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9 *Attorneys for Plaintiff and Class Counsel*

**ELECTRONICALLY FILED**

Superior Court of California,  
County of San Diego

**06/30/2023 at 12:44:00 PM**

Clerk of the Superior Court  
By Veronica Navarro, Deputy Clerk

11 **SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF SAN DIEGO**

13 MARION WILLIAMS, on behalf of himself and  
14 all others similarly situated,

15 Plaintiff,

16 v.

17 UDEMY, INC., a Delaware limited liability  
company, and DOES 1- 50, inclusive,

18 Defendants.

Case No. 37-2023-00003666-CU-BT-NC

[E-FILE]

**CLASS ACTION**

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

Date: July 28, 2023

Time: 1:30 P.M.

Judge: Robert P. Dahlquist

Dept: N-29

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 Class<sup>1</sup>  
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 Udemy, Inc.'s ("Defendant" or  
27

28 <sup>1</sup> Capitalized terms herein, unless otherwise defined, have the same definitions as those terms in the Settlement Agreement and Release.

1 “Udemy”) e-commerce store Udemy.com. This involved daily or near-daily gathering of pricing data from  
2 Defendant’s e-commerce store, Udemy.com, and cataloguing numerous offerings listed for sale on the  
3 website. I directed the investigation through the use of my paralegals, expert consultants, and associates,  
4 and reviewed their time entries accordingly. I was also actively involved in the management of the  
5 Lawsuit. I assigned litigation tasks to my associates, but performed the high-level negotiation of the  
6 Settlement and oversaw the approval process and law & motion work.

7 3. I believe the investigation revealed that Defendant continuously discounted its products by  
8 setting an “Original” price, a “Sale” price, and a “% off” (final discount) price for well over 90 days at a  
9 time.

10 4. I interpret the investigation to show that Udemy’s “Original” prices were false and used  
11 exclusively to induce consumers to believe that the merchandise was once sold at the “Original” price  
12 from which the false discount and corresponding sale prices were derived. The investigated products were  
13 “discounted” for a substantial period of time, in violation of California’s False Advertising Law (“FAL”)  
14 and the Federal Trade Commission Act (“FCTA”), and sometimes without ever being offered for the  
15 original reference price.

16 5. As part of my analysis, I retained an economist to develop and support the damages model  
17 alleged and used in connection with resolution of this matter.

18 6. The law firms of Lynch Carpenter, LLP and Keller Postman LLC have together expended  
19 a substantial amount of time and effort in prosecuting this Lawsuit and achieved an extraordinary benefit  
20 for the Class. Because Udemy is an exclusively online store, all purchasers were subject to being  
21 compelled to arbitration. Were it not for the potential for serial arbitration brought by my law firm, Lynch  
22 Carpenter, and the Keller Postman firm, the matter would not have been resolved. The requested fee is  
23 reasonable and appropriate based on the risks of litigation, Class Counsel’s refusal of alternative  
24 employment opportunities with guaranteed payment, and the benefit obtained for the Class.

25 7. Prior to mediation, Class Counsel prepared an extensive confidential mediation brief,  
26 representing the culmination of Class Counsel’s pre- and post-litigation investigative work, including  
27 information related to Plaintiff’s purchases, Class data from Defendant, Defendant’s widespread pricing  
28 practices, and expert analysis thereof. During this time, Class Counsel worked closely with their expert to

1 develop the damages model alleged against Defendant. Following settlement in principle, Class Counsel  
2 drafted the substantive terms of the Settlement and Notice plan and engaged in further negotiation over  
3 the structure of the Settlement Agreement.

4 8. Only after reaching agreement on the material terms of the Settlement, the Parties  
5 negotiated an agreement on attorneys' fees, costs, and incentive awards that Udemey will pay separate and  
6 apart from its payment to the Class.

7 9. My firm's hourly rates are as follows: \$995.00 per-partner hour; \$450.00 per-associate  
8 hour; and \$175.00 per-paralegal hour as of the date of this declaration. I have established my billable rate  
9 through an annual, informal survey of similarly experienced consumer class action attorneys in the  
10 Southern California legal market and in consulting defense counsel with respect to their hourly rates in  
11 defense of similar matters. I expect to spend additional time to conclude this case, including following up  
12 with the Claims Administrator, responding to objector(s) and preparing for and attending the Final  
13 Fairness Hearing. Further, my firm has spent approximately \$66,780.07 of un-reimbursed expenses  
14 incurred in connection with this case. A breakdown of these costs is set forth below:

15 **COSTS**

16

No.	General Description	Cost:
1.	Mediation	\$39,886.25
2.	Court fees	\$1,649.82
3.	Service of Process	\$172.00
4.	Scanning, photocopying, printing, and other office related costs	Waived
5.	Expert Consultants/Data Mining	\$23,164.00
6.	Travel, hotel, rideshare	\$1,908.00

24 **TOTAL: \$66,780.07**

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

No.	General Description	Hours	Rate	Lodestar
1.	<b><i>Pre-filing investigation; research establishing theory of liability, addressable market and mass arbitration strategy: (Partner Time)</i></b> Designed the pre-suit investigation, including observation and recording of pricing practices and sales transactions. State by state advertising research and analysis of addressable market. Sales volume analysis. Coordinated the strategy and execution for the analysis of Udemy' website. Assessed investigation-acquired pricing between Udemy's website and WaybackMachine.org. Designed and implemented the pre-suit comparison market investigation – identifying items offered for sale and compared against other online course providers. Research regarding statutory liability for false reference pricing; impact /damages analysis.	137.24	\$995	\$136,713
2.	<b><i>Pleadings: (Associate Time)</i></b> Research case law and review case database for filings regarding fraudulent sale discounting complaints; gather factual information for complaint and review corresponding investigation data; draft complaint and circulate for edits; gather and incorporate exhibits; incorporate revisions, revise, finalize, and file; issue for service; begin drafts of mediation statements; draft complaint, first amended complaint in state court action; circulate for review and incorporate edits; finalize, file, and e-serve.	112.5	\$450	\$50,625
3.	<b><i>Investigation Time (Paralegal time):</i></b> Observed market pricing practices for thousands of courses identified on Udemy.com for 14 total months prior to suit and subsequent months preceding the initial mediation, filing, service and other correspondence.	98.7	\$175	\$17,150
4.	<b><i>Discovery: (Associate time)</i></b> Draft written discovery requests for premediation data exchange, prepare draft Requests for Production of Documents and Special Interrogatories for first arbitration matters.	13.8	\$450	\$6,210
5.	<b><i>Discovery: (Partner time):</i></b> Strategize with team regarding goals of pre-mediation discovery; serve requests and discuss parameters with opposing counsel.	5.2	\$995	\$5,174
6.	<b><i>Evaluation, Retention and substantive work with Experts (Partner time):</i></b> Screened, vetted and interviewed consumer behavior consultants / human factors experts and economists. Conference calls and email correspondence with consumer survey expert regarding options for consumer survey design with respect to Defendant's pricing scheme; use of false reference prices; impact on consumer behavior. Drafted memorandum regarding substantive liability issues; scope of consumer purchase pattern and behavior impacted by false reference prices; correlating survey issues. Follow up correspondence and discussion regarding the use of open-ended survey questions; recall bias issues for consumer survey.	8.2	\$995	\$8,159
7.	<b><i>Law and Motion: (Associate time):</i></b> Conduct legal research and respond to Motion to Compel arbitration research and draft memorandum of points and authorities and stipulation of the parties to move response deadlines, research motion preliminary approval motion in light of settlement terms; attorney's fees application.	45.5	\$450	\$20,475

