

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re: The Home Depot, Inc., Customer
Data Security Breach Litigation

No.: 1:14-md-02583-TWT

This document relates to:

FINANCIAL INSTITUTION CASES

**APPLICATION OF THE “CONSENSUS GROUP” TO SERVE AS CO-
LEAD COUNSEL, PLAINTIFFS’ STEERING COMMITTEE, AND CO-
LIAISON COUNSEL FOR THE FINANCIAL INSTITUTION PLAINTIFFS**

After much hard work and compromise, the overwhelming majority of all plaintiffs’ counsel in the financial institution cases has agreed upon the lawyers they believe would best serve as their leadership. Their agreement represents a consensus of the clients and lawyers in twenty-six of the twenty-six pending financial institution cases. The Consensus Group (identified below) includes many of the nation’s preeminent class action law firms with extensive experience in multidistrict litigation (including before this Court) and specifically data breach cases such as this one. Indeed, the group includes overall lead counsel as well as lead counsel for both the consumer and financial institutions tracks in *In re Target Corporation Customer Data Security Breach Litigation*, MDL No. 14-2522 (D. Minn.), the largest data breach multidistrict litigation to date.

The Consensus Group proposes that the Court approve a leadership structure consisting of three co-lead counsel, an eleven member steering committee, and two co-liaison counsel and that the following lawyers be appointed to these positions:

Co-Lead Counsel: Kenneth S. Canfield of Doffermyre Shields Canfield & Knowles, LLC in Atlanta; Joseph P. Guglielmo of Scott+Scott, Attorneys at Law, LLP in New York City; and Gary F. Lynch of Carlson Lynch Sweet & Kilpela, LLP in Pittsburgh.

Plaintiffs' Steering Committee: James J. Pizzirusso of Hausfeld, LLP (chair); Joseph Henry (Hank) Bates, III of Carney Bates & Pulliam PLLC; Bryan L. Bleichner of Chestnut Cambronne, PA; Brian C. Gudmundson of Zimmerman Reed PLLP; Vincent J. Esades of Heins Mills & Olson P.L.C.; Andrew N. Friedman of Cohen Milstein Sellers & Toll PLLC; Robert N. Kaplan of Kaplan Fox & Kilsheimer LLP; W. Daniel Miles III of Beasley Allen Crow Methvin Portis & Miles, P.C.; Arthur M. Murray of The Murray Law Firm; Karen H. Riebel of Lockridge Grindal Nauen P.L.L.P.; and Tomas A. Withers of Gillen, Withers & Lake LLC.

Co-Liaison Counsel: W. Pitts Carr of W. Pitts Carr and Associates, PC and Ranse M. Partin of Conley Griggs Partin LLP.

These lawyers are collectively referred to as the “Consensus Group.”

The group’s lawyers have proven track records successfully representing plaintiffs in hundreds, if not thousands, of class actions and multidistrict proceedings, requiring the expenditure of considerable resources and close cooperation with other lawyers to accomplish the results they have achieved. Accordingly, the Consensus Group easily satisfies the criteria for leadership the

Court set forth in Case Management Order No. 1.¹

I. BACKGROUND

Twenty-six financial institution class actions filed on behalf of twenty-eight different financial institutions are currently before the Court. Approximately eighty-six lawyers have entered their appearances in these cases. The Consensus Group represents twenty-eight of the twenty-eight financial institution plaintiffs; indeed, the proposed co-leads individually represent ten of those clients. The group also believes it is supported by all of the lawyers who have entered an

¹ Reflecting the number and quality of lawyers representing the financial institutions, the Consensus Group inevitably is the result of tough choices and compromises. Firms which clearly have the skill, expertise and experience to serve as co-lead counsel and frequently serve in lead positions have agreed to accept positions on the steering committee. Other capable and experienced firms have agreed not to seek any leadership position. There were also disagreements about the number of lawyers who would most effectively serve as lead and liaison counsel and on the steering committee. All members of the Consensus Group believe their compromise accomplishes the goal of organizing the litigation so that it can be effectively handled for their clients; amasses the resources needed to litigate this complex case with professionalism and dispatch; and avoids the need for counsel to file and the Court to assess numerous competing leadership applications, many from lawyers with whom the Court may not be familiar. However, counsel are well aware that the leadership choice belongs to the Court, which may have different views about the appropriate structure and the merits of individual lawyers. In the event the Court will not accept three co-leads, but will accept two, one of the proposed co-leads has graciously agreed to serve instead on the steering committee. If the Court will not approve an 11 member steering committee, the designated co-leads request an opportunity to recommend to the Court who will step aside. Similarly, the designated co-leads request an opportunity to recommend a replacement in the hopefully unlikely event the Court decides any proposed steering member is not qualified.

