WAGE AND HOUR LITIGATION**

***Verma v. 3001 Castor Inc.***, (E.D. Pa.). As co-class counsel, Carlson Lynch won a \$4.5 million jury verdict in 2018 for misclassified workers at a Philadelphia nightclub. The claims were brought under the FLSA and Pennsylvania Minimum Wage Act.

***Herron v. Investment Professionals Inc.*** (W.D. Pa.). Carlson Lynch secured a \$450,000 settlement for 12 financial advisors who were misclassified by a financial services company and consequently did not receive overtime compensation. The settlement was approved in February 2018.

***Herzfeld v. 1416 Chancellor Inc.*** (E.D. Pa.). Carlson Lynch is class counsel for a litigation-certified Rule 23 class and FLSA collective of more than 100 nightclub entertainers alleging misclassification and violations of the FLSA and Pennsylvania wage and hour laws. A settlement for a total amount of \$415,000 was reached and granted preliminary approval in January 2018. A final approval fairness hearing has been set for June 2018.

***Correll v. One Three Five, Inc.*** (W.D. Pa.). Carlson Lynch was class counsel for a class of several hundred nightclub performers who alleged that they were misclassified by the club's owner as independent contractors, resulting in violations of the Fair Labor Standards Act and Pennsylvania state wage laws. A class settlement was granted final approval in 2016 and provided \$815,000 in total relief for the class.

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

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

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

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

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

***Tarlecki v. Bebe Stores, Inc.***, (N.D. Cal.). Carlson Lynch was co-lead counsel in this wage and hour litigation alleging that defendant retail clothier was violating federal and state minimum wage laws. Final approval of a class settlement was approved following a fairness hearing in 2009.

***Dykeman v. Charming Shoppes, Inc.***, (Sup. Ct., King County, Washington). Carlson Lynch was co-lead counsel in this case alleging violations of the Washington state minimum wage laws. After the Court denied defendants' motion to dismiss and granted plaintiffs' class certification motion, the parties reached a mediated settlement which was approved by the trial judge. The settlement proceeds were distributed to the class in early spring of 2007. Carlson Lynch was also co-lead counsel in a related case in state court in California on behalf of a class of California Charming Shoppes Employees. The parties in that case negotiated a proposed settlement, and final approval was granted following a fairness hearing in May 2008.

***Battaline v. Advest***, (W.D. Pa.). Carlson Lynch was lead counsel for plaintiffs in this wage and hour class action alleging that defendant stock brokerage company violated state overtime laws. After Defendant filed its answer and substantial informal and formal discovery ensued, the



parties participated in mediation and reached an agreement regarding a proposed national settlement. The settlement was approved in 2008.

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

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

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

***Meola v. AXA Financial, Inc.***, (N.D. Cal.). Carlson Lynch was co-class counsel for plaintiff in this wage and hour litigation alleging that defendant financial services company violated federal and state overtime laws. A mediated national class-based settlement was negotiated in this matter and final approval was granted following a fairness hearing in the fall of 2009.

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

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

***Steinberg v. Morgan Stanley & Co.***, (S.D. Cal.). Carlson Lynch was co-class counsel for plaintiff in this wage and hour litigation alleging that defendant stock brokerage company

violated federal and state overtime laws. A mediated national class-based settlement was reached and final approval of the settlement has been granted.

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

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

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

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

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

***Northwestern Memorial Healthcare Automatic Meal Break Deduction Litigation***, (N.D. Ill.), Carlson Lynch was lead counsel in this collective/class action on behalf of hourly health care workers (primarily nurses) alleging improper pay practices in connection with automatic meal break deductions. After extensive discovery and the denial of Defendant's motion for summary judgment, the Parties reached a mediated class settlement in the fall of 2012. In December, 2013, the Court granted final approval of the settlement and the settlement proceeds have been distributed to the class.

***Crozer-Keystone Health System Overtime Litigation***, (E.D. Pa.), Carlson Lynch filed a putative collective action against Crozer-Keystone Health System in the Eastern District of Pennsylvania.

