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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

TERRI N. WHITE, *et al.*,

Plaintiffs,

v.

EXPERIAN INFORMATION SOLUTIONS, INC.,

Defendant.

AND RELATED CASES:

05-CV-0173-DOC (MLGx)
05-CV-7821-DOC (MLGx)
05-CV-0392-DOC (MLGx)
05-CV-1172-DOC (MLGx)
05-CV-5060-DOC (MLGx)

CASE NO. 05-CV-1070 DOC (MLGx) (Lead Case)

DECLARATION OF MICHAEL A. CADDELL

Date: December 11, 2017
Time: 8:30 a.m.
Ctrm: 9D
Judge: Hon. David O. Carter

DECLARATION OF MICHAEL A. CADDELL

I, Michael A. Caddell, am counsel for Plaintiffs in this proceeding. I am over 18 years of age and competent to make the following statement. All of the statements below are based on my personal knowledge.

The Court previously appointed me as class counsel pursuant to FED. R. CIV. P. 23(g) in the above-styled litigation, and I am an attorney and principal of the law firm of Caddell & Chapman.

Caddell & Chapman

1. Caddell & Chapman has an outstanding record representing primarily plaintiffs in complex litigation across the United States. I am a past co-recipient of the Public Interest Award from The Trial Lawyers for Public Justice Foundation and have been named "Impact Lawyer of the Year" by Texas Lawyer magazine. Caddell & Chapman's other named partner, Cynthia Chapman, who is also working on behalf of the Class in this matter, has been named by the National Law Journal as one of the "Top 40 Lawyers under 40 in America" and one of the "Top 50 Women Litigators in America." Both Cynthia Chapman and I have been named by LawDragon as two of the "500 Leading Plaintiffs' Lawyers in America."

2. Caddell & Chapman has worked hard to attain a strong reputation for integrity and excellence, [1] even while pursuing difficult and sometimes controversial cases. As Federal District Judge Royal Ferguson noted during a remand hearing in 2002, "Mr. Caddell, you and your office have a gold-plated reputation as good and thorough and thoughtful lawyers."[2] As United States Bankruptcy Judge Alan H. W. Shiff in Connecticut noted in 2003 during a contested motion to appoint Michael

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[1] Texas Monthly has all named all of Caddell & Chapman's lawyers either Texas Super Lawyers or Texas Rising Stars. Both Cynthia Chapman and I have been named Texas Super Lawyers every year from 2003 to 2017.

[2] *Bellorin v. Bridgestone/Firestone, Inc.*, Cause No. P-01-CA-034, United States District Court, Western District of Texas, Pecos Division, Transcript of March 5, 2002 at 9, ll. 22–23. Instead of burdening the Court with copies of the transcripts and orders referenced in this personal statement, copies or excerpts of these documents will be provided upon request.

Caddell as Special Counsel to the Britestarr Bankruptcy Estate, "I think he's got a national reputation he's competent …. Mr. Caddell appeared before the Court and my recollection is that he comported himself very well."[3] Steven Mackey, from the Office of the United States Trustee, Region 2, for the District of Connecticut commented in the same hearing, "Mr. Caddell is more than competent, he is a pugnacious bulldog and where there is [sic] grounds to make a recovery he usually does." [4] "Where the fire is the hottest people tend to get scorched once in a while, and Mr. Caddell takes cases where the fire is as hot as it gets."[5]

3. Even while representing their clients zealously, however, Caddell & Chapman have maintained an excellent reputation as ethical lawyers. Ethics author and Professor Geoffrey Hazard noted, having "worked with lawyers" at "Caddell & Chapman … over the years in various matters," that Caddell & Chapman's lawyers "have consistently demonstrated the most proper ethical standards, including those applicable in class suit litigation," and that their conduct "exemplifies … high ethical concern."[6]

4. Even Harvard Professor William Rubenstein, frequent class-action commentator and sole author of Newberg on Class Actions, who formerly served as an expert on behalf of Objectors in this action (and who expressly declined to opine that *Hernandez* counsel should be disqualified in this matter), characterized Caddell & Chapman as "experienced" and "skilled class action attorneys," and

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[3] *In re: Britestarr Homes, Inc.*, Cause No. 02-50811, United States Bankruptcy Court, District of Connecticut, Transcript of June 3, 2003 at 9, 14.

[4] *Id*. at 12–13.

[5] *Id*. at 12.

[6] Hazard Declaration, filed in *White v. Experian Information Solutions, Inc.*, Case No. 05-CV-1070 DOC; In the U.S. Dist. Ct., Central Div. California, ECF Dkt. No. 605-6, Jan. 4, 2010.

acknowledged me as a "nationally-known plaintiffs' attorney,"[7] when he was serving as an expert for Toshiba in another of Caddell & Chapman's numerous national class action recoveries.

5. Prominent class-action expert Professor Geoffrey Miller, in commenting on Caddell & Chapman's work in *In Re: Trans Union Corp. Privacy Litigation*, the largest FCRA Settlement in history (where I served as Co-Lead Settlement Counsel and Cynthia Chapman was the principal author of the settlement structure), stated "[h]aving worked closely with [Caddell & Chapman], I can also attest that they are among the finest class action attorneys I have been privileged to know during my two decades of experience in this field of law. They not only possess excellent analytical and rhetorical skills, but—more importantly—displayed remarkable qualities of judgment, imagination and persistence."

6. Similarly, in May of 2013, in conjunction with his analysis of the work done by Caddell & Chapman in the *In Re: Navistar Diesel Engine Products Liability Litigation*, MDL No. 2223 in Chicago (where I served as Lead Counsel and Cynthia Chapman chaired the Law Committee), Professor Miller attested: "I am familiar with the Lead Counsel, Caddell & Chapman, and consider the attorneys at that firm to be among the finest class action attorneys I have encountered in more than a quarter century of work in this area," "I know Counsel to be highly ethical attorneys," and "Lead Counsel, with the assistance of the Court, performed admirably."

7. Former Caddell & Chapman attorney George Niño, a trial attorney with twenty years of experience, also worked on behalf of the Class prior to the 2009 Proposed Settlement. During his time at Caddell & Chapman, he represented several

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[7] Rubenstein Declaration, Dec. 4, 2009, *Elihu v. Toshiba Am. Info. Sys., Inc.*, Case No. BC328556; in the Superior Ct. of Calif., Los Angeles County–Central District

million consumers in cases involving Toshiba laptop computers, Nissan 350z cars, and Circuit City tax overcharges. In 2007, he was part of the Caddell & Chapman team that helped the Quapaw Tribe reach an $11.5 million settlement against ASARCO. In 2006, he was part of the Caddell & Chapman trial team that secured a $33.6 million verdict against Exxon Mobil following a five-week jury trial. Mr. Niño is a 1989 graduate of Stanford Law School and a 1986 graduate of Yale University. He is licensed to practice law in California and Texas and also practiced in Washington, D.C. as a Special Assistant United States Attorney. Mr. Niño was named a Texas Super Lawyer in 2005, an H Texas "Houston's Top Lawyers for the People" in 2005 and 2006, and an H Texas "Houston's Top Lawyers" in 2006.

