

**IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA**

MALINDA S. SMIDGA, ASHLEY POPA,
MATILDA DAHLIN, CHRISTINA
CALCAGNO, and BRIAN CALVERT,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BATH & BODY WORKS LLC, and
VICTORIA'S SECRET STORES, LLC,

Defendants.

CIVIL DIVISION – CLASS ACTION
The Honorable Philip A. Ignelzi

No. GD-21-009142

**DECLARATION OF KELLY K.
IVERSON ON BEHALF OF LYNCH
CARPENTER, LLP IN SUPPORT OF
APPLICATION FOR AWARD OF
ATTORNEYS' FEES AND
EXPENSES**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

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**DECLARATION OF KELLY K. IVERSON ON BEHALF OF LYNCH CARPENTER,
LLP IN SUPPORT OF APPLICATION FOR AWARD OF ATTORNEYS’ FEES AND
EXPENSES**

I, KELLY K. IVERSON, hereby declare as follows:

1. I am a partner with the law firm of Lynch Carpenter, LLP (“Lynch Carpenter” or the “Firm”). I submit this declaration in support of the Application for Attorneys’ Fees and Expenses in connection with the Settlement of the above-captioned action (the “Action”).

2. The Firm serves as counsel representing Plaintiffs Malinda Smidga, Ashley Popa, Matilda Dahlin, Christina Calcagno, and Brian Calvery and the Settlement Class in the Action.

3. The information contained in this declaration is taken from time and expense records prepared and maintained by the Firm in the ordinary course of business. The information was prepared by my staff and reviewed by me. The purpose of the review was to confirm the accuracy of, and the necessity for, the time and expenses submitted by the Firm in connection with the Application for Attorneys’ Fees and Expenses.

4. As set forth below, the time spent by the Firm on the four actions ultimately consolidated into this Settlement totals 1,222.2 hours, and the lodestar, based on current billing rates, totals \$1,026,930. The billing rates for the partners, attorneys, and support staff align with the Firm’s standard billing rates for complex litigation actions. In instances where personnel are no longer employed by the Firm, lodestar calculations are based on their final-year billing rates during their tenure with the Firm.

| Professional | Position | Hours | Rate | Lodestar |
|-------------------------|-----------------|---------------|-------------|-----------------------|
| Gary Lynch | Partner | 78 | \$1,100 | \$85,800.00 |
| Todd Carpenter | Partner | 73.1 | \$1,050 | \$76,755.00 |
| Kelly Iverson | Partner | 423.2 | \$950 | \$402,040.00 |
| Jamisen Etzel | Partner | 6.4 | \$900 | \$5,760.00 |
| Elizabeth Pollock-Avery | Partner | 10.9 | \$900 | \$9,810.00 |
| Scott Braden | Partner | 198.1 | \$850 | \$168,385.00 |
| Tiffine Malamphy | Partner | 0.8 | \$750 | \$600.00 |
| Nick Lange | Partner | 1.4 | \$700 | \$980.00 |
| Paige Noah | Associate | 13.2 | \$650 | \$8,580.00 |
| Patrick Donathen | Associate | 356.2 | \$500 | \$178,100.00 |
| Samantha Steed | Associate | 74 | \$495 | \$36,630.00 |
| Hannah Barnett | Associate | 4.4 | \$450 | \$1,980.00 |
| Chris Cornelius | Associate | 3.3 | \$450 | \$1,485.00 |
| Lucia Romani | Associate | 81.1 | \$450 | \$36,495.00 |
| Sadie Fahsbender | Law Clerk | 12.8 | \$275 | \$3,520.00 |
| Lexi Epley | Law Clerk | 0.6 | \$275 | \$165.00 |
| Maggie Robalino | Paralegal | 33 | \$275 | \$9,075.00 |
| Dan Hart | Paralegal | 2.5 | \$275 | \$687.50 |
| Jon Romanishin | Paralegal | 0.3 | \$275 | \$82.50 |
| Total: | | 1222.2 | | \$1,026,930.00 |

5. The Firm also seeks an award of \$40,814.83 in expenses. I believe the expenses are of a type normally charged to a fee-paying client in the private legal marketplace. It includes charges for filing fees, deposition transcripts, e-discovery vendors, experts, mediation, and travel associated with the case. The expenses and charges are summarized below, which were taken from the accounting records of the Firm.