The Complaint challenges pay practices related to nurse practitioners and/or physicians' assistants. The plaintiffs in these cases allege that they are illegally being denied overtime compensation by their employers. After discovery, the Parties filed cross motions for summary judgment. In a widely reported opinion issued on January 4, 2011, the Court granted Plaintiff's motion for summary judgment, holding that Defendant had misclassified individuals in Plaintiff's job position. Defendant's motion for reconsideration of the federal court's summary judgment decision was denied in a twenty one page opinion and order issued on August 15, 2011. Following mediation, the settlement of this case was approved in August 2012.

#### **EMPLOYMENT DISCRIMINATION**

*White v. United Steel Workers of America*, (W.D. Pa.), Carlson Lynch was co-lead counsel in this age-discrimination class action against the U.S.W.A. After overcoming a motion to dismiss on a legal issue regarding which there was a substantial split of authority, the defendant requested mediation to explore the possibility of settlement. After extensive mediation over a one month period in June 2004, the case ultimately settled for an amount that defense counsel characterized as the highest ever paid by the U.S.W.A. in connection with civil litigation.

#### **ANTITRUST**

*In Re Blue Cross Blue Shield Antitrust Litigation*, MDL No. 2406, (N.D. Ala.). Carlson Lynch represents healthcare subscriber plaintiffs in four states in this nationwide class action challenging the anti-competitive practices of Blue Cross/Blue Shield's nationwide network of local insurers who do not compete with each other based on geographic boundaries. In addition to Carlson Lynch's work on the individual cases, Carlson Lynch partner Ben Sweet has been appointed by Judge Proctor to the Litigation Committee, and Carlson Lynch associates have been significantly involved in the discovery process.

*In Re National Football League's "Sunday Ticket" Antitrust Litigation*, MDL No. 2668, (C.D. Cal.). Carlson Lynch represents small businesses who allege that the NFL and DirectTV abused their market power and conspired to charge supra-competitive prices for access to out-of-market NFL game broadcasts. The cases were consolidated before the Hon. Beverly Reid O'Connell in December 2015.

#### **DISABILITY DISCRIMINATION**



***ADA (Americans with Disabilities Act) Accessibility Litigation.*** Carlson Lynch is currently counsel for plaintiffs in a substantial number of putative class actions filed on behalf of disabled individuals to enforce the ADA's accessibility requirements. Over the last six years, Carlson Lynch has represented the visually disabled in seeking improved access to ATMs, Point of Sale devices, automated retail kiosks, and websites. Carlson Lynch has also represented individuals with limited mobility in seeking elimination of architectural barriers found in parking lots, paths of entry, and interior store design. These cases have been prosecuted in numerous federal courts across the country. Carlson Lynch has overcome motions to dismiss in more than fifteen of these cases. A substantial number of the cases have been settled, and in all of those cases the defendants have agreed to equitable relief calculated to guarantee the accessibility to public accommodations that is required by the ADA.

Moreover, in January 2016, Magistrate Judge Robert C. Mitchell of the United States District Court for the Western District of Pennsylvania recommended certification of a national class of mobility-disabled individuals who were denied full and equal access to Cracker Barrel stores due to the company's inadequate centralized ADA maintenance policies. Judge Mitchell recommended that Carlson Lynch be appointed as counsel for the Class. Cracker Barrel has over 630 stores across the country. The report and recommendation was adopted by District Judge Mark Hornak in July 2016. The case subsequently settled, securing injunctive relief for the nationwide class.

More recently, Carlson Lynch is representing a disabled individual in *Egan v. Live Nation Worldwide, Inc.*, 2:17-cv-445 (W.D. Pa.). The claims involve wheelchair inaccessibility and ticket unavailability at Pittsburgh-area concert events promoted by Live Nation and ticketed by Ticketmaster. In March 2018, Judge Mark Hornak denied Live Nation's attempt to force arbitration of the potential class action. Live Nation is appealing to the Third Circuit.