8. Caddell & Chapman attorney Amy E. Tabor has also worked on behalf of the Class in this litigation. Ms. Tabor is a trial attorney with 14 years of experience, including years of experience with complex class action litigation and the FCRA. Ms. Tabor is a 2003 graduate of the University of Texas School of Law with high honors, where she was a member of the Texas Law Review and the Order of the Coif. She earned her B.A. from Brown University, magna cum laude, in 1995. She is licensed to practice in Texas and California and in multiple federal courts. She was named a "Texas Rising Star" by Texas Monthly magazine in 2006–2009. Ms. Tabor has been invited to speak at class action CLE seminars. In November 2015, she presented "The ABCs of Class Actions" at the National Consumer Law Center's 24th Annual Consumer Rights Litigation Conference in San Antonino. In September 2016, she presented on "FCRA Class Action Litigation: Overview and Recent Developments" as part of the National Association of Consumer Advocates' CLE webinar series.

Caddell & Chapman's Class Action Experience

9. Caddell & Chapman's typical role in class action litigation is as either lead or co-lead counsel (or in another leadership position). For example, past cases in

which Caddell & Chapman and I have served in such a role include (1) *In re Navistar Diesel Engine Products Liability Litigation*, an MDL proceeding (Case No. MDL-2223), consolidating some 35 cases from around the country (I was Lead Counsel), in which a settlement was approved on July 2, 2013, by Federal District Judge Matthew J. Kennelly in Chicago, Illinois, which provided partial reimbursement for post-warranty engine repair costs incurred by a class of over 1 million current and former owners of Ford vehicles equipped with 6.0-liter PowerStroke diesel engines (Judge Kennelly: "the settlement can be viewed as paying roughly 50% of the full value of the class members' claims, were they to succeed" and is "clearly fair."); (2) the Polybutylene National Class Action Litigation in Tennessee, Texas, and California (*Cox v. Shell*),[8] in which over $1 billion was recovered for the class (I was Co-Lead Counsel and served throughout the settlement process as Chairman of the Board of the Consumer Plumbing Recovery Center, the entity responsible for administering the settlement, which completely replumbed over 320,000 homes across America at no cost to individual homeowners); (3) *In re: Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigations*[9] in Ohio, another $1 billion recovery for a national class (I was Special Counsel to the Plaintiffs' Steering Committee and part of the six-lawyer team which negotiated the initial $750 million class settlement with Sulzer); (4) *Hotchkiss v. Little Caesar Enterprises*,[10] a national class action in Texas and Michigan which resulted in a settlement valued at $350 million and the complete restructuring of the Little Caesar's franchise (I was Lead Counsel); and (5) *In re*

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[8] Civil No. 18,844, Obion County Chancery Court, Tennessee.

[9] Cause No. 1:01-CV-9000 (MDL Docket No. 1401), United States District Court, Northern District of Ohio, Eastern Division.

[10] C.A. No. 99-CI-16042, District Court of Bexar County, Texas.

Hyundai and Kia Horsepower Litigation,[11] a national class action in California that made available to the class roughly $125 million in cash and/or debit cards (I was Co-Lead Counsel).

10. In the last few years alone, Cynthia Chapman and I were named as Class Counsel in *Elihu, et al. v. Toshiba*, a national class action settlement in California which provided extended warranties and other relief for over 860,000 purchasers of Toshiba laptop computers, Ms. Chapman was named as Co-Lead Counsel in a national class action settlement in California involving some 80,000 purchasers of Nissan's 350Z, and I was named Lead or Co-Lead Counsel in numerous national class action settlements including, inter alia: (1) *Hooker v. Sirius XM Radio Inc.*, No. 4:13-cv-00003, a nationwide Telephone Consumer Protection Act settlement for three months of free access to Sirius XM's satellite radio service, $35 million in cash, and injunctive relief, which Judge Arenda Wright Allen of the Eastern District of Virginia finally approved on December 22, 2016; (2) *Berry v. LexisNexis*, a nationwide settlement for injunctive relief on behalf of a class of over 200 million consumers, as well as a $13.5 million fund recovered for a smaller damages class, finally approved by Judge James R. Spencer of the Eastern District of Virginia on September 5, 2014 and affirmed by the Fourth Circuit in *Berry v. Schulman*, 807 F.3d 600 (4th Cir. 2015), cert. denied sub nom. *Schulman v. LexisNexis Risk & Info. Analytics Grp., Inc.*, No. 15-1420, 2016 WL 2962583 (U.S. Oct. 3, 2016); (3) *Henderson v. Acxiom*, a $20.8 million nationwide FCRA settlement given final approval on August 7, 2015 by Judge Robert E. Payne of the Eastern District of Virginia; (4) *Zakskorn v. Am. Honda Motor Co.*, a nationwide class action settlement given final approval on June 9, 2015 by Judge Kimberly J. Mueller of the Eastern District of California; (5) *Teagle v. LexisNexis Screening Solutions, Inc.* (formerly

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[11] Case No. 02CC00287, Superior Court of Orange County, California.

"Choicepoint"), a nationwide FCRA Settlement given final approval on July 31, 2013, by Judge Richard Story for the Northern District of Georgia; (6) *Williams v. LexisNexis Risk Management*, a $22 million FCRA Settlement approved June 25, 2008, by Federal District Judge Robert Payne in Richmond, Virginia; (7) *Hardy v. Hartford*, a settlement providing injunctive and monetary relief to a nationwide class of Hartford insureds with respect to the payment of General Contractors' overhead and profit on property damage claims, approved by Judge Bury of the Federal District Court of Arizona on June 18, 2008; (8) *In re Trans Union Corp. Privacy Litigation*, Case 1:00-cv-04729, MDL Docket No. 1350, N.D. Illinois, at $75 million, the largest FCRA Settlement in history and one of the largest class actions in history including more than 190 million class members, where the settlement was approved by Judge Robert Gettleman on September 17, 2008; and (9) *Williams Ambulance, et al. v. Ford Motor Co.*, a settlement that obtained final approval from Federal District Judge Marcia Crone on July 2, 2009 in the Eastern District of Texas, in which the owners of some 20,000 defective ambulances—utilizing the same diesel engine at issue in the *In re Navistar* case—were eligible to obtain substantial compensation from Ford in the form of extended warranties, reimbursements for repairs, and enhanced service. My partner Cynthia Chapman also recently served on the Plaintiffs' Steering Committee and as a Co-Chair Liaison of the Law Committee in *In re: Medtronic, Inc., Implantable Defibrillators Products Liability Litigation*, an MDL proceeding (Case No. MDL-1726) in the United States District Court for the District of Minnesota, in which a settlement of over $100 million was approved.

