

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUL 21 2020

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

JAMES W. McCORMACK, CLERK
By:  **DEP CLERK**

**SAMUEL ACKER, PHILLIP DAVIDSON,
and TERRY MORROW, individually, and on
behalf of all others similarly situated**

PLAINTIFFS

v.

No. 4:20-cv-852-DPM

PROTECH SOLUTIONS, INC.

DEFENDANT

NOTICE OF REMOVAL

Please take notice that the above captioned case, filed as case No. 60CV-20-3858 in the Circuit Court of Pulaski County, Arkansas (the “State Court Action”), has been removed by defendant, Protech Solutions, Inc. (“Protech”), to the United States District Court for the Eastern District of Arkansas. Protech files this Notice of Removal and states as grounds for removal the following:

1. Plaintiffs, Samuel Acker, Phillip Davidson, and Terry Morrow, filed a Class Action Complaint in the State Court Action on July 14, 2020.
2. The Complaint asserts claims of negligence and invasion of privacy arising from the alleged potential exposure of Pandemic Unemployment Assistance (“PUA”) claimants’ personal information in connection with Protech’s administration of Arkansas’s PUA Application System. Plaintiffs seek actual damages, punitive damages, attorneys’ fees, and costs. They also seek injunctive relief.
3. Protech was served with a copy of plaintiffs’ Complaint on July 17, 2020.

This case assigned to District Judge Marshall
and to Magistrate Judge Ray

4. This Notice of Removal is timely under 28 U.S.C. § 1446(b), having been filed within thirty (30) days after Protech's receipt of the Complaint.

5. The United States District Court for the Eastern District of Arkansas, Central Division, is the district court for the district and division embracing the place where the state court action is pending.

6. This Court has original jurisdiction of this matter under 28 U.S.C. § 1332(d)(2), in that it involves minimal diversity of citizenship, the number of putative class members exceeds 100, and the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs.

7. Plaintiffs Davidson and Morrow are residents of Arkansas. Plaintiff Acker is a resident of Wyoming. Protech's principal place of business is located in Little Rock, Arkansas. Accordingly, the requirement of minimal diversity is satisfied. *See* 28 U.S.C. § 1332(d)(2)(A) (stating that minimal diversity exists when "any member of a class of plaintiffs is a citizen of a State different from any defendant").

8. Plaintiffs seek to represent a class of "all individuals who applied for Pandemic Unemployment Assistance with the Arkansas Division of Workforce Services" whose "personal information and/or financial information was exposed" in connection with Protech's operation of Arkansas's PUA Application System. Compl. ¶ 48. Plaintiffs allege this class is comprised of tens of thousands of members, including an estimated 30,000 Arkansans. Compl. ¶ 49. Thus, the aggregate number of class members is greater than 100. *See* 28 U.S.C. § 1332(d)(5)(B).

9. Plaintiffs, for themselves and the putative class, seek damages and equitable relief that in the aggregate exceed \$5,000,000.00. In determining whether the amount-in-controversy requirement is satisfied, courts may consider the total amount of alleged actual damages, punitive

damages, and the costs of complying with an injunction. *See Bell v. Preferred Life Assur. Soc’y*, 320 U.S. 238, 240 (1943); *Everett v. Verizon Wireless, Inc.*, 460 U.S. 818, 829 (2006).

10. Plaintiffs allege they have suffered actual injuries including but not limited to loss of unemployment assistance payments for an extended period of time, spending time calling the PUA hotline, penalties, late fees, and other costs, spending time finding fraudulent charges and remedying them, damage to credit, canceling compromised credit and debit cards and having them reissued, purchasing credit monitoring and identity theft prevention, addressing and remedying identity theft, placing “freezes” and “alerts” with credit reporting agencies at a cost up to \$5.00 to add and another \$5.00 to remove, spending time on the phone disputing charges, closing or modifying financial accounts, and resetting automatic billing and payment instructions. Compl. ¶ 45. They allege they have paid and will continue to pay late fees and declined payment fees. Compl. ¶ 45. They allege they are unable to pay their ongoing basic living expenses, buy groceries, and pay their utility bills. Compl. ¶¶ 32, 37, 42. In addition to actual injuries, plaintiffs allege they have suffered anxiety, emotional distress, and loss of privacy. Compl. ¶ 47. Plaintiffs also seek damages for “other economic and non-economic losses,” Compl. ¶¶ 64, 69, and punitive damages. Compl., p. 19. They allege they are at an increased risk of fraud and identity theft, and will continue to suffer these damages, “for many years into the future.” Compl. ¶ 26.

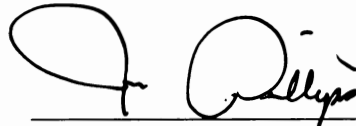
11. Plaintiffs also seek injunctive relief and “other affirmative equitable relief” requiring Protech to restore plaintiffs’ and class members’ access to the PUA Application System. Compl. ¶ 75.

12. From the face of the Complaint, there is a substantial likelihood that plaintiffs intend to seek damages in excess of \$5 million. The amount-in-controversy requirement is satisfied.

13. Protech will file a copy of this Notice of Removal with the Circuit Court of Pulaski County, Arkansas.

14. Copies of all process, pleadings, and orders served upon Protech in the State Court Action are attached hereto.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Phillips", is written above a horizontal line.

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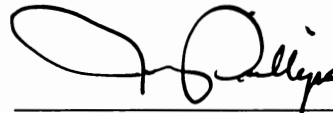
CERTIFICATE OF SERVICE

I, James L. Phillips, certify that on the 21st day of July, 2020, a copy of the foregoing was served on the following counsel of record by First Class Mail, postage prepaid:

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IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

DIVISION

SAMUEL ACKER, PHILLIP DAVIDSON,
and TERRY MORROW, individually, and on
behalf of all others similarly situated,

Plaintiffs,

v.

PROTECH SOLUTIONS, INC.,

Defendant.

Case No.

Judge:

**CLASS ACTION COMPLAINT FOR
DAMAGES**

JURY TRIAL DEMANDED

Plaintiffs SAMUEL ACKER, PHILLIP DAVIDSON, and TERRY MORROW (collectively, "Plaintiffs"), by and through their attorneys, bring this class action lawsuit on behalf of themselves and all other persons similarly situated, and for their Class Action Complaint against Defendant PROTECH SOLUTIONS, INC., Plaintiffs allege with personal knowledge with respect to themselves individually and on information and belief derived from, among other things, investigation of counsel and review of public documents as to all other matters, as follows:

PARTIES

1. Plaintiff SAMUEL ACKER ("Acker") is a natural person with a principal place of residence in Cheyenne, Wyoming.
2. Plaintiff PHILLIP DAVIDSON ("Davidson") is a natural person with a principal place of residence in Paragould, Arkansas.
3. Plaintiff TERRY MORROW ("Morrow") is a natural person with a principal place of residence in Clarksville, Arkansas.
4. Defendant PROTECH SOLUTIONS, INC. ("Protech" or "Defendant") is an Arkansas corporation with a principal place of business in Little Rock, Arkansas.

JURISDICTION AND VENUE

5. Pursuant to Ark. Code Ann. § 16-4-101 and the due process of law clause of the Fourteenth Amendment of the United States Constitution, the Court has jurisdiction over PROTECH SOLUTIONS, INC. because it is an Arkansas corporation, has its headquarters in Arkansas, and regularly conducts business in Arkansas.

6. Venue lies in this Court pursuant to Ark. Code Ann. § 16-60-101 as a substantial part of the events or omissions that form the basis of this Class Action Complaint occurred in Pulaski County, Arkansas; Defendant conducted activity that gave rise to the claims for relief in this County; and Defendant maintains its headquarters in this County.

THE DATA BREACH

7. Plaintiffs bring this suit on behalf of themselves and a Class of similarly situated individuals against Defendant for Defendant's failure to secure and protect Plaintiffs' and Class members' personal and financial information.

8. Protech was hired by the state of Arkansas, to create, implement, and maintain a secure website for the Arkansas Division of Workforce Services ("ADWS") that would allow self-employed Arkansans and gig economy workers to apply online for unemployment benefits during the coronavirus pandemic, *i.e.*, the Pandemic Unemployment Assistance ("PUA") Application System. The contract between Arkansas and Protech provided that (i) Protech would be paid \$3 million to create, implement, and maintain the PUA website, (ii) the website would be hosted on a secure/encrypted platform, and (iii) breaches would be able to be monitored to "protect the solution and the data within," such as social security numbers ("SSN") and banking information. The contract also required Protech to submit a data security plan that included automated notifications to the company and the State in the event of a breach.

9. Plaintiffs and Class members submitted PUA claims through the PUA Application System created, implemented, and powered by Protech. However, at one of the worst times in the lives of Plaintiffs and Class members, when they find themselves unemployed in the midst of a pandemic and resulting recession, Protech negligently and recklessly made Plaintiffs' and Class members' path to recovery significantly harder by interfering with their access to PUA payments and putting their identity and credit standing at risk.

10. Protech failed to create and implement a secure website for Plaintiffs and other Class members to submit claims for PUA benefits. As a result of Protech's actions and inactions, the social security numbers, birthdays, and banking information of approximately 30,000 PUA applicants have been exposed (the "Data Breach").

11. On May 15, 2020, the ADWS learned of the Data Breach and took the PUA Application System offline. On May 21, 2020, the ADWS notified Plaintiffs and Class members of the Data Breach, and informed Plaintiffs and Class members that they are eligible for complimentary credit monitoring and identity restoration services provided by MyIDCare™ powered by ID Experts, but only for a period of one year.

12. As a result of the Data Breach, the PUA Application System was temporarily shut down. Even after the PUA Application System was back up and running, Plaintiffs and other Class members were and are still locked out of their accounts pending a "fraud review."

13. As a result of the Data Breach, Plaintiffs and Class members must now be vigilant and review their credit reports for incidents of identity theft, and to educate themselves about security freezes, fraud alerts, and other steps to protect themselves against identity theft.

14. Data security breaches have dominated the headlines for the last two decades, and it does not take an IT industry expert to know that the failure to take reasonable security

precautions places individual's personal information at risk.

15. The general public can tell you the names of some of the biggest data breaches: Adobe, eBay, Equifax, LinkedIn, and Heartland Payment Systems, etc.¹

16. Upon information and belief, Protech failed to use reasonable and necessary industry standards when creating, implementing, and maintaining the PUA Application System to prevent a data breach, including the FTC's guidelines, resulting in the Data Breach.

17. Likewise, Protech failed to create, implement, and maintain adequate safeguards for the online storage of personal and financial information of Plaintiffs and Class members, resulting in the Data Breach.

18. Because of its failure to create, maintain, and/or comply with necessary cybersecurity requirements, Protech was unable to ensure the protection of information security and confidentiality, and protect against obvious and readily foreseeable threats to information security and confidentiality or the unauthorized access to the personal and financial information, resulting in the Data Breach.

DAMAGES FROM DATA BREACHES

19. The United States Government Accountability Office released a report in 2007 regarding data breaches ("GAO Report") in which it noted that victims of identity theft will face "substantial costs and time to repair the damage to their good name and credit record."²

¹ See, e.g., Dan Swinhoe, *The 15 Biggest Data Breaches of the 21st Century*, CSO ONLINE (Apr. 17, 2020), <https://www.csoonline.com/article/2130877/the-biggest-data-breaches-of-the-21st-century.html> (last visited July 9, 2020).

² See "Data Breaches Are Frequent, but Evidence of Resulting Identity Theft Is Limited; However, the Full Extent Is Unknown," pg. 2, by U.S. Government Accountability Office, June 2007, at: <https://www.gao.gov/new.items/d07737.pdf> (last visited July 9, 2020) ("GAO Report").

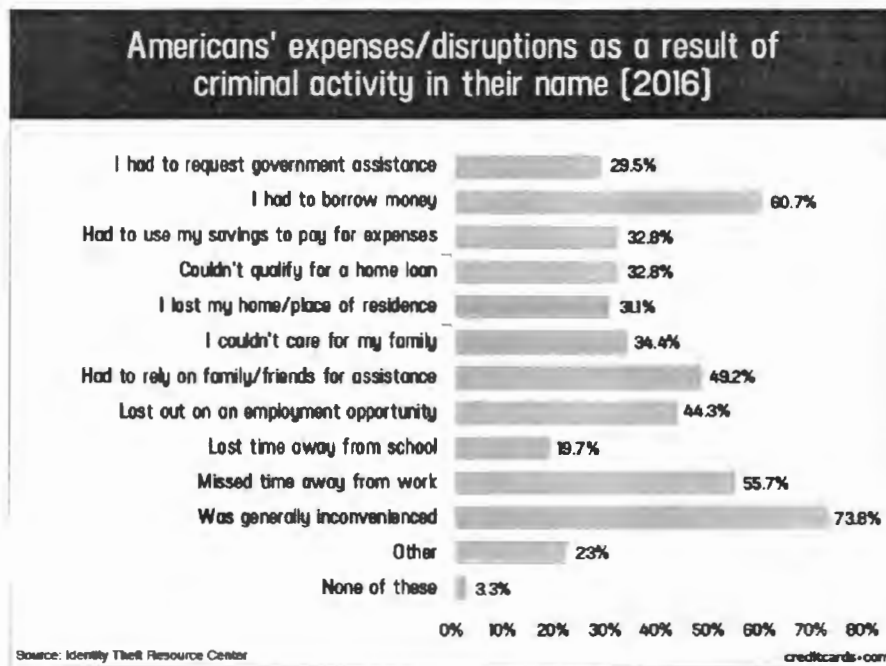
20. The FTC recommends that identity theft victims take several steps to protect their personal and financial information after a data breach, including contacting one of the credit bureaus to place a fraud alert (consider an extended fraud alert that lasts for 7 years if someone steals their identity), reviewing their credit reports, contacting companies to remove fraudulent charges from their accounts, placing a credit freeze on their credit, and correcting their credit reports.³

21. Identity thieves use stolen personal information such as SSNs for a variety of crimes, including credit card fraud, phone or utilities fraud, and bank/finance fraud.

22. Identity thieves can also use SSNs to obtain a driver's license or official identification card in the victim's name but with the thief's picture; use the victim's name and SSN to obtain government benefits; or file a fraudulent tax return using the victim's information. In addition, identity thieves may obtain a job using the victim's SSN, rent a house or receive medical services in the victim's name, and may even give the victim's personal information to police during an arrest resulting in an arrest warrant being issued in the victim's name. When unemployment benefits are involved, some of the data entrusted to the Defendant included bank account numbers which, when used along with address and social security data, can be used to attempt to breach the bank accounts of the members of the Class compromising other money that those unemployment applicants might have in their accounts.

23. A study by the Identity Theft Resource Center shows the multitude of harms caused by fraudulent use of personal and financial information:

³ See <https://www.identitytheft.gov/Steps> (last visited July 20, 2020).



Source: “Credit Card and ID Theft Statistics” by Jason Steele, 10/24/17, at: <https://www.creditcards.com/credit-card-news/credit-card-security-id-theft-fraud-statistics-1276.php> (last visited July 9, 2020).

24. There may be a time lag between when harm occurs versus when it is discovered, and also between when personal and financial information is stolen and when it is used. According to the U.S. Government Accountability Office, which conducted a study regarding data breaches:

[L]aw enforcement officials told us that in some cases, stolen data may be held for up to a year or more before being used to commit identity theft. Further, once stolen data have been sold or posted on the Web, fraudulent use of that information may continue for years. As a result, studies that attempt to measure the harm resulting from data breaches cannot necessarily rule out all future harm.

See GAO Report, at p. 29.

25. Personal and financial information is such a valuable commodity to identity thieves that once the information has been compromised, criminals often trade the information on the “cyber black-market” for years.

26. Thus, there is a strong probability that entire batches of stolen information have been dumped on the black market, and are yet to be dumped on the black market, meaning Plaintiffs and Class members are at an increased risk of fraud and identity theft for many years into the future.

27. Data breaches are preventable.⁴ As Lucy Thompson wrote in the DATA BREACH AND ENCRYPTION HANDBOOK, “In almost all cases, the data breaches that occurred could have been prevented by proper planning and the correct design and implementation of appropriate security solutions.”⁵ She added that “[o]rganizations that collect, use, store, and share sensitive personal data must accept responsibility for protecting the information and ensuring that it is not compromised”⁶

28. “Most of the reported data breaches are a result of lax security and the failure to create or enforce appropriate security policies, rules, and procedures. . . . Appropriate information security controls, including encryption, must be implemented and enforced in a rigorous and disciplined manner so that a *data breach never occurs*.”⁷

FACTS RELEVANT TO PLAINTIFF SAMUEL ACKER

29. Acker is a citizen of Wyoming (and was during the period of the Data Breach).

30. Acker is disabled and, prior to the pandemic, Acker was a gig economy worker who worked as an independent contractor for an Arkansas company.

31. On or about May 5, 2020, Acker applied online for PUA benefits through the ADWS PUA Application System created, implemented, and maintained by Protech.

⁴ Lucy L. Thomson, “Despite the Alarming Trends, Data Breaches Are Preventable,” *in* DATA BREACH AND ENCRYPTION HANDBOOK (Lucy Thompson, ed., 2012).

⁵ *Id.* at 17.

⁶ *Id.* at 28.

⁷ *Id.*

32. As a direct result of the Data Breach, Acker did not receive a PUA payment until June 8, 2020. Further, Acker is now locked out of the PUA Application System and has not received a PUA payment since June 15, 2020, and he is unable to apply for further PUA benefits due to a “fraud review”. As a direct result of the Data Breach, Acker has begun to face irreparable harms due to his inability to pay for his ongoing basic living expenses, such as the ability to purchase groceries and maintain current payments on his utility bills. As a direct result of the Data Breach, Acker has been unable to pay all of his bills, and has incurred penalties on his credit card accounts and other late fees.

33. As a direct result of the Data Breach, Acker will have to spend additional time and expend additional energy protecting and monitoring his identity and credit.

FACTS RELEVANT TO PLAINTIFF PHILLIP DAVIDSON

34. Davidson is a citizen of Arkansas (and was during the period of the Data Breach).

35. Prior to the pandemic, Davidson was self-employed and worked in Arkansas.

36. On or about May 5, 2020, Davidson applied online for PUA benefits through the ADWS PUA Application System created, implemented, and maintained by Protech.

37. As a direct result of the Data Breach, Davidson has not received a PUA payment since June 1, 2020, he has been unable to pay all of his bills, has fallen behind on his mortgage, and is now at risk of having his Chapter 13 bankruptcy (which he filed in March 2020), being dismissed for non-payment. Davidson has been locked out of the PUA Application System since June 1, 2020, and he has been unable to apply for further PUA benefits. Despite submitting various documents to prove his identity, Davidson continues to be locked out of the PUA Application System and is not receiving the PUA payments that he desperately needs. In addition to his Chapter 13 bankruptcy being in jeopardy of dismissal, the denial of access to PUA benefits has caused

Davidson the irreparable harm of not being able to afford his basic living expenses, including paying for groceries and maintaining current payments on his utilities.

38. As a direct result of the Data Breach, Davidson will have to expend additional time and energy protecting and monitoring his identity and credit.

FACTS RELEVANT TO PLAINTIFF TERRY MORROW

39. Morrow is a citizen of Arkansas (and was during the period of the Data Breach).

40. Prior to the pandemic, Morrow was self-employed before becoming unemployed, and he worked for Tyson Foods and Birchtree in Arkansas.

41. On or about May 14, 2020, Morrow applied online for PUA benefits through the ADWS PUA website created, implemented, and maintained by Protech. During the application process, Morrow supplied her account information for her Skylight Net Spin Card with Regions Bank, so that her PUA payments could be made directly to that account.

42. As a direct result of the Data Breach, Morrow was the victim of identity theft. The day after she applied online for PUA benefits through the PUA website created, implemented, and maintained by Protech, someone fraudulently used her name and SSN to set up an account with Bank of America in Texas ("BOA Account"), and without her authorization or knowledge transferred all her money from her Skylight Net Spin Card (*i.e.*, \$757.24) into the BOA Account. Morrow spent approximately 20 hours trying to get her money back, including filing a police report and dealing with the bank. As a direct result of the data Breach, Morrow fell behind on paying her utilities and other bills. Morrow has also been charged late fees and penalties on accounts that, as a direct result of Defendant's conduct, have become delinquent.

43. As a direct result of the Data Breach, Morrow will have to expend additional time and energy protecting and monitoring her identity and credit.

PLAINTIFFS' AND CLASS MEMBERS' DAMAGES

44. As a direct and proximate result of Protech's conduct, Plaintiffs and the Class members have been placed at an imminent, immediate, and continuing increased risk of harm from fraud and identity theft.

45. Plaintiffs and members of the Class have or will suffer actual injury as a direct result of the Data Breach including:

- a. Loss of unemployment assistance payments for an extended period of time while the PUA Application System website was down and while their accounts are frozen for "fraud review";
- b. Being unable to apply for an extension of PUA benefits due to their accounts being frozen for "fraud review", and spending time calling the hotline regarding the "fraud review";
- c. The imposition of penalties, late fees, and other costs associated with their inability to obtain PUA benefits to pay their bills;
- d. Spending time finding fraudulent charges and remedying fraudulent charges;
- e. Damage to their credit;
- f. Canceling compromised credit and debit cards and having them reissued;
- g. Purchasing credit monitoring and identity theft prevention;
- h. Time and money addressing and remedying identity theft;
- i. Taking trips to banks and waiting in line to verify their identities in order to restore access to the accounts;
- j. Placing "freezes" and "alerts" with credit reporting agencies which, pursuant to Ark. Code Ann. § 4-112-111, will cost up to five dollars (\$5.00) to place a security freeze on a credit report, to temporarily lift a security freeze on a credit report, or to remove a security freeze from a credit report;
- k. Spending time on the phone with or visiting financial institutions to dispute fraudulent charges;
- l. Contacting their financial institutions and closing or modifying financial accounts;
- m. Resetting automatic billing and payment instructions from compromised credit and debit cards to new cards;

- n. Paying late fees and declined payment fees imposed as a result of failed automatic payments that were tied to compromised cards that had to be cancelled; and
- o. Closely reviewing and monitoring bank accounts and credit reports for unauthorized activity for years to come.

46. Moreover, Plaintiffs and the Class members have an interest in ensuring that their personal and financial information is protected from further breaches by the implementation of security measures and safeguards, including making sure that the storage of data containing their personal and financial information is not accessible online.

47. As a direct and proximate result of Protech's actions and inactions, Plaintiffs and Class members have suffered anxiety, emotional distress, loss of privacy, identity theft, financial damages, and are at an increased and immediate risk of future harm.

CLASS ALLEGATIONS

48. **Class Definition:** Plaintiffs bring this action pursuant to Ark. R. Civ. P. 23, on behalf of a class of similarly situated individuals and entities ("the Class"), defined as follows:

All individuals who applied for Pandemic Unemployment Assistance ("PUA") with the Arkansas Division of Workforce Services through the PUA Application System designed, implemented, and maintained by Protech Solutions, and whose personal information and/or financial information was exposed in the Data Breach.

Excluded from the Class are: (1) Defendant, Defendant's agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and those entities' current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

49. **Numerosity:** Upon information and belief, the Class is comprised of tens of thousands of members. Initial reports state that approximately 30,000 Arkansans had sensitive and

confidential information exposed.⁸ Thus, the Class is so numerous that joinder of all members is impracticable. Class members can easily be identified through records of the ADWS, or by other means.

50. **Commonality and Predominance:** There are several questions of law and fact common to the claims of Plaintiffs and Class members, which predominate over any individual issues, including:

- a. Whether Protech created, implemented, and maintained the PUA Application System without adequate protections for the personal and financial information of Plaintiffs and members of the Class;
- b. Whether Protech adopted, implemented, and maintained reasonable safeguards to prevent the unauthorized access to the personal and financial information of Plaintiffs and members of the Class;
- c. Whether Protech promptly provided notification of the Data Breach;
- d. Whether Protech owed a duty to Plaintiffs and members of the Class to safeguard and protect their personal and financial information;
- e. Whether Protech breached a duty to Plaintiffs and members of the Class to safeguard and protect their personal and financial information;
- f. Whether Protech breached a duty to Plaintiffs and members of the Class by failing to adopt, implement, and maintain reasonable safeguards to protect the personal and financial information of Plaintiffs and members of the Class; and
- g. Whether Protech is liable for the damages suffered by Plaintiffs and members of the Class as a result of the Data Breach.

51. **Typicality:** Plaintiffs' claims are typical of the claims of members of the Class. All claims are based on the same legal and factual issues. Plaintiffs and each of the Class members

⁸ See https://www.govtech.com/templates/gov_print_article?id=570572181 (last visited July 9, 2020) (“Arkansas was forced to temporarily shut down an unemployment benefits program last week after a data breach potentially exposed the personal information of some 30,000 state residents.”).

provided their personal and financial information through the PUA Application System created, implemented, and maintained by Protech. Defendant's conduct was uniform to Plaintiffs and all Class members.

52. **Adequacy of Representation:** Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class, and have retained counsel competent and experienced in complex class actions. Plaintiffs have no interests antagonistic to those of any members of the Class, and Defendant has no defenses unique to Plaintiffs. The questions of law and fact common to the proposed Class predominate over any questions affecting only individual members of the Class.

53. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed members of the Class to prosecute their claims individually. The trial and the litigation of Plaintiffs' claims are manageable.

COUNT I
Negligence
(On behalf of Plaintiffs and the Class)

54. Plaintiffs repeat and reallege the allegations of paragraphs 1-53 with the same force and effect as though fully set forth herein.

55. Protech's actions and inactions were of the type that would result in foreseeable, unreasonable risk of harm to Plaintiffs and Class members. Protech knew, or should have known, of the risks inherent in collecting and storing the personal and financial information of Plaintiffs and Class members and the importance of adequate security in creating, implementing, and maintaining the PUA Application System. Indeed, the contract between ADWS and Protech

specifically addressed data security. Additionally, Protech was well aware of numerous, well-publicized data breaches that exposed the personal and financial information of individuals.

56. Protech had a common law duty to prevent foreseeable harm to those whose personal and financial information it was entrusted. This duty existed because Plaintiffs and Class members were the foreseeable and probable victims of the failure of Protech to adopt, implement, and maintain reasonable security measures so that Plaintiffs' and Class members' personal and financial information would not be unsecured and accessible by unauthorized persons. Protech knew that the PUA Application System was for the implementation and provision of services for the Coronavirus Aid, Relief, and Economic Security ("CARES") Act of 2020 Federal Pandemic Unemployment Assistance Program. Thus, Protech knew that Plaintiffs and Class members who would be applying for assistance under the PUA program are unemployed and have significant short-term economic need. Further, Protech knew that if the PUA Application System did not work correctly, had to be temporarily or permanently taken down, or applicants were locked out of the system, then Plaintiffs and Class members would be unable to obtain their PUA payments, which would detrimentally impact the applicants' ability to pay for basic living expenses or maintain current payments on utility or other bills.

57. Protech had a special relationship with Plaintiffs and Class members. By creating, implementing, and maintaining the PUA Application System, Protech was entrusted with Plaintiffs' and Class members' electronic data containing their personal and financial information, and Protech was in a position to protect the electronic data (and the personal and financial information) from unauthorized access.

58. The duties of Protech also arose under section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, which prohibits "unfair . . . practices in or affecting commerce,"

including, as interpreted and enforced by the FTC, the unfair practice of failing to use reasonable measures to protect individuals' personal and financial information by companies. Various FTC publications and data security breach orders further form the basis of the duties of Protech.

59. Protech had a duty to exercise reasonable care in obtaining, retaining, securing, safeguarding, deleting, and protecting Plaintiffs' and Class members' personal and financial information in its possession so that the personal and financial information would not come within the possession, access, or control of unauthorized persons.

60. More specifically, the duties of Protech included, among other things, the duty to:
- a. Adopt, implement, and maintain adequate security measures for protecting an individual's personal and financial information to ensure that the information is not accessible online by unauthorized persons; and
 - b. Adopt, implement, and maintain processes to quickly detect a data breach and to promptly act on warnings about data breaches.

61. Protech breached the foregoing duties to exercise reasonable care in obtaining, retaining, securing, safeguarding, deleting, and protecting the electronic data containing an individual's personal and financial information in its possession on the PUA Application System so that the electronic data would not come within the possession, access, or control of unauthorized persons. For example, the experience of Morrow shows that Class members' personal and financial information is at risk of, and is actually, being accessed and misused by unauthorized third parties.

62. Protech acted with reckless disregard for the security of the personal and financial information of Plaintiffs and the Class because Protech knew or should have known that its data security for the PUA Application System was not adequate to safeguard the personal and financial information that was collected and stored.

63. Protech acted with reckless disregard for the rights of Plaintiffs and the Class by failing to promptly detect the Data Breach, and further, provide notice of the Data Breach pursuant

to Ark. Code Ann. § 4-110-105, so that Plaintiffs and Class members could take measures to protect themselves from damages caused by the unauthorized access to the personal and financial information compromised in the Data Breach.

64. As a result of the conduct of Protech, Plaintiffs and Class members have suffered and will continue to suffer foreseeable harm. Plaintiffs and Class members have suffered actual damages including, but not limited to, identify theft; expenses and/or time spent on credit monitoring for a period of years; time spent scrutinizing bank statements, credit card statements, and credit reports; time spent initiating fraud alerts; and increased risk of future harm. Further, Plaintiffs and Class members have suffered and will continue to suffer other forms of injury and/or harm including, but not limited to, anxiety, emotional distress, loss of privacy, and other economic and non-economic losses, including loss of unemployment assistance for an extended period of time while their accounts are frozen for “fraud review.”

COUNT II
Invasion of Privacy
(On Behalf of Plaintiffs and the Class)

65. Plaintiffs repeat and reallege the allegations of paragraphs 1-53 with the same force and effect as though fully set forth herein.

66. Defendant invaded the right to privacy of Plaintiffs and Class members by displaying, disclosing, and allowing unfettered access of their personal and financial information to unauthorized and unknown individuals, and by failing to employ reasonable and necessary safeguards to prevent unauthorized access to Plaintiffs’ and Class members’ personal and financial information.

67. Plaintiffs’ and Class members’ personal and financial information was held privately and confidentially by them and used only for legitimate personal and financial purposes.

They only entrusted their personal and financial information to third parties as necessary for legitimate purposes, and required the third parties to hold the personal and financial information in confidence at all times and protect it against unauthorized disclosures. Plaintiffs and Class members were reasonable in expecting Defendant to maintain the security and confidentiality of their personal and financial information.

68. Defendant's conduct was and is highly offensive to a reasonable person with ordinary sensibilities.

69. As a result of the conduct of Protech, Plaintiffs and Class members have suffered and will continue to suffer actual damages including, but not limited to, identify theft; expenses and/or time spent on credit monitoring for a period of years; time spent scrutinizing bank statements, credit card statements, and credit reports; time spent initiating fraud alerts; and increased risk of future harm. Further, Plaintiffs and Class members have suffered and will continue to suffer other forms of injury and/or harm including, but not limited to, anxiety, emotional distress, loss of privacy, and other economic and non-economic losses, including loss of unemployment assistance for an extended period of time while their accounts are frozen for "fraud review."

COUNT III
Injunctive Relief
(On Behalf of Plaintiffs and the Class)

70. Plaintiffs repeat and reallege the allegations of paragraphs 1-53 with the same force and effect as though fully set forth herein.

71. Protech's ongoing and continuing wrongful conduct, including its failures to employ reasonably adequate security over Plaintiffs' and Class' members' personal and financial

information and failures to adequately remedy the effects of the Data Breach, has caused and will continue to cause Plaintiffs and Class members to suffer irreparable harm.

72. Plaintiffs and Class members are suffering irreparable harm because they are under “fraud review” as result of the Data Breach and, therefore, are not receiving their unemployment assistance payments they need to pay for basic necessities, such as mortgage payments, rent payments, car payments, utility bills, and groceries. The lack of PUA payments creates a hardship that interferes with Plaintiffs’ and Class members’ ability to make these payments.

73. Plaintiffs and Class members are also suffering other forms of irreparable harm, including but not limited to: fraudulent charges, fraudulent activity relating to opening new accounts for credit, damage to their credit, out-of-pocket expenses, the value of their time reasonably incurred to remedy or mitigate the effects of the Data Breach, anxiety, emotional distress, loss of privacy, and other economic and non-economic losses.

74. Such irreparable harm will not cease unless enjoined by the Court.

75. Plaintiffs and the Class are entitled to injunctive relief and other affirmative equitable relief requiring Defendant to restore Plaintiffs’ and Class members’ access to the PUA Application System so that Plaintiffs and Class members can receive their desperately needed unemployment assistance payments.

76. If the requested injunction is not issued, Plaintiffs and the Class will suffer and continue to suffer the irreparable injury as set forth above.

77. The hardship to Plaintiffs and Class members if the injunction was not to issue would be significant. Plaintiffs and Class members are unemployed and cannot pay for basic necessities, such as groceries.

78. The requested injunctive relief is in the public interest, as it will provide assurances and security to Plaintiffs and Class members who are already vulnerable and in need of assistance, and will facilitate the increased participation in the PUA program, which exists for the purpose of aiding Plaintiffs and the Class, as well as future applicants and the economy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs SAMUEL ACKER, PHILLIP DAVIDSON, and TERRY MORROW, individually, and on behalf of all others similarly situated, respectfully request that judgment be entered in their favor and against PROTECH SOLUTIONS, INC., as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action, and certifying the Class defined herein;
- B. Appointing Plaintiffs as representatives of the Class;
- C. Appointing Plaintiffs' counsel as counsel for the Class;
- D. Entering judgment in favor of Plaintiffs and the Class against Defendant;
- E. Awarding Plaintiffs and Class members actual and punitive damages, and all other forms of available relief, as applicable;
- F. Awarding Plaintiffs and the Class attorney's fees and costs, including interest thereon as allowed or required by law;
- G. Entering an injunction to mandatorily enjoin Defendant to immediately restore Plaintiffs' and Class members' access to the PUA Application System; and
- H. Granting all such further and other relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs SAMUEL ACKER, PHILLIP DAVIDSON, and TERRY MORROW, individually, and on behalf of all others similarly situated, hereby demand a trial by jury on all claims so triable.

Respectfully submitted,

/s/ Dustin McDaniel

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Counsel for Plaintiffs and the putative Class

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C06D12 : 16 Pages

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

DIVISION

SAMUEL ACKER, PHILLIP DAVIDSON,
and TERRY MORROW, individually, and on
behalf of all others similarly situated,

Plaintiffs,

v.

PROTECH SOLUTIONS, INC.,

Defendant.

Case No.

Judge:

**PLAINTIFFS' EMERGENCY MOTION
PURSUANT TO ARK. R. CIV. P. 65 FOR
A TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION**

NOW COME Plaintiffs SAMUEL ACKER (“Acker”), PHILLIP DAVIDSON (“Davidson”), and TERRY MORROW (“Morrow”) (collectively “Plaintiffs”), individually and on behalf of all others similarly situated, by and through counsel, and bring their *Emergency Motion Pursuant to Ark. R. Civ. P. 65 for a Temporary Restraining Order and/or Preliminary Injunction* (“Motion”). In support of this Motion, Plaintiffs state as follows:

I. INTRODUCTION.

As a result of the COVID-19 pandemic, a large number of self-employed Arkansans and “gig economy” workers were suddenly unemployed, necessitating the creation of the Pandemic Unemployment Assistance (“PUA”) program in Arkansas. *See*, Class Action Complaint (“Complaint” or “Compl.”), ¶ 8. To manage this influx of unemployment claims, the Arkansas Division of Workforce Services (“ADWS”) hired Defendant PROTECH SOLUTIONS, INC. (“ProTech” or “Defendant”) to create, implement, and maintain a secure website for ADWS through which unemployment benefit claimants could apply for PUA program assistance online (the “PUA Application System”). *Id.*

The contract between the state of Arkansas and ProTech specifically required ProTech to ensure that the PUA Application System was secure, such that claimants' personally identifiable information ("PII")—*e.g.*, social security numbers and banking information—would be protected. Compl. ¶ 8. The contract also required ProTech to submit a data security plan that included automated notifications to the company and the State in the event of a data breach. *Id.*

Despite the contractual and legal obligation to protect PUA program claimants' PII, ProTech negligently and recklessly failed to secure the PUA Application System. Compl. ¶¶ 7-11, 16-18, 49. As a result of ProTech's actions and inactions, the PII—such as their social security numbers, birthdays, and banking information—of approximately 30,000 PUA claimants, including Plaintiffs and members of the Class defined in the Complaint,¹ was exposed in a massive data breach (the "Data Breach"). *Id.*

After the Data Breach was discovered on May 15, 2020, ProTech temporarily shut down the PUA Application System. Compl. ¶¶ 11-12. Although the PUA Application System is now back online, Plaintiffs and other Class members were and still are "locked out" of their accounts pending a "fraud review." *Id.*; see also Affidavit of Samuel Acker in Support of Plaintiffs' Emergency Motion for a Temporary Restraining Order ("Acker Affidavit"), attached hereto as **Exhibit A**, ¶ 5; and Affidavit of Phillip Davidson in Support of Plaintiffs' Emergency Motion for a Temporary Restraining Order ("Davidson Affidavit"), attached hereto as **Exhibit B**, ¶ 6.

Since PUA Application System access is a prerequisite to obtaining PUA program payments, Plaintiffs and Class members have not received any such payments as a result of being "locked out" of their PUA Application System accounts. Compl. ¶ 12; Acker Affidavit, ¶ 5.

¹ Plaintiffs seek certify of a Class defined as follows: "All individuals who applied for Pandemic Unemployment Assistance ("PUA") with the Arkansas Division of Workforce Services through the PUA Application System designed, implemented, and maintained by Protech Solutions, and whose personal information and/or financial information was exposed in the Data Breach." Compl. ¶ 48.

Therefore, at one of the worst times in the lives of Plaintiffs and Class members, when they find themselves unemployed in the midst of a pandemic and resulting recession, and are therefore most in need of financial assistance, Plaintiffs and Class members are unable to receive it. *See* Compl. ¶ 9; Acker Affidavit, ¶¶ 5-8; Davidson Affidavit, ¶¶ 5-8.

As set forth in the Complaint, the Data Breach has far-reaching consequences—such as placing Plaintiffs and Class members at an increased risk of identity theft, and requiring Plaintiffs and Class members to vigilantly monitor their credit—and has actually resulted in identity theft and harm to Plaintiffs and Class members. *See, e.g.*, Compl. ¶¶ 13-15, 19-28. While these harms can be addressed through the normal course of litigation, Plaintiffs’ and Class members’ short-term needs cannot. Indeed, because Plaintiffs and Class members have not received (and will continue to not receive) the PUA program payments to which they are entitled until their PUA Application System accounts are “unlocked,” they are (and will continue to be) unable to pay their bills and face imminent risk of not being able to pay for basic living expenses or maintain current payments on utility bills. Acker Affidavit, ¶¶ 7-8; Davidson Affidavit, ¶¶ 6-8. For example, Acker is having difficulties paying his living expenses, paying for groceries, and paying his utility bills. Acker is also not able to make regular monthly payments on unsecured lines of credit, and he is incurring late fees. Acker Affidavit, ¶¶ 7-8. Similarly, Davidson is having difficulties paying his household expenses, including paying for food and utilities. And Davidson received a motion to dismiss his Chapter 13 bankruptcy case because he has failed to (and cannot) make the necessary payments. Davidson Affidavit, ¶¶ 7-8.

The decision to grant preliminary relief is to “preserve the status quo until the merits are determined.” *Customer Microsystems, Inc. v. Blake*, 344 Ark. 536, 541 (Ark. 2001) (quoting *Dataphrase Systems, Inc. v. C.L. Systems, Inc.*, 640 F.2d 109, 113 (8th Cir. 1981) Accordingly,

Plaintiffs, individually, and on behalf of the Class, bring this Motion to require ProTech to “reopen” their PUA Application System accounts, which was the status quo prior to the Data Breach.

As set forth below, the requested temporary restraining order (“TRO”) and/or preliminary injunction (“Injunction”) will allow Plaintiffs and Class members to receive PUA program payments and avoid irreparable harm, as it will provide them with the monetary assistance the PUA program is designed to provide. Since the requested TRO/Injunction is necessary to avoid irreparable harm, and in light of the fact that Plaintiffs and Class members have a significant likelihood of success on the merits, the Court should grant the Motion.

II. RELEVANT FACTS.

1. Plaintiff Samuel Acker

Acker filed an application for PUA on May 5, 2020. Acker Affidavit, ¶ 2. He received the Notice of Breach from ADWS on May 21, 2020. *Id.* ¶ 3. As a direct result of the Data Breach, Acker did not receive a PUA payment until June 8, 2020. *Id.* ¶ 4. Further, Acker is now locked out of the PUA Application System and has not received a PUA payment since June 15, 2020, and he is unable to apply for further PUA benefits due to a “fraud review”. *Id.* ¶¶ 5-6. As a direct result of the Data Breach, Acker has begun to face irreparable harms due to his inability to pay for his ongoing basic living expenses, such as the ability to purchase groceries and maintain current payments on his utility bills. *Id.* ¶ 7. As a direct result of the Data Breach, Acker has been unable to pay all of his bills and has incurred penalties on his credit card accounts and other late fees. *Id.* ¶ 8.

2. Plaintiff Phillip Davidson

On May 5, 2020 Davidson filed his application for PUA. Davidson Affidavit, ¶ 3. He received the Notice of Breach from ADWS on May 21, 2020. *Id.* ¶ 4. Davidson has been locked out of the PUA Application System since June 1, 2020, and he has been unable to apply for further PUA benefits. *Id.* ¶ 6. As a direct result of the Data Breach, Davidson has not received a PUA payment since June 1, 2020, and he is now at risk of having his Chapter 13 bankruptcy (which he filed in March 2020) being dismissed for non-payment. *Id.* ¶ 7. In addition to his Chapter 13 bankruptcy being in jeopardy of dismissal, the denial of access to PUA benefits has caused Davidson the irreparable harm of not being able to afford his basic living expenses, including paying for groceries and maintaining current payments on his utilities. *Id.* ¶ 8.

III. LEGAL ARGUMENT.

“[T]he primary purpose of preliminary injunctive relief is to preserve the status quo until the merits of a controversy are decided.” *American Investors Life Ins. Co. v. TCB Transp.*, 312 Ark. 343, 345 (1993) (quoting *Citizens' Pipeline v. Twin City Pipeline*, 183 Ark. 1006, 39 S.W. 2D 1017 (1931)). The issuance of the requested TRO/Injunction is within the Court’s discretion and is governed by Ark. R. Civ. P. 65 (“Rule 65”). *Arkansas Dep’t of Human Services v. Ledgerwood*, 2017 Ark. 308, 8 (2017); *Three Sisters Petroleum, Inc. v. Langley*, 348 Ark. 167, 175 (2002).

“In determining whether to issue a TRO [or Injunction] pursuant to Rule 65, a circuit court must consider two issues: (1) whether irreparable harm will result in the absence of an injunction or restraining order, and (2) whether the moving party has demonstrated a likelihood of success on the merits.” *Id.* at 7 (citing *Baptist Health v. Murphy*, 362 Ark. 506 (2005)); *AJ&K Operating Co. v. Smith*, 355 Ark. 510, 517 (2003); *Three Sisters Petroleum*, 348 Ark. at 175.

Courts have recognized that no one factor is dispositive, and that in balancing these two factors, “a party must show a lack of an adequate remedy at law to obtain relief in equity.” *American Investors*, 312 Ark. at 345 (quoting *Compute-A-Call v. Tolleson*, 285 Ark. 355, 687 S.W. 2d 129 (1985)). Here, as set forth below, both of these factors weigh in favor of granting the Motion.

A. There Is Substantial Likelihood That Plaintiffs Will Prevail on the Merits.

The test for determining a likelihood of success is whether there is a reasonable probability of success in the litigation. *Ledgerwood*, 2017 Ark. 308 at 12 (quoting *Custom Microsystems Inc. v. Blake*, 344 Ark. 536 (2001)). Such a showing of reasonable probability of success is a benchmark for issuing a preliminary injunction. *Id.*

While Plaintiffs have alleged three separate theories for recovery in this lawsuit, (1) Negligence; (2) Invasion of Privacy; and (3) Injunctive Relief, all of these theories stem from the same facts—that Defendant’s actions and inactions resulted in the Data Breach. The fact that ProTech was responsible for ensuring the security of the PUA Application System is not in dispute, nor is the fact that the Data Breach occurred. *See*, Section I, *supra*.

Although it is possible that Plaintiffs may not prevail under every theory of liability at trial, there is little question that Defendant is liable—as evidenced by the admission that there was a data security incident and Plaintiffs’ and Class members’ PII was unsecured—and that Plaintiffs will prevail on at least one (or more) of the legal theories which they have pled. This is all that is necessary for Plaintiffs to demonstrate a likelihood of success on the merits of the underlying action. Therefore, this factor weighs in favor of granting the requested TRO/Injunction.

B. Irreparable Harm Will Occur If a TRO/Preliminary Injunction is Not Granted.

Irreparable injury or harm, which must be shown for injunctive relief, is normally shown when it cannot be adequately compensated by money damages or redressed in a court of law. *See, Three Sisters Petroleum*, 348 Ark. at 175; *see also, Kruetzer v. Clark*, 271 Ark. 243, 244 (1980). Merely financial harm is not irreparable as it can be adequately compensated by monetary damages. *Three Sisters Petroleum*, 348 Ark. at 175. A finding that something beyond “mere inconvenience” will be caused by the litigation is needed to show irreparable harm. *Id*; *see also, Standard Oil Co. of Louisiana v. Reddick*, 202 Ark. 393, 396 (1941).

Here, as a result of being “locked out” of their PUA Application System accounts, Plaintiffs and Class members are unable to receive the PUA program benefits to which they are entitled. *See* Acker Affidavit, ¶¶ 5-6; Davidson Affidavit, ¶ 6. Although those benefits, in themselves, are monetary in nature, the harm caused by their continued unavailability goes beyond purely economic damages.

For example, because Plaintiffs have not received the PUA program benefits to which they are entitled, they cannot afford to purchase food, clothing, and other basic necessities. *See* Acker Affidavit, ¶ 7; Davidson Affidavit, ¶ 8. Acker also has been unable to pay monthly rent, credit card bills, etc., putting him at risk of eviction, account closures, and repossession. *See* Acker Affidavit, ¶¶ 7-8. Davidson is at risk of having his Chapter 13 bankruptcy dismissed due to the inability to have access to his PUA benefits. *See* Davidson Affidavit, ¶ 7.

Plaintiffs’ inability to pay their monthly bills and afford basic necessities puts them at a risk of permanent and irreversible harm and is sufficient to establish irreparable harm. *Ledgerwood*, 2017 Ark. 308 at 10 (“Appellees admit that they have suffered lack of food, have remained in soiled clothes, have gone without bathing[,] have become more isolated, and have

suffered worsened medical conditions...Given this evidence, appellees have provided a sufficient showing of irreparable harm to justify the circuit court's issuance of a temporary restraining order.”).

Indeed, the entire purpose of the PUA program is to lessen the harms associated with unemployment by providing claimants with short-term monetary assistance. *See, Buckstaff Bath House Co. v. McKinley*, 198 Ark. 91 (1939) (“If unemployment cannot be avoided, at least its tragic consequences can be ameliorated. Such is the purpose of the statute in question.”). For this reason, the United States Supreme Court has observed that unemployment “benefits are a matter of statutory entitlement for persons qualified to receive them,” such that “their termination involves state action that adjudicates important rights” guaranteed by due process. *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970). The erroneous deprivation of core constitutional rights also constitutes an irreparable harm. *See, Muntaqim v. Hobbs*, 2017 Ark. 97, 4 (2017) (“The Supreme Court has clearly stated that the denial of First Amendment rights, even for minimal amounts of time, constitutes irreparable harm.”); *McCuen v. Harris*, 321 Ark. 458, 467 (1995).

Simply put, Plaintiffs and Class members are among the neediest during this difficult economic time and require the short-term economic assistance the PUA program was intended to provide. Yet, by preventing Plaintiffs and Class members from accessing the PUA Application System unless and until they can prove that their PUA program claims are legitimate—and even then, still failing to give them access—Defendant places their needs as subservient to its own.

In other words, Plaintiffs and Class members should not have to wait while Defendant cleans up its own mess before they are able to obtain much needed public aid. The Data Breach was a problem of Defendant's own making, and Defendant should be required to bear the

consequences. Therefore, the requested TRO/Injunction is both necessary to prevent further irreparable injury to Plaintiffs and Class members, and appropriate under the circumstances.

C. The Court, in Its Discretion, May Dispose of the Bond Requirement Before Entering a TRO/Preliminary Injunction.

Rule 65(c) explicitly allows this Court discretion to order the moving party to provide a bond in seeking a TRO/Injunction. Here, there is a good cause for this Court to exercise its discretion and issue the TRO/Injunction in the absence of a bond.

First, as discussed above, Plaintiffs and Class members applied for assistance under the PUA program because they are unemployed and have significant short-term economic need. *See* Acker Affidavit, ¶¶ 5-8; Davidson Affidavit, ¶¶ 6-8. Since requiring Plaintiffs to provide a bond would “effectively foreclose [their] right to a preliminary injunction” or TRO, the Court can waive this requirement. *McCuen*, 321 Ark. at 467.

Second, “the purpose of a bond is to indemnify the parties enjoined against damages occasioned by the wrongful issuance of the injunction.” *Weathersbee v. Wallace*, 14 Ark. App. 174, 177 (1985). In this case, however, the requested TRO/Injunction would only require Defendant to permit Plaintiffs and Class members to *access* the PUA Application System it administers and would not result in any monetary payments directly from Defendant. As such, there are no potential damages for which Defendant may require indemnification.

Therefore, the Court should issue the TRO/Injunction without requiring a bond.

IV. CONCLUSION.

For the reasons stated herein, the Court should enter the requested TRO/Injunction, without bond, requiring Defendant to immediately restore Plaintiffs’ and Class members’ access to the PUA Application System. A proposed order granting the requested relief, with all necessary factual and legal findings, is attached hereto as **Exhibit C**.