#### **FIRM ATTORNEYS**

#### **PARTNERS:**

##### **R. Bruce Carlson**

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

Bruce is admitted to practice in the state courts of Pennsylvania and West Virginia, the

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

### **Gary F. Lynch**

Gary Lynch was born and grew up in Western Pennsylvania. Gary earned his Juris Doctor degree in 1989 from the University of Pittsburgh School of Law, where he served as an Editor of the *University of Pittsburgh Law Review*, and a Bachelor of Science degree in Accounting from the Pennsylvania State University in 1986. He was admitted to the State Bar of the Commonwealth of Pennsylvania in 1989, and is admitted to practice in the United States Supreme Court, the United States Courts of Appeals for the First, Third, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits, and the United States District Courts for the Western, Middle, and Eastern Districts of Pennsylvania, the Northern and Southern Districts of Ohio, the Northern and Central Districts of Illinois, the Western District of New York, the Eastern and Western Districts of Michigan, and the District of Maryland. Gary has also been admitted *pro hac vice* in numerous jurisdictions nationwide.

Gary has been engaged in the practice of law for the last twenty-five years, beginning his legal career at Reed Smith, LLP (formerly Reed Smith Shaw & McClay). Since leaving Reed Smith in 1991, Gary has served as the Managing Partner of Lynch & Kunkel and Gary F. Lynch, P.C., focusing his practice on the representation of clients in employment-related matters, particularly complex litigation. Since co-founding Carlson Lynch LTD in June of 2004, Gary has developed a nationally recognized plaintiffs' class action practice in the areas of consumer protection litigation and employee rights.

Gary has served in a leadership capacity in several MDL/class action proceedings. For example, in *Ellis v. Edward Jones* (N.D. Ohio No. 1:08-cv-00540, MDL No. 1779), he chaired the Plaintiffs' Leadership Committee in a wage and hour class/collective action alleging that returned more than \$19 million to the class. Gary also served as Counsel of Record before the United States Supreme Court in the case of *Genesis HealthCare Corp. v. Symczyk*.

Gary serves on the Local Rules Advisory Committee for the United States District Court for the Western District of Pennsylvania. He has been rated as a "Super Lawyer" and has received Martindale Hubbell's "AV" rating. Gary is a frequent local and national Continuing Legal Education lecturer.

Gary is active in a number of community non-profit organizations, including past President and current board member of the Human Services Center, Inc. (an outpatient behavioral healthcare provider), board member of the Highland House, Inc. (a halfway home for women recovering from addiction), and board member of the Lawrence County (Pennsylvania)

Historical Society.

### **Benjamin J. Sweet**

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

From 2003 through 2012, first as an associate and for the last several years as Partner, Ben practiced at Kessler Topaz Meltzer & Check LLP in Philadelphia, one of the largest and most prestigious plaintiffs' firms in the country, where he concentrated his practice exclusively in class action litigation, with an emphasis on federal securities litigation. He helped to obtain significant recoveries on behalf of class members in several nationwide federal securities class actions, including: *In re Tyco, Int'l Sec. Litig.*, No. 02-1335-B (D.N.H.) (\$3.2 billion total recovery for class members, the largest ever recovery from a single corporate defendant in a federal securities action); *In re Wachovia Preferred Securities and Bond/Notes Litig.*, No. 09-Civ. 6351 (RJS), (S.D.N.Y.) (\$627 million recovery for class members).

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

Ben has been selected by his peers five times - in 2008, 2010, 2011, 2012 and 2013 - as a Pennsylvania SuperLawyers Rising Star, a distinction bestowed annually on no more than 2.5% of Pennsylvania lawyers under the age of 40. In 2014, he was selected by his peers as a Pennsylvania SuperLawyer. Ben began his career in 2001 at Reed Smith LLP in Pittsburgh, focusing on complex civil and employment litigation. When not practicing law, Ben is an active musician and recording artist who performs regularly in and around Pittsburgh with his band *Southside American*. A Type I diabetic himself, Ben serves on the Board of Directors of the Western Pennsylvania Chapter of the Juvenile Diabetes Research Foundation. He is the proud father of daughter Riley, 11, and son William, 8.