No.	General Description	Hours	Rate	Lodestar
8.	<b>Law and Motion: (Partner time)</b> Reviewed drafts as referenced above.	7.6	\$995	\$7,562
9.	<b>Settlement Agreement and Mediation: (Associate time)</b> Draft settlement agreement and notices; correspond with partners and co-counsel regarding various drafts of settlement agreement and notices; receive revisions and incorporate same; correspondence with claims administrator regarding settlement notices, website, and dissemination of notice.	38.9	\$450	\$17,505
10.	<b>Mediation / Settlement: (Partner time)</b> Revised and edited mediation brief; coordinated with expert from damages expert to support available damages analysis; attended full day mediation(s); follow up settlement issues; negotiated settlement details through multiple revisions and phone calls with opposing counsel. Post mediation settlement discussions and teleconferences; multiple revisions to Settlement Agreement; Notices.	48.2	\$995	\$47,959
11.	<b>Motions for Settlement Approval (Associate Time):</b> 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; research and draft instant motion for attorneys' fees and costs; circulate to partner for review and incorporate edits; finalize and file; research and draft motion for final approval of settlement.	19.2	\$450	\$8,640
12.	<b>Motions for Settlement Approval (Partner Time):</b> Made revisions to Motion for Preliminary Approval; met with client; prepared for oral argument for Motion for Preliminary Approval.	2.3	\$995	\$2,285
13.	<b>General Case Management Issues: (Partner time)</b> Preparation and participation in; periodic teleconferences with co-counsel, mediator(s), and opposing counsel.	12.3	\$995	\$12,238
14.	<b>Motion for Attorneys' Fees / Motion for Final Approval (Associate Time):</b> 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.	13.2	\$450	\$5,940
15.	<b>Motion for Attorneys' Fees / Motion for Final Approval: (Partner time)</b> Evaluated and provided revisions to motion for attorneys' fees; prepared declaration.	7.1	\$995	\$7,064
16.	<b>Attendance at and preparation for Final Approval Hearing (Prospective) (Partner time)</b>	3.2	\$995	\$3,184
	<b>TOTAL FEES:</b>			<b>\$356,883</b>
	<b>Expenses:</b>			<b>\$66,780.07</b>



No.	General Description	Hours	Rate	Lodestar
	arbitration. Discuss presentation of mass arbitration plan prior to meetings with opposing counsel. Analysis of addressable market. Prepare for and attend 3 mediation sessions with co-counsel. Negotiate terms of settlement agreement, review and revise drafts of same. Interview and receive bids on settlement administration. Review briefings regarding preliminary approval and related issues and provide input on notice language for motion exhibits.			
3.	<b>TOTAL FEES</b>			<b>\$180,380</b>

15. Plaintiff Marion Williams 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.

16. Lynch Carpenter and the Keller Postman firm agreed to accept Plaintiff's case on a pure contingency fee basis.

17. The hourly rate of \$995.00 per hour for Lynch Carpenter partners is in line with comparable hourly rates charged by other law firms that handle class action litigation in Southern California. My previous rate of \$750.00 per hour was approved by Judge Joel R. Wohlfeil on July 15, 2020, in *Petkevicius v. Lamps Plus, Inc.*, No. 37-2019-00020667-CU-MC-CTL (Super. Ct. San Diego Cnty.), and on September 27, 2019, in *Rael v. RTW Retailwinds, Inc., et al*, No. 37-2019-00003850-CU-MC-CTL (Super. Ct. San Diego Cnty.), by Judge Richard S. Whitney on February 11, 2020, in *Olmedo v. PVH Retail Stores, LLC*, No. 37-2019-00003250-CU-MC-CTL (Super. Ct. San Diego Cnty.), and by Judge Ronald F. Frazier on July 12, 2019, in *Dennis v. Ralph Lauren Corporation, et al.*, No. 37-2018-00058462-CU-MC-CTL (Super. Ct. San Diego Cnty.)—each, like here, on unopposed fee applications in false and deceptive price discounting class action cases. My previous hourly rate was also recently approved on January 21, 2021, in a \$13,000,000 all-cash settlement in *Figueroa v. Capital One, N.A.*, No. 3:18-cv-00692 (S.D. Cal.), and on April 5, 2019, in an \$8,000,000 all-cash FACTA Settlement in *Mocek, Varoz, et al v. AllSaints USA Limited*, No. 2016-CH-10056 (Cir. Ct. Cook Cnty. Ch. Div.). My previous rate of \$650.00 per hour was approved in 2017 by Judge Judith Hayes on an unopposed fee application in a Song-Beverly Credit Card Act case, *Manner v. Summit Pizza West, LLC*, No. 37-2015-5909-CU-MC-CTL (Super. Ct. San Diego Cnty.). My rate has increased since then commensurate with

1 other plaintiff's class action practitioners in Southern California with my level of experience and success.  
2 The firm resume for Lynch Carpenter is attached as Exhibit 2.

3 18. My hourly rate is consistent with my level of expertise in consumer class actions. I have  
4 extensive experience in class actions: during the course of my career, I have taken and defended over  
5 100 depositions in personal injury, complex and class action cases. I have successfully participated in  
6 mediations resulting in more than \$100,000,000 in settlements or awards in class action cases. I have  
7 drafted, filed, and argued multiple motions in complex consumer class actions, including all forms of  
8 discovery, dispositive and certification motions. My practice focuses exclusively on consumer class action  
9 and complex litigation, representing plaintiff classes in major insurance fraud, unfair business practices,  
10 false and deceptive advertising, product liability and anti-trust violations.

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

23 20. I have also represented thousands of consumer credit cardholders against several major  
24 retailers arising from violations of the Song-Beverly Credit Card Act, Cal. Civil Code § 1747.08 and have  
25 achieved excellent results, including, but not limited to, class benefits valued between \$40 and \$120  
26 against Gucci America, Inc. I have also represented thousands of consumer debit card holders against  
27 major commercial banks, including assuming a leadership role as prosecuting counsel in *In re: Checking*  
28 *Account Overdraft Litig., Larsen v. Union Bank and Dee v. Bank of the West*, MDL No. 2036 (S.D. Fl.).



1 I have filed similar actions against several other banks and credit unions across the country, which allege  
2 that each institution manipulated the processing of customer debit card purchases to maximize overdraft  
3 fees, including actions against Northwest Savings Bank (*Toth v. Northwest Savings Bank*, Case No. GD-  
4 12-8014 (Ct. Com. Pl. Allegheny Cnty.); Pinnacle National Bank (*Higgins v. Pinnacle Bank*, No. 11-  
5 C4858 (Cir. Ct. 12th Jud. Dist.); and Mission Federal Credit Union (*Taylor v. Mission Fed. Credit Union*,  
6 No. 37-2012-00092073-CU-BT-CTL, (Super. Ct. San Diego Cnty.)). Recently, I served as lead counsel  
7 in *Figueroa v. Capital One, N.A.*, in which the plaintiff alleged Capital One charged its accountholders  
8 illegal balance inquiry fees in connection with the use out-of-network ATMs. That case was settled on a  
9 class-wide basis for a total payment from defendant of \$13,000,000. *See Figueroa v. Capital One, N.A.*,  
10 No. 3:18-cv-00692 (S.D. Cal.), ECF No. 93 at 2.