WHEREFORE, Plaintiffs request that the Court enter a TRO and/or Preliminary Injunction against Defendant, as follows:

- A. Mandatorily enjoin Defendant to immediately restore Plaintiffs' and Class members' access to the PUA Application System;
- B. Award Plaintiffs their costs and attorney fees; and
- C. Grant any other relief as is deemed just and proper.

Respectfully submitted,

/s/ Dustin McDaniel
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Counsel for Plaintiffs and the putative Class

**IN THE CIRCUIT COURT
PULASKI COUNTY, ARKANSAS**

SAMUEL ACKER, PHILLIP DAVIDSON,
and TERRY MORROW, individually, and on
behalf of all others similarly situated,

Case No.

Judge:

Plaintiffs,

v.

PROTECH SOLUTIONS, INC.,

Defendant.

**AFFIDAVIT OF SAMUEL ACKER IN SUPPORT OF PLAINTIFFS' EMERGENCY
MOTION FOR A TEMPORARY RESTRAINING ORDER**

I, SAMUEL ACKER, hereby certify as follows:

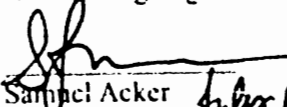
1. I am over the age of 18 years. I am competent and willing to testify as to the facts set forth in this Affidavit, which are based on my personal knowledge, unless stated otherwise.
2. On May 5, 2020 I applied online for Pandemic Unemployment Assistance benefits ("PUA") online through the Arkansas Department of Workforce Services's ("ADWS") PUA website.
3. On May 21, 2020, I received an email from ADWS notifying me that my personal and financial information was exposed in the Data Breach.
4. I did not receive my first PUA benefit check until June 8, 2020.
5. Since June 8, 2020 I have been "locked out" of the PUA Application System and unable to apply for further PUA benefits due to a "fraud review".
6. I have not received any other PUA benefit payments since June 15, 2020.

Exhibit A

7. As a result of not receiving the PUA Benefits, I have been having difficulties paying my on-going living expenses including difficulties in having available funds to afford groceries and the ability to maintain current payments on my utility bills.

8. In addition to the financial difficulties listed in Paragraph 7 above, I have also been unable to make my regular monthly payments on unsecured lines of credit and have begun accruing late fees on these accounts.

I certify under the penalty of false swearing that the foregoing is true.


Samuel Acker July 13, 2020

**IN THE CIRCUIT COURT
PULASKI COUNTY, ARKANSAS**

**SAMUEL ACKER, PHILLIP DAVIDSON,
and TERRY MORROW, individually, and on
behalf of all others similarly situated,** **Case No.**
Judge:

Plaintiffs,

v.

PROTECH SOLUTIONS, INC.,

Defendant.

**AFFIDAVIT OF PHILLIP DAVIDSON IN SUPPORT OF PLAINTIFFS' EMERGENCY
MOTION FOR A TEMPORARY RESTRAINING ORDER**

I, Phillip Davidson, hereby certify as follows:

1. I am over the age of 18 years. I am competent and willing to testify as to the facts set forth in this Affidavit, which are based on my personal knowledge, unless stated otherwise.
2. I am also a Debtor in Chapter 13 Bankruptcy Case No. 20-11313 pending in the United States Bankruptcy Court for the Eastern District of Arkansas, Northern Division. (the "Chapter 13")
3. On May 5, 2020 I applied online for Pandemic Unemployment Assistance benefits ("PUA") online through the Arkansas Department of Workforce Services's ("ADWS") PUA website.
4. On May 21, 2020, I received an email from ADWS notifying me that my personal and financial information was exposed in the Data Breach.
5. I did not receive my first PUA benefit check until June 1, 2020.

Exhibit B
Scanned with CamScanner

6. Since June 1, 2020 I have been "locked out" of the PUA Application System and unable to apply for further PUA benefits.

7. On June 2, 2020 I received a Motion to Dismiss in my Chapter 13 case for failure to make payments as required under my Chapter 13 Plan. My inability to make payments is directly related to the lack of access to my PUA benefits and without this access I had to scramble from other basic necessity payments to bring my Chapter 13 current.

8. In addition to the hardship in my Chapter 13, the lack of access to my PUA benefits has made it difficult to afford my ordinary household expenses, including food and utilities.

I declare under penalty of perjury under laws of the State of Arkansas that the foregoing statements are true and correct.

Phillip Davidson
Samuel Acker
Phillip Davidson

COUNTY OF *Greene*

:: ss

STATE OF ARKANSAS

Before me, a Notary Public in and for said county, personally appeared the above named *Phillip Davidson* Samuel Acker who acknowledged he did sign the foregoing document and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at *Parisville*, Arkansas on this *14* day of July, *2020*.

Becky Murphy Hickey
NOTARY PUBLIC



IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ DIVISION

SAMUEL ACKER, PHILLIP DAVIDSON,
and TERRY MORROW, individually, and on
behalf of all others similarly situated,

Plaintiffs,

v.

PROTECH SOLUTIONS, INC.,

Defendant.

Case No.

Judge:

PLAINTIFFS' EMERGENCY MOTION
PURSUANT TO ARK. R. CIV. P. 65 FOR
A TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION

TEMPORARY RESTRAINING ORDER

THIS MATTER coming on for hearing on *Plaintiffs' Emergency Motion Pursuant to Ark. R. Civ. P. 65 for a Temporary Restraining Order and/or Preliminary Injunction*, with/without notice, counsel for the Plaintiffs/parties present, the Court being fully advised in the premises, with the Court hearing argument of counsel and the Court reviewing the pleadings, submissions and affidavits,

THE COURT FINDS:

- (a) Plaintiffs have demonstrated a showing of irreparable harm if this Court does not enter the Temporary Restraining Order to preserve the *status quo*;
- (b) Plaintiffs have demonstrated that no adequate remedy at law exists, necessitating the entry of the Temporary Restraining Order;
- (c) Plaintiffs have shown a likelihood of success on the merits on the issues raised by the motion, which the Court finds are the issues predominating this proceeding;
- (d) After reviewing the equities and balancing the hardships in entering the Temporary Restraining Order, the Court finds that the equities favor Plaintiffs;
- (e) For good cause shown, the Court finds that the Temporary Restraining Order should be entered without a bond.

IT IS HEREBY ORDERED:

1. Plaintiffs' Emergency Motion for a Temporary Restraining Order is granted.

Exhibit C

2. Defendant is mandatorily enjoined to immediately restore Plaintiffs' and putative Class members' access to the Pandemic Unemployment Assistance Application System.

3. This injunction shall remain in full force and effect until _____.

4. This injunction is designed to maintain the *status quo* between the parties.

5. This matter is set for status at _____ on _____, 2020, in Room _____, at which time a date will be set for a preliminary injunction hearing.

Judge

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
HON. ALICE S. GRAY - 12TH DIVISION 6TH CIRCUIT**

SAMUEL ACKER ET AL V PROTECH SOLUTIONS

60CV-20-3858

SUMMONS

THE STATE OF ARKANSAS TO DEFENDANT:

PROTECH SOLUTIONS, INC.
SHIVA DUVVURU
REGISTERED AGENT
303 W. CAPITOL SUITE 330
LITTLE ROCK, AR 72201

A lawsuit has been filed against you. The relief demanded is stated in the attached complaint. Within 30 days after service of this summons on you (not counting the day you received it) - or 60 days if you are incarcerated in any jail, penitentiary, or other correctional facility in Arkansas - you must file with the clerk of this court a written answer to the complaint or a motion under Rule 12 of the Arkansas Rules of Civil Procedure.

The answer or motion must also be served on the plaintiff or plaintiff's attorney, whose name and address are:

Dustin McDaniel
1307 WEST FOURTH STREET
LITTLE ROCK, AR 72201

If you fail to respond within the applicable time period, judgment by default may be entered against you for the relief demanded in the complaint.

Additional notices:

Plaintiffs' Emergency Motion Pursuant to Ark. R. Civ. P. 65 for a Temporary Restraining Order and/or Preliminary Injunction

Address of Clerks Office

TERRI HOLLINGSWORTH, CIRCUIT CLERK
CIRCUIT COURT OF PULASKI COUNTY
401 W. MARKHAM
LITTLE ROCK, AR 72201

CLERK OF COURT



Latanya Christopher, DC

Date: 07/14/2020

No. 60CV-20-3858 This summons is for PROTECH SOLUTIONS, INC. (name of Defendant).

PROOF OF SERVICE

On _____ [date] I personally delivered the summons and complaint to the individual at _____ [place]; or

After making my purpose to deliver the summons and complaint clear, on _____ [date] I left the summons and complaint in the close proximity of the defendant by _____ [describe how the summons and complaint was left] after he/she refused to receive it when I offered it to him/her; or

On _____ [date] I left the summons and complaint with _____, a member of the defendant's family at least 18 years of age, at _____ [address], a place where the defendant resides; or

On _____ [date] I delivered the summons and complaint to _____ [name of individual], an agent authorized by appointment or by law to receive service of summons on behalf of _____ [name of defendant]; or

On _____ [date] at _____ [address], where the defendant maintains and office or other fixed location for the conduct of business, during normal working hours I left the summons and complaint with

[name and job description]; or

I am the plaintiff or an attorney of record for the plaintiff in this lawsuit, and I served the summons and complaint on the defendant by certified mail, return receipt requested, restricted delivery, as shown by the attached signed return receipt.

I am the plaintiff or an attorney of record for the plaintiff in this lawsuit, and I mailed a copy of the summons and complaint by first-class mail to the defendant together with two copies of a notice and acknowledgment and received the attached notice and acknowledgment form within twenty days after the date of mailing.

Other [specify]:

 I was unable to execute service because:

My fee is \$ _____.

To be completed if service is by a sheriff or deputy sheriff:

Date: _____ SHERIFF OF _____ COUNTY, ARKANSAS

By: _____
[Signature of server]

[Printed name, title, and badge number]

To be completed if service is by a person other than a sheriff or deputy sheriff:

Date: _____ By: _____
[Signature of server]

[Printed name]

Address: _____

Phone: _____

Subscribed and sworn to before me this date: _____

Notary Public

My commission expires: _____

Additional information regarding service or attempted service:

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2020-Jul-15 12:16:28
60CV-20-3858
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**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
12TH DIVISION**

**SAMUEL ACKER, PHILLIP DAVIDSON,
and TERRY MORROW, individually, and on
behalf of all others similarly situated**

PLAINTIFFS

v.

CASE NO. 60CV-20-3858

PROTECH SOLUTIONS, INC.

DEFENDANT

**PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION AND INCORPORATED
BRIEF IN SUPPORT**

NOW COME Plaintiffs SAMUEL ACKER (“Acker”), PHILLIP DAVIDSON (“Davidson”), and TERRY MORROW (“Morrow”) (collectively “Plaintiffs”), individually and on behalf of all others similarly situated, by and through counsel, and for their *Motion for Class Certification* (“Motion”), state as follows:

INTRODUCTION

1. As a result of the COVID-19 pandemic, a large number of self-employed Arkansans and “gig economy” workers were suddenly unemployed, necessitating the creation of the Pandemic Unemployment Assistance (“PUA”) program in Arkansas. *See*, Class Action Complaint (“Complaint” or “Compl.”), ¶ 8. To manage this influx of unemployment claims, the Arkansas Division of Workforce Services (“ADWS”) hired Defendant PROTECH SOLUTIONS, INC. (“ProTech” or “Defendant”) to create, implement, and maintain a secure website for ADWS through which unemployment benefit claimants could apply for PUA program assistance online (the “PUA Application System”). *Id.*

2. The contract between the state of Arkansas and ProTech specifically required ProTech to ensure that the PUA Application System was secure, such that claimants’ personally identifiable information (“PII”)—*e.g.*, social security numbers and banking information—would

be protected. Compl. ¶ 8. The contract also required ProTech to submit a data security plan that included automated notifications to the company and the State in the event of a data breach. *Id.*

3. Despite the contractual and legal obligation to protect PUA program claimants' PII, ProTech negligently and recklessly failed to secure the PUA Application System. Compl. at ¶¶ 7-11, 16-18, 49. As a result of ProTech's actions and inactions, the PII—such as their social security numbers, birthdays, and banking information—of approximately 30,000 PUA claimants, including Plaintiffs and members of the Class (defined below), was exposed in a massive data breach (the "Data Breach"). *Id.*

4. The Data Breach has far-reaching consequences—such as placing Plaintiffs and Class members at an increased risk of identity theft and requiring Plaintiffs and Class members to vigilantly monitor their credit—and has actually resulted in identity theft and harm to Plaintiffs and Class members. *See, e.g.*, Compl. ¶¶ 13-15, 19-28, 32-33, 37-38, 42-47. Accordingly, Plaintiffs, individually, and on behalf of the Class, assert three (3) causes of action against Defendant arising from the Data Breach: (1) Negligence; (2) Invasion of Privacy; and (3) Injunctive Relief. *See*, Compl. Counts I-III.

5. At this time, Plaintiffs seek to certify the Class defined herein, pursuant to Ark. R. Civ. P. 23 ("Rule 23"). As set forth below, this case is perfectly suited for Class treatment, as Plaintiffs' and Class members' claims all arise from the same set of facts—*i.e.*, Defendant's actions and inactions which resulted in the Data Breach—and present a common question of Defendant's liability.

CLASS DEFINITION

6. Plaintiffs bring this action pursuant to Rule 23, on behalf of a Class of similarly situated individuals and entities (the “Class”), defined as follows:

All individuals who applied for Pandemic Unemployment Assistance (“PUA”) with the Arkansas Division of Workforce Services through the PUA Application System designed, implemented, and maintained by Protech Solutions, and whose personal information and/or financial information was exposed in the Data Breach.

Excluded from the Class are: (1) Defendant, Defendant’s agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and those entities’ current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge’s immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

See, Compl. ¶ 48.

LEGAL STANDARD

7. The decision to certify a class “is purely a procedural question” governed by Rule 23. *E.g.*, *The Money Place, LLC v. Barnes*, 349 Ark. 518, 524 (2002); *F&G Fin. Services, Inc. v. Barnes*, 349 Ark. 420, 424 (2002). As such, “the issue of whether to certify a class is not determined by whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met.” *Am. Abstract & Title Co. v. Rice*, 358 Ark. 1, 9 (2004); *Speights v. Stewart Title Guar. Co., Inc.*, 358 Ark. 59, 64 (2004) (“This court [the Supreme Court of Arkansas] has repeatedly held that, in cases involving the certification of class actions, neither we nor the trial court may delve into the merits of the underlying claim in determining whether the elements of Rule 23 have been satisfied.”); *The Money Place*, 349 Ark. at 524 (same). In fact, “a trial court *may not consider* whether the plaintiffs will ultimately

prevail, or even whether they have a cause of action.” *Speights*, 358 Ark. at 64 (quoting *Fraley v. Williams Ford Tractor & Equip. Co.*, 339 Ark. 322, 335 (1999)) (emphasis added by *Speights*).

8. Instead, all that is required for class certification is that the case meets the requirements of Rule 23, and that determination is “within the broad discretion of the trial court.” *E.g.*, *Fraley*, 339 Ark. at 333; *Flow Doc, Inc. v. Horton*, 2009 Ark. 411, 8 (2009). Therefore, “in order for a class action suit to be certified six factors must be met”: “(1) numerosity; (2) commonality; (3) predominance; (4) typicality; (5) superiority; and (6) adequacy.” *E.g.*, *Flow Doc*, 2009 Ark. at 8; Ark. R. Civ. P. 23(a)-(b). These requirements are substantially similar to those under Fed. R. Civ. P. 23 and are to be interpreted “in the same manner.”¹ *Fraley*, 339 Ark. at 336 (citing *Farm Bureau Mut. Ins. Co. of Arkansas, Inc. v. Farm Bureau Policy Holders & Members*, 323 Ark. 706, 709 (1996); *Union Nat. Bank v. Barnhart*, 308 Ark. 190, 197 (1992)).

ARGUMENT

9. As set forth below, all of Rule 23’s requirements are satisfied in this case. Therefore, the Court should grant the Motion, and certify the Class defined herein.

A. Numerosity.

10. “The first requirement of class certification is ‘that the class is so numerous that joinder of all members is impracticable.’” *E.g.*, *Fraley*, 339 Ark. at 333 (quoting Ark. R. Civ. P. 23(a)(1)). There is no “bright-line rule to determine how many class members are required to satisfy the numerosity requirement,” but classes consisting of hundreds or thousands of members are routinely certified. *Fraley*, 339 Ark. at 334 (collecting cases). Moreover, “the exact size of the proposed class and the identity of the class members need not be established for the court to certify a class, and the numerosity requirement may be supported by common sense.” *Cheqnet*

¹ For this reason, Plaintiffs will refer to federal court decisions regarding Fed. R. Civ. P. 23 herein, as appropriate.

Sys., Inc. v. Montgomery, 322 Ark. 742, 748 (1995) (quoting *Brewer v. Friedman*, 152 F.R.D. 142, 143 (N.D. Ill. 1993)) (internal quotations and alterations omitted); *Fraley*, 339 Ark. at 333.

11. Here, numerosity is easily satisfied, as initial reports state that approximately 30,000 Arkansans had sensitive and confidential information exposed in the Data Breach. *See*, Compl. ¶ 49.

B. Commonality.

12. Rule 23(a)(2) next requires that “there are questions of law or fact common to the class”—*i.e.*, commonality. Importantly, “Rule 23(a)(2) does not require that all questions of law or fact raised in the litigation be common.” *Simpson Hous. Sols., LLC v. Hernandez*, 2009 Ark. 480, 9 (2009); *Rosenow v. Alltel Corp.*, 2010 Ark. 26, 6 (2010). Rather, “the test for satisfaction of the commonality requirement is that there need be only a single issue of law or fact common to all members of the class.” *E.g.*, *Kersten v. State Farm Mut. Auto. Ins. Co.*, 2013 Ark. 124, 8 (2013); *Rosenow*, 2010 Ark. 26 at 6; *Simpson*, 2009 Ark. 480 at 9.

13. Here, there are several common questions of fact and law central to the resolution of Plaintiffs’ and Class members’ claims. Those common questions are:

- a. Whether Protech created, implemented, and maintained the PUA Application System without adequate protections for the personal and financial information of Plaintiffs and members of the Class;
- b. Whether Protech adopted, implemented, and maintained reasonable safeguards to prevent the unauthorized access to the personal and financial information of Plaintiffs and members of the Class;
- c. Whether Protech promptly provided notification of the Data Breach;
- d. Whether Protech owed a duty to Plaintiffs and members of the Class to safeguard and protect their personal and financial information;
- e. Whether Protech breached a duty to Plaintiffs and members of the Class to safeguard and protect their personal and financial information;

- f. Whether Protech breached a duty to Plaintiffs and members of the Class by failing to adopt, implement, and maintain reasonable safeguards to protect the personal and financial information of Plaintiffs and members of the Class; and
- g. Whether Protech is liable for the damages suffered by Plaintiffs and members of the Class as a result of the Data Breach.

See, Compl. ¶ 50.

14. Each of these common questions arises from Defendant’s actions and omissions—which led to the Data Breach—and can be resolved on a class-wide basis because those actions and omissions are common to all Plaintiffs’ and Class members’ claims. *See, e.g.*, Compl. ¶¶ 7-18, 31-33, 36-38, 41-47. In other words, Defendant’s actions and omissions are “a common wrong” sufficient to establish commonality. *Simpson*, 2009 Ark. 480 at 15; *SEECO, Inc. v. Stewmon*, 2016 Ark. 435, 15 (2016). Indeed, where, as here, “the defendant’s acts, independent of any action by the class members, establishes a common question relating to the entire class,” commonality is satisfied. *Rosenow*, 2010 Ark. 26 at 6 (quoting *Simpson*, 2009 Ark. 480 at 9) (internal quotations omitted); *Robinson Nursing & Rehab. Ctr., LLC v. Phillips*, 2017 Ark. 162, 7 (2017).

C. Predominance.

15. “Once commonality is determined when deciding whether to certify a class, the next question is whether common questions of law and fact predominate over any questions affecting only individual members.” *Robinson*, 2017 Ark. 162 at 7; Ark. R. Civ. P. 23(b). While the predominance requirement “is more stringent than commonality,” predominance is satisfied “where the preliminary, overarching issues common to all class members predominate over the individual issues.” *E.g., Union Pac. R.R. v. Vickers*, 2009 Ark. 259, 9 (2009) (internal quotations omitted); *Simpson*, 2009 Ark. 480 at 15; *Rosenow*, 2010 Ark. 26 at 10.

16. In general, “if a case involves preliminary, common issues of liability and wrongdoing that affect all class members, the predominance requirement of Rule 23 is satisfied.” *Kersten*, 2013 Ark. 124 at 8; *Rosenow*, 2010 Ark. 26 at 10 (“If a case involves preliminary issues common to all class members, predominance is satisfied.”). This is true “even if the court must subsequently decertify a class due to individualized damages.” *Simpson*, 2009 Ark. 480 at 15; *Rosenow*, 2010 Ark. 26 at 10; *Vickers*, 2009 Ark. 259 at 10. “Thus, the mere fact that individual issues and defenses may be raised regarding the recovery of individual members cannot defeat class certification where there are common questions concerning the defendant’s alleged wrongdoing that must be resolved for all class members.” *Vickers*, 2009 Ark. 259 at 10; *Kersten*, 2013 Ark. 124 at 9 (“Our law is now well settled that the mere fact that individual issues and defenses may be raised by the defendant cannot defeat class certification where there are common questions concerning the defendant’s alleged wrongdoing that must be resolved for all class members.”). “Stated another way, predominance does not fail simply because there are individual issues that may arise; the central question to be resolved by the circuit court is whether there are overarching issues that can be addressed before resolving individual issues.” *Rosenow*, 2010 Ark. 26 at 10.

17. As noted above, this case concerns a “common wrong”—*i.e.*, Defendant’s acts and omissions giving rise to the Data Breach—which is “the starting point for examination of” the predominance issue. *Vickers*, 2009 Ark. 259 at 9; *Simpson*, 2009 Ark. 480 at 15; *Kersten*, 2013 Ark. 124 at 8; *SEECO*, 2016 Ark. 435 at 15. Accordingly, each of Plaintiffs’ and Class members’ claims will depend upon the threshold issue of whether those acts and omissions violated the law. *See, e.g.*, Compl. ¶ 50 and Counts I-III. Therefore, predominance is satisfied, even if the precise

measure of Plaintiffs' and Class members' damages may vary. *Simpson*, 2009 Ark. 480 at 15; *Rosenow*, 2010 Ark. 26 at 10; *Vickers*, 2009 Ark. 259 at 10; *Kersten*, 2013 Ark. 124 at 9.

D. Typicality.

18. Rule 23(a)(3)'s typicality requirement considers whether "the claims or defenses of the representative parties are typical of the claims or defenses of the class." "A class representative satisfies the Rule 23 requirement of typicality if the claims and defenses are representative of the class." *SEECO*, 2016 Ark. 435 at 19 (citing *The Money Place*, 349 Ark. 518).

19. Similar to commonality and predominance, "the typicality requirement is satisfied if the class representative's claim arises from the same wrong allegedly committed against the members of the class." *DIRECTV, Inc. v. Murray*, 2012 Ark. 366, 13 (2012); *Kersten*, 2013 Ark. 124 at 6. Put another way, "a representative's claim is typical if it arises *from the same event or practice or course of conduct* that gives rise to the claims of other class members, and if the representative's claims are based on the same legal theory." *DIRECTV*, 2012 Ark. 366 at 13 (internal quotations and alterations omitted) (emphasis in original); *Kersten*, 2013 Ark. 124 at 6.

20. "Moreover, when it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met *irrespective of varying fact patterns which underlie individual claims.*" *DIRECTV*, 2012 Ark. 366 at 13 (internal quotations and alterations omitted) (emphasis in original); *Kersten*, 2013 Ark. 124 at 6. Therefore, like commonality and predominance, the typicality inquiry "focuses upon the *defendant's* conduct and not on the injuries or damages suffered by the plaintiffs" or the class. *Id.* (emphasis added); *SEECO*, 2016 Ark. 435 at 21 ("Our focus in reviewing typicality is, therefore, the extent to which the lead plaintiff's claim is similar to the other potential class members, not how it is different.").

21. Here, as noted with respect to commonality and predominance, Plaintiffs' and Class members' claims arise from the same course of conduct, giving rise to the same legal theories. *See*, Sections IV-B and IV-C, *supra*. Accordingly, as was the case in *The Money Place*, Plaintiffs' "claims are typical, if not identical except for the amount of damages, to the claims of each Class member." *The Money Place*, 349 Ark. at 529.

E. Adequacy.

22. Rule 23(a)(4) requires that "the representative parties and their counsel will fairly and adequately protect the interests of the class." There are three elements to this adequacy requirement: "(1) the representative counsel must be qualified, experienced, and generally able to conduct the litigation; (2) that there be no evidence of collusion or conflicting interest between the representative and the class; and (3) the representative must display some minimal level of interest in the action, familiarity with the practices challenged, and ability to assist in decision making as to the conduct of the litigation." *FirstPlus Home Loan Owner 1997-1 v. Bryant*, 372 Ark. 466, 477 (2008).