### **Edwin J. Kilpela, Jr.**

Ed Kilpela is a native of Pittsburgh and a graduate of the Pennsylvania State University and the University of Michigan Law School, where he won the prestigious Campbell Moot Court Competition while earning awards for both best brief and as the best oral advocate in the competition. Ed lives in Mt. Lebanon with his twin sons, Devin and Graham and his wife, Gina.. Ed has litigated and tried complex class-action and mass tort matters both at Carlson Lynch on

behalf of individuals and consumers and, previously, at both Williams & Connolly LLP and Wheeler Trigg O'Donnell LLP, two of the finest complex litigation firms in the country.

Mr. Kilpela's current practice focuses on consumer-oriented class actions and financial fraud matters. Currently, Ed represents a class of insurance purchasers in Western Pennsylvania, Rhode Island, and Hawaii in an antitrust conspiracy class-action alleging illegal collusion between the members of the nationwide network of Blue Cross/Blue Shield insurers, resulting in increased insurance premiums and lack of competition in the health insurance market. In addition, Ed serves as counsel for purchasers of glucosamine/chondroitin health supplements who were defrauded by multiple companies in their marketing and advertising of those supplements in which unsupported and medically false claims were made regarding joint health benefits the supplements do not provide.

A representative sample of Ed's past litigation experience includes 1) serving as counsel for a large financial institution and its officers and directors in connection with securities class action and ERISA lawsuits stemming from alleged accounting manipulation and corresponding stock losses; 2) serving as national Counsel for large multinational pharmaceutical corporation in multiple cases across the country defending against allegations that company failed to adequately warn consumers and prescribing health providers about potential product risks; 3) representing a large multinational consumer goods manufacturer in multiple products liability class action matters stemming from claims regarding alleged product defects.

Mr. Kilpela was selected by his peers in 2011, 2012, and 2013 as a Rising Star in SuperLawyers, a distinction given to no more than 2.5% of his peers under the age of 40. In 2016 and 2017, Mr. Kilpela was selected as a Pennsylvania SuperLawyer.

### **Todd Carpenter**

Todd Carpenter is a former shareholder at the Phoenix based, Bonnett, Fairbourn, Friedman & Balint, P.C.. His practice focuses on consumer class action, representing plaintiff classes in major insurance fraud, unfair business practices, false and deceptive advertising, product liability cases and anti-trust violations. Mr. Carpenter has represented plaintiffs in numerous class action proceedings in California and throughout the country, in both state and federal courts.

Mr. Carpenter, through his participation in a multi-district litigation action before U.S. District Court Judge James Lawrence King in Miami, Florida, represented consumers in separate actions against Union Bank, N.A. and Bank of the West to recover damages stemming from alleged fraudulent overdraft fee practices. The cases resulted in favorable settlements, resulting in nearly \$50 million dollars in recovered fees to customers. Mr. Carpenter has filed similar actions against several other banks and credit unions across the country, alleging that each institution manipulated the processing of customer debit card purchases to maximize overdraft fees.

Mr. Carpenter has successfully represented several plaintiff classes in recovering statutory penalties resulting from violations of California's Song Beverly Credit Card Act §1747.08.

Additionally, Mr. Carpenter's efforts as part of a collaborative team of lawyers have resulted in the recovery of millions of dollars in compensation for California consumers of food and supplement products arising from misleading advertising claims made by producers and manufacturers about the safety and efficacy of the products.

Mr. Carpenter received his B.B.A in 1999 from the University of New Mexico, where he was awarded the University's Karen Abraham's Outstanding Service Award in 1997 and again in 1998 for his development and participation in after school recreational leagues for underprivileged youth. Mr. Carpenter received his law degree, from the University of San Diego School of Law in 2002. While in law school he served as Vice President for the Democratic Student Association and garnered recognition for representing indigent litigants through the University of San Diego School of Law's Legal Clinic. Mr. Carpenter is a member of the California Bar and has also been admitted to practice in all Federal District Courts in the state of California.

### **Kelly K. Iverson**

Kelly Iverson, a partner at Carlson Lynch, was born and raised in Pittsburgh where she received a degree in Business Management from Chatham University and her Juris Doctor from Duquesne University School of Law. Prior to attending law school, Kelly spent four years working as an insurance claims representative at Travelers Insurance Company where she handled automobile liability claims.