11. Caddell & Chapman's current docket includes over a dozen national and state class actions around the United States. In most cases, Caddell & Chapman is either Lead or Co-Lead Counsel. For example, Caddell & Chapman represents a putative class in FCRA litigation on appeal in the Ninth Circuit Court of Appeals regarding alleged improper access to consumer credit information. Caddell & Chapman also represents the Class in an FCRA action that recently received final

approval in the Northern District of California, *Hawkins v. S2Verify, LLC*, No. 15-cv-03502-WHA (N.D. Cal.). Similarly, Caddell & Chapman was Co-Lead Counsel in a case against two major beverage distributors, Constellation and Gallo, resulting in a settlement for a nationwide class of consumers which obtained final approval on August 31, 2012, in Los Angeles Superior Court. Caddell & Chapman was also Co-Lead Counsel for a class of bank account holders in a case against Comerica Bank before Federal District Judge James King in Miami in the *In Re: Checking Account Overdraft Litigation*, MDL No. 2036. On August 10, 2012, Caddell & Chapman, with its co-counsel, prevailed in its efforts to certify a class in that case, and was successful in defeating a subsequent Rule 23(f) interlocutory appeal to the Eleventh Circuit. A $14.58 million settlement was reached in that case, which was granted final approval by Judge King in 2014. Caddell & Chapman also was appointed Co-Lead counsel in an automotive defect case against Honda, in which a national class settlement for over 1.2 million class members was finally approved at a Final Fairness Hearing on October 28, 2013, after Caddell & Chapman achieved a contested certification of a multi-state class before Federal District Judge Margaret Morrow in Los Angeles and prevailed in a Rule 23(f) interlocutory appeal to the Ninth Circuit.

12. On November 1, 2016, Judge Richard L. Voorhees of the Western District of North Carolina granted final approval in an FCRA settlement in *Brown v. Lowes Companies, Inc.*, No. 5:13-cv-00079 (W.D.N.C.), appointing Caddell & Chapman as class counsel. On January 26, 2015, Judge John F. Walter of the Central District of California granted final approval to a FCRA settlement in *Smith v. Harbor Freight Tools USA, Inc.*, No. 2:13-cv-062620-JFW-VBK. That settlement provides more than 12,000 consumers cash or gift-card relief, at the class member's choice, for alleged violations of the FCRA. Notably, that settlement garnered no objections from class members and a lone opt-out. On January 13, 2014, Judge Jesus G. Bernal approved a settlement in a class action against Farmers Insurance, regarding alleged improper subtraction of deductibles from payments for losses exceeding policy limits

to Farmers insureds in Arizona. Under the settlement, class members will receive compensation for 100% of the alleged underpayments, plus interest.

13. I also served recently as Lead Counsel in *In re Ford Motor Co. Speed Control Deactivation Switch Products Liability Litigation*, an MDL proceeding (Case No. MDL-1718) pending in the Eastern District of Michigan, where my firm took the lead role in facilitating a double-tracked, multi-party mediation that resulted in more than 100 settlements of individual cases involving vehicle fires. I am also lead or co-lead counsel in numerous other national or state class actions against, among others, Carrier IQ, Equifax, LexisNexis, and S2Verify. Cynthia Chapman is also serving in leadership positions in these and various other state and/or national class actions around the United States.

14. While Caddell & Chapman's primary focus in the area of class actions has been as lead counsel for a putative or certified class, it has on occasion represented objectors with respect to proposed settlements that appeared abusive or defective. Since 2001, Caddell & Chapman has represented objectors in nine matters with respect to proposed settlements. In several cases, Caddell & Chapman was lead or co-lead counsel for most or all of the objectors' counsel. In *Clark v. Equifax Information Services, Inc.*,[12] concerning a proposed national FCRA settlement with the three largest credit reporting agencies, the district court refused to approve a proposed settlement after a two-day contested hearing in which I presented an expert and cross-examined several witnesses, including experts, advanced by the settlement proponents. Ultimately, after the settlement was modified with Caddell & Chapman's participation and assistance, the court approved the modified settlement

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[12] *Franklin E. Clark, et al. v. Equifax Information Services, Inc.*, No.8:00-1218-22, United States District Court for the District of South Carolina, Anderson Division. There were two other related cases as well, Case Nos. 8:00-1217-22 and 8:00-1219-22.

and noted that "the involvement of Objectors' Counsel [which were led by Caddell & Chapman] aided in improving the final settlement terms," "the value to the class has … clearly been improved through the modifications to the Stipulation[s] of Settlement," and "Objectors' Counsel [for whom I served as Lead Counsel] … contributed to the final successful settlements."[13]

15. Similarly, in *In re Hyundai and Kia Horsepower Litigation*, Caddell & Chapman, joined by many firms across the country, successfully objected to a proposed coupon settlement and convinced a state district court in Texas to withdraw preliminary approval for that settlement.[14] Ultimately, Caddell & Chapman, as Co-Lead Counsel, obtained a vastly improved settlement which was submitted to and ultimately approved by the Superior Court in Orange County, California, Judge Stephen J. Sundvold, presiding. In approving the settlement, Judge Sundvold commented that it was "a tremendous accomplishment," "you've done a terrific job," and the settlement "is as fair and reasonable as could have been arrived at."[15] In four of the other cases in which Caddell & Chapman has represented objectors, settlement modifications were ultimately approved by the trial court and either affirmed on appeal or became final without appeal. In several of those as well, the court or opposing counsel specifically noted the contributions of the objectors led or represented by Caddell & Chapman.[16]

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[13] *Id.*, Order of April 20, 2004, at 33 nn.34–35; 34.

[14] *Hermie Bundick, et al. v. Hyundai Motor Am.*, Cause No. B-168,410, 60th Judicial District of Jefferson County, Beaumont, Texas.

[15] *In re Hyundai and Kia Horsepower Litigation*, Case No. 02CC00287, Superior Court of Orange County, California, Transcript of June 16, 2004 at 33–34, 43. The court's comments were premised on a claims rate of 15% to 20%, and the final claims rate was 19.2%.

