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Superior Court of California,

County of San Diego

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Clerk of the Superior Court

By V. Navarro ,Deputy Clerk

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 TRISHA TEPERSON, on behalf of herself and all
11 others similarly situated,

12 Plaintiff,

13 vs.

14 NOGIN, INC., a Delaware Corporation, JUSTICE
15 BRAND HOLDINGS, LLC, a New York Limited
16 Liability Company, BLUESTAR ALLIANCE LLC,
17 a New York Limited Liability Company, B. RILEY
18 SECURITIES, INC., a Delaware Corporation, and
19 B. RILEY PRINCIPAL INVESTMENTS, LLC, a
20 Delaware Limited Liability Company, and
21 DOES 1-50, inclusive,

22 Defendants.

Case No. 37-2023-00041084-CU-NP-NC

[E-FILE]

CLASS ACTION

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

Date: February 21, 2024

Time: 1:30 P.M.

Judge: Cynthia Freeland

Dept: N-27

20 I, Todd D. Carpenter, declare:

21 1. I am an attorney duly admitted to practice law before all courts of the State of California,
22 and I am a shareholder in the law firm of Lynch Carpenter, LLP, counsel for Plaintiff and the Class¹
23 herein. I make this declaration in support of Plaintiff's Unopposed Motion for Attorneys' Fees, Costs, and
24 Incentive Award. If called as a witness, I could and would competently testify to the following:

25 2. I have personally been involved in the investigation and prosecution of this class action
26 from its inception through to the present. I oversaw the investigation into Nogin, Inc. ("Nogin," and
27

28 ¹ Capitalized terms herein, unless otherwise defined, have the same definitions as those terms in the
Settlement Agreement and Release ("Settlement" or "SA"). (See ROA No. 75, Ex 1.)

1 together with Justice Brand Holdings, LLC, Bluestar Alliance LLC, B. Riley Securities, Inc., and B. Riley
2 Principal Investments, LLC, “Defendants”). The investigation spanned more than a year and involved
3 online data from their e-commerce website, shopjustice.com. I was actively involved in the management
4 of the Action. I assigned litigation tasks to my associates but performed the high-level negotiation of the
5 Settlement and oversaw the approval process and law and motion work.

6 3. My firm performed a pre-suit investigation, which included the development of a data
7 collection software application that monitored Defendants’ online pricing at shopjustice.com. Plaintiff’s
8 Counsel retained and deployed a preeminent computer programmer and data expert to construct a data
9 collection software application that monitored, on a daily basis, Defendants’ pricing practices for every
10 product offered for sale in the 12-months preceding the filing of the Federal Court Action. The process
11 used to obtain the original and sale price for products on shopjustice.com leveraged an open-source
12 software library which is used for software test automation. Plaintiff’s expert developed a proprietary
13 application utilizing the library that initiated a web browser, loaded the URL (shopjustice.com), then
14 inspected the content of the page, isolating each of the links to the product. The application crawled
15 through each link, loading the pages one at a time and ultimately spanning the entire website. The
16 application was designed to mimic what a search engine like Google does when it indexes a website. Once
17 it loads each page, the application sought out each of the products that were on sale. When it identified a
18 product on sale, the application would record all the information about that product—e.g., price, sale, date,
19 URL—and take a screenshot of the product. The application would also take a screenshot of the entire
20 webpage, top to bottom, for verification that the data was not made up or tampered with in any way. This
21 application was run twice a day, every day, on three different servers in different geographic locations
22 around the country. This data was later aggregated into a single database where a timeline of the sale price
23 for each product could be established. The data was collected from March 2022 through the filing of the
24 Complaint. Technical adjustments were made to the application following the filing of the lawsuit to
25 ensure that the data collection would continue, uninterrupted.

26 4. Our investigation revealed that Defendant Nogin consistently discounted its products and
27 that Defendant Nogin infrequently offered or actually sold products at the reference price. I believe based
28 on my review of these practices that Defendant Nogin’s discount pricing violates certain laws including

1 California’s False Advertising Law (“FAL”),² the Federal Trade Commission Act,³ California’s Unfair
2 Competition Laws (“UCL”),⁴ and California’s Consumer Legal Remedies Act (“CLRA”).⁵

3 5. I interpret the investigation to show that Nogin’s “Original” prices were false and used
4 exclusively to induce consumers to believe that the merchandise was once sold at the “Original” price
5 from which the false discount and corresponding sale prices were derived. The investigated products were
6 “discounted” for a substantial period of time, in violation of the FAL, UCL, CLRA, and the Federal Trade
7 Commission Act, and were never offered for the full original reference price. This pricing practice
8 appeared to be uniform across Nogin’s e-commerce website; the only thing that changed was the requisite
9 “_% off” or sale price on certain merchandise items. Defendants disagree with our conclusions.

10 6. Lynch Carpenter, LLP expended a substantial amount of time and effort in prosecuting this
11 case and, in my opinion, achieved an extraordinary benefit for the Class. The requested fee is reasonable
12 and appropriate based on the risks of litigation, Class Counsels’ refusal of alternative employment
13 opportunities with guaranteed payment, and the benefit obtained for the Class.

14 7. My firm’s investigation into Defendants’ pricing practices continued after the filing of the
15 initial Federal Court Action. The Parties together analyzed the relevant legal issues and engaged in
16 negotiations, eventually reaching the point where they agreed to attend private mediation to explore
17 settlement. The parties exchanged information such as class size, makeup of Defendants’ inventory,
18 contact information for the settlement class, and potential settlement structures to guide future mediation
19 discussions.