appearance. *See* Declaration of Gary F. Lynch in Support of Financial Institutions Leadership Committee Submission (“Lynch Dec.”), §§ 4-7 (attached as Exhibit 1).

The clients and lawyers associated with the Consensus Group are representative of the breadth and scope of this litigation. The financial institutions represented by the group are geographically diverse, comprising banks and credit unions of all sizes, and have by far the largest individual and collective share of the damages suffered by those who have filed cases. The group includes financial institutions with branches in thirteen states and the District of Columbia and, in terms of asset size, is a good cross sample of the small, medium and large financial institutions injured by the data breach.

The group’s lawyers also are representative of those who have appeared in the financial institution cases with firms from around the country, including a strong contingent of well-qualified counsel from Atlanta. The firms range in size from three lawyers to more than seventy. And, the individual lawyers in the group bring complementary talents needed to handle litigation of this type, such as service as lead or co-lead counsel in other MDLs; familiarity with the Court, its rules and practices; long standing relationships with defense counsel; trial skills; extensive experience with electronic discovery and managing large databases; legal research and writing; and detailed knowledge of data breach case law.

These facts demonstrate that the Consensus Group truly represents a consensus of the clients and lawyers involved in the financial institution cases.

II. ARGUMENT

In Case Management Order No. 1, the Court stated the “main criteria” for leadership positions are (1) willingness and ability to commit to a time-consuming process; (2) ability to work cooperatively with others; (3) professional experience in this type of litigation; and (4) access to sufficient resources to advance the litigation in a timely manner. Doc. No. 3 at 6. Other considerations in Fed. R. Civ. P. 23(g)(1)(A) include the work counsel has done in identifying or investigating potential claims in the action and counsel’s knowledge of the applicable law. The Consensus Group clearly meets these criteria.

A. The Consensus Group Has Committed, and Will Continue To Commit, Substantial Time and Resources

All members of the Consensus Group are willing and able to commit to what could be a time-consuming process. Perhaps the best evidence of their commitment is the substantial time and resources that they collectively have already expended. Among the specific tasks undertaken to date are investigating the claims, conducting an exhaustive public records search; issuing FOIA requests to obtain documents; speaking with knowledgeable witnesses and experts; and researching potential causes of action and defenses. Further, group members have

spent considerable time and effort organizing to prepare and file a joint preliminary statement, communicating and meeting with defense counsel, and otherwise compiling with the directives of the Court. And achieving the compromise slate reflected in this proposal also took considerable effort. Accordingly, the Consensus Group satisfies the Court's first criteria.

B. The Consensus Group Has and Will Continue to Work Cooperatively Together To Achieve Success in this Litigation

Similarly, the firms in the Consensus Group are committed to work cooperatively with each other as well as with firms representing consumers, a commitment which they have already demonstrated. Shortly after this Court issued CMO No. 1, the firms in the Consensus Group organized calls amongst all counsel in both the consumer and financial institution cases to coordinate and prepare the materials necessary for the Initial Conference. Proposed co-leads Ken Canfield, Gary Lynch, and Joseph Guglielmo, along with the proposed chair of the steering committee, James Pizzirusso, and other group attorneys, worked with all counsel to obtain their information and undertook to draft and edit the preliminary report.

The group's attorneys organized and led negotiations with defense counsel for the proposed discovery plan under Rule 26(f), conferred on behalf of all

plaintiffs with respect to scheduling issues, and drafted and negotiated with defense counsel the second CMO. Further, group attorneys drafted proposals and conferred with the defense regarding preservation of non-party discovery as directed by the Court at the Initial Conference. Clearly, the commitment to work cooperatively has already been demonstrated by the firms comprising the Consensus Group.