[16] See, e.g., *In re Wireless Tel. Federal Cost Recovery Fees Litig.*, Case No. MDL 1559, Master Case No. 4:03-md-01559, United States District Court for the Western

16. In addition to my leadership roles in various class actions, I have also written about class action issues and have been invited to speak at class action and other CLE seminars. For example, I co-authored: "Issues Particular to Consumer Finance Class-Action Settlements," in The Review of Banking & Financial Services, Vol. 25, No. 9, September 2009; "Effective Approaches to Class Action Settlements," in the 14th Annual Consumer Financial Services Litigation Institute PLI Course Handbook Series Number B 1728, March 2009; and "Recent Developments in Class Action Certification and Settlement," in the 15th Annual Consumer Financial Services Litigation Institute PLI Course Handbook Series Number B-1789, February 2010, and I served as a panelist on class action issues at the 2014 ABA Annual Institute on Class Actions in Chicago and at both the 14th and 15th Annual Consumer Financial Services Institutes sponsored by the Practicing Law Institute in New York and Chicago in 2009 and 2010.

Caddell & Chapman's Trial Experience

17. Caddell & Chapman's trial and other complex litigation experience, which includes more than 50 jury trials and hundreds of evidentiary hearings, is germane to

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District of Missouri, Western Division, Order dated July 8, 2004 at 4 (objectors represented by Michael Caddell and Ken Nelson "contributed significantly more to the settlement [than another group of objectors] and several of the suggestions [they] made were incorporated into the final settlement."); *Terri Shields, on Behalf of Herself and All Others Similarly Situated v. Bridgestone/Firestone, Inc.*, Cause No. B-170,462, 172nd Judicial District Court of Jefferson County, Texas, Plaintiff's Unopposed Motion for Entry of Order Supplementing Record, dated March 31, 2005, at 2 ("Plaintiff recognizes that the resolution of the objections to the original settlement is due to the efforts of many counsel for objectors, including, but not limited to, Mitchell A. Toups, Mike Caddell … Many objector counsel, including the aforementioned, worked constructively with class counsel and counsel for Defendants to achieve the above-stated results." Caddell & Chapman's fees in Shields were all donated to charity.

the appointment of Class Counsel in this matter. It is important for the Defendants to know that Plaintiffs' Counsel has extensive trial experience and can competently try a case. Indeed, Caddell & Chapman has tried numerous complex cases (and evidentiary hearings) against the Nation's top defense firms to a successful conclusion.

18. In February 2016, after a four-day jury trial, Caddell & Chapman obtained a unanimous jury verdict totaling $11.9 million that resulted in a judgment in excess of $3 million in Hidalgo County, Texas District Court. Caddell & Chapman's client was a block and brick manufacturer whose competitor's defamatory statements put the company out of business.

19. In 2012, Caddell & Chapman led a group of four firms pursuing False Claims Act claims in a qui tam case against DaVita, the nation's second-largest dialysis-treatment provider. During the course of the case, Caddell & Chapman took more than 40 depositions (I took more than 35), reviewed hundreds of thousands of pages of documents, briefed dozens of motions—from discovery to four dispositive motions—and handled several fiercely contested hearings, and was victorious every time. The case settled for $55 million paid to the United States and a confidential amount for attorneys' fees (which was disclosed to and approved by the U.S. Department of Justice).

20. In 2011 Caddell & Chapman settled claims against the soils engineer for a $100 million, 31-story condominium tower on South Padre Island that earned the unenviable world record for the tallest reinforced-concrete structure ever imploded when, shortly after the building was "topped-out," it began differentially settling into the sand, causing columns to blow out, severe structural cracking, and enormous floor deflection.[17] The settlement occurred after Cynthia Chapman's successful

[17] *Ocean Tower, L.P., et al. v. Raba-Kistner Consultants, Inc. et al.*; Cause No.2008-06-

appellate briefing at the Texas Supreme Court and my voir dire and jury selection at trial.[18]

21. In July 2009, I served as lead counsel for the Park Memorial Homeowners' Association against Lexington Insurance Company, seeking compensation for a 105-unit condominium project that had been declared uninhabitable by the City of Houston due to structural concerns. The case settled for a confidential amount—but only after we had successfully argued and prevailed over some 15 motions for summary judgment, Daubert motions, and motions in limine, and only one day before jury selection was to commence.[19]

22. In August 2008 we recovered $9 million in consent judgments after trial commenced in federal district court in McAllen, Texas, which judgments were paid in full plus interest at 8.25% following a contested evidentiary bankruptcy hearing in Jackson, Mississippi, in January 2010 (the total paid recovery was $10,084,000).[20]

23. In March 2006, Cynthia Chapman and I completed a complex, hotly contested five-week trial against ExxonMobil in which the jury awarded Caddell & Chapman's client $33.6 million[21]—ultimately, rather than pursuing an appeal,

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3619-E; 357th District Court of Cameron County, Texas.

[18] While the terms of various settlements are confidential, public records reflect there has been a complete release of $75 million in lenders' liens on the property, and Caddell & Chapman's client retained ownership of the property after the demolished tower had been removed.

[19] *Park Memorial Condominium Ass'n, Inc. v. Lexington Ins. Co.*; Cause No. 2007-38187, 133rd Judicial District Court of Harris County, Texas.

[20] *Ezequiel Reyna, et al. v. Michael J. Miller, et al.*., Case No. M-05-006; In the United States District Court for the Southern District of Texas, McAllen Division.

[21] *Tetco v. ExxonMobil Corp.*, Cause No. 2003-Cl-04424, 73rd Judicial District of Bexar County, Texas.

Exxon Mobil settled the matter. Notably, ExxonMobil's trial counsel at the time of trial was President-Elect of the American College of Trial Lawyers.

24. In July 1999, Caddell & Chapman recovered $30 million for the families of 14 Maquiladora workers killed in a bus accident in Mexico after two weeks of trial and three unsuccessful mandamus efforts at the Texas Supreme Court brought by the victims' employer, which was represented by two former Texas Supreme Court Justices and four different law firms.[22]

25. In November 1998, we obtained a $14.9 million verdict against Little Caesar Enterprises after a two-week trial in federal district court before Judge Ricardo Hinojosa, where our opponent was the lead name partner in Susman Godfrey, in a commercial case in which the pre-trial offer was zero, and defense counsel had the case on a reverse contingency (they worked for free if we recovered more than $50,000). The case settled after trial for a confidential amount.[23]

Past Recoveries

26. Since 1996, Caddell & Chapman has obtained more than 90 recoveries valued at $1 million or more, and more than 30 recoveries that exceeded $10 million. The value of the Firm's total recoveries in that time total more than $3.0 billion. To further illustrate the depth and breadth of Caddell & Chapman's experience and versatility, the following is a list of some of the cases in which Caddell & Chapman served as lead counsel and the recoveries made in each of these cases (some of which are identified by case type[24] and others of which are identified by case style: (1) C.A.

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[22] *Rodriguez-Olvera v. Salant Corp.*, CA-1998-CI-17169, State District Court, Maverick County, Texas.