20 8. The Parties engaged in arm’s-length negotiations, including a full-day mediation session
21 with JAMS Mediator Hon. Edward A. Infante on September 5, 2023, who has substantial experience
22 mediating consumer class actions. At the close of the mediation, and after exchanging numerous
23 proposals, the Parties reached a tentative Class-wide settlement.

24
25
26 ² Cal. Bus. & Prof. Code §§ 17500, *et seq.*

27 ³ 15 U.S.C. §§ 45(a)(1) and 52(a); 16 C.F.R. §§ 233.1(a) and (b).

28 ⁴ Cal. Bus. & Prof. Code §§ 17200, *et seq.*

⁵ Cal. Civ. Code §§ 1750, *et seq.*

9. Prior to mediation, Class Counsel prepared an extensive confidential mediation brief, representing the culmination of Class Counsels' pre- and post-litigation investigative work, including information related to Plaintiff's purchases, Class data from Defendants, and Defendants' widespread pricing practices. Following settlement in principle, Class Counsel drafted the substantive terms of the Settlement and Notice plan and engaged in further negotiation over the structure of the Settlement. The Parties reached an arms-length Settlement with the assistance of an experienced mediator after an extensive investigation of Plaintiff's claims and negotiated discovery of Defendants' sales data, leading to the Settlement worth an estimated \$7,390,975 in direct benefits to the Class.

10. Only after reaching an agreement on the material terms of the Settlement did the Parties negotiate an agreement on attorneys' fees, costs, and incentive awards that Defendants will pay separate and apart from its payment to the Class.

11. My firm's hourly rates are as follows: \$995.00 per partner hour; \$450.00 per associate hour; and \$175.00 per paralegal hour as of 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 and in consulting defense counsel with respect to their hourly rates in defense of similar matters. I expect to spend additional time to conclude this case, including following up with the Claims Administrator, responding to objector(s) and preparing for and attending the Fairness Hearing. Further, my firm has spent approximately \$27,578.55 of un-reimbursed expenses incurred in connection with this case. A breakdown of these costs is set forth below:

COSTS

No.	General Description	Cost:
1.	Court Fees & Service of Process	\$2,784.58
2.	Scanning, Photocopying, Printing, and Other Office-Related Costs	Waived
3.	Expert Consultants/Data Mining	\$14,722.00
4.	Mediation	\$9,475.00
5.	Travel Expenses	\$596.97

TOTAL: \$27,578.55

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

No.	General Description	Hours	Rate	Lodestar
1.	Pre-filing investigation; research establishing theory of liability and addressable market: (Partner Time) Designed the pre-suit investigation, including observation and recording of pricing practices and sales transactions. Advertising research and analysis of addressable market. Sales volume analysis. Coordinated the strategy and execution for the analysis of Nogin's investigation. Assessed investigation-acquired pricing between Defendants' pricing practices and pricing practices of similar retailers. Designed and implemented the pre-suit comparison market investigation – identifying items offered for sale and compared against similar retailers. Research regarding statutory liability for false reference pricing; impact /damages analysis.	70.5	\$995	\$70,147.50
2.	Investigation Time (Paralegal time): Observed market pricing practices from online data collected for products for sale at Defendants' e-commerce website shopjustice.com for 12 total months prior to the Federal Court Action and subsequent months preceding the initial mediation, filing, service, and other correspondence. Also, observed market pricing from similar retailers, distribution channels, and the relevant market.	98	\$175	\$17,150.00
3.	Pleadings: (Associate Time) Research case law and review case database for filings regarding fraudulent sale discounting complaints; gather factual information for the complaint from various staff members and investigators and review corresponding investigation data; draft complaint, circulate for edits, implement any partner comments or edits, and re-circulate for review; gather and incorporate exhibits; incorporate remaining revisions, revise, finalize, and file; issue for service; begin drafts of mediation statements; circulate for review and incorporate edits; finalize, file, and e-serve; researched Nogin securities and bankruptcy filings; researched new entities to add post-bankruptcy filing; draft and finalize leave for motion to amend complaint to add the additional defendants; Revised Complaint for filing of First Amended Complaint (FAC), circulated FAC to partners for review and finalization before filing and e-serving.	58.4	\$450	\$26,280.00
4.	Pleadings: (Partner time) Reviewed drafts as referenced above.	17	\$995	\$16,915.00
5.	Settlement Agreement and Mediation: (Associate time) Draft Settlement Agreement and Notice exhibits; correspond with partners and co-counsel regarding various drafts of settlement agreement and notices; receive multiple iterations of revisions and incorporate same; correspondence with Claims Administrator regarding Settlement Notices, website, and dissemination of Notice.	32.5	\$450	\$14,625.00