Perhaps most significantly, the Consensus Group's ability to work cooperatively is demonstrated by their ability to amicably come together and organize a leadership structure. As evidenced by the firm biographies attached to the Lynch Dec., Exs. A - P, the group includes many large, well-funded and well-staffed firms that have handled some of the largest class actions in the nation's history. These firms could have easily decided to contest the proposed leadership structure. Instead, the firms chose to work cooperatively and support the current proposal. This Court's second factor thus is also met.

C. The Consensus Group Has Substantial Experience Successfully Litigating Complex Cases, Including Data Breach Class Actions

The Consensus Group collectively has extensive, perhaps unparalleled success, litigating complex class actions and multidistrict litigation, including data security breach actions. Specifically, one firm, Chestnut Cambronne, serves as

overall lead plaintiffs' counsel in the *Target* data breach litigation. Two firms in the group, Zimmerman Reed and Heins Mills, serve as lead counsel for both its financial institutions and consumers tracks; other firms also serve in leadership positions in *Target*, including several on the steering committee for the financial institution cases: Carlson Lynch, Scott+Scott, Hausfeld, Beasley Allen, and Lockridge Grindal Nauen. As a result, the group has invaluable experience in this developing area of law, as well as practical knowledge of the payment card industry and information technology systems at issue here.

The experience and qualifications of the firms and lawyers who seek appointment as part of the Consensus Group are set forth below.

1. Proposed Co-lead Counsel

**Kenneth Canfield, Doffermyre Shields Canfield & Knowles
(Atlanta, Georgia)**

Twenty years ago, the *National Law Journal* referred to Doffermyre Shields Canfield & Knowles as "one of Atlanta's leading firms in high-profile, class action litigation." Since that time the firm has developed a national reputation in such litigation and is named by *Best Lawyers* and *U.S. News and Daily Report* as one of the country's top firms in mass torts and class actions. The firm and its lawyers also are routinely named as among the best in Atlanta by publications such as

Chambers U.S.A. Guide to America's Leading Lawyers for Business, Best Lawyers in America, Super Lawyers, and Benchmark Litigation.

The firm's experience in class actions and multidistrict litigation includes a wide range of subject matters such as consumer issues, insurance, medical billing and payment, products liability, antitrust and RICO. All four of the firm's named partners have been appointed as lead counsel in complex class actions and three have served as lead or co-lead counsel in multidistrict proceedings. Firm lawyers have also served on plaintiff steering committees in such proceedings. Several of the cases in which firm lawyers served in leadership positions each recovered over a billion dollars in relief for the class, including *In re Silicone Gel Breast Implant Product Liability Litigation* (N.D. Ala.) (co-lead counsel); *In re Managed Care Litigation* (S.D. Fla.) (steering committee); and *Naef v. Masonite Co.*, (Mobile, Ala.) (co-lead counsel).

Mr. Canfield, individually, has developed a reputation for his class action expertise and is listed in *Best Lawyers* and similar publications. For example, the 2012 edition of *Chambers U.S.A.* reported based upon interviews with clients and other lawyers with whom he had worked: "Kenneth Canfield is revered as a 'brilliant litigator,' particularly in relation to his work on complex class actions." He has served as sole lead counsel in one multidistrict proceeding, *In re FIAU*

Product Liability Litigation (D.C.C.); co-lead counsel in *In re Allstate Fair Credit Reporting Act Litigation* (D. Tenn.); liaison counsel in two MDLs before this Court, *In re Androgel Antitrust Litigation* and *In re Atlas Roofing Corporation Chalet Shingle Products Liability Litigation*; a steering committee member in other MDLs, including *In re Managed Care Litigation* (S.D. Fla.); and court-appointed class counsel in many other federal and state class actions.

Gary F. Lynch, Carlson Lynch Sweet & Kilpela, LLP
(Pittsburgh, Pennsylvania)

Carlson Lynch Sweet & Kilpela, LLP is a leading national class action firm with extensive experience litigating complex cases across the country. *See, e.g., In re Residential Capital, LLC*, No. 12-12020-mg (Bankr. S.D.N.Y.) (described by the court as “the most legally and factually complex case” it had encountered and which settled for \$330 million); *In re Community Bank of Northern Virginia Second Mortgage Lending Practices Litigation*, MDL 1674 (W.D. Pa.) (certified class with claims exceeding \$200 million). Firm lawyers also are on executive and other committees in pending MDLs. *See, e.g., In re Blue Cross Blue Shield Antitrust Litigation*, MDL 2406 (N.D. Ala.); *In re Nutramax Cosamin Marketing and Sales Practices Litigation*, MDL No. 2498 (D. Md.).