After law school, Kelly joined one of Pittsburgh's largest law firms where she spent nine years. She was fortunate to have the unusual opportunity at such a firm to advocate on behalf of injured consumers and individuals, in personal injury cases and class actions. Kelly has extensive litigation experience in both state and federal courts. She served as lead counsel at trial in federal court in a medical malpractice action, receiving a verdict in her client's favor for the maximum statutory damage award. Kelly's trial practice also includes second chair experience in jury trials, commercial arbitration, and underinsured motorist arbitration. Kelly has also argued in front of the Superior Court of Pennsylvania.

In early 2017, Kelly began working as co-counsel with Bruce Carlson in a class action against a multi-level marketing company, LuLaRoe, for improper sales tax charges to consumers. Through this work, Kelly gained firsthand knowledge of the dynamic collaboration between the high-caliber attorneys at this firm. Within a year, Kelly decided to join Bruce and his partners at Carlson Lynch to continue her established practice of advocating for consumers, both individually and on a class basis.

Kelly currently serves on the Board of Millvale Athletic Association, a local fastpitch softball organization. From 2010 through 2017, Kelly served as a high school mock trial attorney advisor for Fort Cherry High School and Pittsburgh Science and Technology Academy.

Kelly lives in Lawrenceville with her partner, Nathan, their three children and their Rottweiler/Lab mix, Brewster.

### **Eric D. Zard**

Eric Zard, a partner at Carlson Lynch, was born and raised in Minnesota where he received his Bachelor of Science from the University of Minnesota and his Juris Doctor from the University of Saint Thomas School of Law. While in law school, Eric served as an editor for the *University of Saint Thomas Law Journal*, authored a comment that was published in the *University of Saint Thomas Law Journal* (Patentability of Human Genetic Information: Exploring Ethical Dilemmas Within the Patent Office and Biotechnology's Clash with the Public Good, 6 U. St. Thomas L.J. 486 (2009)), and received a Dean's Award for Negotiations.

After graduating law school, Eric moved to Phoenix, Arizona and began his legal career at Bonnett, Fairbourn, Friedman & Balint, P.C., where he practiced consumer class action litigation for over seven years. During his time in Phoenix, Eric also defended architects, engineers, and other design professionals, businesses, and individuals in civil litigation. Eric has represented commercial landlords in purchase and sales agreements and unique landlord-tenant disputes. Eric represents clients that have been discriminated against, sexually abused and harassed in the work place, clients that have suffered severe physical injuries related to motor vehicle accidents, and individuals in premise liability matters.

In 2017, Eric decided to join a friend and former colleague from Bonnett-Fairbourn, Todd Carpenter, at Carlson Lynch in San Diego, California. Eric continues to represent plaintiffs in a wide-range of matters but his primary focus is consumer class action litigation. Eric has represented numerous clients in both state and federal courts throughout the country.



## **ASSOCIATES:**

### **Kristin Graham**

Kristy Graham is a native of Pittsburgh, Pennsylvania. She attended the University of Virginia in Charlottesville and graduated in 1998 with a bachelor's degree in environmental sciences. Before returning to Charlottesville for law school, Kristy taught English in Madrid, Spain and, later, worked as an analyst for Booz Allen Hamilton at its headquarters in Northern Virginia. Kristy graduated from the University of Virginia School of Law in 2003. While in law school, she served as an Articles Editor for the *Virginia Law Review*.

Kristy began her legal career as a commercial litigation associate with Holland & Hart, a Denver-based law firm with over 400 attorneys in 15 offices. While at Holland & Hart, Kristy was involved in all aspects of litigation in federal and state court, from preparing pleadings and conducting discovery through drafting dispositive motions and supporting briefs. Kristy was also part of a multinational energy company's defense team in a severance pay class action lawsuit stemming from one of the largest mergers in U.S. history. Prior to joining Carlson Lynch in January 2015, Kristy also practiced law with small firms in Pennsylvania and Colorado. Kristy's broad array of litigation experience includes general commercial, labor, and employment, ERISA, oil and gas, real estate, and personal injury cases. Kristy works in all aspects of Carlson Lynch's complex litigation practice.