| Expense Category | Amount |
|-------------------------|--------------------|
| Filing fees | \$4,031.35 |
| Service of Process | \$338.32 |
| Mediation | \$14,416.19 |
| Depositions | \$2,951.04 |
| Travel | \$5,181.50 |
| Experts | \$8,725.00 |
| Support Vendors | \$5,171.43 |
| | |
| Total | \$40,814.83 |

6. Biographical information about the Firm is set forth in the Firm Resume attached as **Exhibit A**.

7. I declare under penalty of perjury, pursuant to the laws of Pennsylvania, that to the best of my knowledge, the foregoing is true and correct. If called upon by the Court, I could and would competently testify that the following facts are true and correct.

Executed this 17th day of June, 2024, at Pittsburgh Pennsylvania.



 KELLY K. IVERSON

EXHIBIT A



LYNCH CARPENTER

Pittsburgh ▪ San Diego ▪ Chicago ▪
Los Angeles

OUR MISSION

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

The Lynch Carpenter platform is self-made, without reliance upon the legacy of a long-established “repeat player” law firm and is based upon the fundamental principle that input from a broad base of lawyers with diverse backgrounds, working together with mutual respect, will result in the strongest possible organization. The firm strives to provide equal opportunities for promotion and leadership to its attorneys and supporting professionals. Fourteen of the twenty-three Lynch Carpenter attorneys have been appointed to leadership positions in multidistrict or otherwise consolidated litigation, or in class-action matters involving financial fraud (including securities fraud, derivative actions, and lending fraud), data breach, privacy, consumer fraud, breach of contract, labor and employment, antitrust, and civil rights, in federal and state courts throughout the country.

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

In October 2020, *The Legal Intelligencer* named Lynch Carpenter (under its predecessor name) “Litigation Department of the Year” for general litigation in Pennsylvania. In 2021, the firm was named as a finalist for Litigation Department of the Year in the Pennsylvania region by *The American Lawyer*. In 2022, the firm was named as a finalist for Privacy/Data Breach firm of the year by *ALM*. In 2023, the firm was named as a Pennsylvania Powerhouse by *Law360*. Several of its partners co-authored updates to *Class Actions: The Law of 50 States*, published by Law Journal Press, from 2021 to 2023. Lynch Carpenter’s attorneys are recipients of numerous additional individual awards, as described in more detail in the individual biographies on the firm’s website.

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

REPRESENTATIVE AND NOTABLE CASES

PRIVACY & DATA BREACH LITIGATION

In re: MOVEit Customer Data Security Breach Litig., No. 1:23-md-03083 (D. Mass.). In January 2024, Judge Burroughs appointed Gary Lynch as Co-Lead Counsel in this sprawling multi-district litigation action arising from an exploited file-sharing software vulnerability, which led to thousands of data breaches that compromised PII and PHI of nearly 80 million individuals.

Kolstedt v. TMX Finance Corporate Services, Inc., No. 4:23-cv-00076 (S.D. Ga.). In September 2023, Judge Baker appointed Kelly Iverson as Co-Lead Counsel in this consolidated litigation involving a data breach impacting 5 million consumers. The plaintiffs recently filed their consolidated amended complaint.

Miller et al. v. NextGen Healthcare Inc., No. 1:23-cv-02043 (N.D. Ga.). In September 2023, Judge Thrash appointed Gary Lynch to the Plaintiffs' Steering Committee in this consolidated matter related to a data breach at an electronic health record provider which compromised the information of over 1 million patients.

Geleng et al. v. Independent Living Systems, LLC, No. 1:23-cv-21060 (S.D. Fla.). Elizabeth Pollock-Avery was appointed to the Plaintiffs' Executive Committee in this consolidated matter related to a data breach at a healthcare administration and managed care solutions provider, which compromised the PII and PHI of over 4.2 million individuals.

In re Samsung Customer Data Security Breach Litig., MDL No. 3055 (D.N.J.). In March 2023, Judge O'Hearn appointed Kelly Iverson to the Plaintiffs' Executive Committee in this MDL relating to a data breach at Samsung that impacted the PII of millions of the defendant's current and former customers. The defendant's motion to dismiss is currently pending.