Mr. Lynch has more than twenty years’ experience representing class plaintiffs in complex matters. Throughout his career, Mr. Lynch has represented

employees in cases alleging breaches of federal wage and hour laws. For example, in *Ellis v. Edward Jones* (N.D. Ohio No. 1:08-cv-00540, MDL No. 1779), he chaired the Plaintiffs' Leadership Committee in a wage and hour class/collective action alleging that returned more than \$19 million to the class. And in *Genesis HealthCare Corp. v. Symczyk*, 133 S. Ct. 1523 (Apr. 16, 2013), he was counsel of record in a wage and hour case before the United States Supreme Court. Mr. Lynch also has served as lead or co-lead counsel in numerous class actions alleging violations of the Fair and Accurate Credit Transaction Act, most recently as lead counsel in *Dover v. Shoe Show, Inc.* (W.D. Pa. No. 2:12-cv-00694).

Mr. Lynch has particular expertise in data breach cases. He currently serves on the overall executive committee in *Target*; as plaintiffs' counsel in *First NBC Bank v. Kmart Corp.*, No. 1:14-cv-10088 (N.D. Ill.); and as co-lead counsel in *Dittman v. UPMC*, (Allegheny Cty., Pa. No. GD-14-003285), a class action against the University of Pittsburgh Medical Center on behalf of employees injured by a major data breach and identity theft scheme perpetrated by criminals who filed fraudulent returns to obtain the employees' tax refunds. Additionally, Mr. Lynch is currently assisting the Massachusetts Bankers' Association in drafting proposed legislation setting standards for cyber security in the payment card industry.

Joseph P. Guglielmo, Scott+Scott, Attorneys at Law, LLP
(New York, New York)

Scott+Scott is a prominent national law firm with approximately forty attorneys specializing in complex and class litigation. The firm has recovered billions of dollars for its clients and the classes they represent in antitrust, securities, derivative, and consumer class actions such as *In re Providian Financial Corporation Credit Card Terms Litigation*, MDL No. 1301 (E.D. Pa.) (\$105 million recovery); *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-7789 (S.D.N.Y.) (preliminary approval of \$95.5 million settlement); *In re Korean Air Antitrust Litigation*, MDL No. 1891 (C.D. Cal.) (\$65 million recovery); *In re Prudential Ins. Co. SGLI/VGLI Contract Litigation*, MDL No. 2208 (D. Mass.) (\$30 million recovery).

Two other cases deserve special note. In *The Vulcan Society, Inc. v. The City of New York*, No. 1:07-cv-02067-NGG-RLM (E.D.N.Y.), Scott+Scott was co-trial counsel and obtained a \$100 million settlement and significant injunctive relief for a class of black applicants who sought to be New York City firefighters but were denied or delayed employment due to racial discrimination. The firm is also co-lead counsel in *Dahl v. Bain Capital Partners, LLC*, Lead Case No. 1:07-cv-12388-EFH (D. Mass) (the private equity antitrust litigation), which involves allegations of price fixing in the leveraged buyout market by the largest private

equity firms in the country. In September 2014, the court preliminarily approved a \$590.5 million settlement.

Mr. Guglielmo, individually, has successfully represented institutional and individual clients in securities, antitrust, and consumer litigation throughout the United States. Mr. Guglielmo currently serves in the leadership of numerous class actions, including *Target*, in which he is on the steering committee for the financial institution cases; *Howerton v. Cargill, Inc.*, 1:13-cv-00336 (D. Haw.); *Murr v. Capital One Bank (USA), N.A.*, 1:13-cv-1091 (E.D. Va.); *In re Aetna UCR Rates Litigation*, MDL 2020 (D.N.J.); *In re WellPoint, Inc. Out-of-Network "UCR" Rates Litigation*, MDL 2074 (C.D. Cal.). He has also been a principal in numerous other complex class actions. *E.g. In re Managed Care Litigation*, MDL No. 1334 (S.D. Fla.) (settlements exceeding \$1 billion); *Love v. Blue Cross and Blue Shield Ass'n*, No. 03-cv-21296 (S.D. Fla.) (settlements of approximately \$130 million and other benefits of more than \$2 billion); *In re Insurance Brokerage Antitrust Litigation*, MDL No. 1897 (D.N.J.) (settlements exceeding \$180 million).