### **Jamisen Etzel**

Jamisen attended Duquesne University where he graduated *magna cum laude* in 2008 with a Bachelor of Arts in Political Science. He obtained his law degree from New York University School of Law in 2011. While at NYU Law, Jamisen was Managing Editor of the *Journal of Legislation and Public Policy*. During the summer of 2010, Jamisen served an internship with United States District Judge William H. Walls of the United States District Court for the District of New Jersey. Jamisen works primarily in the firm's consumer and employment class litigation practices, and has been involved in most of the firm's recent appellate work, securing several favorable published opinions.

### **Pam Miller**

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

### **Kevin Abramowicz**

Kevin Abramowicz is a native of Allentown, Pennsylvania. In 2011, Kevin received his bachelor's degree from the University of Pittsburgh School of Arts and Sciences. Four years later, he graduated, *cum laude*, from the University of Pittsburgh School of Law, where he served as the Articles Editor for the *University of Pittsburgh Law Review* and completed an



internship with the Honorable David Stewart Cercone, United States District Court for the Western District of Pennsylvania. Kevin also was recognized by the Center for Computer-Assisted Legal Instruction for his excellence in Disability Discrimination Law.

Kevin began working at Carlson Lynch after his second year of law school. He continued working with the firm during his third year of law school and became a full-time attorney in October 2015. Kevin has worked with all of the firm's practice groups.

#### **Brittany Casola**

Brittany Casola attended the University of Central Florida in Orlando and graduated in 2012 with a bachelor's degree in Political Science and a minor in Spanish. Brittany earned her Juris Doctorate from California Western School of Law in 2015 and graduated magna cum laude in the top 10% of her class. Throughout the course of her law school career, she served as a judicial extern to the Honorable Anthony J. Battaglia for the United States District Court, Southern District of California and worked multiple semesters as a certified legal intern for the San Diego County District Attorney's Office. Brittany was awarded Academic Excellence Awards in law school for receiving the highest grade in Trial Practice, Health Law & Policy, and Community Property.

#### **Kevin Tucker**

Kevin Tucker is a graduate of the University of Michigan and the University of Pittsburgh Law School, where he presided over the school's public interest organization while earning a CALI Award for highest grade in Legislation. He was awarded the school's Leadership Award upon graduation. Kevin has litigated and tried a wide range of cases, from those involving Section 1983 prisoner civil rights to First Amendment claims against large media entities. Kevin joined Carlson Lynch in 2016. His current practice focuses on consumer-oriented class actions, and matters involving physical and digital architectural barriers for individuals with disabilities. Kevin has represented classes and/or individuals in federal courts throughout the United States.

#### **Elizabeth Pollock Avery**

Elizabeth was born and raised in Buffalo, New York. After obtaining her bachelor's degree from the State University of New York at Buffalo, she attended Indiana University-Bloomington Maurer School of Law, graduating in 2012. While in law school, Elizabeth assisted indigent members of society as a law clerk at the Monroe County Public Defenders' Office and at the Indiana University Disability Law Clinic.

After graduating, Elizabeth moved to Pittsburgh and worked for a family law firm prior to joining a Plaintiff side employment litigation firm in 2013. As a plaintiff's employment litigator, Elizabeth worked to right the wrongs committed against employees in a variety of areas of employment law, including the Fair Labor Standards Act, the Family and Medical Leave Act, and litigating cases dealing with sexual harassment, gender discrimination, race, age and

disability discrimination.

Elizabeth joined Carlson Lynch in 2017 and continues to advocate for the interests of individuals, as she has throughout her legal career.

### **Bryan Fox**

Bryan is originally a native of Atlanta, Georgia. He attended The University of Georgia, where he earned degrees in Political Science and Spanish, magna cum laude. Before returning to UGA for law school, Bryan worked in south Brazil teaching English and music. After graduating law school in 2013, he was hired as an associate with a local class action litigation firm where he practiced complex civil litigation, primarily ERISA and consumer-based class actions. Bryan went on to found his own practice in employment and business law, representing clients in a variety of contexts. Bryan has a passion for standing up and fighting for those who are facing difficult legal problems – this is a principal reason why he joined Carlson Lynch. Class action cases afford access to justice for consumers and others who might not otherwise be able to afford an attorney, or for whom pursuing a case individually might be too difficult. To that end, Bryan is excited to use his skills and talents in representing those in need.