[23] *Anthony R. Alvarez v. Little Caesar Enters.*, C.A. No.-95-245; United States District Court for the Southern District of Texas, McAllen Division.

[24] Due to confidentiality provisions in the settlement agreements.

No. MDL 2223, *In re Navistar Diesel Engine Products Liability Litigation*, multi-million dollar settlement on behalf of a nationwide class of over 1 million current and former owners of Ford vehicles equipped with 6.0-liter diesel engines; (2) C.A. No. 05-0227, *United States ex rel. Woodard v. Fresenius Medical Care*, $55 million settlement (plus confidential recovery of attorneys fees)—qui tam—non-intervened case (one of the largest recoveries in history in a non-intervened qui tam case); (3) C.A. No. 2000-CI-17169; *Maria Dolores Rodriguez-Olvera v. Salant Corporation, et al.*, $30 million settlement during trial—negligence—forum non conveniens—choice of law—federal jurisdiction—bankruptcy—bus accident in Mexico—14 deaths—Maquiladora workers; (4) C.A. No. 2003-CI-04424; *Tetco, et al. v. ExxonMobil, et al.*, $33.6 million jury verdict—breach of contract, fraud; (5) C.A. No.—95-245; *Anthony R. Alvarez, et al. v. Little Caesar Enterprises, Inc., et al.*, $14.9 million jury verdict—breach of contract, tortious interference—restaurant franchisee versus national franchisor; (6) No. 95-27280; *Douglas E. Moore & Toyota Town, Inc. v. Gulf States Toyota, Inc., Toyota Motor Sales, U.S.A., Inc., Jerry Pyle, & John Bishop*, $7.5 million verdict—fraud, breach of contract/franchise agreement—automobile dealership; (7) $23.4 million—product liability—forum non conveniens; (8) No. 93-062030; *Thomas E. Meadors, et al. v. Gen. Motors, et al.*, $7 million—product liability—motor vehicle—death, personal injury; (9) *Sierra Club v. Crown Central Petroleum*, $2.5 million—first private citizen suit in Texas under Clean Air Act; settlement achieved after successful appeal to Fifth Circuit Court of Appeals; (10) PB/Class, $1.091 billion—national class action—products liability—DTPA—polybutylene pipe and fittings; (11) *Dow Chemical Co., et al v. Miller Pipeline Services*, successfully defended Miller Pipeline Services Co. at jury trial against a $7 million suit filed by Dow Chemical Co. and Dow Pipeline Co. that alleged price-fixing, patent misuse and attempted monopolization; (12) $14.0 million—breach of fiduciary duty and legal malpractice—major New York law firm; (13) $15.7 million—industrial accident—injured workers; (14) $78.4 million subordination of secured

debt plus $3.8 million in payments—special counsel to bankruptcy trustee—fraud, lender liability, equitable subordination—conspiracy—international bank; (15) $18.2 million debt/claims withdrawn and released plus $500,00 payment—special counsel to bankruptcy trustee—breach of contract, bailment, theft—oil terminalling facility; (16) $20 million subordination of secured debt plus payments totaling $1.0 million—special counsel to bankruptcy trustee—fraud, lender liability, breach of fiduciary duty, director's liability, D&O coverage—foreign bank, director, D&O insurer; (17) $1.7 million—national class action—price fixing conspiracy—metal building insulation industry; (18) $22.5 million subordination of secured debt plus $8.0 million payment—breach of fiduciary duty, director's liability—oil company; (19) $107.5 million subordination of secured debt plus $2.5 million payment—fraud, lender liability—conspiracy—foreign banks; (20) $2.0 million—product liability—helicopter crash—Mexico; (21) $8.0 million elimination of priority debt plus 40% of Texas corporation—national class action—securities fraud, breach of fiduciary duty; (22) $2.6 million—trade secrets—commercial defamation; (23) $5 million—toxic tort—sulphur dioxide, asbestos; (24) $13.1 million-products liability—DTPA—1500 homes—polybutylene pipe and fittings; (25) $6.25 million—product liability—motor vehicle—single death; (26) $2.85 million—breach of contract—account mismanagement—national banks; (27) $4.3 million—commercial litigation—intellectual property—fraud, trade secrets, misappropriation; (28) $12.1 million—national class action—consumer fraud; (29) $22.5 million—insurance bad faith—CGL policy; (30) $7 million—insurance bad faith—crime bond; (31) $12 million—insurance bad faith—CGL policies—(underlying case: toxic exposure); (32) $5 million—insurance bad faith—CGL policies—(underlying case: toxic exposure); (33) $10.0 million—breach of fiduciary duty, director's liability, family trusts; (34) $5.1 million—trucking accident; (35) $2.125 million—toxic exposure—2,4-d, dioxins; (36) $5.05 million (including $1.05 million in post-judgment interest) after $4.0 million jury verdict upheld on appeal—closed head injury; (37) $3.5

million—trucking accident; (38) $6 million—toxic exposure—chlordane; (39) $2.5 million—national class action—consumer fraud; (40) $4.15 million—product liability—vehicle fire; (41) $1.5 million—Trident submarine base—government contracts claim; (42) $4 million settlement one day after $6.25 million jury verdict—commercial litigation—deceptive trade practices; and (43) $3.25 million claim successfully defended at trial—take-nothing judgment entered—$600,000 judgment awarded firm's client on counterclaim—commercial litigation—lender liability.

Pro Bono Litigation

27. Cynthia Chapman and I are also proud of our pro bono litigation efforts, including class litigation. For example, on a pro bono basis, Caddell & Chapman represented, as Lead Counsel for a coalition of public interest groups, Hurricanes Katrina and Rita victims in a national class action lawsuit against the Federal Emergency Management Agency (FEMA). The lawsuit, in federal district court in Houston, alleged that FEMA's mishandling of its housing assistance programs violated federal laws and regulations. In a contested evidentiary hearing involving several witnesses, other lawyers from Caddell & Chapman and I persuaded the court to issue a preliminary injunction against FEMA compelling the agency to provide assistance with hurricane victims' utilities as well as base rent. In what lawyers from the Public Interest Law Project of Oakland, California, termed "a significant victory for evacuees," the district court found a "clear entitlement" that FEMA was required to provide assistance with utilities under applicable statutes and regulations, and FEMA's failure to comply with these mandates endangered the victims' ability to remain in livable housing. While the district court's injunction was subsequently overturned by the Fifth Circuit Court of Appeals, FEMA made several concessions to the Hurricane victims in the interim, essentially conceding the relief sought by the lawsuit, as noted by Houston's then-Mayor, Bill White, who stated

that Caddell & Chapman "was of tremendous help to the Katrina evacuees in battling with FEMA."

28. For further information concerning our firm's experience and expertise, the Court is referred to our website (www.caddellchapman.com).