Recently, Mr. Guglielmo, along with others at the firm, was recognized for obtaining a monumental temporary restraining order benefiting New York University which prevented removal of over \$200 million from a Bernard Madoff feeder fund. In issuing the injunction, the court stated: "Scott+Scott has

demonstrated a remarkable grasp and handling of the extraordinarily complex matters in this case. The extremely professional and thorough means by which NYU's counsel has litigated this matter has not been overlooked by this Court.”

Mr. Guglielmo is an expert on electronic discovery, a subject on which he frequently lectures, and is a member of the Steering Committee of Working Group 1 of the Sedona Conference®, an organization devoted to providing guidance and information concerning discovery issues involved in litigation.

2. The Proposed Steering Committee

The proposed steering committee is comprised of eleven firms who could have sought appointment as co-lead counsel in their own right but who have agreed to work closely with the designated co-leads to help prosecute this case. The proposed steering committee includes the following:

(1) James Pizzirusso, Hausfeld LLP (Washington, D.C.)

Mr. Pizzirusso, if approved, will serve as the chair of the steering committee. He is the head of Consumer Protection/Privacy practice group for Hausfeld LLP, routinely recognized as one of the country's top plaintiff firms. He has served as co-lead counsel in numerous successful consumer class actions and MDLs. *See, e.g., In re Warner Music Group Corp. Digital Downloads Litigation*, No. CV-12-0559-RS (N.D. Cal.) (\$11.5 million nationwide settlement for past damages with

future increased in royalty rates going forward). He also serves on the financial institution steering committee in *Target*. In 2012, Law360 designated him as one of four “Rising Stars Under 40” for consumer protection and privacy law. Mr. Pizzirusso has been named as one of the top 16 antitrust lawyers in the country by *Benchmark Guide to Plaintiffs’ Lawyers* (2012); a Washington, DC “litigation star” from 2012 to 2014; and one of the leading U.S. antitrust lawyers for plaintiffs by *International Who’s Who of Competition Lawyers & Economists* (2014).

(2) Joseph Henry (Hank) Bates, III, Carney Bates & Pulliam, PLLC (Little Rock, Arkansas)

Carney Bates & Pulliam, PLLC is a national firm specializing in complex and class action litigation, whose practice includes an emphasis on data breach and data privacy class actions. Mr. Bates has been co-lead counsel in *Campbell v. Facebook, Inc.*, 4:13-cv-05996-PJH (N.D. Cal.) (involving email interception and violations of federal anti-wiretapping laws); represents a lead plaintiff in *Target*; is co-counsel in *Levine v. Sony Pictures Entertainment, Inc.*, 2:14-cv-09687-RGK-SH (C.D. Cal.) (on behalf of employees whose personal information was compromised in a recent data breach); and co-lead counsel in *Grear v Comcast Corporation*, 4:14-cv-05333-JSW (N.D. Cal.) (involving violation of the Computer Fraud and Abuse Act). Beyond the data breach and data privacy sphere, Mr. Bates and his firm has served in a lead or co-lead position in numerous class actions in

the securities, consumer protection, employment, and environmental contexts. *See, e.g., In re Lernout & Hauspie Securities Litigation*, No. 00-11589-PBS (D. Mass.) (\$115 million settlement).

(3) Bryan L. Bleichner, Chestnut Cambronne, PA (Minneapolis, MN)

For over 50 years, Chestnut Cambronne PA, has successfully prosecuted and defended class actions across the country in such areas as data breaches, securities, ERISA, banking, antitrust, and consumer protection law. Bryan Bleichner and his firm serve in a leadership capacity in *Target*. Mr. Bleichner is on the executive committee in *Christian v. National Hockey League*, No. 0:14-md-02551 (SRN/JSM) (D. Minn.); local counsel in *Puerta v. Tile Shop Holdings, Inc.*, No. 0:14-cv-00786 (ADM/TNL) (D. Minn.); and co-lead counsel in *Lucas v. SCANA Energy Marketing, Inc.*, No. 1:12-cv-02356 (N.D. Ga.) before the Honorable Steve C. Jones. His cases collectively have recovered in excess of \$11 billion for consumers, shareholders, and others. He has also been a featured speaker at the National ABA Institute on Class Actions and is an officer of the Antitrust Section of the National Federal Bar Association.