11 21. I have been recognized as a semi-finalist as a “Top Corporate Litigation Attorney,” by the  
12 San Diego Daily Transcript in 2012, and I have been named a San Diego “Super Lawyer” every year since  
13 2015.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
15 true and correct, and that this declaration was executed on June 30, 2023, in San Diego, California.

16 Dated: June 30, 2023

**LYNCH CARPENTER, LLP**

17 By: /s/Todd D. Carpenter

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*Attorneys for Plaintiff and Class Counsel*

# EXHIBIT 1

# Keller | Postman

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# About Keller Postman

Keller Postman is a leading complex litigation firm for plaintiffs, specializing in mass actions. We represent consumers, employees, and veterans in class actions, mass torts, and mass arbitrations, at the trial and appellate levels, in federal and state courts.



## Our Mission

To aggressively pursue our clients' claims, en masse, against the entities that have harmed them by driving innovation in the practice of law, devising cutting-edge strategies that don't follow the standard playbook, conceiving novel arguments, and pursuing unparalleled excellence in everything we do.

## Our Approach

Serving hundreds of thousands of clients in litigation and arbitration, Keller Postman has prosecuted high-profile antitrust, privacy, product-liability, employment, and consumer-rights cases and secured substantial settlements for our clients. Our firm also acts as plaintiffs' counsel in high-stakes public-enforcement actions.

Keller Postman seeks out complicated cases and takes on groundbreaking legal challenges where our legal and strategic counsel can add significant value. Our innovative approach combines high-end legal expertise with best practices in business operations and technology to deliver superlative representation for plaintiffs.

Our greatest asset is our team of smart, dedicated professionals. Keller Postman lawyers honed their skills at AmLaw 100 law firms, national trial boutiques, corporate in-house legal departments, prestigious government posts, and successful business startups. Every member of our team shares a commitment to client service and a spirit of determination, dedication, creativity, and excellence.

### OUR TEAM

- 10 PARTNERS
- 20 ASSOCIATES
- 24 STAFF ATTORNEYS & COUNSEL
- 23 LEGAL SUPPORT TEAM MEMBERS
- 36 CLIENT SERVICES TEAM MEMBERS
- 30 CASE MANAGEMENT TEAM MEMBERS
- 40 BUSINESS, OPERATIONS & IT TEAM MEMBERS

### OUR OFFICES

- CHICAGO
- WASHINGTON, D.C.
- AUSTIN



# About Our Team

## Keller Postman is home to one of the most exceptional teams representing plaintiffs in the United States.

We're powered by a talented team with top-notch credentials and real-world experience. Our lawyers have litigated "bet the company" cases for plaintiffs and defendants, studied and taught at some of the top law schools in the country, served at the highest levels of government, and managed more than \$1 billion of litigation-related investments.

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THE FIRM COMPRISES NEARLY  
FIVE DOZEN LAWYERS  
AND MORE THAN  
125 PROFESSIONAL STAFF MEMBERS.

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### CLIENT SERVICES & CASE MANAGEMENT TEAM

We have established large, in-house client-services and case-management teams to serve our clients from the early stages of litigation to the final moments of settlement distributions. We expertly and efficiently cover all aspects of our cases, including client intake, case workup, and litigation at all levels of the judiciary.

### TECHNOLOGY, DATA & ANALYTICS TEAM

Keller Postman operates a dedicated, in-house technology, data, and analytics team, led by an accomplished graduate of the Massachusetts Institute of Technology. Our firm utilizes cutting-edge technology and processes to ensure successful litigation for thousands of claims at once.

OF KELLER  
POSTMAN'S  
PARTNERS AND  
ASSOCIATES:

# 80%

hail from national defense-oriented law firms, and 73% from AmLaw 100 firms and elite trial boutiques.

# 63%

were law clerks at a federal court of appeals or district court.

# 70%

attended a Top 15 U.S. News ranked law school.

# 4

of Keller Postman's partners were law clerks at the Supreme Court of the United States.

# Why Keller Postman

## CLIENTS FIRST APPROACH

Our primary goal is always to achieve exceptional results for our clients—we are tireless in our pursuit of justice on their behalf. We move with speed and efficacy. We genuinely care about each individual client, and we demonstrate that by providing outstanding client service.

## FEARLESS INNOVATION

We drive innovation in the practice of law, sharing an ambition to do things differently—and to do them better. It is not enough merely to advocate for our clients. We prize creativity, develop and harness our own technology, and commit the resources necessary to succeed.

## COMMITTED TO EXCELLENCE

We pursue unparalleled excellence in everything we do. We challenge ourselves to perform at the highest level and deliver outstanding results. At every level of the firm, we take pride in serving as trusted advisors and provide exceptional client service.

## STRENGTH TO WIN

Our team has the skills and resources to go head-to-head with the largest, most well-resourced corporations in the country. Plus, our lawyers have experience on both sides of the courtroom and the negotiating table, allowing us the unique ability to anticipate our opponents' moves.

## Industry Recognition

### THE NEW YORK TIMES

Keller Postman is driven “by a legal reformist spirit and entrepreneurial zeal.”

### WALL STREET JOURNAL

“[Keller Postman is calling] companies on their bluff and saying, ‘You think you’re going to get out of liability by going to arbitration? We’ll show you what the arbitration system can do when you face tens of thousands of claims.’”

### THE AMERICAN LAWYER

“Part of the vision was to make plaintiff-side work attractive to folks with clerkship and Big Law experience like [Keller Postman’s] founders. So far, the approach seems to be working.”

### LAWDRAGON MAGAZINE

“Accelerated by a well-curated culture of excellence, innovation, and service, Keller Postman [leads] litigation across some of the biggest product liability MDLs in history.”



# Awards

We're proud of the recognition we've received as leaders of the plaintiffs' bar.

## ELITE TRIAL LAWYERS LAW FIRM OF THE YEAR

In 2021, the National Law Journal named Keller Postman the Trial Strategy Innovation Law Firm of the Year. And in 2022, Keller Postman was named the Privacy & Data Breach Law Firm of the Year.



## ELITE TRIAL LAWYERS RISING STARS & ELITE WOMEN

Our lawyers have been named 2021 & 2022 Elite Trial Lawyers' Rising Stars of the Plaintiffs' Bar and 2022 Elite Trial Lawyers' Elite Women of the Plaintiffs' Bar.

## NATIONAL LAW JOURNAL & AMERICAN LAWYER TRAILBLAZERS

Our team has been named 2021 and 2022 Plaintiffs' Lawyers Trailblazers and 2022 Employment Law Trailblazers by the National Law Journal. Our lawyers have also been named 2022 Midwest Trailblazers and South Trailblazers by American Lawyer.



## LAW360 MVP

Managing Partner Warren Postman was named the 2022 Law360 Technology MVP of the Year and the 2021 Law360 Employment MVP of the year.



## WOMEN WORTH WATCHING IN LEADERSHIP

Partner Zina Bash is named to the 2022 Women Worth Watching in Leadership by Profiles in Diversity Journal.



## SUPER LAWYERS®

Thirteen of Keller Postman's Attorney's were recognized by Illinois Super Lawyer for 2023. Four Partners as Super Lawyers and nine as Rising Stars.

## KELLER POSTMAN ATTORNEYS NAMED TO MANY EXCLUSIVE LEGAL DIRECTORIES,

including Chambers & Partners, National Trial Lawyers Top 100, Super Lawyers, Best Lawyers, and Lawdragon's 500 Leading Lawyers in America, 500 Leading Plaintiff Consumer Lawyers, and Leading Plaintiff Financial Lawyers.