In re Wawa, Inc. Data Security Litig., No. 2:19-cv-6019 (E.D. Pa.). Gary Lynch was appointed Co-Lead Counsel for a putative class of financial institution plaintiffs in consolidated actions brought against Wawa, Inc. arising out of a 2019 payment card data breach involving the convenience store's point-of-sale systems. A consolidated amended complaint was filed in July 2020, and in 2021 the district court denied the defendant's motion to dismiss the primary claims. In March 2023, the parties negotiated a proposed settlement that will provide up to \$37 million in relief for the class; a final approval hearing is anticipated in the first quarter of 2024.

In re TikTok, Inc., Consumer Privacy Litig., No. 20-cv-4699 (MDL No. 2948) (N.D. Ill.). Judge Lee appointed Katrina Carroll as Co-lead Counsel in this multidistrict litigation alleging that one of the world's biggest social media platforms captured, collected, and transmitted personal data from TikTok users and their devices without their consent and/or knowledge, including private information and biometric information within the meaning of the Illinois Biometric Information Privacy Act. In August 2022, a settlement for \$92 million received final approval.

In re Equifax, Inc. Customer Data Security Breach Litig., MDL No. 2800 (N.D. Ga.). The Equifax data breach compromised the nation's entire credit reporting system. More than 400 lawsuits filed by consumers and financial institutions were consolidated in the MDL. Gary Lynch was appointed Co-Lead Counsel for financial institution plaintiffs. After significant dispositive motions practice and initial rounds of discovery, the parties negotiated a settlement of the financial institution class action that provides up to \$7.75 million in cash benefits, plus additional injunctive relief. The court granted final approval in October 2020.

In re Blackbaud, Inc. Customer Data Breach Litig., MDL No. 2972 (D.S.C.). In 2020, data security company Blackbaud, Inc. was target for a ransomware attack. In the litigation that followed, brought by Blackbaud's customers, Kelly Iverson was appointed to the Plaintiffs' Steering Committee. On October 19, 2021, the Honorable J. Michelle Childs denied Blackbaud's motion to dismiss Plaintiffs' negligence and gross negligence claims and the plaintiffs' motion for class certification is currently pending.

Popa v. Harriet Carter Gifts, Inc., 52 F.4th 121 (3d Cir. 2022). Lynch Carpenter won reversal of a district court's summary judgment for defendants in a case regarding applicability of Pennsylvania's Wiretapping and Electronic Surveillance Control Act ("WESCA"), 18 PA. CONS. STAT. 5702 *et seq.* The Third Circuit rejected the defendants' attempt to establish a "direct party" exception to WESCA, which would have undermined the two-party consent requirement of the statute. The Third Circuit also confirmed that defendants bear the burden of proving a prior consent defense, and that the location of electronic interception of website communications under WESCA is at the point where software re-routes transmissions from a user's device, not where the website communications are ultimately received. The remanded case remains in litigation in the Western District of Pennsylvania.

In re Marriott International Customer Data Security Breach Litig., MDL No. 2879 (D. Md.). Lynch Carpenter was appointed to the Plaintiffs' Steering Committee in this multidistrict litigation related to the data breach involving Starwood guest information dating back to at least 2014. The MDL includes more than 100 cases and is in pretrial litigation. The district court certified several bellwether classes in May 2022 and the Fourth Circuit granted the defendant's Rule 23(f) appeal. On remand, the case was re-certified by the district court and is, again, on appeal to the Fourth Circuit.

Baker v. ParkMobile, LLC, No. 1:21-cv-02182 (N.D. Ga.). This case involved a data breach of ParkMobile's servers, impacting personal information of 21 million consumers. Nicholas Colella was appointed to the Plaintiffs' Steering Committee. Judge Steve Jones denied ParkMobile's motion to dismiss the negligence, negligence per se, and state consumer protection claims. A motion for class certification is currently pending.