23. Here, because Plaintiffs' and Class members' claims arise from the same course of conduct—*i.e.*, Defendant's acts and omissions which gave rise to the Data Breach—there is no basis to assert the existence of "conflicting interest between the representatives and the class." *F&G Fin. Services*, 349 Ark. at 428; *Bryant*, 372 Ark. at 480. Moreover, although this lawsuit is at its inception, Plaintiffs have already demonstrated their willingness to participate and monitor the progress of this litigation, as they (1) provided Plaintiffs' counsel with sufficient information to investigate their claims, (2) assisted Plaintiffs' counsel in drafting and reviewing the Complaint, and (3) reviewed, signed, and submitted affidavits in support of Plaintiffs' *Emergency Motion*

Pursuant to Ark. R. Civ. P. 65 for a Temporary Restraining Order and/or Preliminary Injunction. F&G Fin. Services, 349 Ark. at 429; *Union Nat. Bank v. Barnhart*, 308 Ark. 190, 198 (1992).

24. Finally, although “Class counsel is presumed to be adequate,” Plaintiffs’ counsel would meet this burden even in the absence of such a presumption. *SEECO*, 2016 Ark. 435 at 21. As discussed in Plaintiffs’ *Motion for Appointment of Interim Class Counsel*, Plaintiffs’ counsel (1) have already committed substantial time and effort in researching and identifying the claims of Plaintiffs and the putative Class, (2) conducted extensive research into the factual and legal issues involved in this matter, (3) have sufficient resources to advance the litigation in a timely manner, and (4) have demonstrated, and will continue to demonstrate, their ability to make important strategic decisions in connection with pleadings, discovery, and class certification in this case.

25. Moreover, Plaintiffs’ counsel have substantial experience in complex litigation and class action proceedings, and have repeatedly been found to meet the Fed. R. Civ. P. 23’s adequacy requirements in courts throughout the nation. *See*, firm bio for DannLaw, attached hereto as Exhibit A; firm bio for Zimmerman Law Offices, P.C., attached hereto as Exhibit B; and firm bio for McDaniel, Wolff & Benca, PLLC, attached hereto as Exhibit C. This case is no different, and therefore, adequacy is satisfied.

F. Superiority.

26. In addition to predominance, Rule 23(b) requires “that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” This “superiority requirement is satisfied if class certification is the more efficient way of handling the case, and it is fair to both sides.” *Beverly Enterprises-Arkansas, Inc. v. Thomas*, 370 Ark. 310, 319 (2007) (internal quotations omitted); *Robinson*, 2017 Ark. 162 at 7. As with predominance, where a case presents threshold “common, predominating questions of law or fact,” a class action

is the superior method of adjudication. *Id.*; *Robinson*, 2017 Ark. 162 at 10; *Rosenow*, 2010 Ark. 26 at 11 (“This court has repeatedly recognized that conducting a trial on the common issue in a representative fashion can achieve judicial efficiency.”).

27. Superiority is satisfied here because, as discussed at length above, this case presents common issues of fact and law central to Defendant’s liability which can be decided in a single proceeding. *See*, Sections IV-B through IV-D, *supra*; *Rosenow*, 2010 Ark. 26 at 11 (“The avoidance of multiple suits lies at the heart of any class-action decision.”). This is true even if the Court will ultimately be required to determine individualized damages issues in a separate bifurcated proceeding. *Rosenow*, 2010 Ark. 26 at 11-12; *Robinson*, 2017 Ark. 162 at 10 (discussing *GGNSC Arkadelphia, LLC v. Lamb by & through Williams*, 2015 Ark. 253, 19 (2015)); *Simpson*, 2009 Ark. 480 at 19. Indeed, as noted by the Supreme Court of Arkansas, Rule 23(d) “allows the circuit court to enter orders necessary for the appropriate management of the class action,” which can be used to ease any potential manageability concerns related to individualized damages determinations. *Rosenow*, 2010 Ark. 26 at 11-12.

28. In light of the fact that Rule 23’s federal counterpart provides federal courts with similar mechanisms to ameliorate any manageability issues, courts around the country have held that “refusing to certify on manageability grounds alone should be the last resort.” *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 664 (7th Cir. 2015) (citing *Carnegie v. Household Int’l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004) (“a class action has to be unwieldy indeed before it can be pronounced an inferior alternative”)). Indeed, a particular management issue may never come to fruition because “settlement might eliminate all the thorny issues that the court would have to resolve if the parties fought out the case.” *Carnegie*, 376 F.3d at 660 (citing *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997)). Similarly, a result favorable to a defendant relative to

a threshold class-wide liability question—*e.g.*, whether Defendant’s acts and omissions caused the Data Breach—could render individual issues moot. *Mullins*, 795 F.3d at 671; *see also*, *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013); *Messner v. Northshore University HealthSystem*, 669 F.3d 802, 819 (7th Cir. 2012). Accordingly, a trial court should “wait and see how serious the problem may turn out to be after settlement or judgment,” when the court knows more “about available records, response rates, and other relevant factors.” *Mullins*, 795 F.3d at 664 (citing *Carnegie*, 376 F.3d at 661). Then, “if a problem is truly insoluble, the court may decertify the class at a later stage of the litigation.” *Id.*

29. This approach to manageability is entirely consistent with the approach endorsed by the Supreme Court of Arkansas, which has frequently mentioned the possibility of decertification after common liability issues are determined as an alternative to the outright denial of class certification. *Simpson*, 2009 Ark. 480 at 15; *Rosenow*, 2010 Ark. 26 at 10; *Vickers*, 2009 Ark. 259 at 10. Therefore, in light of the many threshold, common issues presented in this case, superiority is satisfied, notwithstanding any potential manageability issues that may arise in this case.

CONCLUSION

30. For the reasons stated herein, the Court should grant the Motion, and enter an order certifying the Class defined herein.

WHEREFORE, Plaintiffs, individually, and on behalf of the Class, pray for an order finding that this action satisfies the prerequisites for maintenance as a class action, certifying the Class defined herein, appointing Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel, and for all other relief this Court may deem just and proper. A draft Order is attached hereto as Exhibit D.

Respectfully submitted,

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DannLaw

Since 2008, DannLaw has represented individuals and businesses in a wide array of legal matters. The attorneys of DannLaw are established and respected trial lawyers who represent clients in simple litigation, complex litigation, appellate litigation, and class action lawsuits. DannLaw has recovered millions of dollars on behalf of thousands of individuals and businesses across the country including the states of Ohio, Illinois, Oregon, Florida, Kentucky, New Jersey and Tennessee.

Marc E. Dann

Marc Dann is the Managing Partner of DannLaw. He is also a Partner of Advocate Attorneys LLP in Washington DC. . These practices focus on representing clients who have been harmed by banks, debt buyers, debt collectors and other financial predators and providing access legal services for traditionally underserved working class and middle class Americans. Dann has fought for the rights of tens of thousands of consumers and brought class actions lawsuits on behalf of clients in both private practice and as Ohio's Attorney General.

As Ohio Attorney General, Marc Dann initiated securities fraud claims against the creators of mortgage-backed securities on behalf of Ohio's public pension funds. He assembled Ohio's Organized Crime Commission to mobilize Mortgage Fraud Task Forces in Ohio's major cities to prosecute those engaged in mortgage fraud and predatory lending, Dann's office challenged the standing of mortgage servicers to foreclose in cases where the State of Ohio was a party. Dann also worked with former Ohio Supreme Court Chief Justice Thomas Moyer to organize over 1,200 volunteer lawyers to represent homeowners in foreclosure.

After leaving the Attorney General's Office, Marc Dann began representing Ohio homeowners facing foreclosure pro bono. During this time, he recognized that the issues faced by individual homeowners represented patterns of practice throughout the mortgage servicing industry. In response, he mobilized a team and created DannLaw in order to fight for the rights of Ohioans.

Since DannLaw was founded, it has grown to represent clients facing a range of consumers' rights issues including in class action. While mortgage servicing litigation practice the foundation of DannLaw, Marc Dann has developed a comprehensive collection of tools designed to help clients stay in their homes including prosecuting more than 25 Class Action cases. . He is a recognized national leader in the use of federal mortgage servicing regulations to hold servicers accountable for their actions.

Utilizing these tools has lead Marc Dann to host seminars explaining these techniques to other attorneys. These working groups help to elevate the defense of clients across the nation while allowing attorneys to recognize patterns of practice that affect all citizens.

This collaborative spirit also applies to the communities of which DannLaw is a part. As a proud member

of Midtown Cleveland, Marc Dann and the team members at the firm participate in community events, such as the annual Midtown clean-up. Marc Dann and DannLaw also support the Cleveland International Film Festival each year.

Dann prioritizes professional organizations as well, as a member of the American Bar Association, the Federal Bar Association, the Cleveland Metropolitan Bar Association, the Ohio State Bar Association, and the National Association of Consumer Bankruptcy Attorneys. He is a member of the Society of Attorneys General Emeritus, the Democratic Attorneys General Association and the Ohio Attorneys General Association.

Marc Dann is a regular contributor to *Attorney at Law Magazine* and the *Cleveland Metropolitan Bar Association Magazine*. His work has also been featured in *NACBA's Consumer Bankruptcy Journal* and *Legal Ink Magazine* and *Working Class Perspectives* compiled by Georgetown University.

Dann has been appointed Liason Counsel in the Sonic Data Breach MDL (ND Ohio), and Lead counsel in *Lieber v. Wells Fargo* (ND Ohio), *Miller v. Intelleos* (ND OH), *Black v. Girard* (Trumbull County Ohio) *Madyda v. Ohio* (Ohio Court of Claims) and serves as Liason Counsel for Guardians of NAS Children in *In Re Opiate Litigation MDL* (ND OH).

Dann is admitted to practice in the United States Court of Appeals for the Sixth Circuit, United States District Court for the Southern District of Ohio, United States District Court for the Northern District of Ohio, United States District Court for the Northern District of Illinois, The Northern District of Indiana, The Western District of Tennessee and the Ohio Supreme Court. He has pro hac vice admission in Cook County, Illinois, Washoe County Nevada, United States District Court for the Southern District of Florida, United States District Court for the Middle District of Florida, United States District Court for the Northern District of Georgia, United States District Court in Nevada, United States District Court for the Western District of New York, United States District Court for the Southern District of New York, United States District Court for the Eastern District of New York, United States District Court for the District of New Jersey, United States District Court for the Eastern District of Pennsylvania, United States District Court for the Western District of Washington, and the United States District Court for the Central District of California

A native of Cleveland, Ohio, Marc Dann is a 1984 graduate of the University of Michigan, where he earned a bachelor's degree in history. He graduated from the Case Western Reserve University School of Law in 1987.

Brian D. Flick

Mr. Flick advocates for plaintiffs and defendants nationwide in state and federal trial and appellate courts. His practice areas include Consumer Bankruptcy debtor representation in the areas of Chapter 7, 12, and 13, consumer fraud, real estate litigation, foreclosure defense, student loan debt defense, Bankruptcy Litigation, and Mortgage Servicing Litigation under the Real Estate Settlement Procedures Act and the

Truth in Lending Act.

He has experience in all phases of litigation including extensive discovery, substantive motion practice, trial practice, and appellate practice. Mr. Flick has worked vigorously for over 14 years to protect the rights of consumers and to pursue recovery for plaintiffs and defendants in numerous civil matters including class actions.

Mr. Flick graduated from Adrian College with a B.A. In Political Science. He earned his law degree from the Ohio Northern University Pettit College of Law. While in law school, he received several academic awards and appeared on the Dean's List multiple times.

Since beginning the practice of law, he has been very active in local and national attorney associations. He is the current president of the Bankruptcy Committee and the Volunteer Lawyers Committee for the Cincinnati Bar Association. He is the current Sixth Circuit Listserv Moderator for the National Association of Consumer Bankruptcy Attorneys, a position he has held since May 2017. He is the current Ohio State Chair for the National Association of Consumer Advocates, a position he has held since May 2017. He was also appointed by the Board of Trustees as a member of the Unauthorized Practice of Law Committee of the Cincinnati Bar Association, a position he has held since June 2017. Mr. Flick has been a frequent speaker at Cincinnati Bar Association, NACBA, and NACA events since 2014 as well as assisting with DannLaw's Regulation X and Z Seminars that have taken place since 2016.

Mr. Flick is admitted to the practice of law in the State of Ohio, State of Kentucky and the Federal District Courts and Bankruptcy Courts in the following jurisdictions: Southern District of Ohio; Northern District of Ohio; Eastern District of Kentucky; Western District of Kentucky; Eastern District of Tennessee; Northern District of Indiana; Eastern District of Michigan and the Northern District of Illinois. He has also been admitted *pro hac vice* in civil litigation in the following United States District Courts for either resolved or pending matters: District of Nevada, Eastern District of Pennsylvania, Central District of Florida and Southern District of Florida. He is also admitted in the United States Court of Appeals for the Sixth Circuit.

Michael A. Smith, Jr.

Mr. Smith is the most recent addition to DannLaw's team of highly skilled attorneys. A graduate of the Ohio State University and the University of Georgia School of Law Mr. Smith is admitted to practice in the State of Ohio, State of New Jersey, the United States District Court for the Northern District of Ohio and the United States District Court for the District of New Jersey. Smith has been active in federal litigation, including Class Action Litigation in the state and Federal Courts of Ohio and New Jersey.

Emily White

After spending nearly a decade as a public interest attorney, Emily White joined DannLaw. She is the

Managing Partner of the firm's Columbus, Ohio office where she practices student loan debt, disability rights, Class Action and consumer law.

Emily received her law degree from the City University of New York School of Law, where she served on the editorial board of the New York City Law Review. Following law school, she served for two years as a judicial law clerk to the Honorable Sylvia H. Rambo, U.S. District Court Judge for the Middle District of Pennsylvania.

In 2009 she joined the Legal Aid Society of Cleveland, where she represented low-income consumers during the historic recession and foreclosure crisis. While at Legal Aid she authored a chapter of Ohio Consumer Law focused on student loans and helped student loan borrowers resolve defaults and apply for student loan discharges.

In 2013 she joined Disability Rights Ohio as a staff attorney. In that role Emily represented individuals with disabilities in employment and higher education matters and offered advice about issues related to student loans and vocational rehabilitation services.

Emily received an undergraduate degree in Philosophy from the University of Illinois at Urbana-Champaign. Before attending law school she served as an AmeriCorps volunteer with Habitat for Humanity NYC.

Javier Merino

Attorney Javier Merino is the managing partner of the New Jersey office of DannLaw where he focuses his practice on Consumer, Bankruptcy and Mortgage Servicing Litigation. After receiving his Juris Doctorate from St. John's University School of Law. His practice is focused on bankruptcy, foreclosure defense, and negotiating mortgage loan modifications.

Marino has litigated dozens of claims under Federal and State Consumer Law laws in New Jersey and New York and has defended hundreds of Foreclosure cases.

While at St. John's Law School he was the Executive Blog Editor for the New York Litigator Law Journal and served as treasurer of the Metropolitan/Latino Law Student Association. He also volunteered his time assisting in the preparation of bankruptcy petitions while working at the St. John's Bankruptcy Advocacy Clinic.

Javier Merino is a graduate of Rutgers University and St. John's Law School

Attorney Merino is licensed to practice in the states of New Jersey and New York, the Federal District Court of New Jersey, Third Circuit Court of Appeals, Eastern District of New York, and the Southern District of New York.

Dan Solar

Attorney Dan Solar has brought consumer cases against loan modification mills and financial institutions, won motions to vacate older foreclosure judgments on behalf of DannLaw clients, and unearthed significant evidence of fraud and robo-signing via the legal discovery process.

A licensed attorney since 2009, Dan earned a B.A. in Political Science from Denison University in 2006 and a J.D. from the University of Akron School of Law in 2009. He served an internship at the Cuyahoga County Public Defender's Office and during his years in law school worked as a law clerk for a firm in Akron, Ohio where he focused on a variety of tort matters and insurance litigation.

In addition to his extensive legal training, Attorney Solar's experience in the origination of mortgage loans gives him a specialized, in-depth and invaluable knowledge of every facet of the mortgage lending process.

Attorney Solar is admitted to practice in the State of Ohio, the United States District Courts for the Northern and Southern Districts of Ohio, and the Eleventh Circuit Court of Appeals.

REPRESENTATIVE CLASS ACTIONS CASES

Completed Cases:

Miller et al. v. Inteleos, Inc., Case No. 1:17-cv-00763-DAP NDOH - \$570,000 recovery for a nationwide class of sonographers who took and passed a certification examination but the testing agency improperly scored their results and falsely reported that they failed the examination.

Lieber v. Wells Fargo Bank, N.A., Case No. 1:16-cv-02868-PAG NDOH - \$425,000 recovery for a nationwide class of borrowers whose lender failed to properly respond to qualified written requests, requests for information, and/or notices of error because of an improper active litigation, active mediation, or active bankruptcy exception.

Clark, et al. v. Lender Processing Services, Inc, et al., Case No. 2:12-cv-02187 NDOH

Hlavasa, et al. v. Bank of America, et al., Case No. 2:2011-cv-00530 NDOH

Turner, et al. v. Lerner, Sampson & Rothfuss, Case No. 1:11-cv-00056 NDOH

In re Sonic Corp. Customer Data Security Breach, 1:17-md-2807 NDOH (Order granting Plaintiffs' Unanimous and Unopposed Motion to Appoint Attorney William B. Federman as Interim Lead Counsel, Attorney Marc Dann as Interim Liaison Counsel, and Attorneys Thomas A. Zimmerman, Jr., Michael R.

Fuller, Melissa R. Emert and Miles Clark as Plaintiffs' Steering Committee signed 01/03/2018) - Class action for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by a retailer.

Pending Cases:

RESPA and Mortgage Servicing Class Action

- DannLaw is co-counseling a Class action for a nationwide class of borrowers who were denied the requisite loan modification options, as required by the Real Estate Settlement Procedures Act against a Mortgage Servicer. The matter has not yet proceeded to appointment of Class Counsel or Class Certification.
- Dannlaw is putative class counsel in Trivison v. Citizens Bank (ND OH)
- Danlaw is putative class counsel in Ryder v. Wells Fargo (SD OH)

Data Breach/Misuse of Consumer Information -

- DannLaw is co-counseling a Class action for a nationwide class and a statewide class for Ohio Consumers who were subject to a data breach from a third-party data collection agency who contracted with one of the three major Credit Reporting Agencies. The matter has not yet proceeded to appointment of Class Counsel or Class Certification.
- DannLaw is co-counseling a Class action for a nationwide class and a statewide class for Ohio Consumers who were subject to a data breach from one of the three major Credit Reporting Agencies. The matter has not yet proceeded to appointment of Class Counsel or Class Certification.

Disability Rights - DannLaw is co-counseling a Class Action Class action for a nationwide class of disabled individuals who were denied full, equal and independent access to the goods, services and facilities provided by a hotel. The matter has not yet proceeded to appointment of Class Counsel or Class Certification.

Shareholder Derivative Suit - DannLaw is co-counseling as Local Counsel a Shareholder Derivative Complaint against a multi-state Managed Care facility. The matter has not proceeded to Class Certification.

NOTE: This list of cases is a representative sample of some of the class action lawsuits. It is not an exhaustive list as it does not include matters that have settled confidentially prior to any Motion for Class Certification.

ZIMMERMAN LAW OFFICES, P.C.

Since 1996, Zimmerman Law Offices has represented individuals and businesses in a wide array of legal matters. Its attorneys are established and respected trial lawyers who represent clients in complex litigation and class action lawsuits nationwide. The firm has an extensive and varied litigation-based practice, with a focus on class action litigation. Zimmerman Law Offices has recovered over \$250 million on behalf of millions of individuals and businesses nationwide.

The attorneys at Zimmerman Law Offices are experienced in Multidistrict Litigation (MDL), having served as lead counsel in MDL cases throughout the country. These MDL cases included claims for fraud, improper pricing, misleading product claims, and privacy violations including data breaches.

ATTORNEYS

Thomas A. Zimmerman, Jr.

A seasoned litigator for over 23 years, Mr. Zimmerman practices extensively and has obtained multi-million dollar jury verdicts in class action, corporate, commercial, medical malpractice, consumer fraud, constitutional due process, general civil, product liability, toxic tort, and other complex litigation. He represents both plaintiffs and defendants nationwide in state and federal trial and appellate courts. He also represents individuals and corporations in transactional matters, and before state and federal administrative and regulatory agencies.

Mr. Zimmerman has been lead counsel in national and state-wide class action litigation, and has handled other multi-party litigation involving such companies as MCI/Worldcom, United Airlines, Peoples Gas, AT&T, Warner-Lambert, Pfizer, Liberty Mutual Insurance Co., DaimlerChrysler, ADT, Ford Motor Co., Mead Johnson, KCBX, Inland Bank, Commonwealth Edison, Ameritech, Wells Fargo, and Bridgestone/Firestone. He is well respected for his representation of physicians, dentists, nurses, psychologists, veterinarians, and many other licensed professionals before state and federal agencies including the Illinois Department of Financial and Professional Regulation, and the U.S. Department of Health and Human Services.

In 2017, 2018, 2019 and 2020, he was selected as a *Super Lawyer* in the area of class action and mass torts.

In 2000, he was voted one of the Top 40 Illinois Attorneys Under the Age of 40. This is especially notable, as he was chosen out of 60,000 attorneys in Illinois under the age of forty.

In 2003, the Illinois Supreme Court appointed Mr. Zimmerman to the Review Board of the Attorney Registration and Disciplinary Commission ("ARDC"). He served in that capacity until 2011, wherein he presided over appeals by attorneys who have been found to have committed misconduct, and recommended discipline for their ethical violations. In 2013, the ARDC

appointed Mr. Zimmerman as Special Counsel, wherein he conducts independent investigations in matters involving allegations of misconduct against attorneys associated with the ARDC.

Additionally, the Illinois Governor appointed Mr. Zimmerman to the Illinois Courts Commission in 2003. A Commission member presides over proceedings wherein judges are charged with committing ethical violations, and imposes discipline on judges who are found to have engaged in misconduct. Mr. Zimmerman has served as a Commission member continuously since his appointment.

Prior to becoming an attorney, Mr. Zimmerman worked for AT&T where he negotiated partnerships with companies for domestic and international joint-venture and new product development activities. During this time, he was the featured speaker at 400 conferences, seminars, and presentations. Thereafter, he presented oral testimony at various Federal Senate and Congressional hearings. After obtaining his law license, Mr. Zimmerman has lectured at law schools and seminars, and is frequently interviewed by the news media concerning legal issues.

Mr. Zimmerman earned a B.S. in Computer Science-Mathematics from the University of Illinois, and an M.B.A. in Finance from DePaul University in the evenings while working for AT&T. After leaving AT&T, Mr. Zimmerman earned his law degree from the Chicago-Kent College of Law, where he was a Ramsey-Burke Scholarship recipient and earned the Academic Achievement Award.

He is admitted to practice law in Illinois, and other states on a case-by-case basis, and he is admitted to practice before the U.S. Supreme Court, and various federal courts of appeal and federal district courts. Based on his demonstrated experience and ability, he was appointed to the federal court trial bar.

Mr. Zimmerman is currently the chair of the Clerk of the Circuit Court of Cook County Attorney Advisory Committee, and was formerly co-chair of the Clerk of the Circuit Court Transition and Strategic Planning Public Policy Subcommittee.

Mr. Zimmerman is a member of the American, Illinois State, and Chicago Bar Associations, and the Illinois Trial Lawyers Association, where he serves on various committees. He is also a member of the American Association for Justice. In 2000, he was appointed to the Illinois Trial Lawyers Association Board of Advocates.

Involved in numerous community service activities, Mr. Zimmerman has been an Illinois State Board of Education surrogate parent of disabled children since 1988. In addition, he was a speaker on the rights of disabled people for the Illinois Planning Council on Developmental Disabilities, and a Family Shelter Service counselor to battered children for many years. He has been recognized by the federal court for his pro bono representation of indigent clients.

Sharon A. Harris

Ms. Harris has extensive experience litigating complex class action matters in state and federal trial and appellate courts nationwide. For over 20 years, she has focused her practice on consumer protection, product liability, privacy, and antitrust matters. Ms. Harris has developed a particular expertise in state unfair and deceptive practice statutes, privacy laws, federal antitrust laws, the Fair Credit Reporting Act, the Racketeer Influenced and Corrupt Organizations Act (RICO), the Telephone Consumer Protection Act, and various other federal and state laws. For example, she was appointed class counsel in *In re Pilot Flying J Fuel Rebate Contract Litigation*, which involved allegations that the defendants violated RICO and various state laws by withholding portions of fuel discounts and rebates to which class members were contractually entitled.

Ms. Harris received her Bachelor of Science degree from Michigan State University with a dual major in Political Science and Social Science. She received her law degree from DePaul University College of Law.

She is admitted to practice in the State of Illinois, the United States District Court for the Northern District of Illinois, and the United States Courts of Appeals for the Seventh and Ninth Circuits, and she is a member of the American, Illinois State, and Chicago Bar Associations.

Matthew C. De Re

Mr. De Re advocates for both plaintiffs and defendants nationwide in state and federal trial and appellate courts. His practice areas include class action, corporate, commercial, consumer fraud, general civil, product liability, personal injury, and other complex litigation. He also represents professionals, such as physicians, dentists, nurses, insurance producers, and real estate brokers, before state and federal agencies, including the Illinois Department of Financial and Professional Regulation and the Department of Insurance. In addition to his extensive litigation practice, Mr. De Re assists individuals and corporations in transactional matters.