The Litigation

29. Plaintiffs in the consolidated and coordinated actions pending in this Court (the "Litigation") allege that Defendants Experian Information Solutions, Inc. ("Experian"), Equifax Information Services, LLC ("Equifax"), and Trans Union LLC ("TransUnion") recklessly or negligently violated the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq*., by failing to maintain reasonable procedures to assure the accurate reporting of debts that have been discharged in bankruptcy.

During the course of this litigation, Plaintiffs undertook substantial discovery, including taking or defending forty depositions, producing over 50,000 pages of documents, and reviewing over 40,000 pages of documents produced by the Defendants. Plaintiffs also consulted with and retained numerous credit reporting and consumer bankruptcy experts, interviewed numerous consumers, and reviewed thousands of consumer credit reports. The depositions taken by Plaintiffs included depositions of each of Defendants' experts, as well as testimony from Directors, Vice Presidents, other senior officers, and analysts and consultants from Defendants' departments handling, among other subjects, data acquisition services, consumer relations, consumer fraud, technical, software, and modeling, compliance, decision analytics, and predictive services. From these depositions, Class Counsel acquired significant information used to rebut Defendants' opposition to changing their procedures and meet Defendants' challenges regarding class certification. For example, Class Counsel learned, among other things, that Defendants could identify consumers who had credit reports issued whose files included a Chapter 7

bankruptcy discharge, both in current and archived files; that Defendants could screen out consumers whose bankruptcies involved asset cases; that certain types of debts are discharged in a Chapter 7 no-asset bankruptcy; and that Defendants were not engaging in reasonable monitoring and reporting of disputed tradelines to ensure maximum possible accuracy. The depositions also helped Class Counsel challenge the scoring analyses conducted by both Experian and Equifax, as well as Defendants' arguments concerning alleged scoring benefits to consumers from inaccurate credit reporting.

30. In order to conduct discovery efficiently and avoid duplicating work, Class Counsel divided into three discovery teams, one for each Defendant. Counsel carefully coordinated discovery efforts to ensure that they were doing identical discovery of each Defendant and held numerous meetings and conference calls to discuss documents and depositions and keep all teams informed of what information they were learning and what discovery was still needed. (*Id.*)

31. Class Counsel also retained several experts who have filed numerous declarations with the Court and engaged in extensive motion practice, including briefing and arguing a motion for summary judgment. Negotiations leading up to the 2009 Proposed Settlement were hard fought. The parties engaged in lengthy, contentious, and complicated negotiations (with the participation of Defendants' insurance carriers), including seven in-person sessions with a JAMS mediator, the Hon. Lourdes Baird (Ret.), and five in-person mediation sessions with mediator Randall Wulff, as well as several additional in-person or telephonic sessions involving counsel for the parties. These efforts resulted in the April 2008 Injunctive Relief Settlement Agreement, which this Court approved. (Dkt. 290.) The parties then resumed with several mediation sessions to continue working toward a settlement of the Class's monetary relief claims, but without success. Plaintiffs also engaged in separate settlement discussions with each of the Defendants. On January 26, 2009, the parties appeared for a hearing on Plaintiffs' Motion for Class

Certification of a 23(b)(3) damages class. Prior to the hearing, the Court issued a tentative ruling denying Plaintiffs' Motion for Class Certification pursuant to FED. R. CIV. P. 23(b)(3), decided not to hear the Motion at that time, and directed the parties to make a final attempt to settle the litigation.

32. The parties and Defendants' insurance carriers participated in an additional mediation session before mediator Wulff three days later but did not reach an agreement. The parties and Defendants' insurance carriers then participated in a settlement conference at the Court on February 5, 2009. At that conference, Plaintiffs, Equifax, and Experian reached agreement on the principal terms of a settlement (the "2009 Proposed Settlement"), which would have resolved of all Plaintiffs' claim in the Litigation for monetary damages, including statutory and punitive damages. (Dkt. 383.) TransUnion agreed to join that settlement on February 18, 2009. All of this work, performed before insertion of the service award language that the Ninth Circuit later found created a conflict, contributed to securing the $45 million cash fund that Defendants deposited into the registry of the Court in connection with the 2009 Proposed Settlement, and which will continue to benefit the Settlement Class here.

33. After the Court granted preliminary approval, (Dkt. 423), notice was given to the Class. Plaintiffs then moved for final approval, (Dkt. 604), which this Court granted after concluding the settlement was fair and reasonable and after giving due consideration to all objections received. (Dkt. 776.) A group of objectors appealed to the Ninth Circuit, which found that the language of the Settlement's service award provision created an impermissible conflict. *Radcliffe v. Experian Info. Solutions Inc.*, 715 F.3d 1157, 1164–65 (9th Cir. 2013) ("*Radcliffe I*"). In response to this ruling, Class Counsel have agreed not to seek any fees for the period of conflict identified by the Ninth Circuit, April 1, 2009, through May 1, 2013, and have removed all hours expended during this time period from their lodestars submitted with this motion.

34. On remand in 2013, out of an abundance of caution, Class Counsel put in place multiple additional safeguards to ensure that the Class's best interests were protected, including the presence of newly associated counsel, Public Justice, P.C. and Francis & Mailman, who, in addition to being unconnected to the prior conflict, bring considerable additional class action experience and FCRA expertise to the table. Class Counsel entered into a cooperating counsel agreement, vetted by Professor Charles Silver, to ensure that newly associated counsel is incentivized to achieve the best result for the Class. After this Court appointed Class Counsel to represent the Class under FED. R. CIV. P. 23(g), (Dkt. 956), Class Counsel were required to defend their appointment through a lengthy appeal to the Ninth Circuit, including a petition for certiorari to the United States Supreme Court.

35. After the Ninth Circuit's March 2016 ruling in *Radcliffe v. Hernandez*, 818 F.3d 537 (9th Cir. 2016) and remand to this Court, Plaintiffs re-evaluated the litigation options that would best serve the Class's interests. The Parties resumed settlement negotiations and attended a mediation with the Hon. Daniel Weinstein (Ret.) on August 25, 2016, but did not reach agreement. On September 19, 2016, Plaintiffs moved for leave to file a Third Amended Complaint to add two additional Class Representatives and two subclasses. (Dkt. 1005.) On October 11, 2016, this Court tentatively denied Plaintiffs' motion and ordered the parties to appear for a settlement conference before the Hon. Dickran M. Tevrizian. (Dkt. 1021.) The parties reached an agreement and signed a term sheet on November 7, 2016. Over the next few months, the parties worked to document the detailed settlement language. The final Settlement Agreement was executed on April 14, 2017. Subject to this Court's approval, the Settlement Agreement will resolve all of the claims of the Plaintiffs and all members of the Settlement Class.