(4) Brian C. Gudmundson, Zimmerman Reed PLLP (Minneapolis, MN)

Zimmerman Reed PLLP has been appointed lead or liaison counsel in fifteen MDLs in the last ten years and has a proven track record of litigating major cases

effectively, efficiently, and respectfully. Brian Gudmundson concentrates on complex commercial and class action cases. His partner, Charles Zimmerman, and firm serve as lead counsel for the financial institutions in *Target*. As a coordinating member of the *Target* lead counsel team, Mr. Gudmundson has developed particular knowledge regarding liability, discovery and damages issues in data breach cases on behalf of financial institutions.

In other notable cases, Mr. Gudmundson and his firm currently serve as co-lead counsel in the NHL concussion injury litigation representing retired players who allege the NHL minimized concussion risks for decades; served on the lead counsel team that recovered \$50 million for retired National Football League players arising from the unauthorized use of their identities; and served as court-appointed co-lead counsel in *In re Dockers Roundtrip Airfare Promotion Sales Practices Litigation* (C.D. Cal.), a national consumer class action which obtained a multimillion dollar settlement.

(5) Vincent J. Esades, Heins Mills & Olson P.L.C. (Minneapolis, MN)

Vincent Esades has a national practice in the field of complex litigation, primarily in the areas of antitrust, consumer fraud and securities fraud. He has been recognized as a top antitrust litigator by *The Legal 500 US*, which ranks Heins Mills & Olson as one of the top five antitrust class actions firms nationally

and as one of the Minnesota "Litigation Stars" in the inaugural edition of *Benchmark Plaintiff: The Definitive Guide to America's Leading Plaintiff Firms & Attorneys*. Vince has worked on numerous major antitrust cases, as lead counsel and in other capacities.

He currently serves as lead counsel for the consumer class in *Target*. He also is co-lead counsel in numerous other major class actions, including *In re Lipitor Antitrust Litigation*, MDL No. 2332 (D.N.J.); *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Company, Ltd.*, Case No. 09c0852 (E.D. Wis.); and *In re Puerto Rican Cabotage Antitrust Litigation*, MDL No. 1960 (D.P.R.). And he serves on the steering committee in many other MDL class actions and has tried a multidistrict class action as a member of the multi-firm trial team in *In re High Pressure Laminates Antitrust Litigation* (MDL No. 1368 S.D.N.Y.).

**(6) Andrew N. Friedman, Cohen Milstein Sellers & Toll PLLC
(New York, NY)**

Mr. Friedman joined Cohen Milstein Sellers & Toll PLLC, one of the country's premiere class action firms with 80 lawyers, in 1985. Among other duties, he has headed the firm's Consumer Protection & Unsafe Products Practice group. Mr. Friedman regularly serves as a lead or co-lead counsel and has been instrumental in securing significant recoveries on behalf of thousands of consumers. For example, he was one of the principal counsel in *Snyder v.*

Nationwide Mutual Insurance Company (Sup. Ct., Onondaga Cnty., N.Y.), which resulted in a settlement recovering benefits for the class valued at between \$85 million and \$103 million. In addition, Mr. Friedman was one of two co-lead counsel in a class action against Thomson Consumer Electronics, which settled on terms making \$100 million available to the class. Mr. Friedman has also been involved in data breach cases, including serving on the Steering Committee on the financial institution side of *In re Heartland Payment Systems, Inc. Data Security Breach Litigation* (S.D. Tex.).