He has experience in all phases of litigation, including extensive discovery and substantive motion practice. He has assisted in the defense of individuals and companies in cases involving personal injury, employment, and civil rights. Mr. De Re has also vigorously pursued recovery for plaintiffs in numerous civil matters. Prior to joining Zimmerman Law Offices, he served as a Law Clerk for the Circuit Court of Cook County.

Mr. De Re graduated from the University of Wisconsin-Madison with a B.S. in both Political Science and History. He earned his law degree from Washington University in St. Louis. While in law school, he received academic awards and appeared on the Dean's List multiple times. He also served two years on the Executive Board of the Student Bar Association and was the Associate Managing Editor for the Washington University Journal of Law & Policy.

He is admitted to practice law in the State of Illinois and is a member of the Illinois State and Chicago Bar Associations.

Jeffrey D. Blake

Mr. Blake represents consumers in class actions involving unfair and deceptive trade practices, privacy violations, antitrust matters, and defective products. He has considerable experience prosecuting complex cases in state and federal courts throughout the nation, including appeals.

Mr. Blake received his J.D., *cum laude*, from the Chicago-Kent College of Law in 2012. While attending, Mr. Blake served as Executive Articles Editor for the *Chicago-Kent Law Review*, spent a semester as a judicial extern for the Honorable Samuel Der-Yeghiayan of the United States District Court for the Northern District of Illinois, and participated in the Intellectual Property Law Clinic and the Center for Open Government.

After graduating law school, Mr. Blake served as the judicial law clerk for the Honorable Patrick McKay, Superior Court Judge for the Third Judicial District in Anchorage, Alaska.

Mr. Blake received a Bachelor of Science from the University of Illinois at Chicago.

He is admitted to practice in the State of Illinois and the United States District Court for the Northern District of Illinois.

Jordan M. Rudnick (*of counsel*)

Mr. Rudnick represents individuals and large national and international companies in providing business advice, counsel and dispute resolution in a wide variety of contexts for almost 20 years. In particular, Mr. Rudnick represents plaintiffs and defendants nationwide in class action, corporate, commercial, consumer fraud, general civil, and other complex litigation in state and federal courts, arbitrations, and mediations. Mr. Rudnick has been involved in all phases of litigation, including extensive discovery, substantive motion practice, trials and appeals.

His experience as an attorney also includes representing parties in nationwide securities fraud class actions. Notably, Mr. Rudnick represented Canadian Imperial Bank of Commerce in the Enron class action securities litigation and related proceedings. He also has extensive experience representing commercial policyholders in recovering insurance proceeds from their insurers.

Mr. Rudnick serves as an arbitrator for FINRA (Financial Industry Regulatory Authority, formerly known as the NASD or National Association of Securities Dealers) where he and panels of two other arbitrators decide the outcome of disputes between investors and securities brokers and dealers.

He has provided extensive pro bono representation of improperly-expelled school children in conjunction with the Legal Assistance Foundation of Metropolitan Chicago, and with the Chicago Coalition for the Homeless. In addition, in his spare time, he is a volunteer at the Lincoln Park Community Homeless Shelter.

Mr. Rudnick served as a judicial law clerk to the Honorable Justice Joseph Gordon, Illinois Appellate Court, 1st District, where he drafted opinions in appeals arising from complex civil and criminal trial court decisions.

Mr. Rudnick earned his B.A. in Political Science from the University of Chicago, and he graduated *cum laude* from the John Marshall Law School with honors and on a full scholarship. In law school, he appeared on the Dean's List, and he was a member of the school's Moot Court Team. He also was a Staff Editor on the *John Marshall Law Review* for two years.

He is admitted to practice law in Illinois, New York, and Washington, D.C., and is a member of the Chicago Bar Association, NAACP, and ACLU.

REPRESENTATIVE CLASS ACTION CASES

Completed Cases

Misleading Product Claims — \$62 million recovery for a nationwide class of customers who purchased products that were advertised to reduce cellulite in the human body, plus equitable relief to correct the misleading claims. *Joseph v. Beiersdorf North America, Inc.*, No. 11 CH 20147 (Cook Cnty, IL).

Improper Cellular Phone Fee — \$48 million recovery for a statewide class of businesses and individuals who paid an improper municipal infrastructure maintenance fee on their cellular phone bills. *PrimeCo Personal Communications, et al. v. Illinois Commerce Commission, et al.*, 98 CH 5500 (Cook Cnty, IL).

Defective Vehicles — \$35 million in monetary and injunctive relief for a nationwide class of individuals and businesses who purchased vehicles manufactured with a defective transmission. *Vargas, et al. v. Ford Motor Co.*, No. 12 cv 8388 (C.D. CA).

Fraud — \$31 million recovery for a nationwide class of businesses and individuals who placed advertisements in a newspaper based on fraudulent circulation figures. *In re Chicago Sun-Times Circulation Litigation*, No. 04 CH 9757 (Cook Cnty, IL).

Defective Products — \$16 million recovery for a nationwide class of individuals who purchased defective home security systems that could be easily hacked and disabled. *Edenborough v. ADT, LLC, et al.*, No. 16 cv 2233 (N.D. CA).

Misleading Product Claims — \$14 million recovery for a nationwide class of customers who purchased defective garden hoses with misleading claims, plus equitable relief to extend the product's warranty. *Bergman, et al. v. DAP Products, Inc., et al.*, No. 14 cv 3205 (D. MD).

Fraud / Data Breach — \$11.2 million recovery for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by an internet

service provider, and who also paid money to that provider based on misrepresentations. *In re Ashley Madison Customer Data Security Breach Litigation*, MDL No. 2669 (E.D. MO).

Defective Products — \$9 million recovery for a nationwide class of individuals who sustained financial and personal injuries resulting from their purchase and use of baby wipes that were tainted with a dangerous bacteria. *Jones v. First Quality Enterprises, Inc., et al.*, No. 14 cv 6305 (E.D. NY).

Power Outages — \$7.75 million recovery for a statewide class of businesses and individuals who sustained financial damages due to widespread and prolonged power outages. *In re Commonwealth Edison 1999 Summer Power Outages*, No. 99 CH 11626 (Cook Cnty, IL).

Privacy Violation — \$7.3 million recovery for a nationwide class of consumers whose personal information was improperly disclosed. *Aliano v. Airgas USA, LLC*, No. 14 CH 20024 (Cook Cnty, IL).

Data Breach — \$4.3 million recovery for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by a retailer. *In re Sonic Corp. Customer Data Breach Litigation*, MDL No. 2807 (N.D. OH).

Unsolicited Faxes — \$4 million recovery for a nationwide class of businesses and individuals who sustained damages resulting from the receipt of unsolicited facsimile advertisements. *Derosé Corp. v. Goyke Health Center*, 06 CH 6681 (Cook Cnty, IL).

Fraud — \$3.5 million recovery for a nationwide class of Spanish speaking purchasers of baby formula, arising out of misleading product labeling. *Cardenas v. Mead Johnson & Company*, No. 01 CH 11151 (Cook Cnty, IL).

Unsolicited Faxes — \$2.5 million recovery for a statewide class of individuals and businesses who sustained damages resulting from the receipt of unsolicited facsimile advertisements. *iMove Chicago, Inc. v. Inland Bancorp, Inc., et al.*, No. 16-cv-10106 (N.D. IL)

Misleading Product Labeling — \$2.5 million recovery for a nationwide class of businesses and individuals who purchased whiskey whose labeling misstated the characteristics of the product. *Due Fratelli, Inc. v. Templeton Rye Spirits, LLC*, No. 2014 CH 15667 (Cook Cnty, IL).

Misrepresentations in Book — \$2.35 million recovery for a nationwide class of customers who purchased a fictional book while under the impression that the book was a non-fiction memoir. *In re A Million Little Pieces Litigation*, No. 06-md-1771 (S.D. NY).

Consumer Fraud — \$1.6 million recovery for a nationwide class of individuals who paid for and traveled to an event that did not occur as advertised. *Norton v. Niantic, Inc.*, No. 2017 CH 10281 (Cook Cnty, IL).

Misleading Product Labeling — \$1.5 million recovery for a nationwide class of individuals who purchased a product whose packaging misstated the characteristics of the product. *In re Honest*

Company Sodium Lauryl Sulfate (SLS) Marketing and Sales Practices Litigation, MDL No. 2719 (C.D. CA).

Improper Debiting of Bank Accounts — \$1.5 million recovery for a statewide class of individuals who were members of a health club that debited its members' bank accounts without adequate notice or authority. *Wendorf, et al. v. Landers, et al.*, No. 10 cv 1658 (N.D. IL).

Environmental Contamination — \$1.4 million recovery for a statewide class of individuals and businesses who suffered from an infiltration of coal and petroleum coke dust in the air and on their property. *Martin, et al. v. KCBX Terminals Company, et al.*, No. 13 cv 08376 (N.D. IL).

Misleading Product Claims — \$1.4 recovery for a nationwide class of individuals and businesses who purchased HDMI cables based on representations that more expensive higher speed cables were needed to operate certain audio visual equipment. *O'Brien, et al. v. Monster, Inc., et al.*, No. 2015 CH 13991 (Cook Cnty, IL).

School Misrepresenting Accreditation — \$1.2 million recovery, representing nearly the full value of each class member's loss, for a statewide class of individuals who enrolled in a school based on the school's misrepresentations that it was accredited. *Allen v. Illinois School of Health Careers, Inc.*, No. 10 CH 25098 (Cook Cnty, IL).

Privacy Violation — \$1 million recovery for a nationwide class of consumers whose personal information was improperly disclosed. *Radaviciute v. Christian Audigier, Inc.*, No. 10 cv 8090 (N.D. IL).

Breach of Contract — \$570,000 recovery for a nationwide class of sonographers who took and passed a certification examination but the testing agency improperly scored their results and falsely reported that they failed the examination. *Miller, et al. v. Inteleos, Inc.*, No. 17 cv 763 (N.D. OH).

Privacy Violation — \$500,000 recovery for a statewide class of consumers whose personal information was improperly disclosed. *Aliano v. Joe Caputo and Sons – Algonquin, Inc., et al.*, No. 09 cv 0910 (N.D. IL).

Contaminated Drinking Water — \$500,000 recovery for a statewide class of individuals who suffered damages as a result of a contaminated water well, plus equitable relief to close the well. *Joseph Marzano v. Village of Crestwood*, No. 09 CH 16096 (Cook Cnty, IL).

Fraud — \$425,000 recovery for a nationwide class of businesses and individuals who purchased spirits whose labeling misstated the characteristics of the product. *Due Fratelli, Inc. v. Proximo Spirits, Inc.*, No. 2014 CH 17429 (Cook Cnty, IL).

Foreclosure Fraud — \$425,000 recovery for a nationwide class of borrowers whose lender failed to properly respond to qualified written requests, requests for information, and/or notices of error because of an improper active litigation, active mediation, or active bankruptcy exception. *Lieber v. Wells Fargo Bank, N.A.*, No. 16 cv 2868 (N.D. OH).

Privacy Violation — \$295,000 recovery for a nationwide class of consumers whose personal information was improperly disclosed. *Joseph v. Marbles, LLC*, No. 13 cv 4798 (N.D. IL).

Privacy Violation — \$250,000 recovery for a nationwide class of consumers whose personal information was improperly disclosed. *DiParvine v. A.P.S., Inc. d/b/a Car Quest Auto Parts*, No. 11 cv 6116 (N.D. IL).

Unsolicited Faxes — \$237,600 recovery for a statewide class of individuals and businesses who sustained damages resulting from the receipt of unsolicited facsimile advertisements. *Phillips Randolph Enterprises, LLC v. Key Art Publishing Co.*, No. 07 CH 14018 (Cook Cnty, IL).

Improper Health Club Memberships — Recovery for a statewide class of individuals whose health club membership agreements provided for improper membership terms. *Izak-Damiecki v. World Gym International, LLC*, No. 10 CH 18845 (Cook Cnty, IL).

Illegal Lending Practices — Recovery, representing the maximum amount of statutory damages, for a nationwide class of customers who obtained loans whose terms violated the Truth in Lending Act, plus equitable relief to modify the loan contract to conform with the law. *Papeck, et al. v. T.N. Donnelly & Co.*, No. 09 CH 31997 (Cook Cnty, IL).

Privacy Violation — Recovery for a nationwide class of over 36 million consumers whose personal information was improperly disclosed. *Dudzienski v. GMRI, Inc.*, No. 07 cv 3911 (N.D. IL).

Unsolicited Faxes — Recovery for a statewide class of individuals and businesses who sustained damages resulting from the receipt of unsolicited facsimile advertisements. *Phillips Randolph Enterprises, LLC v. Home Run Inn, Inc.*, No. 08 CH 43273 (Cook Cnty, IL).

Privacy Violation — Recovery for a statewide class of over 60,000 consumers whose personal information was improperly disclosed. *O'Brien v. Paninos, Inc.*, No. 10 cv 2991 (N.D. IL).

Breach of Warranty — Recovery on behalf of a nationwide class of customers who had their warranty retroactively changed from a lifetime guarantee to a 90-day guarantee, plus equitable relief to reinstate the lifetime guarantee on the products. *Brady, et al. v. Learning Curve Int'l, Inc., et al.*, No. 06 CH 03056 (Cook Cnty, IL).

Privacy Violation — Recovery for a nationwide class of tens of thousands of consumers whose personal information was improperly disclosed. *In re Kathy Aliano v. Hancock Fabrics, Inc.*, No. 07-10353 (Del. BK).

Improper Debt Collection — Recovery on behalf of a nationwide class of individuals against whom attempts were made to collect a time-barred debt, in violation of the Fair Debt Collection Practices Act. *Ocasio v. First Financial Investment Fund V, LLC, et al.*, No. 15 cv 10167 (N.D. IL).

Pending Cases — Preliminary Approval of Settlement Granted

Data Breach — Class action for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by a restaurant chain. *Ramsey v. 41 E. Chestnut Crab Partners, LLC, et al.*, No. 19 CH 2759 (Cook Cnty., IL).

Constitutional Violation — Class action for a nationwide class of individuals who were subjected to an unreasonable search. *Ferrill v. Village of Villa Park, Illinois*, No. 19 cv 6809 (N.D. IL).

Pending Cases — Appointed Class Counsel

Constitutional Violation — Class action for a nationwide class of individuals who were wrongfully issued automated construction zone speed enforcement tickets on a highway that was not under construction. *Black, et al. v. City of Girard, Ohio, et al.*, No. 18 cv 1256 (Trumbull Cnty, OH).

Improper Fee — Class action for a statewide class of individuals who were charged an improper fee by the state in connection with the issuance of a driver's license. *Madyda, et al. v. Ohio Dept. of Public Safety*, No. 19-426 (OH Ct. of Claims).

Invasion of Privacy — Class action for a nationwide class of individuals who were surreptitiously viewed and recorded using the toilets in holding cells. *Alicea, et al. v. County of Cook*, No. 18 cv 5381 (N.D. IL).

Pending Cases — Appointed to Executive Committee

Misleading Product Claims — Class action for a nationwide class of individuals who purchased defective cheese products based on misleading representations. *In re 100% Grated Parmesan Cheese Marketing and Sales Practices Litigation*, MDL No. 2707 (N.D. IL).

Pending Cases

Fraud — Class action for a statewide class of individuals who were wrongfully issued automated red light tickets by red light cameras that were installed in violation of state law.

Improper Court Fee — Class action for a nationwide class of individuals and businesses who were charged an improper fee by the Clerk of the Court.

Unpaid Overtime — Class action for a nationwide class of individuals who were not paid all wages and premium overtime for hours worked in excess of forty hours per week.

Data Breach — Class action for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by their employer.

Improper Debt Collection — Class action for a nationwide class of individuals who were sent misleading debt collection letters, in violation of the Fair Debt Collection Practices Act.

Data Breach — Class action for a statewide class of individuals who had their personal, financial, and medical data stolen due to insufficient protection of that information by a hospital.

Violation of RESPA Act — Class action for a nationwide class of borrowers who were denied the requisite loan modification options, as required by the Real Estate Settlement Procedures Act.

Environmental Contamination — Class action for a statewide class of individuals who suffered from an infiltration of lead and arsenic on their property.

Constitutional Violation — Class action for a nationwide class of individuals who were wrongfully issued automated traffic speed enforcement tickets by a municipality that was denied authorization to issue the tickets.

Invasion of Privacy — Class action for a nationwide class of individuals who received unauthorized telemarketing calls to their phones.

Fraud — Class action for a nationwide class of individuals who purchased used cosmetics and beauty products that were sold as new.

Breach of Contract — Class action for a statewide class of individuals who are members of athletic clubs that unilaterally terminated their rewards program without notice.

Unpaid Wages — Class action for a statewide class of individuals who were not paid all of the wages they earned while working at restaurants.

Antitrust — Class action for a nationwide class of individuals who purchased packaged seafood products from companies that conspired to fix prices in violation of the Sherman Act.

Environmental Contamination — Class action for a statewide class of individuals whose residential drinking water was contaminated with lead.

Constitutional Violation — Class action for a statewide class of individuals whose homes were wrongfully taken by the government without adequate compensation.

Fraud — Class action for a nationwide class of individuals who paid inflated prices for tickets to events due to improper coordination among ticket brokers.

Fraud — Class action for a nationwide class of individuals who were deliberately targeted through marketing and sales of electronic cigarettes when they were minors.

Defective Product — Class action for a nationwide class of individuals who purchased misbranded and adulterated pharmaceuticals.

Data Breach — Class action for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by state governments.

Consumer Fraud — Class action for a statewide class of individuals who were denied loans due to improper banking practices.

Shareholder Derivative Suit — Class action for a nationwide class of individuals against a company due to breaches of fiduciary duties and insider trading.

Consumer Fraud — Class action for a nationwide class of individuals who paid inflated prices for a product.

NOTE: This list of cases is a representative sample of some of the class action lawsuits. It is not an exhaustive list.

McDaniel, Wolff, & Benca, PLLC

McDaniel, Wolff & Benca, PLLC is a full-service law firm based in Little Rock, Arkansas serving individuals, families, and businesses of all sizes. The attorneys combine their legal and professional experiences into client-focused and results-based services. They place a premium on developing and maintaining long-term relationships with their clients. With decades of combined experience, MWB has a plethora of knowledge pertaining to state and federal court litigation.

Dustin McDaniel

Dustin McDaniel is an attorney and founding partner in the firm of McDaniel, Wolff & Benca, PLLC. Dustin was elected to the Arkansas House of Representatives in 2004, serving from 2005-2007. He was the only freshman lawmaker in the 85th General Assembly to be named by the *Arkansas Democrat Gazette* to its “Top 10 Legislators” list in 2005. In 2006, Dustin was elected as Arkansas’s 55th Attorney General. At the time, he was the youngest Attorney General in the United States. In 2010, Dustin was reelected. He was selected by his colleagues around the nation to hold many leadership roles, including Chairman of the Southern Region of the National Association of Attorneys General, Co-Chair of the Democratic Attorneys General Association and Chairman of the NAAG Tobacco Project, which oversees roughly \$7 Billion in annual payments between settling tobacco companies and 46 states. Dustin currently serves as Co-Chair of the Society of Attorneys General Emeritus (SAGE), which is the professional association for all former AG’s in the United States. Dustin is also proud to be the first Arkansan named as a Rodel Fellow at the Aspen Institute.

Under the Arkansas Constitution, Dustin was term limited for life as AG at the end of his second term. In 2015, he formed the law firm of McDaniel, Richardson, and Calhoun, PLLC which quickly established a successful national attorney general practice managing investigations, litigations and general government affairs with AG’s and governors. The firm also navigated regulatory and political affairs, as well as litigation in Arkansas on complex issues including education, manufacturing, healthcare, technology, medical cannabis, tobacco, and casino gaming.

In 2019, McDaniel Richardson & Calhoun, PLLC merged with the Little Rock tax law firm of Wolff & Ward, PLLC and the criminal defense firm of Benca & Johnston, PLLC to form McDaniel Wolff & Benca, PLLC.

Dustin and his wife Bobbi have three children. Both are active in the community. Dustin is a member of 50 For the Future and serves on the boards of The University of Arkansas Alumni Association, The UALR Wm. H Bowen School of Law Dean’s Advisory Council and The U.S. Hemp Authority. Bobbi works as a client advocate at the Arkansas Hunger Relief Alliance. Dustin graduated *cum laude* with his Juris Doctor from the Bowen School of Law, where he served as Honor Council Prosecutor and as Assistant Articles Editor for the UALR Law Review. The law school presented Dustin with its “Young Alumnus Award” in 2002 and its “Distinguished Alumnus Award” in 2019. He is a graduate of the Walton College of Business at the University of Arkansas, where he was Interfraternity Council President and a member of the Kappa Sigma fraternity. In 2004, Dustin was an honor graduate of the Arkansas Law Enforcement

Training Academy as a Patrolman for the Jonesboro Police Department. He has maintained his law enforcement certification to this day, serving as a volunteer deputy sheriff in Poinsett County, Arkansas. In 2008, The Arkansas Sheriff's Association named Dustin "Arkansas's 76th Sheriff," an honor previously bestowed only once to the late Lieutenant Governor Winthrop Rockefeller.

Dustin is admitted to the practice of law in the State of Arkansas, District of Columbia, United States Tax Court, United States District Court - Eastern and Western Districts of Arkansas, United States Court of Appeals - Eighth Circuit, and the United States Supreme Court.

Education

William H. Bowen School of Law, J.D.

University of Arkansas, B.A.

Professional Associations and Memberships

National Association of Attorneys General's Energy and Environment Committee

National Association of Attorneys General's Public Safety and Health Committee

National Association of Attorneys General's Southern Region

National Association of Attorneys General's Tobacco Committee

Democratic Attorneys General Association

Society of Attorneys General Emeritus

Arkansas House of Representatives

University of Arkansas Alumni Association

Bart Calhoun

Bart Calhoun is one of our firm's founding partners and helps lead our litigation department. Bart's practice includes commercial litigation, debt collections, probate litigation, family law, and much more. Additionally, Bart regularly provides legal and government relations services to clients engaged in highly regulated industries such as those in the fields of agriculture, construction, healthcare, medical marijuana, casino gaming, and banking.

Before entering private practice, Bart served as an Assistant Attorney General in the Arkansas Attorney General's Office, primarily serving in the public protection department. As a part of such practice, he represented the interests of Arkansas consumers in federal and state courts located throughout the United States. Also, while at the Arkansas Attorney General's Office, Bart provided counsel with respect to proposed legislation and regularly communicated with members from the Arkansas General Assembly.

Bart is admitted to practice law in the State of Arkansas, U.S. District Court Eastern District of Arkansas, and U.S. District Court Western District of Arkansas.

Education

William H. Bowen School of Law, J.D.

Arkansas State University, B.A.

Professional Associations and Memberships

Arkansas Bar Association

Arkansas Bar Association, House of Delegates, Tenure

Arkansas Bar Association, Leadership Academy

Arkansas Spinal Cord Foundation

Patrick Benca

Patrick Benca is a founding partner of the firm and leads our criminal defense team. His practice focuses on the defense of state and federal crimes, including but not limited to white-collar crimes, drug charges, homicide charges, civil forfeitures, juvenile law, violent crimes, criminal appeals, and other post-conviction relief, and much more.

Patrick has been a passionate supporter of fighting for civil rights since graduating from the University of Arkansas at Little Rock, William H. Bowen School of Law. He has experience working with the Little Rock Police Department's crime scene investigators and often teaches continuing education courses to his peers about complex issues surrounding search and seizure and other criminal law matters. Patrick is a death penalty certified attorney who has successfully won appeals in front of the Arkansas Supreme Court for clients on death row. He was also appointed by Governors Mike Beebe and Asa Hutchinson to the Arkansas Sex Offenders Assessment Committee.

Patrick Benca is a member of the National Association of Criminal Defense Attorneys, the Arkansas Association of Criminal Defense Attorneys, and the Arkansas Trial Lawyers Association. He has been named one of the National Trial Lawyers Top 40 under 40, he was awarded the Death Penalty Focus 2012 Abolition Award, and the Arkansas Association of Trial Lawyers "Champion of Justice Award." In 2017 he was named one of the best lawyers in Arkansas by Little Rock Soiree.

Patrick is admitted to practice law in the State of Arkansas, the State of California, United States District Court – Eastern and Western Districts of Arkansas, United States District Court – Western District of Tennessee, United States Court of Appeals – Sixth and Eighth Circuits, and United States Supreme Court.

Education

William H. Bowen School of Law, J.D.

University of Arkansas at Little Rock, B.A.

Professional Associations and Memberships

National Association of Criminal Defense Attorneys

Arkansas Association of Criminal Defense Attorneys

Arkansas Trial Lawyers Association

Proclaim Justice - Board Member

Lauren Collins

Lauren Collins is an associate attorney at the firm. Lauren's practice focuses on state and federal criminal defense law including white-collar crimes, drug charges, search and seizure, civil forfeitures, juvenile law, violent crimes, appeals, and other post-conviction relief.