Opris v. Sincera Reproductive Medicine, No. 2:21-cv-3072 (E.D. Pa.). Lynch Carpenter served as Co-Lead Counsel in this data breach case involving the 2020 compromise of patients' personal identifiable information and protected health information from a reproductive health services provider. In May 2022, Judge Slomsky denied the majority of the defendant's motion to dismiss. A class settlement received final approval in September 2023 for \$1.2 million.

In re Home Depot Customer Data Breach Litig., 1:14-md-02583, MDL 2583 (N.D. Ga.). In this multidistrict litigation, Lynch Carpenter attorneys represented financial institutions in litigation related to the major data breach at the retailer which continued for almost six months in 2014 and resulted in the compromise of approximately 56 million payment card accounts. Lynch Carpenter was appointed by Judge Thrash to be one of three Lead Counsel managing the financial institution track of the litigation. In September 2017, the Court granted final approval to a comprehensive class settlement that provides over \$27 million in relief to the financial institution class.

First Choice Federal Credit Union v. The Wendy's Company et al., No. 2:16-cv-0506, (W.D. Pa.). This class action arose out of malware installed on the point-of-sale systems of Wendy's franchised restaurants for the purpose of capturing and ex-filtrating customer payment card data. Approximately 18 million payment cards were exposed. The United States District Court for the Western District of Pennsylvania consolidated several proposed class actions and appointed Lynch Carpenter as Co-lead Counsel on behalf of the plaintiff financial institutions.

In November 2018, after three rounds of in- person mediation, Wendy’s agreed to pay \$50 million into a non-reversionary fund and to adopt and/or maintain certain reasonable safeguards to manage its data security risks. When the settlement received final approval in November 2019, the Honorable Maureen P. Kelly noted Class Counsel’s “national reputation,” “significant experience in these types of class actions and in data breach litigation,” and “high level of skill and efficiency.” Judge Kelly further explained:

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

Dittman et al. v. UPMC d/b/a The University of Pittsburgh Medical Center and UPMC McKeesport, Allegheny Cty., Pa. No. GD-14-003285; 196 A.3d 1036 (Pa. 2018). Lynch Carpenter represented several employees of the health care group UPMC in a class action stemming from a breach of UPMC’s personnel files. On November 21, 2018, the Supreme Court of Pennsylvania issued a landmark decision, reversing two lower courts, regarding the viability of common law negligence claims in the wake of a data breach. The Court found that UPMC engaged in affirmative conduct by collecting and storing employee data, and that general principles of negligence support holding actors to “a duty to others to exercise the care of a reasonable man to protect [others] against an unreasonable risk of harm to them arising out of the act.” As to the economic loss doctrine, the Court agreed with Plaintiffs’ interpretation of Pennsylvania legal precedent on the issue, finding that the question of whether the economic loss doctrine applies necessarily turns on the “source of the duty alleged,” and, accordingly, a plaintiff may seek pecuniary damages under a negligence theory if the duty sought to be enforced arises independently of any contractual relationship between the parties. After remand to the trial court, additional motions practice, and initiating discovery, the parties reached a multimillion-dollar settlement that received final approval in December 2021.

Biscan v. Shields Health Care Group, Inc., No. 1:22-cv-10901-PBS (D. Mass). Judge Saris appointed Elizabeth Pollock-Avery as Interim Co-Lead Counsel in this data breach case against a healthcare company involving patients from several states. The defendant’s motion to dismiss is currently pending.

In re: Apple Data Privacy Litig., No. 5:22-cv-07069 (N.D. Cal.). Judge Davila appointed Lynch Carpenter LLP as Co-Lead Counsel in this consolidated litigation alleging that Apple tracks users’ analytics and personal information, even when those users turn off all data sharing settings. The defendant’s motion to dismiss is currently pending.

In re: Zillow Group, Inc. Session Replay Software Litig., No. 2:22-cv-1282 (W.D. Wash.). Gary Lynch serves as Co-Lead Counsel on behalf of visitors to Zillow’s website who allege they were illegally wiretapped by software operating on the page. An amended complaint was filed in April 2023 and the defendant’s motion to dismiss is currently pending.