No.	General Description	Hours	Rate	Lodestar
6.	Mediation / Settlement: (Partner time) Revised and edited mediation brief; attended a full-day mediation; addressed follow-up Settlement issues; negotiated Settlement details through multiple revisions and phone calls with opposing counsel pre and post-bankruptcy. Post-mediation Settlement discussions and teleconferences; multiple revisions to Settlement Agreement; Notices.	40.8	\$995	\$40,596.00
7.	Motions for Preliminary Settlement Approval (Associate Time): Research motion in support of preliminary approval of class action Settlement and draft the same; incorporate edits from partner; finalize, file, and serve; assist with preparation for preliminary approval hearing; drafting of amended preliminary approval, circulating to partners for revisions, incorporate partner comments and revisions, finalize for filing.	28.7	\$450	\$12,915.00
8.	Motions for Preliminary Settlement Approval (Partner Time): Made revisions to motion for preliminary approval, and amended motion for preliminary approval; met with client; prepared for oral argument for motion for preliminary approval; travel to and appearance at the preliminary approval hearing.	10.2	\$995	\$10,149.00
9.	General Case Management Issues: (Partner time) Preparation and participation in; periodic conferences with associates and paralegals, investigators, mediator, and opposing counsel.	18	\$995	\$17,910.00
10.	Motion for Attorneys' Fees / Motion for Final Approval (Associate Time): research regarding motion for attorneys' fees and motion for final approval of class action Settlement and draft the same; incorporate edits from partner; prepare for final approval hearing; research and draft instant fee motion; circulate to partner for review and incorporate edits; finalize and file; have the claims administrator upload a copy of Plaintiff's fee motion to the Settlement website.	21.5	\$450	\$9,675.00
11.	Motion for Attorneys' Fees / Motion for Final Approval: (Partner time) Evaluated and provided revisions to motion for attorneys' fees; prepared declaration.	10.7	\$995	\$10,646.50
12.	Attendance at and preparation for Final Approval Hearing (Prospective) (Partner time)	3.5	\$995	\$3,482.50
	TOTAL FEES:			\$250,491.50
	TOTAL EXPENSES:			\$27,578.55

13. Plaintiff Trisha Teperson maintained continued involvement in the litigation, including reviewing initial pleadings and communicating with Class Counsel on the status of the Federal Court Action and the subsequent Lawsuit filed in state court.

14. Lynch Carpenter, LLP agreed to accept Plaintiff's case on a pure contingency fee basis.

1 15. The hourly rate of \$995.00 per hour for Lynch Carpenter partners is in line with comparable
2 hourly rates charged by other law firms that handle class action litigation in Southern California and have
3 been approved by Judge Michael D. Washington on August 19, 2024, in *Martinez v. American*
4 *Freight, LLC*, No. 37-2024-00002841-CU-BT-NC (Super. Ct. San Diego Cnty.). My current rate was
5 approved by Judge Robert P. Dahlquist on March 4, 2024, in *Fallenstein v. PVH Corp. et al*, No. 37-2023-
6 00029952-CU-MC-NC (Super. Ct. San Diego Cnty.), and on July 28, 2023, in *Williams v. Udeemy Inc*,
7 No. 37-2023-00003666-CU-BT-NC (Super. Ct. San Diego Cnty.). My current rate was also approved by
8 Judge Cynthia Freeland on January 19, 2024, in *Aberl v. Ashley Global Retail, LLC*, No. 37-2023-
9 00011536-CU-BT-NC (Super. Ct. San Diego Cnty.), and on February 16, 2024, in *Rivali v.*
10 *Shutterfly, LLC*, No. 37-2023-00019221-CU-BT-NC (Super. Ct. San Diego Cnty.). My previous rate of
11 \$750.00 per hour was approved by Judge Jeffrey T. Miller on January 21, 2021, in *Figuroa v. Capital*
12 *One, N.A.* (S.D. Cal., Jan. 21, 2021, No. 18CV692 JM(BGS)) 2021 WL 211551, Judge Joel R. Wohlfeil
13 on July 15, 2020, in *Petkevicius v. Lamps Plus, Inc.*, No. 37-2019-00020667-CU-MC-CTL (Super. Ct.
14 San Diego Cnty.), and on September 27, 2019, in *Rael v. RTW Retailwinds, Inc., et al*, No. 37-2019-
15 00003850-CU-MC-CTL (Super. Ct. San Diego Cnty.), by Judge Richard S. Whitney on February 11,
16 2020, in *Olmedo v. PVH Retail Stores LLC*, No. 37-2019-00003250-CU-MC-CTL (Super. Ct. San Diego
17 Cnty.), and by Judge Ronald F. Frazier on July 12, 2019, in *Dennis v. Ralph Lauren Corp., et al.*, No. 37-
18 2018-00058462-CU-MC-CTL (Super. Ct. San Diego Cnty.)—each, like here, on unopposed fee
19 applications in false and deceptive price discounting class action cases. My rate has increased since then
20 commensurate with other plaintiff’s class action practitioners in Southern California with my level of
21 experience and success. The firm resume for Lynch Carpenter is attached as **Exhibit 1**.

22 16. My hourly rate is consistent with my level of expertise in consumer class actions. I have
23 extensive experience in class actions: during the course of my career, I have taken and defended over
24 100 depositions in personal injury, complex and class action cases. I have successfully participated in
25 mediations resulting in more than \$100,000,000 in settlements or awards in class action cases. I have
26 drafted, filed, and argued multiple motions in complex consumer class actions, including all forms of
27 discovery, dispositive and certification motions. My practice focuses exclusively on consumer class action
28

1 and complex litigation, representing plaintiff classes in major insurance fraud, unfair business practices,
2 false and deceptive advertising, product liability and antitrust violations.