(7) Robert N. Kaplan, Kaplan Fox & Kilsheimer LLP (New York, NY)

Kaplan Fox & Kilsheimer LLP is a national law firm with offices in New York, San Francisco, Los Angeles, and Chicago. It has been in existence for more than 60 years and has recovered more than \$5 billion for its clients and classes including \$2.425 billion in 2012 in the Bank of America Securities Litigation and more than \$900 million to date in the Air Cargo Antitrust Litigation. It also has experience in data breach cases. Mr. Kaplan has led the prosecution of numerous class actions. Recently, he was listed by defense and corporate counsel as one of the top 75 plaintiffs' attorneys in the United States for all disciplines. See http://lawprofessors.typepad.com/files/dc-188012-v2-trial_lawyer_kingpins1.xls. Prior to joining Kaplan Fox, Mr. Kaplan was a trial attorney with the United States

Department of Justice where he litigated both civil and criminal actions. He also served as law clerk to the Hon. Sylvester J. Ryan, then Chief Judge of the Southern District of New York. Mr. Kaplan is a member of the Committee on Civil Litigation/Advisory Group of the Eastern District of New York. Mr. Kaplan served for many years on a part-time basis as a Municipal Judge in Rye, New York, and is a member of the Board of Visitors of Columbia Law School. He has been involved in some of the largest and most important antitrust and securities MDL cases in history and has been a lead counsel or a member of the executive committee in dozens of MDLs.

(8) W. Daniel Miles, Beasley Allen Crow Methvin Portis & Miles, P.C. (Montgomery, AL)

Beasley Allen Crow Methvin Portis & Miles, P.C. is a large plaintiff firm with 77 lawyers and approximately 380 staff members. Mr. Miles heads the firm's Consumer Fraud /Class Action/Commercial Litigation section. He has extensive experience with complex litigation, class action lawsuits, and MDLs involving consumer and commercial fraud, antitrust, healthcare, *qui tam* litigation, and class actions. Mr. Miles has been selected as lead or co-lead counsel in four MDLs and a partner was so selected in another: *In re Vioxx Products Liability Litigation*, MDL No. 1657; *In re Reciprocal of America (ROA) Sales Practices Litigation*, MDL No. 1551; *In re American General Life and Accident Insurance*

Company Industrial Life Insurance Litigation, MDL No. 1429; and *In re Dollar General Corp. Fair Labor Standard Acts Litigation*, MDL No. 1653.

(9) Arthur M. Murray, The Murray Law Firm (New Orleans, LA)

Art Murray has over thirteen years of experience as trial counsel in mass actions and class actions throughout the United States at both the trial and appellate levels. He was recently included in the Rising Star (Class Action) category of *Louisiana Super Lawyers*. Mr. Murray was lead counsel in *Guidry v. American Public Life Ins. Co.*, which involved the underpayment of cancer policy benefits and resulted in a substantial national class settlement that had only two opt-outs; lead appellate counsel in *Grefer v. Alpha Technical, Inc.* which, to date, stands as the largest single plaintiff punitive damage judgment ever upheld on appeal in Louisiana; and counsel in the Louisiana PPO litigation (*Gunderson v. F.A. Richard and Assoc., Inc.* and the related cases which followed), helping thousands of health care providers collect more than \$300 million. To date, he has overseen 18 certified class actions (both merits and settlement).

(10) Karen Hanson Riebel, Lockridge Grindal Nauen P.L.L.P. (Minneapolis, MN)

Karen Riebel has focused her practice on complex class actions for more than 20 years and has extensive trial experience. For example, Ms. Riebel was a member of the team that tried *In re ICN/Viratek Securities Litigation* (S.D. NY)

before the Honorable Kimba Wood and which settled for \$14.5 million after the jury returned a partial verdict. In 1994, Ms. Riebel was as a member of the trial team that secured a jury verdict for punitive damages of \$5 billion on behalf of the class in *In re The Exxon Valdez*, Case No. A89-0095-CV (D. Alaska).

Currently, Ms. Riebel's practice is on the forefront of data breach and privacy litigation. She serves as liaison counsel for the financial institution plaintiffs and on the plaintiffs' leadership committee in *Target* and as plaintiffs' counsel in *First NBC Bank v. Kmart Corp.* No. 1:14-cv-10088 (N.D. Ill.); *In re Community Health Systems, Inc. Customer Data Security Breach*, MDL No. 2595; *Dittman v. UPMC*, No. GD-14-003285; *In re iPhone Application Litigation*, MDL 2250 (N.D. Cal.); and *In re Google Android Consumer Privacy Litigation*, MDL 2264 (N.D. Cal.).