In re UAAA Data Security Litig., No. 7:21-cv-05813 (S.D.N.Y.). Judge Briccetti appointed Lynch Carpenter as Co-Lead Counsel in this consolidated litigation which alleges that a automobile insurance company violated the Driver’s Privacy Protection Act when it disclosed individuals’ names and driver’s license numbers during a data breach that compromised the company’s online insurance quote platform. The cases is currently in discovery.

In re: BPS Direct, LLC, and Cabelas LLC, Wiretapping Litig., MDL No. 3074 (E.D. Pa.). Judge Kearney appointed Nicholas Colella as Co-Lead Counsel to represent visitors to basspro.com and cabelas.com who allege they were illegally wiretapped by software operating on the page. The court issued an order granting the defendants' motion to dismiss and an appeal is currently pending.

In re Anthem, Inc. Customer Data Security Breach Litig., MDL No. 2617 (N.D. Cal.). Lynch Carpenter attorneys represented customers of a national health insurer which experienced a data breach involving the personal information, including social security numbers, of up to an estimated 80 million customers. The case was consolidated and transferred to the Northern District of California in June 2015. Lynch Carpenter attorneys participated in discovery related to Highmark, the Pennsylvania-based member of the Blue Cross Blue Shield Association and a co-defendant in the MDL. The parties reached a settlement valued at \$117 million, which was approved by the Court.

In re Target Corporation Customer Data Breach Litig., MDL No. 2522 (D. Minn.). This multidistrict litigation arose out of the massive data breach that occurred in late 2013. Judge Magnuson appointed Gary Lynch to the five-member Plaintiffs' Executive Committee that managed the litigation on behalf of all Plaintiffs' tracks (consumer, financial institution, and shareholder). A settlement agreement which provided \$10 million to affected individual customers was granted final approval in November 2015. A separate settlement providing approximately \$39 million in relief to plaintiff financial institutions was granted final approval in May 2016.

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

In re Ashley Madison Customer Data Security Breach Litig., MDL No. 2669 (E.D. Mo.). In this well-publicized data breach case Lynch Carpenter attorneys represented individuals whose highly sensitive account information was leaked from a social media company. The case was consolidated and transferred to the Eastern District of Missouri in December 2015. Judge Ross appointed Gary Lynch and Katrina Carroll (while with her prior firm) to the Executive Committee. A class settlement for \$11.2 million was given final approval in November 2017.

In re Vizio, Inc. Consumer Privacy Litig., MDL No. 2693 (C.D. Cal.). This action was filed on behalf of individuals who purchased Vizio "Smart TVs," which contained software that collected information about the users in a manner that allegedly violates numerous consumer protection statutes. The case was consolidated and transferred to the Central District of California in April 2016, and Lynch Carpenter was appointed to the Plaintiffs' Steering Committee. The case was settled and received final approval in 2019, providing for a \$17 million common fund.

Veridian Credit Union v. Eddie Bauer LLC, No. 2:17-cv-356 (W.D. Wash.). Lynch Carpenter served as Co-Lead Counsel on behalf of a class of financial institutions in this class action against Eddie Bauer arising out of payment card data breach of the retailer's point-of-sale systems in 2016, which led to the exposure of up to 1.4 million payment cards. After overcoming a motion to dismiss and engaging in substantial discovery, the parties negotiated a class action settlement, which was approved in 2019. The agreement made up to \$2.8 million available in direct cash relief to class members and provided for an additional \$7 million worth of injunctive relief and other benefits.

In re: Solara Medical Supplies Data Breach Litig., No. 19-cv-02284 (S.D. Cal.). In January 2020, Judge Marilyn Huff appointed Kelly Iverson to the Plaintiffs’ Steering Committee in this data breach action that affected both the personally identifiable information as well as protected health information of Plaintiffs’ and the classes. In September 2022, a class settlement of \$5.06 million received final approval.

In re Community Health Systems, Inc., Customer Data Security Breach Litig., MDL No. 2595 (N.D. Ala.). Gary Lynch served as a member of the Plaintiffs’ Steering Committee in consolidated multidistrict litigation stemming from a 2014 data breach involving one of the nation’s largest hospital chains. The breach affected over 200 hospitals and the sensitive personal information of approximately 4.5 million patients was compromised. The action settled on a class basis for up to \$3.1 million.