The Settlement Achieved

36. The "23(b)(3) Settlement Class"[25] that will benefit from this Settlement is co-extensive with the Settlement Class under the 2009 Proposed Settlement.

37. The Settlement provides a package of Non-Monetary Relief, including information about fixing credit reporting errors, which is available to all Class members on the Settlement Website, legal assistance in resolving credit reporting errors, and an option for Settlement Class members to claim a free credit report and two free VantageScore credit scores in lieu of a Damage Award. A link to the "Consumer Credit Reporting Assistance" webpage was featured in the Settlement Notice, and thus far this section of the website has received over 80,000 unique visits. With two weeks still remaining in the claims period, over 50,000 Class Members have already claimed the optional free file disclosure and two free VantageScore credit scores.

38. The Settlement also provides that Defendants will contribute an additional $1 million to the approximately $37 million in funds already on deposit in the Court's registry. This fund will be used pay Convenience and Actual Damage Awards to Settlement Class Members. Settlement Class members will not be required to re-submit claims already approved under the 2009 Proposed Settlement, which will continue to be honored in this Settlement unless Class members choose to amend them. They have received Notice either by email or mail according to the Court-approved Notice Plan and will have the opportunity to file claims, amend their claims, opt out, or object up until November 13, 2017.

39. Actual Damage Claims will be paid at fixed levels of $750 for employment inquiries, $500 for mortgage loans or housing inquiries, and $150 for other credit

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[25] Capitalized terms herein have the meanings defined in the Settlement Agreement, (Dkt. 1066).

inquiries, or payment of a discharged debt to obtain credit. Convenience Award Claimants will each receive an equal share of the of the Convenience Damage Award Fund remaining after payment of Actual Damage Awards, administrative and notice costs, and any Court-approved attorneys' fees and service awards. The parties estimate that Convenience Awards will be in the range of $15–20, but they could be more or less.

40. Taking into account the total value provided for Settlement Class Members, this Settlement improves on the already impressive relief made available under the 2009 Proposed Settlement. The new package of Non-Monetary relief agreed in connection with this Settlement provides significant value to the Class, in addition to the Actual Damage Claim and Convenience Claim Awards, which are estimated to be paid at levels similar to what was estimated under the 2009 Proposed Settlement. Based on my experience as Lead Counsel in numerous nationwide consumer and FCRA class actions, I believe the settlement reached here is fair, reasonable, and adequate, and an excellent result for the Class.

41. I believe strongly in the value of this case. I nevertheless recognize that continued litigation would present the Class with a number of challenges. I appreciate the risk that the Court might confirm its tentative ruling denying Plaintiffs' Motion for Class Certification pursuant to Fed. R. Civ. P. 23(b)(3) or that Defendants could prevail on their affirmative defenses, leaving the Class with no, or a much more limited, recovery.

42. If this case were to continue, trial and trial preparation would be time consuming and costly. The parties would need to engage in considerable work with their witnesses, including their experts, to prepare the case for trial. In addition, further motion practice, including a renewed motion for class certification, motions for summary judgment, and/or *Daubert* motions, is likely. Considering the likelihood that Defendants would appeal any judgment in favor of the Class, it could easily be years before this case would be finally resolved.

43. Especially given the complexity of this litigation and the significant risks and delay that the Class would face if this action were to proceed, I believe that the settlement represents an excellent result for Settlement Class members.

Caddell & Chapman's Lodestar and Expenses

44. Caddell & Chapman contemporaneously tracked our time expended working for the Class in this matter, as is our normal practice. In order to avoid overbilling for simple tasks that required little time to complete, all time was billed in increments of one-tenth of an hour.

45. Based on these contemporaneous time records, my staff created a summary showing Caddell & Chapman's lodestar for all work performed since the inception of this case, which totals $8,414,623.75. (*See* Ex. A.) As referenced in my previous Declaration submitted in support of Plaintiffs' Application for Attorneys' Fees in connection with the 2008 Injunctive Relief Settlement, one-half of the time incurred from inception through filing of the Injunctive Relief Settlement (April 3, 2008), comprising 6,609 hours, was allocated to the Injunctive Relief Settlement, and Caddell & Chapman also allocated an additional 39 hours expended in connection with the hearing on the approval of that settlement to obtaining injunctive relief. (Dkt. 575-4 ¶ 27.) Caddell & Chapman has accordingly backed this same number of hours out of our lodestar allocated to obtaining this Settlement, reducing the lodestar by $1,669,796.88. (*See* Ex. A.) Note that, because Caddell & Chapman has used current rates to calculate our lodestar for purposes of this Motion, the total dollar amount deducted for lodestar allocated to obtaining injunctive relief is greater than the amount referenced in my earlier declaration, which was calculated using Caddell & Chapman's 2009 rates. (Dkt. 575-4 at 22.)

46. In addition, as Class Counsel previously committed to the Court, Caddell & Chapman has backed out of our lodestar all work performed during the period of conflict identified by the Ninth Circuit, from April 1, 2009 through May 1, 2013,

reducing the lodestar by $2,113,220.00. (*See* Ex. A.) Accounting for these deductions, Caddell & Chapman's lodestar allocated to this Settlement is $4,631,606.87. (*Id.*) Exhibit A also includes a breakdown of the lodestar allocated to this Settlement by timekeeper. (*Id.*) This summary includes work performed through September 30, 2017. Caddell & Chapman will update this submission with our actual hours worked through final approval in advance of the hearing.

47. Caddell & Chapman also tracked expenses incurred in this litigation on a contemporaneous basis. Caddell & Chapman directly paid expenses for filing fees; expenses associated with the research, preparation, filing, and responding to pleadings in this matter, experts, mediation fees, and other expenses reasonably incurred in litigating this action on behalf of the Class. All of these expenses were advanced with no guarantee they would ultimately be recovered, and most were "hard" costs paid out of pocket to third-party vendors, court reporters, and experts. These expenses were tracked on a contemporaneous basis, as is our normal practice. From the inception of this litigation through September 30, 2017, these expenses total $631,719.63. (*See* Ex. B.) For purposes of this Motion, Caddell & Chapman has backed out those expenses, $110,179.58, that were allocated to the Injunctive Relief Settlement, as well as $99,566.06 in expenses that were incurred during the period of conflict identified by the Ninth Circuit, from April 1, 2009 through May 1, 2013. (*See* Dkt. 575-4 at 22; Ex. B.) Accounting for these deductions, Caddell & Chapman incurred reasonable expenses allocated to this Settlement totaling $421,973.99. (Ex. B.) To further ensure that our expenses are reasonable, we have deducted an additional $10,000 from our expense total, reducing the expenses for which C&C is seeking reimbursement to $411,973.99.