(11) Tomas A. Withers, Gillen, Withers & Lake LLC (Savannah, GA)

Tom Withers was an Assistant U.S. Attorney and Chief of the Criminal Section in the Southern District of Georgia from 1990 to 1998. Mr. Withers served as lead counsel and was responsible for convictions in the nationally-followed prosecution of the nation's largest privately held home health care provider, which was charged with defrauding Medicare of millions in reimbursements. Mr. Withers is well known and respected for his diligent preparation and representation

of clients in a wide variety of cases. He has handled dozens of consumer class actions and helped to develop, and served as liaison counsel for a ground breaking, nationwide, class action litigation in the mortgage industry.

3. The Proposed Co-liaison Counsel

Ranse Partin, Conley Griggs Partin LLP (Atlanta, GA)

Conley Griggs Partin LLP is a boutique trial law firm primarily representing plaintiffs, including businesses and individuals, in civil litigation. Comprised of seven attorneys and nine staff, Conley Griggs Partin focuses on a select number of high quality cases seeking to obtain exceptional results for its clients. Mr. Partin graduated from Emory University and The University of Georgia Law School, cum laude, and served as a law clerk to this Court. The *Fulton County Daily Report* in 2013 ranked Mr. Partin as one of the top 40 lawyers in Georgia under the age of 40. Mr. Partin was co-counsel in obtaining three jury verdicts in excess of \$1 million, including *Hernandez v. Hi-Tech Engineering*, a \$10 million verdict in Jefferson County, Georgia, one of the largest ever in rural Georgia.

W. Pitts Carr of W. Pitts Carr and Associates, PC (Atlanta, GA)

W. Pitts Carr & Associates, PC (formerly Carr & Palmer, LLP), founded in 1973, is a civil trial firm with recognized expertise in complex litigation, including antitrust, securities, environmental, toxic tort, product liability, and transportation

law. Mr. Carr has frequently been part of the leadership team responsible for handling numerous class actions and multidistrict proceedings, for example serving as lead and/or liaison counsel for *In Re Food Service Equipment Hardware Antitrust Litigation*, No. 1:10-cv-1849-WSD, (N.D. Ga.), *Pounds v. Cobb Energy Mgmt. Corp.*, No. 07-1-9408-48, (Sup. Ct. Cobb County, Ga.), *In re Immucor, Inc. Securities Litigation*, No. 1:09-cv-2351-TWT (N.D. Ga.), *In re Carpet Antitrust Litigation*, No. 4:95-CV-193-HLM (N.D. Ga.), *In re Domestic Air Transp. Antitrust Litigation*, 1:90-cv-2485-MHS (N.D. Ga.).

The Consensus Group's extensive and successful background in litigating complex cases, as well as the ability of its members to work cooperatively in this case, will benefit the putative class in the financial institution cases. As such, it weighs heavily in favor of appointing the Consensus Group to lead the financial institution cases pursuant to Rule 23(g) and this Court's second criteria.

D. The Consensus Group Has Sufficient Resources to Advance the Litigation in a Timely Manner

As its members have repeatedly demonstrated by their success in the cases described above and in innumerable other cases, the Consensus Group has more than sufficient resources to advance the litigation in a timely manner. After appointment, co-lead counsel intend to establish a litigation fund to pay the joint expenses needed to finance the case to which they and the other group members

will contribute. Additional funds will be contributed as necessary. This litigation will not suffer for lack of resources. Accordingly, the fourth and final of the Court's criteria is met.

III. CONCLUSION

For the foregoing reasons, the Consensus Group hereby requests that its application for appointment to leadership positions be granted.

Dated: February 2, 2015

Respectfully submitted,

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CERTIFICATION

The Undersigned hereby certifies, pursuant to Local Civil Rule 7.1D, that the foregoing document has been prepared with one of the font and point selections (Times New Roman, 14 point) approved by the Court in Local Civil Rule 5.1C.

This 2nd day of February, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on Monday, February 2, 2015, I electronically filed the **Application of the “Consensus Group” to Serve As Co-Lead Counsel, Plaintiff’ Steering Committee, and Co-Liaison Counsel for the Financial Institution Plaintiffs** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notifications of such filing to the following attorneys of record:

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