A native of Little Rock, Lauren Collins graduated high school from Mount Saint Mary Academy and earned a Bachelor of Arts in Anthropology with a minor in Legal Studies from the University of Arkansas at Fayetteville in 2009. Ms. Collins earned her Juris Doctor from the University of Arkansas at Little Rock, William H. Bowen School of Law.

Lauren is admitted to practice law in the State of Arkansas, Supreme Court of Arkansas, United States District Court - Eastern and Western Districts of Arkansas, and United States Court of Appeals - Eighth Circuit

Professional Associations and Memberships

Arkansas Bar Association

American Bar Association

Pulaski County Bar Association

Arkansas Association of Criminal Defense Lawyers

National Association of Criminal Defense Lawyers

Jessica Duncan Johnston

Jessica Duncan Johnston is a founding partner in the firm and helps lead our criminal defense team. Her practice focuses on the defense of state and federal crimes, including but not limited to white-collar crimes, drug charges, homicide charges, civil forfeitures, juvenile law, violent crimes, criminal appeals, and other post-conviction relief, and much more. Jessica is certified to handle capital crimes where the imposition of the death penalty is at issue. She also regularly assists clients with divorces and other family law matters.

Before entering private practice, Jessica Duncan Johnston served as an Administrative Law Judge for the Arkansas Department of Finance and Administration. During her tenure, she heard cases and determined controversies between taxpayers and the department regarding taxes, licenses, and permits.

Jessica is admitted to practice law in the State of Arkansas, Arkansas Supreme Court, United States District Court – Eastern and Western Districts of Arkansas, and United States Court of Appeals – Eighth Circuit.

Education

William H. Bowen School of Law, J.D.

Arkansas Tech University, B.A.

Professional Associations and Memberships

Arkansas Bar Association

Pulaski County Bar Association

Arkansas Association of Criminal Defense Lawyers

Judge William R. Overton American Inn of Court

Arkansas Association of Women Lawyers

Scott Richardson

Scott Richardson is a founding partner of the firm. Scott primarily practices in the areas of education law, employment litigation, commercial litigation, civil rights litigation, and appellate law. He has litigated cases in both state and federal courts, handling appeals in the Arkansas Court of Appeals, the Arkansas Supreme Court, and the Eighth Circuit Court of Appeals as a Senior Attorney in the Arkansas Attorney General's Office.

Scott Richardson has regularly represented clients at the Arkansas General Assembly where he has advised state legislators and state agencies on pending legislation, spoken before numerous

committees, and advised legislators directly. Scott has also served twice as a Special Associate Justice on the Arkansas Supreme Court.

Scott is admitted to practice law in the State of Arkansas, U.S. District Court Eastern District of Arkansas, U.S. District Court Western District of Arkansas, and U.S. Court of Appeals - Eighth Circuit.

Education

William H. Bowen School of Law, J.D.

University of Arkansas, B.A.

Professional Associations and Memberships

Pulaski County Bar Association

Arkansas Bar Association

Council of School Attorneys, National School Boards Association

Executive Committee, Quapaw Area Council, Boy Scouts of America

Jon Shirron

Jon Shirron is an associate attorney at the firm. Jon's practice focuses on assisting clients with day-to-day business law matters, business mergers and acquisitions, tax planning and IRS controversies, estate planning and probate litigation. His practice is aimed at providing creative solutions to the unique challenges faced by private individuals, families, and their companies.

Prior to attending law school at the University of Arkansas, Jon Shirron spent six years working for his family's fourth-generation business in his hometown of Russellville, Arkansas. He returned to central Arkansas after obtaining his LL.M. in Taxation from the University of Washington.

Jon is admitted to practice law in the State of Arkansas, U.S. District Court, Eastern and Western Districts of Arkansas, and United States Tax Court.

Education

University of Washington School of Law, LL.M. (Taxation)

University of Arkansas School of Law, J.D.

University of the Ozarks, B.S.

Professional Associations and Memberships

Arkansas Bar Association

Pulaski County Bar Association

American Bar Association

Vincent Ward

Vince Ward is a managing partner in the firm's tax and corporate law practice. Vince's practice focuses on tax planning and business law matters involving a diverse group of industries, regularly providing counsel to multi-state retailers, manufacturers, logistics companies, commercial real estate developers, commercial lenders, and many others. He frequently assists clients with business sales and mergers, commercial real estate acquisitions and leasing, IRS controversies, business start-ups and capital raises, charitable organizations, as well as commercial litigation. Vince also provides counseling with respect to estate planning, trust administration, and probate litigation. His practice is founded on providing clients with premier legal services with an emphasis on tax planning, while balancing practical considerations and the specialized needs of private individuals, their businesses, and their families.

A native of Fayetteville, Arkansas, Vince Ward moved to Little Rock after obtaining his Master of Laws in Taxation from Southern Methodist University.

Vince has been selected by his attorney peers for including in *2014 – 2019 Super Lawyers Mid-South Rising Stars List*, *Little Rock Soiree Best Lawyers 2016 & 2017*. He has also served as a faculty member at numerous National Business Institute seminars including *Trusts 101*, *The Probate Process from Start to Finish*, and *How to Keep Tax-Exempt Organizations in Compliance*.

Vince is admitted to practice law in the State of Arkansas, United States District Court - Eastern and Western Districts of Arkansas, United States Bankruptcy Court - Eastern and Western Districts of Arkansas, United States Court of Appeals - Eighth Circuit, and United States Tax Court.

Education

Southern Methodist University School of Law, LL.M. (Taxation)

University of Arkansas School of Law, J.D.

University of Arkansas, B.B.A.

Professional Associations and Memberships

Arkansas Bar Association

Pulaski County Bar Association

American Bar Association

Rufus Wolff

Rufus Wolff is a founding partner and manages the firm's tax and corporate law practice. Rufus practices primarily in the areas of business, corporate and commercial law, mergers and acquisitions, securities law including private placements, tax planning and IRS tax controversy, estate planning, and probate administration. Rufus also regularly counsels clients on matters concerning employee benefits, executive compensation, and alternative staffing arrangements with an emphasis on providing counsel to professional employer organizations. He frequently represents private entrepreneurs, emerging technology companies, real estate developers, oil and gas companies, securities firms, and many other types of investors whose needs require a creative yet practical approach to their complex legal matters.

Rufus Wolff is also a Certified Public Accountant (inactive) and has served as an adjunct professor of law at the William H. Bowen School of Law in Little Rock, teaching Corporate Income Taxation from 1989 to 1996. He has been actively involved in the professional employer organization industry since 1987, representing numerous professional employer organizations throughout the country.

Rufus is admitted to practice law in the State of Arkansas, the State of Texas, United States District Court - Eastern and Western Districts of Arkansas, United States Bankruptcy Court - Eastern and Western Districts of Arkansas, United States Court of Appeals - Eighth Circuit, United States Supreme Court, and United States Tax Court.

Education

William H. Bowen School of Law, J.D. (with highest honors)
University of Arkansas, B.S.B.A.

Professional Associations and Memberships

American Bar Association
Arkansas Bar Association
Pulaski County Bar Association
American Institute of Certified Public Accountants
Arkansas Society of Certified Public Accountants

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
12TH DIVISION**

**SAMUEL ACKER, PHILLIP DAVIDSON,
and TERRY MORROW, individually, and on
behalf of all others similarly situated**

PLAINTIFFS

v.

CASE NO. 60CV-20-3858

PROTECH SOLUTIONS, INC.

DEFENDANT

ORDER GRANTING CLASS CERTIFICATION

The matter before the Court is the Motion for Class Certification of Plaintiffs SAMUEL ACKER, PHILLIP DAVIDSON, and TERRY MORROW (collectively, “Class Representatives” or “Plaintiffs”) to certify a proposed Class in this case (the “Action”) against Defendant PROTECH SOLUTIONS, INC. (“Defendant”) (Plaintiffs and Defendant are collectively referred to as the “Parties”). The Court, having reviewed the operative complaint in the Action, and considered the motion for class certification and arguments of counsel thereon, finds the following:

- A. The members of the Class are so numerous that joinder of all Class members in the Actions would be impracticable, as the Class is comprised of approximately 30,000 individuals;
- B. Questions of law and fact common to the Class predominate over individual questions—including, but not limited to, whether Protech created, implemented, and maintained the PUA Application System without adequate protections for the personal and financial information of Plaintiffs and members of the Class; whether Protech adopted, implemented, and maintained reasonable safeguards to prevent the unauthorized access to the personal and financial information of Plaintiffs and members of the Class; whether Protech promptly provided notification of the Data Breach; whether Protech owed a duty to Plaintiffs and members of the Class to

Exhibit D

safeguard and protect their personal and financial information; whether Protech breached a duty to Plaintiffs and members of the Class to safeguard and protect their personal and financial information; whether Protech breached a duty to Plaintiffs and members of the Class by failing to adopt, implement, and maintain reasonable safeguards to protect the personal and financial information of Plaintiffs and members of the Class; and whether Protech is liable for the damages suffered by Plaintiffs and members of the Class as a result of the Data Breach—are common to the Class and predominate over individual questions;

- C. The claims of the Class Representatives are typical of the claims of the Class, as the Class Representatives submitted PUA claims through the PUA Application System created, implemented, and powered by Protech, and their personal and financial information was exposed in the Data Breach, and the Class Representatives do not have any conflicts of interest with the other members of the Class;
- D. The Class Representatives and Class Counsel can fairly and adequately represent and protect the interests of the Class members, as shown by their investigation and prosecution of the Action; and
- E. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering the interests of the Class members in individually controlling the prosecution of separate actions, the extent and nature of any litigation concerning the controversy already commenced by Class members, the desirability or undesirability of continuing the litigation of these

claims in this forum, and the difficulties likely to be encountered in the management of a class action as it relates to the claims in the Action.

IT IS HEREBY ORDERED:

1. Pursuant to Ark. R. Civ. P. 23, the Court certifies the following Class:

All individuals who applied for Pandemic Unemployment Assistance (“PUA”) with the Arkansas Division of Workforce Services through the PUA Application System designed, implemented, and maintained by Protech Solutions, and whose personal information and/or financial information was exposed in the Data Breach.

Excluded from the Class are: (1) Defendant, Defendant’s agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and those entities’ current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge’s immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

2. Plaintiffs Samuel Acker, Phillip Davidson, and Terry Morrow are appointed as the Class Representatives for the Class, with the Court finding that they have diligently prosecuted this matter and are able to fairly and adequately represent the Class.

3. The Court appoints the following as Class Counsel: Dustin McDaniel of McDaniel, Wolff & Benca, PLLC; Marc E. Dann of DannLaw; and Thomas A. Zimmerman, Jr. of Zimmerman Law Offices, P.C., with the Court finding that these attorneys are experienced in complex class action litigation and are able to fairly and adequately represent the Class, and they have competently represented the Plaintiffs and Class in this matter.

4. By _____, 2020, the Parties shall provide the Court with a proposed plan to disseminate notice of this Class certification to Class members for Court approval. The notice must be reasonably calculated to apprise the Class members of the litigation, Class

certification, and their right to exclude themselves from the Class. Defendant shall disseminate, administer, and bear the costs of the notice.

5. This Action is continued for consideration and approval of the Class notice at _____ m. on _____, 20__.

SO ORDERED.

Dated: _____

ALICE S. GRAY
Circuit Judge

Prepared by:

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**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
12TH DIVISION**

**SAMUEL ACKER, PHILLIP DAVIDSON,
and TERRY MORROW, individually, and on
behalf of all others similarly situated**

PLAINTIFFS

v.

CASE NO. 60CV-20-3858

PROTECH SOLUTIONS, INC.

DEFENDANT

MOTION FOR APPOINTMENT OF INTERIM CLASS COUNSEL

NOW COME Plaintiffs SAMUEL ACKER (“Acker”), PHILLIP DAVIDSON (“Davidson”), and TERRY MORROW (“Morrow”) (collectively “Plaintiffs”), individually and on behalf of all others similarly situated, by and through counsel, and bring their *Motion for Appointment of Interim Class Counsel* (“Motion”). In support of this Motion, Plaintiffs state as follows:

INTRODUCTION

1. As a result of the COVID-19 pandemic, a large number of self-employed Arkansans and “gig economy” workers were suddenly unemployed, necessitating the creation of the Pandemic Unemployment Assistance (“PUA”) program in Arkansas. *See*, Class Action Complaint (“Complaint” or “Compl.”), ¶ 8. To manage this influx of unemployment claims, the Arkansas Division of Workforce Services (“ADWS”) hired Defendant PROTECH SOLUTIONS, INC. (“ProTech” or “Defendant”) to create, implement, and maintain a secure website for ADWS through which unemployment benefit claimants could apply for PUA program assistance online (the “PUA Application System”). *Id.*

2. Despite the contractual and legal obligation to protect PUA program claimants’ personally identifiable information (“PII”)—*e.g.*, social security numbers and banking information, ProTech negligently and recklessly failed to secure the PUA Application System.

Compl. at ¶¶ 7-11, 16-18, 49. As a result of ProTech’s actions and inactions, the PII—such as their social security numbers, birthdays, and banking information—of approximately 30,000 PUA claimants, including Plaintiffs and members of the Class defined in the Complaint,¹ was exposed in a massive data breach (the “Data Breach”). *Id.* Plaintiffs, individually, and on behalf of the Class, assert three (3) causes of action against Defendant arising from the Data Breach: (1) Negligence; (2) Invasion of Privacy; and (3) Injunctive Relief. *See, id.* Counts I-III.

3. Plaintiffs now move this Court to appoint Marc Dann of DannLaw (“Dann”), Thomas A. Zimmerman, Jr. of Zimmerman Law Offices, P.C. (“Zimmerman”), and Dustin McDaniel of McDaniel, Wolff & Benca, PLLC (“McDaniel”) (collectively, “Plaintiffs’ Counsel”) as Interim Class Counsel. Plaintiffs’ Counsel have decades of experience and demonstrated success in prosecuting complex lawsuits and class actions in state and federal courts throughout the nation. *See* firm bios of Dann, Zimmerman, and McDaniel, attached hereto as **Exhibits A, B, and C**, respectively.

LEGAL STANDARD

4. The Arkansas class action statute provides that in the conduct of actions to which the rule applies, the court may make appropriate orders with respect to “determining the course of proceedings,” and “for the protection of putative class members,” including “dealing with similar procedural matters.” *See* Ark. R. Civ. P. 23(d). Further, Arkansas courts “interpret Ark. R. Civ. P.

¹ Plaintiffs separately seek to certify a Class defined as follows: “All individuals who applied for Pandemic Unemployment Assistance (“PUA”) with the Arkansas Division of Workforce Services through the PUA Application System designed, implemented, and maintained by Protech Solutions, and whose personal information and/or financial information was exposed in the Data Breach.” *Id.* at ¶ 48.

23 in the same manner the federal courts interpret the comparable Fed.R.Civ.P. 23.” *Fraleley v. Williams Ford Tractor & Equip. Co.*, 339 Ark. 322, 336, 5 S.W.3d 423, 432 (1999) (citing *Farm Bureau Mutual Ins. Co. v. Farm Bureau Policy Holders & Members*, 323 Ark. 706, 918 S.W.2d 129 (1996); *Union National Bank v. Barnhart*, 308 Ark. 190, 823 S.W.2d 878 (1992)).

5. Federal Rule of Civil Procedure 23(g)(3) provides that the Court “may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.” In appointing interim class counsel, the Court must consider:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel’s knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A).

6. The Court may also consider “any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B); *Cook v. Applebee’s Services, Inc.*, Case No. 13 cv 1289, 2015 WL 5675797, at *3 (S.D. Ill. Sept. 28, 2018).

7. The Court should consider the same factors and principles under Rule 23(g) for appointment of class counsel when appointing interim class counsel. *Simpkins v. Wells Fargo Bank, N.A.*, Case No. 12-cv-00768, 2013 WL 12051028, at *1 (S.D. Ill. June 28, 2013) (citing *Newberg on Class Actions*, § 3:85 (4th ed. 2002)). In this case, Plaintiffs’ Counsel meet all the requirements of Rule 23(g) and should be appointed as Interim Class Counsel.

ARGUMENT

8. Appointing Plaintiffs' Counsel as Interim Class Counsel to represent Plaintiffs and the putative Class will ensure "efficiency and economy without jeopardizing fairness to the parties" in the litigation. *Manual for Complex Litigation, Fourth, Federal Judicial Center* (2004) ("Manual") § 10.221. As was noted in the 2003 amendments to Rule 23:

[Rule 23(g)] authorizes the court to designate interim counsel during the pre-certification period Before class certification, [] it will usually be important for an attorney to take action to prepare for the certification decision. The amendment to Rule 23(c)(1) recognizes that some discovery is often necessary for that determination. It may also be important to make or respond to motions before certification. Settlement may be discussed before certification Rule 23(g)(2)(A) authorizes the court to designate interim counsel to act on behalf of the putative class before the certification decision is made.

Fed. R. Civ. Pro. 23(g) Advisory Committee's Notes.

9. The early appointment of Interim Class Counsel for Plaintiffs and the putative Class will facilitate the efficient prosecution of the claims at issue in this litigation.

10. First, Plaintiffs' Counsel already committed substantial time and effort in researching and identifying the claims of Plaintiffs and the putative Class. Plaintiffs' Counsel are ready and willing to prosecute this action on behalf of Plaintiffs and the putative Class to the fullest extent possible, and to advance the concerned claims.

11. Prior to filing the Complaint, Plaintiffs' Counsel conducted extensive research into the factual and legal issues involved in this matter. For example, Plaintiffs' counsel spent hours researching the underlying facts, issued a request under the Arkansas Freedom of Information Act § 25-19-101, *et seq.*, for the relevant contract between the state of Arkansas and Defendant, analyzed the legal issues, and considered possible legal claims. Thereafter, Plaintiffs' Counsel

drafted and filed a detailed and comprehensive Complaint, a motion for a temporary restraining order, and a motion for class certification.

12. Second, Plaintiffs' Counsel have substantial experience in complex litigation and class action proceedings and have the resources necessary to prosecute this litigation. Dustin McDaniel, of McDaniel, Wolff & Benca, PLLC, served two terms as the Arkansas Attorney General and has significant experience with complex litigation. *See*, firm bio for McDaniel, Wolff & Benca, PLLC, attached hereto as **Exhibit C**. Marc Dann, of DannLaw, routinely litigates complex consumer cases in state and federal courts and has litigated class actions in state and federal courts. *See*, firm bio for DannLaw, attached hereto as **Exhibit A**. Thomas Zimmerman, Jr., of Zimmerman Law Offices, P.C., frequently litigates class actions in state and federal courts across the country and has held many leadership positions. *See*, firm bio for Zimmerman Law Offices, P.C., attached hereto as **Exhibit B**. Dann and Zimmerman have repeatedly been found to meet the Rule 23(a)(4) requirements in various certification decisions, and this case is no different. *See id.* Dustin McDaniel, during his eight-year tenure as Attorney General of Arkansas, represented the State of Arkansas and its consumers in complex consumer litigation in state and federal courts pertaining to unfair trade practices and privacy issues.

13. Finally, Courts often consider the resources that proposed class counsel will commit to the prosecution of the lawsuit. *LeBeau v. United States*, 222 F.R.D. 613, 619 (D. S.D. 2004) ("In considering the resources that counsel will commit to represent the class, the Court may consider the staff, supplies and professional commitments of that attorney.") (citation omitted). Plaintiffs' Counsel have the resources necessary to prosecute this litigation. The cases that Plaintiffs' Counsel have led evidence their ability to fund this litigation. For example, Dann and

Zimmerman have represented plaintiffs in nationwide class action litigation on a wholly contingent basis, advanced hundreds of thousands of dollars for costs and expenses on behalf of the class members, and litigated these cases tirelessly at the trial and appellate levels, securing many landmark rulings along the way. *See, **Exhibits A and B.*** Dustin McDaniel, since leaving office as Attorney General, has handled multi-state investigations and litigation for clients and represented clients in complex litigation across the State of Arkansas. Plaintiffs' Counsel will continue to devote the required resources to aggressively represent and advance the interests of Plaintiffs and the putative Class.

14. In this litigation, as noted, Plaintiffs' Counsel thoroughly investigated the facts and claims in this case, drafted an extensive and detailed Complaint, moved for a temporary restraining order for the benefit of Plaintiffs and the putative Class, and filed a motion for class certification. Plaintiffs' Counsel have demonstrated, and will continue to demonstrate, their ability to make important strategic decisions in connection with pleadings, discovery, and class certification in this case.

WHEREFORE, for the foregoing reasons, Plaintiffs SAMUEL ACKER, PHILLIP DAVIDSON, and TERRY MORROW, individually, and on behalf of all others similarly situated, respectfully request that the Court appoint Dustin McDaniel, Marc Dann, and Thomas A. Zimmerman, Jr. as Plaintiffs' Interim Class Counsel, and enter any such further relief deemed appropriate.

Respectfully submitted,

/s/ Dustin McDaniel
Dustin McDaniel, Ark. Bar No. 99011
Bart W. Calhoun, Ark. Bar No. 2011221
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Sharon Harris (*pro hac vice* anticipated)
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(312) 440-4180 facsimile
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firm@attorneyzim.com

Counsel for Plaintiffs and the putative Class

DannLaw

Since 2008, DannLaw has represented individuals and businesses in a wide array of legal matters. The attorneys of DannLaw are established and respected trial lawyers who represent clients in simple litigation, complex litigation, appellate litigation, and class action lawsuits. DannLaw has recovered millions of dollars on behalf of thousands of individuals and businesses across the country including the states of Ohio, Illinois, Oregon, Florida, Kentucky, New Jersey and Tennessee.

Marc E. Dann

Marc Dann is the Managing Partner of DannLaw. He is also a Partner of Advocate Attorneys LLP in Washington DC. . These practices focus on representing clients who have been harmed by banks, debt buyers, debt collectors and other financial predators and providing access legal services for traditionally underserved working class and middle class Americans. Dann has fought for the rights of tens of thousands of consumers and brought class actions lawsuits on behalf of clients in both private practice and as Ohio's Attorney General.

As Ohio Attorney General, Marc Dann initiated securities fraud claims against the creators of mortgage-backed securities on behalf of Ohio's public pension funds. He assembled Ohio's Organized Crime Commission to mobilize Mortgage Fraud Task Forces in Ohio's major cities to prosecute those engaged in mortgage fraud and predatory lending, Dann's office challenged the standing of mortgage servicers to foreclose in cases where the State of Ohio was a party. Dann also worked with former Ohio Supreme Court Chief Justice Thomas Moyer to organize over 1,200 volunteer lawyers to represent homeowners in foreclosure.

After leaving the Attorney General's Office, Marc Dann began representing Ohio homeowners facing foreclosure pro bono. During this time, he recognized that the issues faced by individual homeowners represented patterns of practice throughout the mortgage servicing industry. In response, he mobilized a team and created DannLaw in order to fight for the rights of Ohioans.

Since DannLaw was founded, it has grown to represent clients facing a range of consumers' rights issues including in class action. While mortgage servicing litigation practice the foundation of DannLaw, Marc Dann has developed a comprehensive collection of tools designed to help clients stay in their homes including prosecuting more than 25 Class Action cases. . He is a recognized national leader in the use of federal mortgage servicing regulations to hold servicers accountable for their actions.

Utilizing these tools has lead Marc Dann to host seminars explaining these techniques to other attorneys. These working groups help to elevate the defense of clients across the nation while allowing attorneys to recognize patterns of practice that affect all citizens.

This collaborative spirit also applies to the communities of which DannLaw is a part. As a proud member

of Midtown Cleveland, Marc Dann and the team members at the firm participate in community events, such as the annual Midtown clean-up. Marc Dann and DannLaw also support the Cleveland International Film Festival each year.

Dann prioritizes professional organizations as well, as a member of the American Bar Association, the Federal Bar Association, the Cleveland Metropolitan Bar Association, the Ohio State Bar Association, and the National Association of Consumer Bankruptcy Attorneys. He is a member of the Society of Attorneys General Emeritus, the Democratic Attorneys General Association and the Ohio Attorneys General Association.

Marc Dann is a regular contributor to *Attorney at Law Magazine* and the *Cleveland Metropolitan Bar Association Magazine*. His work has also been featured in *NACBA's Consumer Bankruptcy Journal* and *Legal Ink Magazine* and *Working Class Perspectives compiled by Georgetown University*.

Dann has been appointed Liaison Counsel in the Sonic Data Breach MDL (ND Ohio), and Lead counsel in *Lieber v. Wells Fargo* (ND Ohio), *Miller v. Intelleos* (ND OH), *Black v. Girard* (Trumbull County Ohio) *Madyda v. Ohio* (Ohio Court of Claims) and serves as Liaison Counsel for Guardians of NAS Children in *In Re Opiate Litigation MDL* (ND OH).

Dann is admitted to practice in the United States Court of Appeals for the Sixth Circuit, United States District Court for the Southern District of Ohio, United States District Court for the Northern District of Ohio, United States District Court for the Northern District of Illinois, The Northern District of Indiana, The Western District of Tennessee and the Ohio Supreme Court. He has pro hac vice admission in Cook County, Illinois, Washoe County Nevada, United States District Court for the Southern District of Florida, United States District Court for the Middle District of Florida, United States District Court for the Northern District of Georgia, United States District Court in Nevada, United States District Court for the Western District of New York, United States District Court for the Southern District of New York, United States District Court for the Eastern District of New York, United States District Court for the District of New Jersey, United States District Court for the Eastern District of Pennsylvania, United States District Court for the Western District of Washington, and the United States District Court for the Central District of California

A native of Cleveland, Ohio, Marc Dann is a 1984 graduate of the University of Michigan, where he earned a bachelor's degree in history. He graduated from the Case Western Reserve University School of Law in 1987.