Bryan and his wife Lisa reside in the Pittsburgh neighborhood of Brookline with their rescue pit bull, Ace. In his free time, Bryan enjoys playing music, exploring the Pittsburgh culinary scene, and traveling.

### **Alyshia Lord**

Alyshia grew up in a small town in Texas, right outside of San Antonio. In 2012, she graduated from Texas State University, summa cum laude, with a Bachelor's in Science and a minor in Sociology. After learning about The California Innocence Project housed at California Western School of Law, Alyshia set her sights on law school in San Diego, California. While in law school, Alyshia focused on devoting her time to causes she truly believed in such as the California Innocence Project, a clinical program dedicated to releasing wrongfully convicted inmates, and the Public Defender's Office where she interned for three semesters. After she graduated from California Western School of Law in 2015, she began her legal career volunteering for the Legal Aid Society where she assisted low-income clients in the pro bono consumer law clinic. Before joining Carlson Lynch Sweet Kilpela & Carpenter in December 2016, she aggressively advocated for injured workers at a small worker's compensation firm.

Alyshia practices in the San Diego office and devotes her time to the firm's employment discrimination and sexual harassment practice areas.

## **Derek Markle**

Derek is a native of Pittsburgh, Pennsylvania. In 2013, Derek graduated magna cum laude from Saint Francis University in Loretto, Pennsylvania. In 2016, Derek graduated from the Dickinson School of Law of the Pennsylvania State University. While in law school, Derek was a member of the Penn State Law Trial Team and competed at the Academy of Trial Lawyers of Allegheny County's annual Mock Trial Competition (formerly the Gourley Cup) where he lead his team to a second place finish.

During law school, Derek served as a judicial intern for the Honorable Judith Ference Olson of the Pennsylvania Superior Court and also for the United States Court of Appeals for the Third Circuit with President Judge D. Brooks Smith. Before joining Carlson Lynch, Derek was a summer associate and law clerk at the Pittsburgh office of one of Pennsylvania's largest law firms.

Derek continues to remain active in both the Saint Francis and Penn State alumni communities. Recently, Derek was elected Vice President of the Saint Francis University National Alumni Association, the youngest person ever to be elected to that office. Derek also sits on the board of directors for his national fraternity, Phi Kappa Theta. In his role, Derek works with the fraternity's collegiate chapters and their members to insure that the chapter, their programs and culture fall in line with the fraternity's mission. When Derek is not practicing law, he enjoys golfing, skiing, and is an avid Penn State football fan.

## **OF COUNSEL:**

### **Tom Withers**

Tom became of counsel to Carlson Lynch in June 2008, and often provides advice and counsel to the firm regarding trial strategy. Tom graduated from the University of Georgia law school in 1984. He also received his undergraduate degree from the University of Georgia. After graduating from law school, Tom joined Oliver, Maner and Gray, in Savannah, Georgia, where he was a partner from 1988 until 1990. While at Oliver, Maner and Gray, Tom was primarily engaged in the defense of medical malpractice cases for physicians. During his six years with the firm, Tom tried approximately ten medical negligence cases to verdict, all of which resulted in verdicts for the defendants.

Thereafter, Tom joined the United States Attorney's Office in the Southern District of Georgia, where he remained for eight years. Tom initially served as an Assistant U.S. Attorney in the Criminal Section before becoming Chief of the Criminal Section in 1993. Tom also served as a Professional Responsibility Officer during his time with the United States Attorney's Office and was given the Department of Justice's Director's Award in 1997. In 1998, Tom left the United States Attorney's Office and became a founding partner of Gillen Parker & Withers (now, Gillen Withers & Lake, LLC). Tom's practice focuses on federal and state criminal defense, Medicare/Medicaid fraud, and complex civil litigation.

Tom is admitted to practice in the state courts of Georgia, the United States District

Courts for the Southern and Northern Districts of Georgia, and the United States Court of Appeals for the Eleventh Circuit.