In re Arby’s Restaurant Group, No. 1:17-mi-55555 (N.D. Ga.). In October 2016, computer hackers accessed Arby’s inadequately protected point-of-sale system and installed malware that infected nearly 1,000 Arby’s restaurant locations. Gary Lynch was appointed by Judge Totenberg as Chair of the Financial Institution Plaintiffs’ Executive Committee. The case settled and received final approval in November 2020.

Vance v. International Business Machines Corp., No. 1:20-cv-577 (N.D. Ill.). Lynch Carpenter attorneys were appointed Co-lead Counsel in this class action claiming IBM violated Illinois’s Biometric Information Privacy Act when it collected, obtained, disclosed, redisclosed, disseminated, and otherwise profited from Illinois residents’ unique facial geometric measurements without providing notice or obtaining consent. In September 2020, Lynch Carpenter defeated nearly all of the arguments raised in IBM’s motion to dismiss. The parties resolved the action in 2023.

In re: Clearview AI, Inc., Consumer Privacy Litig., No. 1:21-cv-00135 (N.D. Ill.). Lynch Carpenter attorneys served as counsel in this multidistrict litigation on behalf of a proposed class of Illinois citizens alleging that Clearview, in violation of the Illinois Biometric Information Privacy Act, scraped over 3 billion facial images from the internet, scanned their biometrics, and built a searchable database allowing users to instantly identify an unknown individual with only a photograph. Clearview then gave access to these biometrics to hundreds of law enforcement agencies, private entities, and individuals.

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

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

CONSUMER PROTECTION/PRODUCTS LIABILITY

In re Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Products Liability Litig., MDL No. 3014 (W.D. Pa.). In February 2022, Kelly Iverson was appointed as one of four Co-Lead Counsel from a pool of 75 applicants. The MDL includes over 300 actions involving allegations regarding the potentially harmful

degradation of sound abatement foam on recalled continuous positive airway pressure (CPAP) machines and the manufacturers' conduct in marketing and ultimate recall of the machines. The parties negotiated a resolution of the economic loss claims in the case providing more than \$500 million in relief to the class, which received final approval in April 2024. Additionally, the parties recently reached a \$1.1 billion settlement in principle of the personal injury and medical monitoring claims.

In re East Palestine Train Derailment, No. 4:23-cv-00242 (N.D. Ohio). The court appoint Kelly K. Iverson to the Plaintiffs' Steering Committee in this consolidated action arising from the derailment of a Norfolk Southern train and subsequent release of toxic chemicals in East Palestine, Ohio. A \$600 million settlement was recently reached between the parties and is pending before the court.

In re Robinhood Outage Litig., No. 20-cv-1626 (N.D. Cal.). In July 2020, Jamisen Etzel was appointed to the Executive Committee overseeing consolidated actions brought by consumers who sustained losses when the trading application Robinhood suffered severe service outages during a period of intense market volatility. A class settlement received final approval in July 2023 for \$9.9 million.

Morrow v. Ann Inc., No. 16-cv-3340 (S.D.N.Y.). Lynch Carpenter attorneys were Co-Class Counsel in a case alleging deceptive pricing practices by a major national retail chain. After plaintiffs overcame a motion to dismiss, the case settled for \$6.1 million worth of class benefits. The settlement was approved in April 2018.

Luca v. Wyndham Hotel Group, LLC, No. 2:16-cv-746 (W.D. Pa.). Lynch Carpenter attorneys were Co-Lead Counsel in a class action against the Wyndham hotel companies for violations of New Jersey consumer protection statutes. Plaintiffs alleged that Wyndham's websites deceptively masked the resort fees charged at certain hotels and forced patrons to agree to illegal terms and conditions. In 2017, plaintiffs defeated a motion to dismiss filed by two of the primary operating subsidiaries. A class settlement worth up to \$7.6 million was reached in 2019 and approved later that year.

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

Mednick v. Precor, Inc., No. 14-cv-03624 (N.D. Ill.): Lynch Carpenter partner Katrina Carroll served as court-appointed Co-lead Counsel in this products liability matter concerning the heart rate monitoring feature on Precor fitness machines. Due to Ms. Carroll's efforts, the plaintiffs defeated a contested class certification motion and obtained class certification for a multi-state consumer class. Ms. Carroll was instrumental in negotiating a class settlement providing meaningful relief for class members, for which the Court issued final approval in 2019.