3 17. I have represented plaintiffs in numerous class action proceedings in California and
4 throughout the country, in both state and federal courts. I have represented thousands of purchasers of
5 consumer products, food, food supplements and over-the-counter drugs in state and federal courts
6 throughout the United States in cases arising out of various false advertising claims made by
7 manufacturers and retailers, including: Proctor & Gamble, General Mills, Bayer, Clorox, WD-40, Dean
8 Foods, Botanical Laboratories, Inc., Irwin Naturals, Inc. General Nutrition Corporation and Pharmavite. I
9 was appointed interim co-lead class counsel in the multidistrict litigation *In re: Folgers Coffee Marketing*,
10 No. 4:21-cv-02984-BP (W.D. Mo.) at ECF No. 48. I was also class counsel for the settlement class in
11 FACTA cases against Hugo Boss, U.S.A. Inc. in the Southern District of California (*Travis Benware v.*
12 *Hugo Boss, U.S.A., Inc.*, No. 3:12-cv-01527-L-MDD (S.D. Cal.)) and Southwest Airlines (*Lumos v.*
13 *Southwest Airlines, Co.*, No. C-13-1429-CRB (N.D. Cal.), and *Mocek, Varoz, et al v. AllSaints USA*
14 *Limited*, No. 2016-CH-10056 (Cir. Ct. Cook Cnty. Ch. Div.)).

15 18. I have also represented thousands of consumer credit cardholders against several major
16 retailers arising from violations of the Song-Beverly Credit Card Act, Civil Code section 1747.08 and
17 have achieved excellent results, including, but not limited to, class benefits valued between \$40 and \$120
18 against Gucci America, Inc. I have also represented thousands of consumer debit card holders against
19 major commercial banks, including assuming a leadership role as prosecuting counsel in *In re: Checking*
20 *Account Overdraft Litig., Larsen v. Union Bank and Dee v. Bank of the West*, MDL No. 2036 (S.D. Fl.).
21 I have filed similar actions against several other banks and credit unions across the country, which allege
22 that each institution manipulated the processing of customer debit card purchases to maximize overdraft
23 fees, including actions against Northwest Savings Bank (*Toth v. Northwest Savings Bank*, Case No. GD-
24 12-8014 (Ct. Com. Pl. Allegheny Cnty.)); Pinnacle National Bank (*Higgins v. Pinnacle Bank*, No. 11-
25 C4858 (Cir. Ct. 12th Jud. Dist.)); and Mission Federal Credit Union (*Taylor v. Mission Fed. Credit Union*,
26 No. 37-2012-00092073-CU-BT-CTL, (Super. Ct. San Diego Cnty.)). Additionally, I served as lead
27 counsel in *Figueroa v. Capital One, N.A.*, in which the plaintiff alleged Capital One charged its
28 accountholders illegal balance inquiry fees in connection with the use out-of-network ATMs. That case

1 was settled on a class-wide basis for a total payment from defendant of \$13,000,000. (See *Figueroa v.*
2 *Capital One, N.A.*, No. 3:18-cv-00692 (S.D. Cal.), ECF No. 93 at 2.) Recently, in *Weiss et al. v.*
3 *FCTI, Inc.*, I represented a nationwide class of consumers who were assessed deceptive and duplicative
4 ATM fees. As a result of the litigation and subsequent settlement, a non-reversionary \$10,000,000 cash
5 fund was created by the defendant for the benefit of the class. (See No. 37-2024-00016908-CU-BT-NC,
6 (Super. Ct. San Diego Cnty.) ROA No. 32.)

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is
8 true and correct, and that this declaration was executed on December 31, 2024, in San Diego, California.

9 Dated: December 31, 2024

LYNCH CARPENTER, LLP

10 By: /s/Todd D. Carpenter

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14 *Attorneys for Plaintiff and Class Counsel*

EXHIBIT 1



LYNCH CARPENTER

Pittsburgh ▪ San Diego ▪ Chicago
Los Angeles ▪ Philadelphia

OUR MISSION

Lynch Carpenter is a national law firm with a singular mission – to provide a voice to those who have been silenced by the disproportionate powers which too often exist in America. With lawyers based in Pittsburgh, San Diego, Los Angeles, Philadelphia, and Chicago, Lynch Carpenter has created an inclusive national community of like-minded legal talent to represent plaintiffs in complex litigation. Lynch Carpenter lawyers have developed strong collaborative working relationships with counsel throughout the nation and have been involved in numerous high-profile multidistrict litigation proceedings, frequently in leadership roles.

The Lynch Carpenter platform is self-made, without reliance upon the legacy of a long-established “repeat player” law firm, and is based upon the fundamental principle that input from a broad base of lawyers with diverse backgrounds, working together with mutual respect, will result in the strongest possible organization. At Lynch Carpenter, diversity is utilized, not tokenized. To this end, the firm strives to provide equal opportunities for promotion and leadership to its attorneys and supporting professionals. Eleven of the 22 Lynch Carpenter attorneys have been appointed to leadership positions in multidistrict or otherwise consolidated litigation, in class-action matters involving financial fraud (including securities fraud, derivative actions, and lending fraud), data breach, privacy, consumer fraud, breach of contract, labor and employment, antitrust, and civil rights, in federal and state courts throughout the country.

Lynch Carpenter represents a wide variety of clients, including individual consumers and employees, small businesses, non-profits, issue advocacy groups, and governmental entities. Over the past ten years, Lynch Carpenter lawyers emerged as national leaders in data breach and privacy litigation, and in that time have negotiated or contributed to class recoveries totaling more than \$250 million in that sector alone. Along the way, the Lynch Carpenter team has generated seminal legal authority in both trial and appellate courts. For example, in 2018, as a direct result of Lynch Carpenter’s tenacious appellate advocacy, the Pennsylvania Supreme Court became one of the first state high courts to recognize that a common-law duty of reasonable care applies to the collection and storage of sensitive electronically-stored data. This landmark opinion, *Dittman v. UPMC*, 196 A.3d 1036 (Pa. 2018), paved the way for data breach victims to bring viable negligence claims against companies whose inadequate security practices allow major breach incidents to happen.