Brian D. Flick

Mr. Flick advocates for plaintiffs and defendants nationwide in state and federal trial and appellate courts. His practice areas include Consumer Bankruptcy debtor representation in the areas of Chapter 7, 12, and 13, consumer fraud, real estate litigation, foreclosure defense, student loan debt defense, Bankruptcy Litigation, and Mortgage Servicing Litigation under the Real Estate Settlement Procedures Act and the

Truth in Lending Act.

He has experience in all phases of litigation including extensive discovery, substantive motion practice, trial practice, and appellate practice. Mr. Flick has worked vigorously for over 14 years to protect the rights of consumers and to pursue recovery for plaintiffs and defendants in numerous civil matters including class actions.

Mr. Flick graduated from Adrian College with a B.A. In Political Science. He earned his law degree from the Ohio Northern University Pettit College of Law. While in law school, he received several academic awards and appeared on the Dean's List multiple times.

Since beginning the practice of law, he has been very active in local and national attorney associations. He is the current president of the Bankruptcy Committee and the Volunteer Lawyers Committee for the Cincinnati Bar Association. He is the current Sixth Circuit Listserv Moderator for the National Association of Consumer Bankruptcy Attorneys, a position he has held since May 2017. He is the current Ohio State Chair for the National Association of Consumer Advocates, a position he has held since May 2017. He was also appointed by the Board of Trustees as a member of the Unauthorized Practice of Law Committee of the Cincinnati Bar Association, a position he has held since June 2017. Mr. Flick has been a frequent speaker at Cincinnati Bar Association, NACBA, and NACA events since 2014 as well as assisting with DannLaw's Regulation X and Z Seminars that have taken place since 2016.

Mr. Flick is admitted to the practice of law in the State of Ohio, State of Kentucky and the Federal District Courts and Bankruptcy Courts in the following jurisdictions: Southern District of Ohio; Northern District of Ohio; Eastern District of Kentucky; Western District of Kentucky; Eastern District of Tennessee; Northern District of Indiana; Eastern District of Michigan and the Northern District of Illinois. He has also been admitted *pro hac vice* in civil litigation in the following United States District Courts for either resolved or pending matters: District of Nevada, Eastern District of Pennsylvania, Central District of Florida and Southern District of Florida. He is also admitted in the United States Court of Appeals for the Sixth Circuit.

Michael A. Smith, Jr.

Mr. Smith is the most recent addition to DannLaw's team of highly skilled attorneys. A graduate of the Ohio State University and the University of Georgia School of Law Mr. Smith is admitted to practice in the State of Ohio, State of New Jersey, the United States District Court for the Northern District of Ohio and the United States District Court for the District of New Jersey. Smith has been active in federal litigation, including Class Action Litigation in the state and Federal Courts of Ohio and New Jersey.

Emily White

After spending nearly a decade as a public interest attorney, Emily White joined DannLaw. She is the

Managing Partner of the firm's Columbus, Ohio office where she practices student loan debt, disability rights, Class Action and consumer law.

Emily received her law degree from the City University of New York School of Law, where she served on the editorial board of the New York City Law Review. Following law school, she served for two years as a judicial law clerk to the Honorable Sylvia H. Rambo, U.S. District Court Judge for the Middle District of Pennsylvania.

In 2009 she joined the Legal Aid Society of Cleveland, where she represented low-income consumers during the historic recession and foreclosure crisis. While at Legal Aid she authored a chapter of Ohio Consumer Law focused on student loans and helped student loan borrowers resolve defaults and apply for student loan discharges.

In 2013 she joined Disability Rights Ohio as a staff attorney. In that role Emily represented individuals with disabilities in employment and higher education matters and offered advice about issues related to student loans and vocational rehabilitation services.

Emily received an undergraduate degree in Philosophy from the University of Illinois at Urbana-Champaign. Before attending law school she served as an AmeriCorps volunteer with Habitat for Humanity NYC.

Javier Merino

Attorney Javier Merino is the managing partner of the New Jersey office of DannLaw where he focuses his practice on Consumer, Bankruptcy and Mortgage Servicing Litigation. after receiving his Juris Doctorate from St. John's University School of Law. His practice is focused on bankruptcy, foreclosure defense, and negotiating mortgage loan modifications.

Marino has litigated dozens of claims under Federal and State Consumer Law laws in New Jersey and New York and an has defended hundreds of Foreclosure cases.

While at St. John's Law School he was the Executive Blog Editor for the New York Litigator Law Journal and served as treasurer of the Metropolitan/Latino Law Student Association. He also volunteered his time assisting in the preparation of bankruptcy petitions while working at the St. John's Bankruptcy Advocacy Clinic.

Javier Merino is a graduate of Rutgers University and St. John's Law School

Attorney Merino is licensed to practice in the states of New Jersey and New York, the Federal District Court of New Jersey, Third Circuit Court of Appeals, Eastern District of New York, and the Southern District of New York.

Dan Solar

Attorney Dan Solar has brought consumer cases against loan modification mills and financial institutions, won motions to vacate older foreclosure judgments on behalf of DannLaw clients, and unearthed significant evidence of fraud and robo-signing via the legal discovery process.

A licensed attorney since 2009, Dan earned a B.A. in Political Science from Denison University in 2006 and a J.D. from the University of Akron School of Law in 2009. He served an internship at the Cuyahoga County Public Defender's Office and during his years in law school worked as a law clerk for a firm in Akron, Ohio where he focused on a variety of tort matters and insurance litigation.

In addition to his extensive legal training, Attorney Solar's experience in the origination of mortgage loans gives him a specialized, in-depth and invaluable knowledge of every facet of the mortgage lending process.

Attorney Solar is admitted to practice in the State of Ohio, the United States District Courts for the Northern and Southern Districts of Ohio, and the Eleventh Circuit Court of Appeals.

REPRESENTATIVE CLASS ACTIONS CASES

Completed Cases:

Miller et al. v. Inteleos, Inc., Case No. 1:17-cv-00763-DAP NDOH - \$570,000 recovery for a nationwide class of sonographers who took and passed a certification examination but the testing agency improperly scored their results and falsely reported that they failed the examination.

Lieber v. Wells Fargo Bank, N.A., Case No. 1:16-cv-02868-PAG NDOH - \$425,000 recovery for a nationwide class of borrowers whose lender failed to properly respond to qualified written requests, requests for information, and/or notices of error because of an improper active litigation, active mediation, or active bankruptcy exception.

Clark, et al. v. Lender Processing Services, Inc, et al., Case No. 2:12-cv-02187 NDOH

Hlavasa, et al. v. Bank of America, et al., Case No. 2:2011-cv-00530 NDOH

Turner, et al. v. Lerner, Sampson & Rothfuss, Case No. 1:11-cv-00056 NDOH

In re Sonic Corp. Customer Data Security Breach, 1:17-md-2807 NDOH (Order granting Plaintiffs' Unanimous and Unopposed Motion to Appoint Attorney William B. Federman as Interim Lead Counsel, Attorney Marc Dann as Interim Liaison Counsel, and Attorneys Thomas A. Zimmerman, Jr., Michael R.

Fuller, Melissa R. Emert and Miles Clark as Plaintiffs' Steering Committee signed 01/03/2018) - Class action for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by a retailer.

Pending Cases:

RESPA and Mortgage Servicing Class Action

- DannLaw is co-counseling a Class action for a nationwide class of borrowers who were denied the requisite loan modification options, as required by the Real Estate Settlement Procedures Act against a Mortgage Servicer. The matter has not yet proceeded to appointment of Class Counsel or Class Certification.
- Dannlaw is putative class counsel in Trivison v. Citizens Bank (ND OH)
- Danlaw is putative class counsel in Ryder v. Wells Fargo (SD OH)

Data Breach/Misuse of Consumer Information -

- DannLaw is co-counseling a Class action for a nationwide class and a statewide class for Ohio Consumers who were subject to a data breach from a third-party data collection agency who contracted with one of the three major Credit Reporting Agencies. The matter has not yet proceeded to appointment of Class Counsel or Class Certification.
- DannLaw is co-counseling a Class action for a nationwide class and a statewide class for Ohio Consumers who were subject to a data breach from one of the three major Credit Reporting Agencies. The matter has not yet proceeded to appointment of Class Counsel or Class Certification.

Disability Rights - DannLaw is co-counseling a Class Action Class action for a nationwide class of disabled individuals who were denied full, equal and independent access to the goods, services and facilities provided by a hotel. The matter has not yet proceeded to appointment of Class Counsel or Class Certification.

Shareholder Derivative Suit - DannLaw is co-counseling as Local Counsel a Shareholder Derivative Complaint against a multi-state Managed Care facility. The matter has not proceeded to Class Certification.

NOTE: This list of cases is a representative sample of some of the class action lawsuits. It is not an exhaustive list as it does not include matters that have settled confidentially prior to any Motion for Class Certification.

ZIMMERMAN LAW OFFICES, P.C.

Since 1996, Zimmerman Law Offices has represented individuals and businesses in a wide array of legal matters. Its attorneys are established and respected trial lawyers who represent clients in complex litigation and class action lawsuits nationwide. The firm has an extensive and varied litigation-based practice, with a focus on class action litigation. Zimmerman Law Offices has recovered over \$250 million on behalf of millions of individuals and businesses nationwide.

The attorneys at Zimmerman Law Offices are experienced in Multidistrict Litigation (MDL), having served as lead counsel in MDL cases throughout the country. These MDL cases included claims for fraud, improper pricing, misleading product claims, and privacy violations including data breaches.

ATTORNEYS

Thomas A. Zimmerman, Jr.

A seasoned litigator for over 23 years, Mr. Zimmerman practices extensively and has obtained multi-million dollar jury verdicts in class action, corporate, commercial, medical malpractice, consumer fraud, constitutional due process, general civil, product liability, toxic tort, and other complex litigation. He represents both plaintiffs and defendants nationwide in state and federal trial and appellate courts. He also represents individuals and corporations in transactional matters, and before state and federal administrative and regulatory agencies.

Mr. Zimmerman has been lead counsel in national and state-wide class action litigation, and has handled other multi-party litigation involving such companies as MCI/Worldcom, United Airlines, Peoples Gas, AT&T, Warner-Lambert, Pfizer, Liberty Mutual Insurance Co., DaimlerChrysler, ADT, Ford Motor Co., Mead Johnson, KCBX, Inland Bank, Commonwealth Edison, Ameritech, Wells Fargo, and Bridgestone/Firestone. He is well respected for his representation of physicians, dentists, nurses, psychologists, veterinarians, and many other licensed professionals before state and federal agencies including the Illinois Department of Financial and Professional Regulation, and the U.S. Department of Health and Human Services.

In 2017, 2018, 2019 and 2020, he was selected as a *Super Lawyer* in the area of class action and mass torts.

In 2000, he was voted one of the Top 40 Illinois Attorneys Under the Age of 40. This is especially notable, as he was chosen out of 60,000 attorneys in Illinois under the age of forty.

In 2003, the Illinois Supreme Court appointed Mr. Zimmerman to the Review Board of the Attorney Registration and Disciplinary Commission ("ARDC"). He served in that capacity until 2011, wherein he presided over appeals by attorneys who have been found to have committed misconduct, and recommended discipline for their ethical violations. In 2013, the ARDC

appointed Mr. Zimmerman as Special Counsel, wherein he conducts independent investigations in matters involving allegations of misconduct against attorneys associated with the ARDC.

Additionally, the Illinois Governor appointed Mr. Zimmerman to the Illinois Courts Commission in 2003. A Commission member presides over proceedings wherein judges are charged with committing ethical violations, and imposes discipline on judges who are found to have engaged in misconduct. Mr. Zimmerman has served as a Commission member continuously since his appointment.

Prior to becoming an attorney, Mr. Zimmerman worked for AT&T where he negotiated partnerships with companies for domestic and international joint-venture and new product development activities. During this time, he was the featured speaker at 400 conferences, seminars, and presentations. Thereafter, he presented oral testimony at various Federal Senate and Congressional hearings. After obtaining his law license, Mr. Zimmerman has lectured at law schools and seminars, and is frequently interviewed by the news media concerning legal issues.

Mr. Zimmerman earned a B.S. in Computer Science-Mathematics from the University of Illinois, and an M.B.A. in Finance from DePaul University in the evenings while working for AT&T. After leaving AT&T, Mr. Zimmerman earned his law degree from the Chicago-Kent College of Law, where he was a Ramsey-Burke Scholarship recipient and earned the Academic Achievement Award.

He is admitted to practice law in Illinois, and other states on a case-by-case basis, and he is admitted to practice before the U.S. Supreme Court, and various federal courts of appeal and federal district courts. Based on his demonstrated experience and ability, he was appointed to the federal court trial bar.

Mr. Zimmerman is currently the chair of the Clerk of the Circuit Court of Cook County Attorney Advisory Committee, and was formerly co-chair of the Clerk of the Circuit Court Transition and Strategic Planning Public Policy Subcommittee.

Mr. Zimmerman is a member of the American, Illinois State, and Chicago Bar Associations, and the Illinois Trial Lawyers Association, where he serves on various committees. He is also a member of the American Association for Justice. In 2000, he was appointed to the Illinois Trial Lawyers Association Board of Advocates.

Involved in numerous community service activities, Mr. Zimmerman has been an Illinois State Board of Education surrogate parent of disabled children since 1988. In addition, he was a speaker on the rights of disabled people for the Illinois Planning Council on Developmental Disabilities, and a Family Shelter Service counselor to battered children for many years. He has been recognized by the federal court for his pro bono representation of indigent clients.

Sharon A. Harris

Ms. Harris has extensive experience litigating complex class action matters in state and federal trial and appellate courts nationwide. For over 20 years, she has focused her practice on consumer protection, product liability, privacy, and antitrust matters. Ms. Harris has developed a particular expertise in state unfair and deceptive practice statutes, privacy laws, federal antitrust laws, the Fair Credit Reporting Act, the Racketeer Influenced and Corrupt Organizations Act (RICO), the Telephone Consumer Protection Act, and various other federal and state laws. For example, she was appointed class counsel in *In re Pilot Flying J Fuel Rebate Contract Litigation*, which involved allegations that the defendants violated RICO and various state laws by withholding portions of fuel discounts and rebates to which class members were contractually entitled.

Ms. Harris received her Bachelor of Science degree from Michigan State University with a dual major in Political Science and Social Science. She received her law degree from DePaul University College of Law.

She is admitted to practice in the State of Illinois, the United States District Court for the Northern District of Illinois, and the United States Courts of Appeals for the Seventh and Ninth Circuits, and she is a member of the American, Illinois State, and Chicago Bar Associations.

Matthew C. De Re

Mr. De Re advocates for both plaintiffs and defendants nationwide in state and federal trial and appellate courts. His practice areas include class action, corporate, commercial, consumer fraud, general civil, product liability, personal injury, and other complex litigation. He also represents professionals, such as physicians, dentists, nurses, insurance producers, and real estate brokers, before state and federal agencies, including the Illinois Department of Financial and Professional Regulation and the Department of Insurance. In addition to his extensive litigation practice, Mr. De Re assists individuals and corporations in transactional matters.

He has experience in all phases of litigation, including extensive discovery and substantive motion practice. He has assisted in the defense of individuals and companies in cases involving personal injury, employment, and civil rights. Mr. De Re has also vigorously pursued recovery for plaintiffs in numerous civil matters. Prior to joining Zimmerman Law Offices, he served as a Law Clerk for the Circuit Court of Cook County.

Mr. De Re graduated from the University of Wisconsin-Madison with a B.S. in both Political Science and History. He earned his law degree from Washington University in St. Louis. While in law school, he received academic awards and appeared on the Dean's List multiple times. He also served two years on the Executive Board of the Student Bar Association and was the Associate Managing Editor for the Washington University Journal of Law & Policy.

He is admitted to practice law in the State of Illinois and is a member of the Illinois State and Chicago Bar Associations.

Jeffrey D. Blake

Mr. Blake represents consumers in class actions involving unfair and deceptive trade practices, privacy violations, antitrust matters, and defective products. He has considerable experience prosecuting complex cases in state and federal courts throughout the nation, including appeals.

Mr. Blake received his J.D., *cum laude*, from the Chicago-Kent College of Law in 2012. While attending, Mr. Blake served as Executive Articles Editor for the *Chicago-Kent Law Review*, spent a semester as a judicial extern for the Honorable Samuel Der-Yeghiayan of the United States District Court for the Northern District of Illinois, and participated in the Intellectual Property Law Clinic and the Center for Open Government.

After graduating law school, Mr. Blake served as the judicial law clerk for the Honorable Patrick McKay, Superior Court Judge for the Third Judicial District in Anchorage, Alaska.

Mr. Blake received a Bachelor of Science from the University of Illinois at Chicago.

He is admitted to practice in the State of Illinois and the United States District Court for the Northern District of Illinois.

Jordan M. Rudnick (*of counsel*)

Mr. Rudnick represents individuals and large national and international companies in providing business advice, counsel and dispute resolution in a wide variety of contexts for almost 20 years. In particular, Mr. Rudnick represents plaintiffs and defendants nationwide in class action, corporate, commercial, consumer fraud, general civil, and other complex litigation in state and federal courts, arbitrations, and mediations. Mr. Rudnick has been involved in all phases of litigation, including extensive discovery, substantive motion practice, trials and appeals.

His experience as an attorney also includes representing parties in nationwide securities fraud class actions. Notably, Mr. Rudnick represented Canadian Imperial Bank of Commerce in the Enron class action securities litigation and related proceedings. He also has extensive experience representing commercial policyholders in recovering insurance proceeds from their insurers.

Mr. Rudnick serves as an arbitrator for FINRA (Financial Industry Regulatory Authority, formerly known as the NASD or National Association of Securities Dealers) where he and panels of two other arbitrators decide the outcome of disputes between investors and securities brokers and dealers.

He has provided extensive pro bono representation of improperly-expelled school children in conjunction with the Legal Assistance Foundation of Metropolitan Chicago, and with the Chicago Coalition for the Homeless. In addition, in his spare time, he is a volunteer at the Lincoln Park Community Homeless Shelter.

Mr. Rudnick served as a judicial law clerk to the Honorable Justice Joseph Gordon, Illinois Appellate Court, 1st District, where he drafted opinions in appeals arising from complex civil and criminal trial court decisions.

Mr. Rudnick earned his B.A. in Political Science from the University of Chicago, and he graduated *cum laude* from the John Marshall Law School with honors and on a full scholarship. In law school, he appeared on the Dean's List, and he was a member of the school's Moot Court Team. He also was a Staff Editor on the *John Marshall Law Review* for two years.

He is admitted to practice law in Illinois, New York, and Washington, D.C., and is a member of the Chicago Bar Association, NAACP, and ACLU.

REPRESENTATIVE CLASS ACTION CASES

Completed Cases

Misleading Product Claims — \$62 million recovery for a nationwide class of customers who purchased products that were advertised to reduce cellulite in the human body, plus equitable relief to correct the misleading claims. *Joseph v. Beiersdorf North America, Inc.*, No. 11 CH 20147 (Cook Cnty, IL).

Improper Cellular Phone Fee — \$48 million recovery for a statewide class of businesses and individuals who paid an improper municipal infrastructure maintenance fee on their cellular phone bills. *PrimeCo Personal Communications, et al. v. Illinois Commerce Commission, et al.*, 98 CH 5500 (Cook Cnty, IL).

Defective Vehicles — \$35 million in monetary and injunctive relief for a nationwide class of individuals and businesses who purchased vehicles manufactured with a defective transmission. *Vargas, et al. v. Ford Motor Co.*, No. 12 cv 8388 (C.D. CA).

Fraud — \$31 million recovery for a nationwide class of businesses and individuals who placed advertisements in a newspaper based on fraudulent circulation figures. *In re Chicago Sun-Times Circulation Litigation*, No. 04 CH 9757 (Cook Cnty, IL).

Defective Products — \$16 million recovery for a nationwide class of individuals who purchased defective home security systems that could be easily hacked and disabled. *Edenborough v. ADT, LLC, et al.*, No. 16 cv 2233 (N.D. CA).

Misleading Product Claims — \$14 million recovery for a nationwide class of customers who purchased defective garden hoses with misleading claims, plus equitable relief to extend the product's warranty. *Bergman, et al. v. DAP Products, Inc., et al.*, No. 14 cv 3205 (D. MD).

Fraud / Data Breach — \$11.2 million recovery for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by an internet

service provider, and who also paid money to that provider based on misrepresentations. *In re Ashley Madison Customer Data Security Breach Litigation*, MDL No. 2669 (E.D. MO).

Defective Products — \$9 million recovery for a nationwide class of individuals who sustained financial and personal injuries resulting from their purchase and use of baby wipes that were tainted with a dangerous bacteria. *Jones v. First Quality Enterprises, Inc., et al.*, No. 14 cv 6305 (E.D. NY).

Power Outages — \$7.75 million recovery for a statewide class of businesses and individuals who sustained financial damages due to widespread and prolonged power outages. *In re Commonwealth Edison 1999 Summer Power Outages*, No. 99 CH 11626 (Cook Cnty, IL).

Privacy Violation — \$7.3 million recovery for a nationwide class of consumers whose personal information was improperly disclosed. *Aliano v. Airgas USA, LLC*, No. 14 CH 20024 (Cook Cnty, IL).

Data Breach — \$4.3 million recovery for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by a retailer. *In re Sonic Corp. Customer Data Breach Litigation*, MDL No. 2807 (N.D. OH).

Unsolicited Faxes — \$4 million recovery for a nationwide class of businesses and individuals who sustained damages resulting from the receipt of unsolicited facsimile advertisements. *Derosé Corp. v. Goyke Health Center*, 06 CH 6681 (Cook Cnty, IL).

Fraud — \$3.5 million recovery for a nationwide class of Spanish speaking purchasers of baby formula, arising out of misleading product labeling. *Cardenas v. Mead Johnson & Company*, No. 01 CH 11151 (Cook Cnty, IL).

Unsolicited Faxes — \$2.5 million recovery for a statewide class of individuals and businesses who sustained damages resulting from the receipt of unsolicited facsimile advertisements. *iMove Chicago, Inc. v. Inland Bancorp, Inc., et al.*, No. 16-cv-10106 (N.D. IL)

Misleading Product Labeling — \$2.5 million recovery for a nationwide class of businesses and individuals who purchased whiskey whose labeling misstated the characteristics of the product. *Due Fratelli, Inc. v. Templeton Rye Spirits, LLC*, No. 2014 CH 15667 (Cook Cnty, IL).

Misrepresentations in Book — \$2.35 million recovery for a nationwide class of customers who purchased a fictional book while under the impression that the book was a non-fiction memoir. *In re A Million Little Pieces Litigation*, No. 06-md-1771 (S.D. NY).

Consumer Fraud — \$1.6 million recovery for a nationwide class of individuals who paid for and traveled to an event that did not occur as advertised. *Norton v. Niantic, Inc.*, No. 2017 CH 10281 (Cook Cnty, IL).

Misleading Product Labeling — \$1.5 million recovery for a nationwide class of individuals who purchased a product whose packaging misstated the characteristics of the product. *In re Honest*

Company Sodium Lauryl Sulfate (SLS) Marketing and Sales Practices Litigation, MDL No. 2719 (C.D. CA).

Improper Debiting of Bank Accounts — \$1.5 million recovery for a statewide class of individuals who were members of a health club that debited its members' bank accounts without adequate notice or authority. *Wendorf, et al. v. Landers, et al.*, No. 10 cv 1658 (N.D. IL).

Environmental Contamination — \$1.4 million recovery for a statewide class of individuals and businesses who suffered from an infiltration of coal and petroleum coke dust in the air and on their property. *Martin, et al. v. KCBX Terminals Company, et al.*, No. 13 cv 08376 (N.D. IL).

Misleading Product Claims — \$1.4 recovery for a nationwide class of individuals and businesses who purchased HDMI cables based on representations that more expensive higher speed cables were needed to operate certain audio visual equipment. *O'Brien, et al. v. Monster, Inc., et al.*, No. 2015 CH 13991 (Cook Cnty, IL).

School Misrepresenting Accreditation — \$1.2 million recovery, representing nearly the full value of each class member's loss, for a statewide class of individuals who enrolled in a school based on the school's misrepresentations that it was accredited. *Allen v. Illinois School of Health Careers, Inc.*, No. 10 CH 25098 (Cook Cnty, IL).

Privacy Violation — \$1 million recovery for a nationwide class of consumers whose personal information was improperly disclosed. *Radaviciute v. Christian Audigier, Inc.*, No. 10 cv 8090 (N.D. IL).

Breach of Contract — \$570,000 recovery for a nationwide class of sonographers who took and passed a certification examination but the testing agency improperly scored their results and falsely reported that they failed the examination. *Miller, et al. v. Inteleos, Inc.*, No. 17 cv 763 (N.D. OH).