# Practice Areas



# Practice Areas

At Keller Postman, we represent plaintiffs in complex litigation matters. Our diverse team has experience litigating cases across a wide variety of practice areas, which allows us to be flexible and responsive to our clients' needs. Regardless of the substantive claims involved, one thing is true about all our cases: they give us the opportunity to use our unique skills and resources to help our clients solve problems and vindicate their rights.

## Antitrust

We believe competition stimulates innovation, sparks improvements of products and services, and leads to more efficient means of delivery and production. We fight anti-competitive conduct through bringing antitrust claims against some of the largest and best-known corporations in the world—and we are confident in our team's vast experience, knowledge and capabilities to successfully litigate these cases.

## Arbitration

We help our clients level the playing field when contracts written by defendants force them into arbitration. Our team has successfully represented plaintiffs in complex arbitration proceedings throughout the United States, including wage-and-hour disputes, employee misclassification claims, consumer product disputes, and other types of contract-related disputes.

## Consumer Protection

We safeguard consumers from unfair corporate practices, corporate malfeasance, and any type of deceptive business practices. We work to protect consumer rights through arbitration and class action under federal and state laws. And our work specifically focuses on regulating emerging and increasingly dominant tech-based corporations that often push boundaries to take advantage of consumers in new or developing areas of law.

## Privacy

Technology continues to evolve and intertwine itself with our day-to-day. With these technological advances come a greater threat to privacy and data protection. Keller Postman is committed to protecting that fundamental right to privacy. Our attorneys' legal acumen matches our technical expertise, which allows us to skillfully litigate even the most complicated privacy claims.

## Product Liability

With extensive experience handling claims associated with products (including with suppliers, manufacturers, and sellers), our attorneys play key roles in some of the most significant product liability multidistrict litigation proceedings in the country. Our team continues to be selected to lead federal and state product-liability litigation through appointments to leadership positions.

## Public Institutions

We represent States, municipalities, and other government entities as plaintiffs in legal actions for the benefit of their constituents. In line with our commitment to the public good, our practice provides pivotal support—in terms of expert attorneys and resources—to public entities for the benefit of their people. We have developed the expertise to help public institutions navigate the legal landscape they face every day.

# Case Highlights



# Case Highlights

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## AMAZON ALEXA MASS ARBITRATION

As reported by The Wall Street Journal, Keller Postman filed roughly 75,000 individual arbitration demands on behalf of Amazon Alexa users who had been recorded without permission. Faced with arbitrating so many individual claims at once, in May 2021, Amazon eliminated its arbitration clause, allowing consumers (for the first time) to pursue their rights in court. Keller Postman's arbitration practice has caused the world's largest retailer to shift away from forced arbitration—a once-unthinkable result that significantly benefits consumers.

After individual and class-action lawsuits against Amazon became permissible, Keller Postman filed a federal antitrust lawsuit against Amazon for the same illegal conduct (the very first lawsuit filed against the company since it began including an arbitration clause into contracts with consumers). In *De Coster et al. v. Amazon.com, Inc.*, Keller Postman represents individual consumers who were charged unfairly high prices by Amazon because of the company's most favored nation clause against third-party merchants. Our firm was also named Co-Lead Class Counsel. In conjunction with the filing of this lawsuit, Keller Postman also separately filed another 75,000 individual arbitration demands for related claims.

The matters have resolved. This matter is significant because of Amazon's move to drop its arbitration clause nationwide and restore access to the courts for over 140 million Amazon consumers. The unprecedented—and astounding—rescission by Amazon of its arbitration requirement marked a significant victory for consumers and access to justice. Across all of Keller Postman's arbitration matters to date, we've secured millions in settlements for more than 500,000 individuals.

## DE COSTER V. AMAZON.COM INC. & FRAME-WILSON V. AMAZON.COM INC.

Leadership Role: Keller Postman Partner Zina Bash named Interim Co-Lead Class Counsel in *De Coster v. Amazon.com Inc.*

Keller Postman filed a federal antitrust lawsuit against Amazon—*De Coster et al. v. Amazon.com Inc.*—after the company dropped its arbitration clause as a result of one of Keller Postman's largest arbitration campaigns representing more than 75,000 consumers in simultaneous individual arbitrations. In this lawsuit, Keller Postman represents a proposed class of Amazon shoppers alleging that the Amazon platform's unlawful imposition of 'most favored nation' pricing restrictions against third-party sellers blocks competition from other e-commerce marketplaces and inflates the prices paid by customers. The plaintiffs' allegation is that Amazon has exploited its market power to inflate prices on its own platform—and across the internet. Given the scale of this antitrust violation, the suit has the potential to be one of the largest antitrust cases in history.

Keller Postman later filed *Frame-Wilson v. Amazon.com Inc.* on behalf of individuals who purchased products from Amazon competitors (such as Ebay). These plaintiffs allege that because Amazon distorted market prices on competitor seller sites through its anticompetitive conduct, they paid far higher prices for their merchandise.

# Case Highlights Continued:

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## INTUIT MASS ARBITRATION

Through deceptive web tactics, Intuit tricked thousands of lower-income Americans into paying to file taxes through TurboTax, though they were eligible to file for free. Faced with a putative consumer class action on behalf of 19 million consumers, Intuit compelled the dispute to individual arbitration. Keller Postman then filed individual arbitration demands at AAA for approximately 200,000 of those consumers.

In response, Intuit sought to send most of those consumers to small claims court and delay the arbitrations. In *Intuit, Inc. v. 9,933 Individuals*, the LA Superior Court denied Intuit's motion to force our clients' claims into small-claims court. It also rejected Intuit's argument that California's SB 707—which imposes severe penalties on companies that refuse to comply with their own arbitration agreements—is preempted. At oral argument, Judge Terry Green said Keller [Postman] deserves “a toast. Good work.”

Intuit then tried to propose a settlement in the class action it had already compelled to arbitration. Our firm objected, arguing that Intuit should not be able to use a class-action settlement to frustrate individual class members' efforts to bring individual arbitrations against the company. Intuit's proposed \$40 million class settlement was denied. In his opinion, Judge Charles Breyer directly addressed the significance of this matter: “This case illustrates the urgent need for Congress to reverse the U.S. Supreme Court's arbitration jurisprudence, which gives corporate defendants an unfair advantage over consumers, and undermines the class's ability to secure a more significant monetary result.”

Furthermore, this is Keller Postman's largest “mass arbitration” matter to date – and an unprecedented number of simultaneous individual arbitrations against a single defendant. As litigation continued throughout 2021, the American Arbitration Association also implemented new arbitral rules for “multiple consumer filings” as a result of Keller Postman's ability to arbitrate so many matters simultaneously.

## BARR V. DRIZLY, LLC F/K/A DRIZLY, INC. ET AL

This class action lawsuit was filed in August 2020 against Drizly, the largest online alcohol delivery marketplace in North America. The complaint alleged that Drizly's security measures were deficient in protecting consumers' personal information and that the company was slow to report the breach. As a result of the data breach, customers were exposed to fraud, identity theft, and other injuries.

Drizly moved to compel arbitration. However, after Keller Postman made an appearance with co-counsel, Drizly agreed to settlement terms within a week. This matter further emphasizes how Keller Postman's innovative strategy in arbitration has come to the aid of consumers whose private information was stolen. We've leveled up our arbitration strategy through making appearances with co-counsel partners after defendants compelled arbitration. We're extremely proud that our firm's reputation in mass arbitration has helped to swiftly secure favorable resolutions for both consumers and employees—and has also prevented defendants from using arbitration to evade liability.