In October 2020, *The Legal Intelligencer* named Lynch Carpenter (under its predecessor name) “Litigation Department of the Year” for general litigation in Pennsylvania. In 2021, the firm was named as a finalist for Litigation Department of the Year in the Pennsylvania region by *The American Lawyer*. Several of its partners co-author the current edition of *Class Actions: The Law of 50 States* published by Law Journal Press. Lynch Carpenter’s attorneys are recipients of numerous additional individual awards, as described in more detail in the individual biographies on the firm’s website.

Lynch Carpenter continues to grow and establish itself as a leader in representing plaintiffs in complex litigation throughout the country. The firm remains committed to developing its younger lawyers and providing them with opportunities for professional growth, both inside and outside of the firm. In leading major complex litigation, the firm draws strength from its decentralized management structure, which fosters collaboration within the firm and enables the assembly of internal litigation teams for each case. In this way, Lynch Carpenter epitomizes the synergistic benefits which result from a group of good lawyers working together to do good things.

REPRESENTATIVE AND NOTABLE CASES

PRIVACY & DATA BREACH LITIGATION

Biscan v. Shields Health Care Group, Inc., 1:22-cv-10901-PBS (D. Mass). Jude Saris appointed Elizabeth Pollock Avery as Interim Co-Lead Counsel, and Hannah Barnett as member of the Interim Executive Committee in this data breach case against a healthcare company involving patients from several states.

In re TikTok, Inc., Consumer Privacy Litig., No. 20-cv-4699 (MDL No. 2948) (N.D. Ill.). Judge Lee appointed Katrina Carroll as Co-lead Counsel in this multidistrict litigation alleging that one of the world's biggest social media platforms captured, collected, and transmitted personal data from TikTok users and their devices without their consent and/or knowledge, including private information and biometric information within the meaning of the Illinois Biometric Information Privacy Act.

In re Equifax, Inc. Customer Data Security Breach Litig., MDL 2800 (N.D. Ga.). The Equifax data breach compromised the nation's entire credit reporting system. More than 400 lawsuits filed by consumers and financial institutions were consolidated in the MDL. Gary Lynch was appointed co-lead counsel for financial institution plaintiffs. After significant dispositive motions practice and initial rounds of discovery, the parties negotiated a settlement of the financial institution class action that provides up to \$7.75 million in cash benefits, plus additional injunctive relief. The court granted preliminary approval of the settlement in June 2020 and final approval in October 2020.

In re Blackbaud, Inc. Customer Data Breach Litig., MDL 2972 (D.S.C.). In 2020, data security company Blackbaud, Inc. was target for a ransomware attack. In the litigation that followed, brought by Blackbaud's customers, Kelly Iverson was appointed to the Plaintiffs' Steering Committee. On October 19, 2021, the Honorable J. Michelle Childs denied Blackbaud's motion to dismiss Plaintiffs' negligence and gross negligence claims.

In re Wawa, Inc. Data Security Litig., 2:19-cv-6019 (E.D. Pa.). Gary Lynch was appointed co-lead counsel for a putative class of financial institution plaintiffs in consolidated actions brought against Wawa, Inc. arising out of a 2019 payment card data breach involving the convenience store's point-of-sale systems. A consolidated amended complaint was filed in July 2020, and in 2021 the district court denied the defendant's motion to dismiss the primary claims.

In re Marriott International Customer Data Security Breach Litigation, MDL No. 2879 (D. MD.). Lynch Carpenter was appointed to the Plaintiffs' Steering Committee in this multidistrict litigation related to the data breach involving Starwood guest information dating back to at least 2014. The MDL includes more than 100 cases and is in pretrial litigation. The District Court certified several bellwether classes in May 2022.

Opris v. Sincera Reproductive Medicine, 2:21-cv-3072 (E.D. Pa.). Lynch Carpenter serves as co-lead counsel in this data breach case involving the 2020 compromise of patients' personal identifiable information and protected health information from a reproductive health services provider. In May 2022, Judge Slomsky denied the majority of the defendant's motion to dismiss, and the case is now in discovery.

In re Anthem, Inc. Customer Data Security Breach Litig., No. 5:15-md-02617, MDL 2617 (N.D. Cal.). Lynch Carpenter attorneys represented 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. Lynch Carpenter attorneys 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 settlement valued at \$117 million, which was approved by the Court.

In re Home Depot Customer Data Breach Litig., 1:14-md-02583, MDL 2583 (N.D. Ga.). In this multidistrict litigation, Lynch Carpenter attorneys represented 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. Lynch Carpenter was appointed by Judge Thrash to be one of three lead counsel managing the financial institution track of the litigation. In September 2017, the Court granted final approval to a comprehensive class settlement that provides over \$27 million in relief to the financial institution class.

First Choice Federal Credit Union v. The Wendy's Company et al, 2:16-cv-0506, (W.D. Pa.). This class action arose out of a malware installed on the point-of-sale systems of Wendy's franchised restaurants for the purpose of capturing and ex-filtrating customer payment card data. Approximately 18 million payment cards were exposed. The United States District Court for the Western District of Pennsylvania consolidated several proposed class actions and appointed Lynch Carpenter as Co-lead Counsel on behalf of the plaintiff financial institutions. In November 2018, after three rounds of in-person mediation, Wendy's agreed to pay \$50 million into a non-reversionary fund and to adopt and/or maintain certain reasonable safeguards to manage its data security risks. When the settlement received final approval in November 2019, the Honorable Maureen P. Kelly noted Class Counsel's "national reputation," "significant experience in these types of class actions and in data breach litigation," and "high level of skill and efficiency." Judge Kelly further explained:

This case has gone on for three and a half years...This was a very involved case and everyone brought to the table an incredible wealth of knowledge, was always prepared, really was thorough and professional in everything that was provided to the Court. And as involved as this case was, if every case I had was as well organized and professionally presented as this case has been, my life would be much easier... The briefs I got in this case and any filings were just so well-done and detailed. And my law clerks and I have discussed that a number of times. I want to thank counsel for the way you have conducted yourselves and the way you've all presented this case.