48. Caddell & Chapman's current rates, which were used for purposes of calculating the lodestar here, are based on prevailing fees for national class-action work and have been most recently approved in *Brown v. Lowe's*, No. 5:13-cv-0079 (W.D.N.C. November 1, 2016) and *Hooker v. Sirius XM Radio, Inc.*, No. 4:13-cv-003

(E.D. Va. May 11, 2017). While Caddell & Chapman generally works on a contingent-fee basis, we do occasionally accept hourly fee engagements in commercial matters. When we do so, we charge our hourly fee-paying clients the same hourly rates used as the basis of this lodestar application. The fact that clients paying by the hour pay the same rates for our time and expertise further confirms that these rates are reasonable and in line with the market for counsel of comparable skill and experience.

49. Caddell & Chapman's historical rates have been approved in numerous courts, including previously in this litigation. (*See* Dkt. 775 at 5); *see also* Order Granting Plaintiff's Motion for Award of Attorneys' Fees, Expenses, and Service Awards, *Berry v. LexisNexis Risk & Information Analytics Group, Inc.*, No. 3:11-cv-754 (E.D. Va. 2014) (Dkts. 129 & 101-1 ¶ 55.) In December 2012, after resolving a high profile and complicated *qui tam* action (*United* States *of America, ex. rel. Ivey Woodard v. DaVita Inc.*, United States District Court for the Eastern District of Texas, Civil Case No. 1:05-CV-00227-MAC-ZJH), the Department of Justice approved attorneys' fees that were based on Caddell & Chapman's then-current rates. In fact, the Department of Justice approved the entire requested fee, which was based on the following rates: Michael Caddell $875; Cynthia Chapman $675; Cory Fein $650; Dana Levy $500; Craig Marchiando $425; Aron Gregg $450; Kathy Kersh $250; Sylvia Z. Vargas $250. Caddell & Chapman's historical rates were also approved in *Danny R. Teagle, et al. v. LexisNexis Screening Solutions, Inc.*, United States District Court for the Northern District of Georgia, Atlanta Division, Civil Action No. 11-cv-01280 (Michael Caddell $875; Cynthia Chapman $675; Craig Marchiando $425; Kathy Kersh $250).

50. Caddell & Chapman's historical rates for attorneys and staff were also approved in the following cases: *In re Navistar 6.0L Diesel Engine Products Liability Litig.*, No. 1:11-cv-02496 (Michael Caddell $750; Cynthia Chapman $650; Cory Fein $625; Amy Tabor $450; Dana Levy $500; Clay Morton $370); *Weltonia Harris v. U.S. Physical Therapy, Inc.*, United States District Court, District of Nevada, Civil

Action No. 2:10cv1508-JCM-VCF (Michael Caddell $750; Cynthia Chapman $650; Cory Fein $625; Craig Marchiando $425; Kathy Kersh $250); *Bradford L. Jackson v. Metscheck, Inc. and First Communities Management, Inc.*, United States District for the Northern District of Georgia, Atlanta Division, Civil Action No. 1:11-CV-2735 (Michael Caddell $750; Cynthia Chapman $650; Cory Fein $625; Amy Tabor $450; Craig Marchiando $425; Kathy Kersh $250); and *Mark Zeller v. E&J Gallo Winery and Constellation Brands, Inc.*, Superior Court of the State of California, for the County of Los Angeles (Central Civil West), Case No. BC432711 (Michael Caddell $750; Cynthia Chapman $650; Cory Fein $625; Craig Marchiando $425; Aron Gregg $400; Kathy Kersh $250; John Dessalet $250).

51. The time spent on this matter kept Caddell & Chapman from taking on other work. In contingent fee cases, the customary award is generally 40% of the result obtained. Counsel accepted this case on a contingent fee basis, taking on all the risk that Plaintiffs would lose a vital motion or issue and end up with nothing. Moreover, Caddell & Chapman and the other Plaintiffs' Counsel have pursued these claims for over 12 years, with no guarantee of success or compensation for their time and expenses.

52. Based upon my experience with other class action matters and given my Firm's lead role in this litigation, I believe that the time expended by Caddell & Chapman in connection with this litigation, when compared to the result achieved for the Class, is reasonable in amount and was necessary to ensure the successful relief obtained on behalf of the Class.

53. Attached as Exhibit C to this Declaration is a chart summarizing the lodestar and expense information submitted by Class Counsel with this motion. As shown in Exhibit C, Class Counsel have backed out of their total lodestar and expense figures all time and expenses that were previously allocated to obtaining injunctive relief, and all work performed and expenses incurred during the period of conflict identified by the Ninth Circuit, April 1, 2009 to May 1, 2013. (*See* Ex. C.)

With these deductions, Class Counsel's total expenses attributable to this Settlement are $838,836.94 to date. (*Id.*) Class Counsel's total lodestar to date is $11,830,950.71. (*Id.*) Class Counsel here applies for less than their total lodestar, requesting $11,161,163.06 in fees, so that the combined total of $12 million in fees and expenses requested matches the amount given in the Notice to Class members. (Dkt. 1066-6 at 7.) Class Counsel's requested fee represents an "inverse" multiplier of 0.94, reflecting that the fees requested are less than the total time Class Counsel have expended in obtaining in this Settlement. (*See* Ex. C.)

54. Class Counsel have performed this work entirely on a contingent basis and have not been compensated for their time or reimbursed for any expenses over the more than 12 years of this litigation. Furthermore, the lodestar submitted to date does not include any time that Class Counsel will expend preparing this motion and the Motion for Final Approval, responding to objections, and briefing and arguing any appeals from final approval, all of which will further decrease the multiplier.

55. In this Settlement, after payment of the Actual Damages Claims, estimated notice and administration costs of no more than $6 million, and the requested $12 million in combined attorneys' fees and expenses, Class Counsel estimate that a fund of approximately $14.3 million will remain to satisfy Convenience Award claims. Based on current projections of approximately 950,000 Convenience Award Claims, this should result in payments of approximately $15.00 in the initial round of check mailing, with an additional $2.50–5.00 when the Settlement Administrator re-distributes funds from uncashed checks to those who cashed their initial claims checks. (*See* Settlement Agreement § 7.2(c).)[26]

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[26] Based on past experience, re-distribution of funds from uncashed checks typically results in a premium to Class members of 25–30% over the initial claim checks. Here, this premium is likely to be toward the upper end or even above this range given that (1) funds from both uncashed Actual Damages Claims checks and uncashed

56. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: October 30, 2017

/s/ Michael A. Caddell
Michael A. Caddell

Convenience Award claims checks will be re-distributed to Convenience Award Claimants, (Settlement Agreement § 7.2(c)), and (2) the initial claims distribution will include checks sent to claimants from the 2009 Proposed Settlement.