# Case Highlights Continued:

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## STATE OF TEXAS V. GOOGLE LLC

Leadership Role: Partner Zina Bash & Partner Ashley Keller are Co-Lead Counsel for our State clients

Keller Postman represents the States of Texas, Idaho, Indiana, Mississippi, North Dakota, South Dakota, and South Carolina in the States' antitrust litigation against Google. Filed in the U.S. District Court for the Eastern District of Texas (and subsequently centralized in the Southern District of New York with similar private cases), the suit alleges that Google monopolized products and services used by advertisers and publishers in online-display advertising. The complaint also alleges that Google engaged in false, misleading, and deceptive acts while selling, buying, and auctioning online-display ads. Google also entered into an unlawful agreement with rival Facebook to maintain control of the marketplace for header bidding. These anticompetitive and deceptive practices demonstrably diminished publishers' ability to monetize content, increased advertisers' costs to advertise, and directly harmed consumers.

Google sought dismissal of the entire case, arguing that its conduct was lawful and that its success was merely a "product of innovation," among other forced justifications. But on September 13, 2022—after Keller Postman Partner Ashley Keller delivered a momentous oral argument—the Court largely rejected those arguments, allowing the States' claims of monopolization, attempted monopolization, and tying to proceed to discovery. We are proud of this result, and eager and ready to push these claims forward on behalf of the States to discover and expose the full magnitude of Google's wrongdoing and restore free competition to the multibillion-dollar ad display marketplace.

## STATE OF TEXAS V. META PLATFORMS INC.

Leadership Role: Partner Zina Bash is Lead Counsel for the State of Texas

Keller Postman represents the State of Texas in a lawsuit against Facebook parent Meta Platforms Inc. for its decade-long use of facial-recognition technology to exploit Texans' biometric information in violation of Texas law. The suit—State of Texas v. Meta Platforms LLC, f/k/a Facebook, Inc.—alleges that the social media giant, formerly known as Facebook, unlawfully captured Texans' biometric identifiers for a commercial purpose without informed consent, disclosed those identifiers to others, and failed to destroy them within a reasonable time—all in violation of the Texas Capture or Use of Biometric Identifier Act ("CUBI"). The State also alleges that Facebook engaged in false, misleading, and deceptive acts and practices in violation of the Texas Deceptive Trade Practices-Consumer Protection Act. The suit seeks civil penalties in the hundreds of billions of dollars.

According to the complaint, for more than a decade, Facebook built an artificial-intelligence empire on the backs of Texans by deceiving them while capturing their most intimate data, thereby putting their well-being, safety, and security at risk. Filed in the state district court in Marshall, TX, the suit seeks civil penalties in the hundreds of billions of dollars.

Attorney General Ken Paxton emphasized the significance of this matter in his statement: "Facebook has been secretly harvesting Texans' most personal information—photos and videos— for its own corporate profit... Texas law has prohibited such harvesting without informed consent for over 20 years. While ordinary Texans have been using Facebook to innocently share photos of loved ones with friends and family, we now know that Facebook has been brazenly ignoring Texas law for the last decade."

# Case Highlights Continued:

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## TOPDEVS, LLC ET AL V. LINKEDIN CORPORATION

Keller Postman filed a class action against LinkedIn—TopDevs, LLC et al v. LinkedIn Corporation—on behalf of users of LinkedIn’s advertising platform. LinkedIn admitted in August 2019 that it had inflated video view and ad impression metrics for more than 418,000 advertisers, who overpaid for their campaigns as a result. The suit alleges that LinkedIn was aware of these metric errors and, in fact, reports rampant non-genuine metrics that inflate the prices for all types of advertising across the LinkedIn platform. Specifically, the suit alleges that, despite aggressively marketing its platform as a premium product that allows marketers to advertise to highly engaged audiences of working professionals, LinkedIn’s platform is plagued by automated, fraudulent, mistaken, and miscalculated engagement with LinkedIn ads, which inflates the prices for all types of advertising on the LinkedIn platform.

This lawsuit is intended to not only stop LinkedIn’s allegedly unfair and fraudulent business practices but also increase transparency into whether LinkedIn’s advertising metrics truly reflect user engagement with paid advertisements. The matter therefore raises important issues regarding overall transparency in online marketing.

## FISHON ET AL V. PELOTON INTERACTIVE, INC.

To secure beneficial network effects in a nascent and growing industry of home-based studio classes, Peloton promised consumers an “ever-growing” library. But Peloton was forced to remove the majority of its content in March 2019 following a copyright infringement lawsuit by members of the National Music Publishers Association. Keller Postman filed approximately 2,700 individual arbitrations on behalf of customers who were promised an “ever-growing” class library. Several arbitrations moved forward, and decisions were issued in favor of the plaintiffs. In response, Peloton refused to abide by the terms of its own arbitration clause and ignored the American Arbitration Association’s requirement that it pay filing fees for demands seeking less than \$10,000.

AAA barred Peloton from using its arbitral forum and announced that “either party may choose to submit its dispute to the appropriate court for resolution.” Keller Postman, in partnership with attorneys from DiCello Levitt Gutzler, filed a class-action lawsuit in the U.S. District Court for the Southern District of New York, Fishon et al v. Peloton Interactive, Inc.

Judge Lewis Liman denied Peloton’s motion to dismiss the case. This matter is important, because Peloton affirmatively chose to disregard its own arbitration agreement and opted instead for the class action. That move reflects the company’s true intention behind the arbitration clause within its Terms of Service: not as an effective method for customers to pursue claims, but as an escape route from liability. Keller Postman’s ability to push forward arbitrations on a mass scale led to Peloton’s decision to voluntarily submit itself to class action litigation. And now the firm can pursue consumer-protection remedies on behalf of all affected Peloton subscribers.

## Case Highlights Continued:

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### MITCH OBERSTEIN ET AL V. LIVE NATION ENTERTAINMENT, INC. ET AL & SKOT HECKMAN ET AL V. LIVE NATION ENTERTAINMENT INC. ET AL

Quinn Emanuel Urquhart & Sullivan filed a class-action lawsuit, *Mitch Oberstein et al v. Live Nation Entertainment, Inc. et al* (formerly *Olivia Van Iderstine et al v. Live Nation Entertainment, Inc. et al*). Ticketmaster customers allege that Ticketmaster and Live Nation used their dominance to inflate ticket prices. After Ticketmaster moved to force consumers to individually arbitrate their disputes, Keller Postman joined as co-counsel with Quinn Emanuel. Later, the district court granted Ticketmaster's motion to compel arbitration, and the order compelling arbitration is on appeal to the Ninth Circuit.

Ticketmaster next published a new arbitration clause for consumers in its terms and conditions that designated a new dispute resolution forum called New Era ADR. Keller Postman filed a new class action against Ticketmaster in January 2022—*Skot Heckman et al. v. Live Nation Entertainment Inc. et al.*—on behalf of individuals subject to the new arbitration agreement. Ticketmaster moved to compel arbitration under the new arbitration agreement. We believe the new arbitration agreement is unconscionable and unfair to consumers. The court has granted our motion for discovery into whether an enforceable arbitration agreement exists, and we will work to uncover the business dealings that exist between Ticketmaster and New Era ADR to prove that this forum is unfair to consumers. Regardless of Ticketmaster's evasive tactics, we will rely on our firm's legal and operational innovation to see that corporations can't change the rules to avoid liability.