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

FINANCIAL FRAUD, LENDING PRACTICES, AND SECURITIES

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

CitiMortgage SCRA Litig., (S.D.N.Y.). Lynch Carpenter attorneys were Tri-Lead Counsel in this class action against CitiMortgage on behalf of Sergeant Jorge Rodriguez in the Southern District of New York. This case alleges that CitiMortgage improperly foreclosed upon Mr. Rodriguez's home (and the homes of similarly situated individuals) while he was serving in Iraq, in violation of the Servicemembers Civil Relief Act. The case settled and received final approval in October 2015, securing \$38.2 million for members of our military service.

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

In re Tenet Healthcare Corp. Securities Litig., No. 02-cv-8462 (C.D. Cal.). Prior to joining the firm, Katrina Carroll represented the State of New Jersey's Division of Investment in this securities class action against Tenet Healthcare and its outside auditor, KPMG, related to false and misleading public statements those entities made between 2000 and 2002 about Tenet's financial health. Katrina played a large role in drafting motions *in limine* briefing issues regarding the admissibility of plaintiff's expert witness report. Tenet settled in 2006 for \$215 million, and KPMG settled in 2008 for \$65 million.

In re Motorola Securities Litig., No. 03-cv-287 (N.D. Ill.). Katrina Carroll represented the State of New Jersey's Division of Investment in this securities class action against Motorola, stemming from misrepresentations made by the company regarding a \$2 billion loan it made to a Turkish entity that was not repaid. The case settled a few days before trial for \$190 million.

Figueroa v. Capital One, No. 18-cv-692 (S.D. Cal.). Todd Carpenter and Eddie Kim served as Class Counsel in a class action challenging the unlawful assessment of multiple ATM fees in contravention of the customer account agreement, which resulted in a \$13 million settlement.

Bingham v. Acorns Grow, 30-2019-0150842 (Cal. Sup. Ct. Orange Cnty.). Eddie Kim served as Class Counsel in a class action on behalf of customers of a financial mobile app that automatically transferred "spare change" from each purchase using debit cards issued by customers' banks into an Acorns Grow investment account. This action challenged the app's failure to prevent overdrafts of customers' checking accounts as a result of the automated transfers and the resultant assessment of overdraft fees. A \$2.5 million settlement received final approval in September 2022.

Schertzer v. Bank of America, No. 19-cv-264 (S.D. Cal.). Lynch Carpenter attorneys represent bank customers who were assessed out-of-network ATM fees for balance inquiries transpiring from deceptive ATM prompts utilized by independent ATM operators Cardtronics and FCTI. Plaintiffs prevailed on challenges to the pleadings. An appeal is currently pending in the 9th Circuit regarding class certification.

COVID-19 CLOSURES LITIGATION

Hickey v. Univ. of Pittsburgh, 8 F.4th 301 (3d Cir. 2023). Gary Lynch argued in front of the Third Circuit after motions to dismiss were granted in favor of the University of Pittsburgh and Temple University. The District Courts held that students could not bring a breach of implied contract under Pennsylvania law, and must point to specific promises in writing. The Third Circuit reversed and remanded, adopting Mr. Lynch’s argument that nothing in Pennsylvania case law suggests implied contract claims brought by students are barred, but rather, can be inferred based on course of conduct and marketing material received by the students that tout the benefits of campus. The Third Circuit also reversed the District Courts’ dismissal of unjust enrichment in the alternative.

Espejo et al. v. Cornell Univ., Case No. 3:20-cv-00467 (N.D.N.Y.). Lynch Carpenter represented students of Cornell University who paid for in-person learning, but received remote online only education and services for half of the Spring 2020 semester following the Covid-19 pandemic. The parties reached a settlement of \$3 million for the class. Final approval is pending.

Carpey v. Board of Regents of the Univ. of Colorado, No.: 2020cv31409 (Colo. Dist. Ct., Denver Cnty.). Lynch Carpenter represented students of the University of Colorado who paid for in-person learning, but received remote online only education and services for half of the Spring 2020 semester following the Covid-19 pandemic. The parties reached a settlement of \$5 million for the class, which received final approval in July 2023.