Privacy Violation — \$500,000 recovery for a statewide class of consumers whose personal information was improperly disclosed. *Aliano v. Joe Caputo and Sons – Algonquin, Inc.*, et al., No. 09 cv 0910 (N.D. IL).

Contaminated Drinking Water — \$500,000 recovery for a statewide class of individuals who suffered damages as a result of a contaminated water well, plus equitable relief to close the well. *Joseph Marzano v. Village of Crestwood*, No. 09 CH 16096 (Cook Cnty, IL).

Fraud — \$425,000 recovery for a nationwide class of businesses and individuals who purchased spirits whose labeling misstated the characteristics of the product. *Due Fratelli, Inc. v. Proximo Spirits, Inc.*, No. 2014 CH 17429 (Cook Cnty, IL).

Foreclosure Fraud — \$425,000 recovery for a nationwide class of borrowers whose lender failed to properly respond to qualified written requests, requests for information, and/or notices of error because of an improper active litigation, active mediation, or active bankruptcy exception. *Lieber v. Wells Fargo Bank, N.A.*, No. 16 cv 2868 (N.D. OH).

Privacy Violation — \$295,000 recovery for a nationwide class of consumers whose personal information was improperly disclosed. *Joseph v. Marbles, LLC*, No. 13 cv 4798 (N.D. IL).

Privacy Violation — \$250,000 recovery for a nationwide class of consumers whose personal information was improperly disclosed. *DiParvine v. A.P.S., Inc. d/b/a Car Quest Auto Parts*, No. 11 cv 6116 (N.D. IL).

Unsolicited Faxes — \$237,600 recovery for a statewide class of individuals and businesses who sustained damages resulting from the receipt of unsolicited facsimile advertisements. *Phillips Randolph Enterprises, LLC v. Key Art Publishing Co.*, No. 07 CH 14018 (Cook Cnty, IL).

Improper Health Club Memberships — Recovery for a statewide class of individuals whose health club membership agreements provided for improper membership terms. *Izak-Damiecki v. World Gym International, LLC*, No. 10 CH 18845 (Cook Cnty, IL).

Illegal Lending Practices — Recovery, representing the maximum amount of statutory damages, for a nationwide class of customers who obtained loans whose terms violated the Truth in Lending Act, plus equitable relief to modify the loan contract to conform with the law. *Papeck, et al. v. T.N. Donnelly & Co.*, No. 09 CH 31997 (Cook Cnty, IL).

Privacy Violation — Recovery for a nationwide class of over 36 million consumers whose personal information was improperly disclosed. *Dudzienski v. GMRI, Inc.*, No. 07 cv 3911 (N.D. IL).

Unsolicited Faxes — Recovery for a statewide class of individuals and businesses who sustained damages resulting from the receipt of unsolicited facsimile advertisements. *Phillips Randolph Enterprises, LLC v. Home Run Inn, Inc.*, No. 08 CH 43273 (Cook Cnty, IL).

Privacy Violation — Recovery for a statewide class of over 60,000 consumers whose personal information was improperly disclosed. *O'Brien v. Paninos, Inc.*, No. 10 cv 2991 (N.D. IL).

Breach of Warranty — Recovery on behalf of a nationwide class of customers who had their warranty retroactively changed from a lifetime guarantee to a 90-day guarantee, plus equitable relief to reinstate the lifetime guarantee on the products. *Brady, et al. v. Learning Curve Int'l, Inc., et al.*, No. 06 CH 03056 (Cook Cnty, IL).

Privacy Violation — Recovery for a nationwide class of tens of thousands of consumers whose personal information was improperly disclosed. *In re Kathy Aliano v. Hancock Fabrics, Inc.*, No. 07-10353 (Del. BK).

Improper Debt Collection — Recovery on behalf of a nationwide class of individuals against whom attempts were made to collect a time-barred debt, in violation of the Fair Debt Collection Practices Act. *Ocasio v. First Financial Investment Fund V, LLC, et al.*, No. 15 cv 10167 (N.D. IL).

Pending Cases — Preliminary Approval of Settlement Granted

Data Breach — Class action for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by a restaurant chain. *Ramsey v. 41 E. Chestnut Crab Partners, LLC, et al.*, No. 19 CH 2759 (Cook Cnty., IL).

Constitutional Violation — Class action for a nationwide class of individuals who were subjected to an unreasonable search. *Ferrill v. Village of Villa Park, Illinois*, No. 19 cv 6809 (N.D. IL).

Pending Cases — Appointed Class Counsel

Constitutional Violation — Class action for a nationwide class of individuals who were wrongfully issued automated construction zone speed enforcement tickets on a highway that was not under construction. *Black, et al. v. City of Girard, Ohio, et al.*, No. 18 cv 1256 (Trumbull Cnty, OH).

Improper Fee — Class action for a statewide class of individuals who were charged an improper fee by the state in connection with the issuance of a driver's license. *Madyda, et al. v. Ohio Dept. of Public Safety*, No. 19-426 (OH Ct. of Claims).

Invasion of Privacy — Class action for a nationwide class of individuals who were surreptitiously viewed and recorded using the toilets in holding cells. *Alicea, et al. v. County of Cook*, No. 18 cv 5381 (N.D. IL).

Pending Cases — Appointed to Executive Committee

Misleading Product Claims — Class action for a nationwide class of individuals who purchased defective cheese products based on misleading representations. *In re 100% Grated Parmesan Cheese Marketing and Sales Practices Litigation*, MDL No. 2707 (N.D. IL).

Pending Cases

Fraud — Class action for a statewide class of individuals who were wrongfully issued automated red light tickets by red light cameras that were installed in violation of state law.

Improper Court Fee — Class action for a nationwide class of individuals and businesses who were charged an improper fee by the Clerk of the Court.

Unpaid Overtime — Class action for a nationwide class of individuals who were not paid all wages and premium overtime for hours worked in excess of forty hours per week.

Data Breach — Class action for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by their employer.

Improper Debt Collection — Class action for a nationwide class of individuals who were sent misleading debt collection letters, in violation of the Fair Debt Collection Practices Act.

Data Breach — Class action for a statewide class of individuals who had their personal, financial, and medical data stolen due to insufficient protection of that information by a hospital.

Violation of RESPA Act — Class action for a nationwide class of borrowers who were denied the requisite loan modification options, as required by the Real Estate Settlement Procedures Act.

Environmental Contamination — Class action for a statewide class of individuals who suffered from an infiltration of lead and arsenic on their property.

Constitutional Violation — Class action for a nationwide class of individuals who were wrongfully issued automated traffic speed enforcement tickets by a municipality that was denied authorization to issue the tickets.

Invasion of Privacy — Class action for a nationwide class of individuals who received unauthorized telemarketing calls to their phones.

Fraud — Class action for a nationwide class of individuals who purchased used cosmetics and beauty products that were sold as new.

Breach of Contract — Class action for a statewide class of individuals who are members of athletic clubs that unilaterally terminated their rewards program without notice.

Unpaid Wages — Class action for a statewide class of individuals who were not paid all of the wages they earned while working at restaurants.

Antitrust — Class action for a nationwide class of individuals who purchased packaged seafood products from companies that conspired to fix prices in violation of the Sherman Act.

Environmental Contamination — Class action for a statewide class of individuals whose residential drinking water was contaminated with lead.

Constitutional Violation — Class action for a statewide class of individuals whose homes were wrongfully taken by the government without adequate compensation.

Fraud — Class action for a nationwide class of individuals who paid inflated prices for tickets to events due to improper coordination among ticket brokers.

Fraud — Class action for a nationwide class of individuals who were deliberately targeted through marketing and sales of electronic cigarettes when they were minors.

Defective Product — Class action for a nationwide class of individuals who purchased misbranded and adulterated pharmaceuticals.

Data Breach — Class action for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by state governments.

Consumer Fraud — Class action for a statewide class of individuals who were denied loans due to improper banking practices.

Shareholder Derivative Suit — Class action for a nationwide class of individuals against a company due to breaches of fiduciary duties and insider trading.

Consumer Fraud — Class action for a nationwide class of individuals who paid inflated prices for a product.

NOTE: This list of cases is a representative sample of some of the class action lawsuits. It is not an exhaustive list.

McDaniel, Wolff, & Benca, PLLC

McDaniel, Wolff & Benca, PLLC is a full-service law firm based in Little Rock, Arkansas serving individuals, families, and businesses of all sizes. The attorneys combine their legal and professional experiences into client-focused and results-based services. They place a premium on developing and maintaining long-term relationships with their clients. With decades of combined experience, MWB has a plethora of knowledge pertaining to state and federal court litigation.

Dustin McDaniel

Dustin McDaniel is an attorney and founding partner in the firm of McDaniel, Wolff & Benca, PLLC. Dustin was elected to the Arkansas House of Representatives in 2004, serving from 2005-2007. He was the only freshman lawmaker in the 85th General Assembly to be named by the *Arkansas Democrat Gazette* to its “Top 10 Legislators” list in 2005. In 2006, Dustin was elected as Arkansas’s 55th Attorney General. At the time, he was the youngest Attorney General in the United States. In 2010, Dustin was reelected. He was selected by his colleagues around the nation to hold many leadership roles, including Chairman of the Southern Region of the National Association of Attorneys General, Co-Chair of the Democratic Attorneys General Association and Chairman of the NAAG Tobacco Project, which oversees roughly \$7 Billion in annual payments between settling tobacco companies and 46 states. Dustin currently serves as Co-Chair of the Society of Attorneys General Emeritus (SAGE), which is the professional association for all former AG’s in the United States. Dustin is also proud to be the first Arkansan named as a Rodel Fellow at the Aspen Institute.

Under the Arkansas Constitution, Dustin was term limited for life as AG at the end of his second term. In 2015, he formed the law firm of McDaniel, Richardson, and Calhoun, PLLC which quickly established a successful national attorney general practice managing investigations, litigations and general government affairs with AG’s and governors. The firm also navigated regulatory and political affairs, as well as litigation in Arkansas on complex issues including education, manufacturing, healthcare, technology, medical cannabis, tobacco, and casino gaming.

In 2019, McDaniel Richardson & Calhoun, PLLC merged with the Little Rock tax law firm of Wolff & Ward, PLLC and the criminal defense firm of Benca & Johnston, PLLC to form McDaniel Wolff & Benca, PLLC.

Dustin and his wife Bobbi have three children. Both are active in the community. Dustin is a member of 50 For the Future and serves on the boards of The University of Arkansas Alumni Association, The UALR Wm. H Bowen School of Law Dean’s Advisory Council and The U.S. Hemp Authority. Bobbi works as a client advocate at the Arkansas Hunger Relief Alliance. Dustin graduated *cum laude* with his Juris Doctor from the Bowen School of Law, where he served as Honor Council Prosecutor and as Assistant Articles Editor for the UALR Law Review. The law school presented Dustin with its “Young Alumnus Award” in 2002 and its “Distinguished Alumnus Award” in 2019. He is a graduate of the Walton College of Business at the University of Arkansas, where he was Interfraternity Council President and a member of the Kappa Sigma fraternity. In 2004, Dustin was an honor graduate of the Arkansas Law Enforcement

Training Academy as a Patrolman for the Jonesboro Police Department. He has maintained his law enforcement certification to this day, serving as a volunteer deputy sheriff in Poinsett County, Arkansas. In 2008, The Arkansas Sheriff's Association named Dustin "Arkansas's 76th Sheriff," an honor previously bestowed only once to the late Lieutenant Governor Winthrop Rockefeller.

Dustin is admitted to the practice of law in the State of Arkansas, District of Columbia, United States Tax Court, United States District Court - Eastern and Western Districts of Arkansas, United States Court of Appeals - Eighth Circuit, and the United States Supreme Court.

Education

William H. Bowen School of Law, J.D.

University of Arkansas, B.A.

Professional Associations and Memberships

National Association of Attorneys General's Energy and Environment Committee

National Association of Attorneys General's Public Safety and Health Committee

National Association of Attorneys General's Southern Region

National Association of Attorneys General's Tobacco Committee

Democratic Attorneys General Association

Society of Attorneys General Emeritus

Arkansas House of Representatives

University of Arkansas Alumni Association

Bart Calhoun

Bart Calhoun is one of our firm's founding partners and helps lead our litigation department. Bart's practice includes commercial litigation, debt collections, probate litigation, family law, and much more. Additionally, Bart regularly provides legal and government relations services to clients engaged in highly regulated industries such as those in the fields of agriculture, construction, healthcare, medical marijuana, casino gaming, and banking.

Before entering private practice, Bart served as an Assistant Attorney General in the Arkansas Attorney General's Office, primarily serving in the public protection department. As a part of such practice, he represented the interests of Arkansas consumers in federal and state courts located throughout the United States. Also, while at the Arkansas Attorney General's Office, Bart provided counsel with respect to proposed legislation and regularly communicated with members from the Arkansas General Assembly.

Bart is admitted to practice law in the State of Arkansas, U.S. District Court Eastern District of Arkansas, and U.S. District Court Western District of Arkansas.

Education

William H. Bowen School of Law, J.D.

Arkansas State University, B.A.

Professional Associations and Memberships

Arkansas Bar Association

Arkansas Bar Association, House of Delegates, Tenure

Arkansas Bar Association, Leadership Academy

Arkansas Spinal Cord Foundation

Patrick Benca

Patrick Benca is a founding partner of the firm and leads our criminal defense team. His practice focuses on the defense of state and federal crimes, including but not limited to white-collar crimes, drug charges, homicide charges, civil forfeitures, juvenile law, violent crimes, criminal appeals, and other post-conviction relief, and much more.

Patrick has been a passionate supporter of fighting for civil rights since graduating from the University of Arkansas at Little Rock, William H. Bowen School of Law. He has experience working with the Little Rock Police Department's crime scene investigators and often teaches continuing education courses to his peers about complex issues surrounding search and seizure and other criminal law matters. Patrick is a death penalty certified attorney who has successfully won appeals in front of the Arkansas Supreme Court for clients on death row. He was also appointed by Governors Mike Beebe and Asa Hutchinson to the Arkansas Sex Offenders Assessment Committee.

Patrick Benca is a member of the National Association of Criminal Defense Attorneys, the Arkansas Association of Criminal Defense Attorneys, and the Arkansas Trial Lawyers Association. He has been named one of the National Trial Lawyers Top 40 under 40, he was awarded the Death Penalty Focus 2012 Abolition Award, and the Arkansas Association of Trial Lawyers "Champion of Justice Award." In 2017 he was named one of the best lawyers in Arkansas by Little Rock Soiree.

Patrick is admitted to practice law in the State of Arkansas, the State of California, United States District Court – Eastern and Western Districts of Arkansas, United States District Court – Western District of Tennessee, United States Court of Appeals – Sixth and Eighth Circuits, and United States Supreme Court.

Education

William H. Bowen School of Law, J.D.

University of Arkansas at Little Rock, B.A.

Professional Associations and Memberships

National Association of Criminal Defense Attorneys

Arkansas Association of Criminal Defense Attorneys

Arkansas Trial Lawyers Association

Proclaim Justice - Board Member

Lauren Collins

Lauren Collins is an associate attorney at the firm. Lauren's practice focuses on state and federal criminal defense law including white-collar crimes, drug charges, search and seizure, civil forfeitures, juvenile law, violent crimes, appeals, and other post-conviction relief.

A native of Little Rock, Lauren Collins graduated high school from Mount Saint Mary Academy and earned a Bachelor of Arts in Anthropology with a minor in Legal Studies from the University of Arkansas at Fayetteville in 2009. Ms. Collins earned her Juris Doctor from the University of Arkansas at Little Rock, William H. Bowen School of Law.

Lauren is admitted to practice law in the State of Arkansas, Supreme Court of Arkansas, United States District Court - Eastern and Western Districts of Arkansas, and United States Court of Appeals - Eighth Circuit

Professional Associations and Memberships

Arkansas Bar Association

American Bar Association

Pulaski County Bar Association

Arkansas Association of Criminal Defense Lawyers

National Association of Criminal Defense Lawyers

Jessica Duncan Johnston

Jessica Duncan Johnston is a founding partner in the firm and helps lead our criminal defense team. Her practice focuses on the defense of state and federal crimes, including but not limited to white-collar crimes, drug charges, homicide charges, civil forfeitures, juvenile law, violent crimes, criminal appeals, and other post-conviction relief, and much more. Jessica is certified to handle capital crimes where the imposition of the death penalty is at issue. She also regularly assists clients with divorces and other family law matters.

Before entering private practice, Jessica Duncan Johnston served as an Administrative Law Judge for the Arkansas Department of Finance and Administration. During her tenure, she heard cases and determined controversies between taxpayers and the department regarding taxes, licenses, and permits.

Jessica is admitted to practice law in the State of Arkansas, Arkansas Supreme Court, United States District Court – Eastern and Western Districts of Arkansas, and United States Court of Appeals – Eighth Circuit.

Education

William H. Bowen School of Law, J.D.

Arkansas Tech University, B.A.

Professional Associations and Memberships

Arkansas Bar Association

Pulaski County Bar Association

Arkansas Association of Criminal Defense Lawyers

Judge William R. Overton American Inn of Court

Arkansas Association of Women Lawyers

Scott Richardson

Scott Richardson is a founding partner of the firm. Scott primarily practices in the areas of education law, employment litigation, commercial litigation, civil rights litigation, and appellate law. He has litigated cases in both state and federal courts, handling appeals in the Arkansas Court of Appeals, the Arkansas Supreme Court, and the Eighth Circuit Court of Appeals as a Senior Attorney in the Arkansas Attorney General's Office.

Scott Richardson has regularly represented clients at the Arkansas General Assembly where he has advised state legislators and state agencies on pending legislation, spoken before numerous

committees, and advised legislators directly. Scott has also served twice as a Special Associate Justice on the Arkansas Supreme Court.

Scott is admitted to practice law in the State of Arkansas, U.S. District Court Eastern District of Arkansas, U.S. District Court Western District of Arkansas, and U.S. Court of Appeals - Eighth Circuit.

Education

William H. Bowen School of Law, J.D.

University of Arkansas, B.A.

Professional Associations and Memberships

Pulaski County Bar Association

Arkansas Bar Association

Council of School Attorneys, National School Boards Association

Executive Committee, Quapaw Area Council, Boy Scouts of America

Jon Shirron

Jon Shirron is an associate attorney at the firm. Jon's practice focuses on assisting clients with day-to-day business law matters, business mergers and acquisitions, tax planning and IRS controversies, estate planning and probate litigation. His practice is aimed at providing creative solutions to the unique challenges faced by private individuals, families, and their companies.

Prior to attending law school at the University of Arkansas, Jon Shirron spent six years working for his family's fourth-generation business in his hometown of Russellville, Arkansas. He returned to central Arkansas after obtaining his LL.M. in Taxation from the University of Washington.

Jon is admitted to practice law in the State of Arkansas, U.S. District Court, Eastern and Western Districts of Arkansas, and United States Tax Court.

Education

University of Washington School of Law, LL.M. (Taxation)

University of Arkansas School of Law, J.D.

University of the Ozarks, B.S.

Professional Associations and Memberships

Arkansas Bar Association

Pulaski County Bar Association

American Bar Association

Vincent Ward

Vince Ward is a managing partner in the firm's tax and corporate law practice. Vince's practice focuses on tax planning and business law matters involving a diverse group of industries, regularly providing counsel to multi-state retailers, manufacturers, logistics companies, commercial real estate developers, commercial lenders, and many others. He frequently assists clients with business sales and mergers, commercial real estate acquisitions and leasing, IRS controversies, business start-ups and capital raises, charitable organizations, as well as commercial litigation. Vince also provides counseling with respect to estate planning, trust administration, and probate litigation. His practice is founded on providing clients with premier legal services with an emphasis on tax planning, while balancing practical considerations and the specialized needs of private individuals, their businesses, and their families.

A native of Fayetteville, Arkansas, Vince Ward moved to Little Rock after obtaining his Master of Laws in Taxation from Southern Methodist University.

Vince has been selected by his attorney peers for including in *2014 – 2019 Super Lawyers Mid-South Rising Stars List*, *Little Rock Soiree Best Lawyers 2016 & 2017*. He has also served as a faculty member at numerous National Business Institute seminars including *Trusts 101*, *The Probate Process from Start to Finish*, and *How to Keep Tax-Exempt Organizations in Compliance*.

Vince is admitted to practice law in the State of Arkansas, United States District Court - Eastern and Western Districts of Arkansas, United States Bankruptcy Court - Eastern and Western Districts of Arkansas, United States Court of Appeals - Eighth Circuit, and United States Tax Court.

Education

Southern Methodist University School of Law, LL.M. (Taxation)

University of Arkansas School of Law, J.D.

University of Arkansas, B.B.A.

Professional Associations and Memberships

Arkansas Bar Association

Pulaski County Bar Association

American Bar Association

Rufus Wolff

Rufus Wolff is a founding partner and manages the firm's tax and corporate law practice. Rufus practices primarily in the areas of business, corporate and commercial law, mergers and acquisitions, securities law including private placements, tax planning and IRS tax controversy, estate planning, and probate administration. Rufus also regularly counsels clients on matters concerning employee benefits, executive compensation, and alternative staffing arrangements with an emphasis on providing counsel to professional employer organizations. He frequently represents private entrepreneurs, emerging technology companies, real estate developers, oil and gas companies, securities firms, and many other types of investors whose needs require a creative yet practical approach to their complex legal matters.

Rufus Wolff is also a Certified Public Accountant (inactive) and has served as an adjunct professor of law at the William H. Bowen School of Law in Little Rock, teaching Corporate Income Taxation from 1989 to 1996. He has been actively involved in the professional employer organization industry since 1987, representing numerous professional employer organizations throughout the country.

Rufus is admitted to practice law in the State of Arkansas, the State of Texas, United States District Court - Eastern and Western Districts of Arkansas, United States Bankruptcy Court - Eastern and Western Districts of Arkansas, United States Court of Appeals - Eighth Circuit, United States Supreme Court, and United States Tax Court.

Education

William H. Bowen School of Law, J.D. (with highest honors)
University of Arkansas, B.S.B.A.

Professional Associations and Memberships

American Bar Association
Arkansas Bar Association
Pulaski County Bar Association
American Institute of Certified Public Accountants
Arkansas Society of Certified Public Accountants

JS 44 (Rev. 09/19)

CIVIL COVER SHEET 4:20-cv-852-DPM

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

| | |
|--|---|
| <p>I. (a) PLAINTIFFS</p> <p>Samuel Acker, Phillip Davidson, and Terry Morrow, individually, and on behalf of all others similarly situated</p> <p>(b) County of Residence of First Listed Plaintiff <u>Laramie County, Wyoming</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i></p> <p>Please see Attachment A.</p> | <p>DEFENDANTS</p> <p>Protech Solutions, Inc.</p> <p>County of Residence of First Listed Defendant <u>Pulaski County, Arkansas</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i> James L. Phillips, Guy W. Murphy, Jr., and Sam Patterson HYDEN, MIRON & FOSTER, PLLC 901 N. University Ave., Little Rock, AR 72207</p> |
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|---|---|----------------------------|---|----------------------------|---------------------------------------|------------|------------|-----------------------|----------------------------|----------------------------|---|----------------------------|---------------------------------------|--------------------------|---------------------------------------|----------------------------|---|----------------------------|----------------------------|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
| <p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p> | <p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;"></td> <td style="width: 33%; text-align: center;">PTF</td> <td style="width: 33%; text-align: center;">DEF</td> <td style="width: 33%;"></td> <td style="width: 33%; text-align: center;">PTF</td> <td style="width: 33%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table> | | PTF | DEF | | PTF | DEF | Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 | Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| | PTF | DEF | | PTF | DEF | | | | | | | | | | | | | | | | | | | | |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 | | | | | | | | | | | | | | | | | | | | |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | | | | | | | | | | | | | | | | | | | | |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | | | | | | | | | | | | | | | | | | | | |

IV. NATURE OF SUIT *(Place an "X" in One Box Only)* Click here for: [Nature of Suit Code Descriptions](#)

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| <p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i></p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p> | <p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input checked="" type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p> | <p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p> | <p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p> | <p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)</p> <p><input type="checkbox"/> 485 Telephone Consumer Protection Act</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p> |
|--|---|---|---|---|

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District *(specify)*

6 Multidistrict Litigation - Transfer

8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. § 1332 (d) (2)

Brief description of cause:
Unauthorized access to personal information.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____ **CHECK YES only if demanded in complaint:**

Actual damages and JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE: 07/21/2020

SIGNATURE OF ATTORNEY OF RECORD:

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

SAMUEL ACKER, et al. v. PROTECH SOLUTIONS, INC.
NOTICE OF REMOVAL

Civil Cover Sheet
Attachment A

Dustin McDaniel
McDaniel, Wolff & Benca, PLLC
1307 West 4th Street
Little Rock, Arkansas 72201
dmcdaniel@mwbfirm.com

Marc E. Dann
Brian D. Flick
DannLaw
P. O. Box 6031040
Cleveland, Ohio 44103
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Thomas A. Zimmerman, Jr.
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Zimmerman Law Offices, P.C.
77 W. Washington Street, Suite 1220
Chicago, Illinois 60602
tom@attorneyzim.com
sharon@attorneyzim.com

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Arkansas Div. of Workforce Services Contractor Hit with Lawsuit Over Pandemic Unemployment Assistance Data Breach](#)