### BIPA LITIGATION OVERVIEW

Keller Postman represents thousands of clients in the state of Illinois who assert violations of the Illinois Biometric Information Privacy Act (BIPA). Our clients' biometric information has been wrongfully captured without consent by employers and technology platforms. We have been litigating cases against numerous entities, including against MOD Pizza, Vonachen Service, Inc., Heartland Beef, Inc., Wireless Vision LLC, and Sydell Hostel Manager LLC, d/b/a Freehand Chicago.

BIPA is one of the country's most stringent biometric privacy laws, prohibiting private companies from capturing, obtaining, storing, transferring, and/or using the biometric identifiers and/or information (such as fingerprints) of another individual for any purpose without first providing such individual with certain written disclosures and obtaining written consent. BIPA requires anyone who records biometric information to get informed consent before doing so and to create a publicly available retention policy so people can be assured that their sensitive biometric data won't be disclosed without their knowledge.

Although BIPA has existed for more than a decade, companies are still capturing biometric information (which can easily be used to perpetrate identity fraud in the wrong hands) in Illinois without explaining the implications of that capture to their employees and customers. While corporations often loosely interpret new laws, Keller Postman is actively influencing the enforceability of these laws, setting a clear path forward for those seeking reprieve from improper collection and storage of private information.

#### Results:

- *Soper v. Sydell Hostel Manager LLC*: Secured \$250,000 settlement for class of ~300
- *Pratz v. MOD Super Fast Pizza, LLC*: Secured \$1.3 million settlement for class of ~1,134
- *Corey v. Wireless Vision, LLC.*: Secured \$279,000 settlement for class of ~300



# Case Highlights Continued:

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## DATA BREACH LITIGATION OVERVIEW

Keller Postman is leading numerous class actions on behalf of hundreds of thousands of individuals whose sensitive personal information—including social security numbers, health/medical records, and financial information—has been stolen. The lawsuits accuse defendants of negligently handling consumers' personal data and private information. Defendants failed to take appropriate precautions to protect this data, did not appropriately and speedily resolve data breach occurrences, and also failed to adequately recompense the plaintiffs.

These class actions include:

- William Biscan v. Shields Health Care Group Inc. (Named Interim Co-Lead Class Counsel)
- Gilbert v. AFTRA Retirement Fund et al.
- Greco v. Syracuse ASC, LLC d/b/a Specialty Surgery Center of Central New York
- Harrington v. Elekta, Inc.
- Miller v. Syracuse University
- Valencia v. North Broward Hospital District d/b/a Broward
- Esposito et al v. Refuah Health Center, Inc.
- Garner v. Missouri Delta Medical Center
- Abbott et al v. Taylor County Hospital District Health Facilities Corporation d/b/a Taylor Regional Hospital
- Cain et al v. Lavaca Medical Center; Crawford v. Ascension Michigan
- Crawford v. Ascension Michigan
- Shepherd v. Cancer and Hematology Centers of Western Michigan, P.C.

Results:

- Hestrup et al. v. DuPage Medical Group. Ltd. d/b/a DuPage Medical Group: Secured \$3 million settlement; Partner Seth Meyer was named Interim Class Counsel
- Alexander, et al. v. Otis R. Bowen Center for Human Services, Inc.: Received preliminary approval for \$1.55 million settlement
- Hall, et al. v. AspenPointe, Inc., et al.: Secured \$1.3 million settlement

## ZANTAC (RANITIDINE) MULTIDISTRICT LITIGATION

Leadership Role: Partner Ashley Keller chairs the Law & Briefing Committee and is a member of the Plaintiffs' Executive Committee

In late 2019, public watchdogs discovered that ranitidine (branded as "Zantac") degrades into the cancer-causing compound NDMA. The FDA pulled it from the market. The Zantac MDL coordinates suits accusing Pfizer Inc., Sanofi SA, Boehringer Ingelheim Pharmaceuticals Inc., and GlaxoSmithKline LLC—as well as generic makers, distributors, pharmacies, and others in the supply chain—of causing thousands of plaintiffs to develop cancer. The importance of this matter lies in the severity of the plaintiffs' claims and the number of injured plaintiffs given the widespread use of these drugs before they were pulled from the shelves.

The Keller Postman team has briefed and argued four rounds of motions to dismiss; amended the master complaints; litigated three appeals through oral argument; briefed and argued key discovery fights; and briefed and argued Daubert motions on general causation. We have also worked up bellwethers for trial, collecting their medical records, responding to discovery, and so forth.

# Case Highlights Continued:

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## ZANTAC STATE COURT LITIGATION

In the Zantac MDL, plaintiffs' leadership has made a conservative choice to only pursue claims for plaintiffs who suffer from at least one of five designated cancers allegedly caused by Zantac consumption (including bladder, gastric, esophageal, liver, and pancreatic cancer). But Keller Postman is leading the charge on aggressive litigation in state court, largely for plaintiffs who suffer from non-designated cancers—and have no other avenue to pursue their claims. We also represent a number of clients with designated cancers in state court. Our firm has filed claims in California, Delaware, Illinois, and Pennsylvania. No other plaintiffs' firm involved in state-side Zantac litigation has attempted to take on such a large number of claimants in this many jurisdictions.

During a hearing on August 9, 2022 in the Illinois case Bayer v. Boehringer Ingelheim Pharm., Keller Postman received a favorable Frye decision when the court denied defendants' motions to exclude Keller Postman's expert on general causation for esophageal and kidney cancer. This is the first ruling in the country on causation and is especially important in vindicating our firm's decision to bring kidney cancer cases, a non-designated cancer.

## 3M COMBAT ARMS EARPLUGS MULTIDISTRICT LITIGATION

Leadership Role: Partner Nicole Berg sits on the Law & Briefing Subcommittee; Partner Ashley Keller is Counsel of Record on the first two appeals

The 3M Combat Arms Earplugs MDL involves claims by military servicemembers against 3M for hearing loss and tinnitus caused by faulty earplugs. Roughly 270,000 servicemembers have lodged claims against 3M related to the earplugs, making this the largest MDL in history.

The court appointed Keller Postman Partner Nicole Berg to the plaintiffs' leadership team as a member of the Law & Briefing Subcommittee. Berg and her team represented one of the 25 bellwether plaintiffs at trial and have played an integral role in drafting responses to MDL-wide dispositive motions and in briefing key legal issues in many bellwether trials. Keller Postman is counsel of record on 3M's appeals of bellwether verdicts. With the bellwether trials complete, the Court ordered four "waves" of 500 cases each to proceed to trial. Keller Postman is currently preparing wave cases for trial.

In July 2022, several "Aearo" subsidiaries—but not 3M itself—filed for bankruptcy, seeking an injunction in favor of 3M to halt litigation in the MDL entirely. Keller Postman responded creatively and aggressively. Specifically, we won a preliminary injunction under the All Writs Act from the MDL Court preventing 3M from trying to relitigate long-settled MDL rulings in bankruptcy. We participated in the bankruptcy court, presenting an expert witness who testified that 3M was facing \$100 billion in liability, arguing that if 3M obtained an injunction to halt MDL litigation, it should also be enjoined from issuing dividends and share buybacks. The bankruptcy court fully denied 3M's injunction request.

In August 2022, Keller Postman filed a bombshell fraudulent transfer complaint against 3M, asking the MDL Court to stop 3M from dissipating its assets by spinning off its healthcare business, paying dividends, and buying back stock (all violations of the Florida Uniform Fraudulent Transfer Act).

Most recently, Judge Rodgers issued a 22-page order in which she granted plaintiffs' motion for summary judgment on 3M's "full and independent liability" for earplug claims, issuing an unprecedented sanction and formally nullifying 3M's bankruptcy scheme.