Dittman et al v. UPMC d/b/a The University of Pittsburgh Medical Center and UPMC McKeesport, Allegheny Cty., Pa. No. GD-14-003285; 196 A.3d 1036 (Pa. 2018). Lynch Carpenter represented several employees of the health care group UPMC in a class action stemming from a breach of UPMC's personnel files. On November 21, 2018, the Supreme Court of Pennsylvania issued a landmark decision, reversing two lower courts, regarding the viability of common law negligence claims in the wake of a data breach. The Court found that UPMC engaged in affirmative conduct by collecting and storing employee data, and that general principles of negligence support holding actors to "a duty to others to exercise the care of a reasonable man to protect [others] against an unreasonable risk of

harm to them arising out of the act.” As to the economic loss doctrine, the Court agreed with Plaintiffs’ interpretation of Pennsylvania legal precedent on the issue, finding that the question of whether the economic loss doctrine applies necessarily turns on the “source of the duty alleged,” and, accordingly, a plaintiff may seek pecuniary damages under a negligence theory if the duty sought to be enforced arises independently of any contractual relationship between the parties. After remand to the trial court, additional motions practice, and initiating discovery, the parties reached a multimillion-dollar settlement that received final approval in December 2021.

In re Target Corporation Customer Data Breach Litig., 0:14-md-02522, MDL 2522 (D. Minn.). This multidistrict litigation arose out of the massive data breach that occurred in late 2013. Judge Magnuson appointed Gary Lynch to the five-member Plaintiffs’ Executive Committee that managed the litigation on behalf of all Plaintiffs’ tracks (consumer, financial institution, and shareholder). A settlement agreement which provided \$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 granted final approval in May 2016.

Greater Chautauqua Federal Credit Union et al v. Kmart Corporation et al, No. 15-cv-02228 (N.D. Ill.). In this consolidated data breach case in which financial institutions were seeking recovery for losses sustained as a result of a 2014 data breach at one of the nation’s largest discount retail chains, Judge Lee appointed Gary Lynch to the Plaintiffs’ Executive Committee, and Katrina Carroll to serve as Liaison Counsel. A settlement was reached and approved in June 2017.

In re Ashley Madison Customer Data Security Breach Litig., MDL No. 2669 (E.D. Mo.). In this well-publicized data breach case Lynch Carpenter attorneys represented 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. Judge Ross appointed Gary Lynch and Katrina Carroll (while with her prior firm) to the Executive Committee. A class settlement for \$11.2 million was given final approval in November 2017.

In re Vizio, Inc. Consumer Privacy Litig., MDL No. 2693 (C.D. Cal.). This action was filed on behalf of 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 Lynch Carpenter was appointed to the Plaintiffs’ Steering Committee. The case was settled and received final approval in 2019, providing for a \$17 million common fund.

Veridian Credit Union v. Eddie Bauer LLC, 2:17-cv-356 (W.D. Wash.). Lynch Carpenter served as co-lead counsel on behalf of a class of financial institutions in this class action against Eddie Bauer arising out of payment card data breach of the retailer’s point-of-sale systems in 2016, which led to the exposure of up to 1.4 million payment cards. After overcoming a motion to dismiss and engaging in substantial discovery, the parties negotiated a class action settlement, which was approved in 2019. The agreement made up to \$2.8 million available in direct cash relief to class members and provided for an addition \$7 million worth of injunctive relief and other benefits.

In Re: Solara Medical Supplies Data Breach Litigation, 19-cv-02284 (S.D. Cal.). In January 2020, Judge Marilyn Huff appointed Kelly Iverson to the Plaintiffs’ Steering Committee in this data

breach action that affected both the personally identifiable information as well as protected health information of Plaintiffs' and the classes.

In re Community Health Systems, Inc., Customer Data Security Breach Litigation, 2:15-cv-00222, MDL 2595 (N.D. Ala.). Gary Lynch served 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. The action settled on a class basis for up to \$3.1 million.

In re Arby's Restaurant Group, 1:17-mi-55555 (N.D. Ga.). In October 2016, computer hackers accessed Arby's inadequately protected point-of-sale system and installed malware that infected nearly 1,000 Arby's restaurant locations. Gary Lynch was appointed by Judge Totenberg as Chair of the Financial Institution Plaintiffs' Executive Committee. The case settled and received final approval in November 2020.

Vance v. International Business Machines Corp., 1:20-cv-577 (N.D. Ill.). Lynch Carpenter attorneys were appointed Co-lead Counsel in this class action claiming IBM violated Illinois's Biometric Information Privacy Act when it collected, obtained, disclosed, redisclosed, disseminated, and otherwise profited from Illinois residents' unique facial geometric measurements without providing notice or obtaining consent. In September 2020, Lynch Carpenter defeated nearly all of the arguments raised in IBM's motion to dismiss, allowing the case to proceed forward toward class certification.