Figueroa v. Point Park Univ., No. 2:20-cv-01484 (W.D. Pa.). Lynch Carpenter represented students of Point Park University who paid for in-person learning, but received remote online only education and services for half of the Spring 2020 semester following the Covid-19 pandemic. After overcoming a motion to dismiss on breach of implied contract and unjust enrichment, the parties reached a settlement of \$1.25 million for the class, which received final approval in December 2023.

Smith v. Univ. of Pennsylvania, No. 2:20c-cv-2086 (E.D. Pa.). Lynch Carpenter was appointed co-lead counsel to represent students who paid for in-person learning, but received remote online only education and services for half of the Spring 2020 semester following the Covid-19 pandemic. Plaintiffs prevailed on a motion to dismiss as to the fees paid for the semester. The parties reached a settlement of \$4.5 million for the class, which received final approval in January 2023.

Kincheloe v. Univ. of Chicago, No. 1:20-cv-03015 (N.D. Ill.). Lynch Carpenter represented students who paid for in-person learning, but received remote online only education and services for half of the Spring 2020 semester following the Covid-19 pandemic. The parties reached a settlement of \$4.95 million for the class, which received preliminary approval in December 2023.

WAGE AND HOUR & EMPLOYMENT DISCRIMINATION LITIGATION

Genesis Healthcare v. Symczyk, No. 11-1059 (U.S. Supreme Court). Gary Lynch served as Counsel of Record before the United States Supreme Court in an appeal addressing the application of mootness principles in a putative collective action filed under Section 216(b) of the Fair Labor Standards Act. When defendant served the plaintiff with a Rule 68 offer of judgment for “make whole” relief, the district court dismissed the case as moot. Gary Lynch successfully argued the appeal in the United States Court of Appeals for the Third Circuit, which held that the FLSA collective action did not become moot upon the plaintiff’s receipt of a Rule 68 offer of judgment for full satisfaction of her individual claim. The Supreme Court reversed in a 5-4 opinion, with Justice Kagan writing a strong dissent on behalf of our client—a position which was subsequently adopted by the majority of the Court in

Campbell-Ewald Co. v. Gomez, 577 U.S. 153 (2016). Plaintiff's position before the Supreme Court was supported by the United States as Amicus Curiae.

Verma v. 3001 Castor Inc., No. 2:13-cv-03034 (E.D. Pa.). As Co-Class Counsel, Lynch Carpenter attorneys won a \$4.59 million jury verdict in 2018 for misclassified workers at a Philadelphia nightclub. The claims were brought under the FLSA and Pennsylvania Minimum Wage Act. The trial verdict was fully affirmed by the Third Circuit in August 2019.

Copley v. Evolution Well Services, LLC, No. 2:20-cv-01442 (W.D. Pa.). In February 2022, Lynch Carpenter obtained collective certification under the FLSA of several hundred "hitch employees." These employees spent hours per week travelling to remote job sites, time for which they were unpaid. On February 10, 2023, Judge Wiegand preliminarily approved a \$2.55 million dollar settlement for the FLSA collective, as well as Pennsylvania and Ohio state classes.

Wintjen v. Denny's, Inc. et al., No. 2:19-cv-00069 (W.D. Pa). On November 18, 2021, Judge Wiegand of the Western District of Pennsylvania granted class and conditional certification and appointed Lynch Carpenter LLP as Class Counsel. The class encompasses all tipped employees within the Commonwealth of Pennsylvania and involves Denny's failure to comply with the tip credit notification requirements as well as the 80/20 rule regarding sidework.

ANTITRUST

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

In re Blue Cross Blue Shield Antitrust Litig., MDL No. 2406 (N.D. Ala.). Lynch Carpenter attorneys represent healthcare subscriber plaintiffs in four states in this nationwide class action challenging the anti-competitive practices of Blue Cross/Blue Shield's nationwide network of local insurers who do not compete with each other based on geographic boundaries. A \$2.7 billion settlement received preliminary approval in early 2021.

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2024, the foregoing was served by email on the following:

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