# Case Highlights Continued:

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## ACETAMINOPHEN —ASD-ADHD MULTIDISTRICT LITIGATION

Leadership Role: Partner Ashley Keller is Co-Lead Counsel and a member of the Plaintiffs' Executive Committee along with Partner Ashley Barriere, who leads the Law and Briefing Subcommittee.

Studies over the last decade have shown that consuming acetaminophen while pregnant increases a child's risk for autism spectrum disorder (ASD), attention deficit hyperactivity disorder (ADHD), and other developmental disorders related to infant exposure during pregnancy. Parents on behalf of their injured children are bringing claims against makers of generic store brand acetaminophen for failing in their duty to adequately warn of the hazards of prenatal exposure to acetaminophen.

According to the complaints, acetaminophen has long been marketed as the safest, and the only appropriate, over-the-counter pain relief drug on the market for pregnant women. However, increasing experimental and epidemiological research shows that prenatal exposure to acetaminophen alters fetal development, which significantly increases the risks of neurodevelopmental disorders. For example, in a study at Johns Hopkins School of Public Health, the risk of autism was three times higher for children whose mothers took the most Acetaminophen. Since 2013, there have been six European birth cohort studies examining over 70,000 mother-child pairs, showing the association between prenatal use of acetaminophen and ASD. And numerous studies over the last decade have shown that long-term maternal use of acetaminophen during pregnancy is substantially associated with ADHD.

Given the strong science, Keller Postman has filed claims in Nevada, California, and Washington, with far more claims to be filed in the following weeks and months. This matter is significant, because more than 65% of women in the United States use acetaminophen during pregnancy and have been reassured repeatedly of its safety (despite the widespread, long-term scientific evidence showing the high risk of developmental disorders because of consuming when pregnant). We anticipate that this will be one of the largest multidistrict litigations in the history of the United States.

Keller Postman has been at the forefront of this fast-growing mass tort since our team first uncovered the Consensus Statement in Nature highlighting the increasing evidence linking prenatal acetaminophen exposure to autism and ADHD. Our team also recently defeated Walmart's motion to dismiss on preemption grounds, overcoming the single largest barrier to plaintiffs' ultimate recovery.

## NECROTIZING ENTEROCOLITIS/INFANT-FORMULA LITIGATION

Keller Postman is leading the state-side litigation against Abbot and Mead—the makers of Enfamil and Similac infant formula and fortifiers—for their role in causing preterm infants to develop necrotizing enterocolitis (NEC), a dangerous inflammation of the intestines that can lead to rupture and death. The lawsuits allege that defendants (including Mead Johnson & Company LLC, Mead Johnson Nutrition Company, and Abbot Laboratories) falsely marketed their infant formulas as “medically endorsed” and “nutritionally equivalent” to mother's breast milk when the formulas are linked to the development of necrotizing enterocolitis.

We are bringing claims on behalf of families in state courts across the country, with cases filed in Illinois (Madison County, Cook County, and St. Clair County), as well as in state courts in California, Pennsylvania, and Missouri. This underscores the vast scope of the harm that the defendants have inflicted on these most vulnerable victims throughout the United States.

## Case Highlights Continued:

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This matter is significant, namely due to the obvious vulnerability of the young victims and the severity of NEC and its long-term effects. Despite mounting legal claims against the companies based on scientific evidence and research that has existed for decades, as well as safer alternatives like donor milk and human-milk based formula, these defendants continue to sell these products and encourage them to be distributed to premature infants across the country. Through this litigation and other advocacy efforts, we hope to shed more light on the dangers of these products and to equip other parents with the information they need to avoid putting their infants' health at risk.

### CAMP LEJEUNE WATER CONTAMINATION LITIGATION

Keller Postman represents thousands of veterans, military family members, and other civilians who were poisoned by the water at U.S. Marine Corps Base Camp Lejeune. As a result of consuming, bathing in, cooking with, and swimming in this contaminated water, our clients allege that they have developed diseases and chronic conditions, including cancers of the bladder, kidney, and liver, non-Hodgkin's lymphoma, Parkinson's disease, and multiple myeloma – among many other ailments.

Keller Postman also played a significant role in lobbying for the passage of The Camp Lejeune Justice Act, which was signed into law by the President on August 10, 2022. Keller Postman Partner Zina Bash played a particularly meaningful role in advancing the Justice Act. Having previously worked at the highest levels of the government, Bash leveraged her connections in Washington to help the bill make its way through Congress. And within minutes of the bill-signing, Keller Postman began filing actions against the U.S. government under the Camp Lejeune Justice Act.

This matter is significant, because over one million individuals were exposed to the toxic water at Camp Lejeune over a 30-year period, from the 1950s to the 1980s. Though the government became aware of the contamination in the early 1980s, it took years to remedy it and decades to warn individuals who had been exposed. Camp Lejeune's poisonous water has also been linked to widespread birth defects and high rates of stillborn babies. In fact, there were so many stillborn babies in Camp Lejeune during that time that a cemetery near the base became known as "Baby Heaven." What happened at Camp Lejeune is a terrible tragedy that could have been prevented. The Camp Lejeune Justice Act has been a long time coming, and it is our privilege to fight for justice on behalf of our clients.

Keller Postman has played a leading role in advocating for the passage of the Camp Lejeune Justice Act. After the Act became law, our firm helped clients sign up for claims under the Act and file them with the Navy and in Court. In fact, within minutes of the bill-signing, we filed the first actions against the government under the Justice Act to obtain compensation for victims.

### PARAGARD IUD MULTIDISTRICT LITIGATION

Leadership Role: Partner Nicole Berg sits on the Plaintiffs' Executive Committee

The Paragard IUD MDL coordinates suits accusing Teva Pharmaceuticals USA, Inc., Teva Women's Health, Inc., The Cooper Companies Inc., and CooperSurgical Inc. of failing to warn users of the risks posed by the Paragard copper intrauterine device (IUD). The plaintiffs allege that their Paragard IUDs broke apart, leaving behind pieces of the device, which sometimes embedded in their uterus. The breakage caused serious complications and injuries, including surgeries to remove the broken pieces of the device, infertility, and pain.

## Case Highlights Continued:

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In September 2021, Partner Nicole Berg argued against defendants' motion to dismiss the claims of plaintiffs in this MDL. Two months later, Judge Leigh Martin May sided with plaintiffs and denied defendants' motion on preemption, shotgun pleading, Rule 12, and Rule 9(b), finding that "factual underpinnings for the design defect claims and detailed allegations about the defendants' failure to warn" were sufficient to state a claim. The discovery process has begun.

### ONGLYZA AND KOMBIGLYZE XR MULTIDISTRICT LITIGATION

Leadership Role: Partner Ashley Barriere appointed to the Plaintiffs' Steering Committee and leads the Law & Briefing Committee

This MDL involves individuals who took Onglyza (saxagliptin) and Kombiglyze XR (saxagliptin and metformin) to treat Type 2 diabetes. The plaintiffs represented by Keller Postman allege that the drugs caused serious cardiac complications. Defendants Bristol-Myers Squibb and AstraZeneca began selling the drugs in 2009 and 2010, before completing a cardiac risk study recommended by the U.S. Food and Drug Administration. The study was completed in 2013 and showed that saxagliptin users had a significantly increased risk of hospitalization due to heart failure.

We're proud of Partner Ashley Barriere's position on plaintiffs' leadership in this MDL. Our firm values empowering both young attorneys and female leaders to take on pivotal roles.