In Re: Clearview AI, Inc., Consumer Privacy Litig., 1:21-cv-00135 (N.D. Ill.). Lynch Carpenter attorneys served as counsel in this multidistrict litigation on behalf of a proposed class of Illinois citizens alleging that Clearview, in violation of the Illinois Biometric Information Privacy Act, scraped over 3 billion facial images from the internet, scanned the facial images' biometrics, and built a searchable database of the scanned images and biometrics, allowing users to instantly identify an unknown individual with only a photograph. Clearview then sold or otherwise gave access to these biometrics to hundreds of law enforcement agencies, private entities, and individuals.

Lewert v. PF Chang's China Bistro, Inc., No. 1:14-cv-04787 (N.D. Ill.): Katrina Carroll served as Court-appointed co-lead counsel representing P.F. Chang's customers who had their personal financial information compromised in a 2014 security breach. This matter was one of the first data breach cases on record. Ms. Carroll oversaw all of the appellate briefing in ultimately obtaining a landmark ruling in the Seventh Circuit on Article III standing, hailed by Law360 as one of the "top privacy cases" of 2016.

Salam v. Lifewatch, Inc., No. 1:13-cv-09305 (N.D. Ill.): In this hard-fought litigation, Lynch Carpenter partner Katrina Carroll is currently involved as court-appointed Co-lead Counsel on behalf of a certified class in this privacy matter brought under the Telephone Consumer Protection Act ("TCPA"). Ms. Carroll has been directly involved in all aspects of litigation, including discovery and motion practice which culminated in a total victory for plaintiffs in contested class certification.

CONSUMER PROTECTION/PRODUCTS LIABILITY

In re Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Products Liability Litig., MDL No. 3014 (W.D. Pa.). In February 2022, Kelly Iverson was appointed as one of four co-lead counsel from a pool of 75 applicants. The MDL includes over 300 actions involving allegations regarding the potentially harmful degradation of sound abatement foam on recalled continuous positive airway pressure (CPAP) machines and the manufacturers' conduct in marketing and ultimate recall of the machines. The actions are in the early pretrial stages.

In re Robinhood Outage Litig., No. 20-cv-1626 (N.D. Cal.). In July 2020, Jamisen Etzel was appointed to the executive committee overseeing consolidated actions brought by consumers who sustained losses when the trading application Robinhood suffered severe service outages in early 2020 during a period of intense market volatility. A consolidated amended complaint was filed in August 2020, and rulings on class certification are expected in 2022.

Morrow v. Ann Inc., 16-cv-3340 (S.D.N.Y.). Lynch Carpenter attorneys were co-class counsel in a case alleging deceptive pricing practices by a major national retail chain. After plaintiffs overcame a motion 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.). Lynch Carpenter attorneys were co-lead counsel in a class action against the Wyndham hotel companies for violations of New Jersey consumer protection statutes. Plaintiffs alleged that Wyndham's websites deceptively masked the resort fees charged at certain hotels and forced patrons to agree to illegal terms and conditions. In 2017, plaintiffs defeated a motion to dismiss filed by two of the primary operating subsidiaries. A class settlement worth up to \$7.6 million was reached in 2019 and approved later that year.

Van v. LLR, Inc., 3:18-cv-0197 (D. Ak.); 962 F.3d 1160 (9th Cir. 2020). Lynch Carpenter partners Jamisen Etzel and Kelly Iverson won a significant consumer rights ruling from the United States Court of Appeals for the Ninth Circuit. The appeals court reversed a district court dismissal for lack of standing, and, in a published decision, held that the temporary loss of money is a sufficient "injury-in-fact" under Article III of the Constitution to confer standing on a consumer to file a federal lawsuit. In September 2021, the District of Alaska certified a class of consumers asserting claims under Alaska's Unfair Trade Practices and Consumer Protection Act.

Mednick v. Precor, Inc., No. 14-cv-03624 (N.D. Ill.): Lynch Carpenter partner Katrina Carroll served as court-appointed Co-lead Counsel in this products liability matter concerning the heart rate monitoring feature on Precor fitness machines. Due to Ms. Carroll's efforts, the plaintiffs defeated a contested class certification motion and obtained class certification for a multi-state consumer class. Ms. Carroll was instrumental in negotiating a class settlement providing meaningful relief for class members shortly thereafter, for which the Court recently issued final approval.

In re Rust-Oleum Restore Marketing, Sales Practices and Prods. Liab. Litig. No. 1:15-cv-1364 (N.D. Ill.): In this sprawling products liability MDL relating to defective deck resurfacing products, Katrina Carroll was instrumental in negotiating a \$9.3 million settlement providing meaningful relief to consumers, which received final approval in March of 2017 by the Honorable Amy J. St. Eve of the

United States District Court for the Northern District of Illinois, now a sitting Judge of the Court of Appeals for the Seventh Circuit.

FINANCIAL FRAUD, LENDING PRACTICES, AND SECURITIES

In re: FedLoan Student Loan Servicing Litigation – MDL No. 2833, (E.D. Pa.). Lynch Carpenter serves as court-appointed co-lead counsel on behalf of student loan borrowers and federal grant recipients in this multidistrict litigation. The claims relate to widespread and systemic failures on the part of a student loan servicer and the U.S. Department of Education to adequately service the programs and advise its participant. A consolidated complaint was filed in November 2019. As of January 2022, a motion to dismiss is fully briefed and currently awaiting resolution by the Court.

CitiMortgage SCRA Litigation, (S.D.N.Y.). Lynch Carpenter attorneys were 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 and received final approval in October 2015, securing a total recovery of \$38.2 million for members of our military service.

In re Community Bank of Northern Virginia and Guaranty National Bank of Tallahassee Secondary Mortgage Loan Litigation, (W.D. Pa./3d Cir.). Lynch Carpenter attorneys were 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.

In re Tenet Healthcare Corp. Securities Litigation, 02-cv-8462 (C.D. Cal.). Prior to joining the firm, Katrina Carroll represented the State of New Jersey’s Division of Investment in this securities class action against Tenet Healthcare and its outside auditor, KPMG, related to false and misleading public statements those entities made between 2000 and 2002 about Tenet’s financial health. Katrina played a large role in drafting motions *in limine* briefing issues regarding the admissibility of plaintiff’s expert witness report. Tenet settled in 2006 for \$215 million, and KPMG settled in 2008 for \$65 million.

In re Motorola Securities Litig., 03-cv-287 (N.D. Ill.). Katrina Carroll represented the State of New Jersey’s Division of Investment in this securities class action against Motorola, stemming from misrepresentations made by the company regarding a \$2 billion loan it made to a Turkish entity that was not repaid. The case settled a few days before trial for \$190 million.

Figueroa v. Capital One, 18-cv-692 (S.D. Cal.). Todd Carpenter and Eddie Kim served as Class Counsel in a class action challenging the unlawful assessment of multiple ATM fees in contravention of the customer account agreement, which resulted in a \$13 million settlement.

Bingham v. Acorns Grow, 30-2019-0150842 (Cal. Sup. Ct. Orange Cnty.). Eddie Kim served as Class Counsel in a class action on behalf of customers of a financial mobile app that automatically transferred “spare change” from each purchase using debit cards issued by customers’ banks into an Acorns Grow investment account. This action challenged the app’s failure to prevent overdrafts of

customers' checking accounts as a result of the automated transfers and the resultant assessment of overdraft fees. A \$2.5 million settlement is pending court approval.

COVID-19 INSURANCE LITIGATION

In re Generali Covid-19 Travel Insurance Litig., No. 20-md-2968, MDL 2968 (S.D.N.Y). In January 2021, Jamisen Etzel was appointed co-lead counsel in this MDL comprising actions brought on behalf of consumers whose travel plans were cancelled as a result of the Covid-19 pandemic, and whose travel insurance provider either denied coverage or refused to return premiums paid for post-departure risks the insurer was not required to cover.

Business Income Insurance Coverage Litigation, various. Lynch Carpenter attorneys represents numerous business-policyholders who were forced to close or curtail their business operations as a result of government shut down orders in the wake of the Covid-19 pandemic and who have been denied insurance coverage under their "all risks" property insurance coverage.

WAGE AND HOUR & EMPLOYMENT DISCRIMINATION LITIGATION

Copley v. Evolution Well Services, LLC, 2:20-cv-01442 (W.D. Pa.). In February 2022, Lynch Carpenter obtained collective certification under the FLSA of several hundred "hitch employees." These employees spent hours per week travelling to remote job sites, time for which they were unpaid. The litigation is currently in the post-conditional certification discovery phase.

Verma v. 3001 Castor Inc., (E.D. Pa.). As co-class counsel, Lynch Carpenter attorneys won a \$4.59 million jury verdict in 2018 for misclassified workers at a Philadelphia nightclub. The claims were brought under the FLSA and Pennsylvania Minimum Wage Act. The trial verdict was fully affirmed by the Third Circuit in August 2019.

Genesis Healthcare v. Symczyk (U.S. Supreme Court). Gary Lynch served as Counsel of Record before the United States Supreme Court in an appeal addressing the application of mootness principles in a putative collective action filed under Section 216(b) of the Fair Labor Standards Act. When defendant served the plaintiff with a Rule 68 offer of judgment for "make whole" relief, the district court dismissed the case as moot. Gary Lynch successfully argued the appeal in the United States Court of Appeals for the Third Circuit, which held that the FLSA collective action did not become moot upon the plaintiff's receipt of a Rule 68 offer of judgment for full satisfaction of her individual claim. The Supreme Court reversed in a 5-4 opinion, with Justice Kagan writing a strong dissent on behalf of our client—a position which was subsequently adopted by the majority of the Court in *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153 (2016). Plaintiff's position before the Supreme Court was supported by the United States as Amicus Curiae.

ANTITRUST

In Re Railway Industry Employee No-Poach Antitrust Litigation, MDL 2850, (W.D. Pa.), Chief Judge Joy Flowers Conti appointed Lynch Carpenter partner Kelly K. Iverson as Plaintiffs' Liaison Counsel on behalf of the class of employees who alleged the defendants and their co-conspirators entered into unlawful agreements to reduce and eliminate competition among them for employees and to suppress the compensation of those employees. The two defendants agreed to class settlements worth a combined \$48.95 million, and final approval was granted in August 2020.

In Re Blue Cross Blue Shield Antitrust Litigation, MDL No. 2406, (N.D. Ala.). Lynch Carpenter attorneys represent 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. A \$2.7 billion settlement received preliminary approval in early 2021.

CIVIL RIGHTS

ADA (Americans with Disabilities Act) Accessibility Litigation. Lynch Carpenter is currently counsel for plaintiffs in a substantial number of putative class actions filed on behalf of individuals with disabilities to enforce the ADA's accessibility requirements. Over the last ten years, Lynch Carpenter attorneys have represented individuals with visual and mobility disabilities in seeking improved access to physical locations, ATMs, Point of Sale devices, and websites.