### IN RE JOHNSON & JOHNSON AEROSOL SUNSCREEN MARKETING, SALES PRACTICES & PRODUCTS LIABILITY LITIGATION

Leadership Role: Keller Postman named Interim Class Counsel

Keller Postman filed a class action against Johnson & Johnson subsidiary Johnson & Johnson Consumer, Inc. (J&J)—Dominguez et al v. Johnson & Johnson Consumer—on behalf of purchasers of certain Aveeno and Neutrogena sunscreens that have dangerous and unacceptable levels of the known cancer-causing chemical, benzene. Benzene, which is often found in crude oil and identified by the smell associated with gasoline, is classified as a human carcinogen by the United States Department of Health and Human Services, and a Group 1 compound (i.e. "carcinogenic to humans") by the World Health Organization and the International Agency for Research on Cancer.

In October 2021, the Judicial Panel on Multidistrict Litigation approved centralizing in Florida the federal court lawsuits accusing Johnson & Johnson of selling sunscreen products tainted with benzene. The consolidated litigation is In re Johnson & Johnson Aerosol Sunscreen Marketing, Sales Practices & Products Liability Litigation.

# Attorney Biographies





# Warren Postman

## *Managing Partner*

Warren combines a deep understanding of the civil litigation system with broad substantive expertise to solve complex litigation challenges for the firm's clients.

Warren is a champion for plaintiffs in mass action litigation. His vision to boldly employ cutting-edge technology and innovation to empower plaintiff-side litigants has given hundreds of thousands of ordinary Americans a realistic avenue to vindicate their rights.

Warren spearheaded the development of the firm's revolutionary mass arbitration practice, which pursues individual arbitrations for thousands of individuals whose claims are subject to arbitration clauses with class-action waivers. The firm aggressively pursues individual arbitrations for tens of thousands of clients simultaneously and, as described by the New York Times, has left defendants "scared to death." Warren has won numerous precedent-setting victories requiring defendants to comply with their obligation to arbitrate under agreements they drafted.

Due in large part to the arbitration practice Warren has built at Keller Postman, the rise of "mass arbitrations" has been one of the most significant recent developments in civil litigation. In the last four years alone, Keller Postman has secured millions in settlements for more than 500,000 individual clients.

Before joining Keller Postman, Warren was Vice President and Chief Counsel for Appellate Litigation at the U.S. Chamber Litigation Center. In that role, he managed appellate strategy for the U.S. Chamber of Commerce, which participates in more than 150 cases each year to shape the law on a wide range of issues affecting businesses. Working closely with senior in-house lawyers at some of the world's largest companies, Warren gained unique insight into the dynamics and trends that shape business litigation.

Warren was previously an attorney in the Issues & Appeals practice at Jones Day, where he helped guide trial and appellate strategy in some of the firm's most complex and high-stakes cases.

Warren served as a law clerk for Justice David H. Souter at the Supreme Court of the United States and Judge William A. Fletcher at the U.S. Court of Appeals for the Ninth Circuit. He graduated magna cum laude from Harvard Law School, where he was Articles Editor on the Harvard Law Review, and graduated magna cum laude and Phi Beta Kappa from Brandeis University.

### EDUCATION

J.D., Harvard Law School  
B.S., Brandeis University

### CLERKSHIPS

Hon. David H. Souter, Supreme Court of the United States  
Hon. William A. Fletcher, U.S. Court of Appeals for the Ninth Circuit

### AWARDS

Chambers & Partners Band 1 District of Columbia Ranking (2022)  
Law360 Technology MVP of the Year (2022)  
Law360 Employment MVP of the Year (2021)  
National Law Journal's Plaintiffs' Lawyers Trailblazers (2021)  
Lawdragon's 500 Leading Lawyers in America (2021, 2022)  
Lawdragon's Leading Plaintiff Financial Lawyers (2021, 2022)  
National Trial Lawyers' Top 100 (2021, 2022)  
Super Lawyers D.C. (2022, 2023)

### CONTACT

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202.918.1870



# Albert Pak

## *Associate*

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Albert represents clients in a range of disputes, including consumer protection and antitrust matters.

At Keller Postman, Albert has represented tens of thousands of people in court and in arbitration. He represents individuals whose privacy rights were violated by devices enabled with Alexa, Amazon's smart home technology. He also represents individual consumers who were charged unfairly high prices by Amazon in light of Amazon's most favored nation clause against third-party merchants.

Before joining Keller Postman, Albert was an associate at Kellogg, Hansen, Todd, Figel & Frederick PLLC in Washington, D.C., where he represented plaintiffs and defendants in federal and state courts at the trial and appellate levels. His practice at Kellogg Hansen focused on appellate, commercial, securities, and antitrust litigation.

Among his notable matters during his time at Kellogg, Albert supported litigation in an antitrust class action against Sutter Health, which operates 24 acute care hospitals in Northern California. The case, *UFCW & Employers Benefit Trust v. Sutter Health et al.*, settled on the eve of trial for \$575 million. In litigating that case and others, Albert has taken and defended multiple depositions, briefed dispositive motions, and presented oral argument in trial and appellate courts.

Albert served as a law clerk for Judge John M. Rogers of the U.S. Court of Appeals for the Sixth Circuit. He graduated from Yale Law School, where he was Managing Editor of the Yale Journal of International Law and a teaching assistant for a course on legal writing. He earned his undergraduate degree with distinction and honors from Stanford University and was admitted to Phi Beta Kappa.

### BAR ADMISSIONS

District of Columbia  
New York

### EDUCATION

J.D., Yale Law School  
B.A., Stanford University

### CLERKSHIPS

Hon. John M. Rogers, U.S. Court of Appeals  
for the Sixth Circuit

### CONTACT

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202.918.1835





# Patrick Huber

## *Associate*

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Patrick represents clients in a range of complex disputes throughout the country, including antitrust, consumer protection, labor and employment, and product-liability cases.

Before joining Keller Postman, Pat was an associate at Pilgrim Christakis, where he represented financial institutions in state and federal courts and arbitration proceedings. He has handled various aspects of cases, from taking depositions to drafting dispositive motions to representing clients at settlement conferences. Pat also has experience managing local counsel and conducting comprehensive fact-based investigations.

Among his more notable matters, Pat assisted in successfully preventing the certification of a putative class action lawsuit filed against a debt collector client alleging violations of state and federal law.

Pat served as a law clerk for Magistrate Judge Steven Tiscione of the U.S. District Court for the Eastern District of New York and Judge Alok Ahuja of the Missouri Court of Appeals, Western District. Pat has also represented indigent clients in criminal cases brought in state courts and juvenile clients in disciplinary proceedings.

After receiving his undergraduate degree and prior to law school, Pat worked as a line cook at the famed Charlie Trotter's in Chicago.

Pat earned his law degree from Washington University in St. Louis School of Law, cum laude, where he was an Executive in Residence and St. Louis Articles Editor for the Journal of Law & Policy and served as a teaching assistant for a legal writing course. During law school, Pat received the Dean's Service Award, the Equal Justice Works Award, and the Honor Scholar Award. He earned his undergraduate degree from the University of Illinois at Urbana-Champaign.

### EDUCATION

J.D., Washington University in St. Louis  
School of Law

B.A., University of Illinois

### CLERKSHIPS

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

Missouri Court of Appeals for the  
Western District

### AWARDS

2023 Illinois Super Lawyers Rising Star

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# EXHIBIT 2



# 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.