IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICIT OF PENNSYLVANIA

HOLLY YENCHA, individually and on behalf of all others similarly situated, *Plaintiff*, *v.* ZeoBIT LLC, a California limited liability company, *Defendant*.	Case No. 2-14-cv-00578-JFC Honorable Joy Flowers Conti

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Circuit Court of Appeals Cases:

United States District Court Cases:

State Circuit Court Cases:

Miscellaneous Authorities:

I. INTRODUCTION

On July 16, 2015, the Court preliminarily approved the Parties' proposed class action settlement (the "Settlement"), which (if finally approved) will resolve certain of Plaintiff Holly Yencha's and the Settlement Class's claims related to the alleged deceptive design and marketing of Defendant ZeoBIT's MacKeeper Software ("MacKeeper" or the "Software").[1] (*See* dkt. 43.) In accordance with that Order, Plaintiff Yencha now respectfully requests that the Court approve an award to Class Counsel of reasonable attorneys' fees for their efforts in investigating, litigating and ultimately resolving this matter to the benefit of the Settlement Class, and a modest incentive award to herself for her own efforts as Class Representative.

The Settlement upon which Plaintiff's request is based is an incredibly strong result for the Class. Reached only after lengthy discussions and exchanges of information between the Parties and a Court-ordered early neutral evaluation with the Honorable Edward A. Infante (ret.) of JAMS (San Francisco), it requires Defendant ZeoBIT to create a $2 million non-reversionary Settlement Fund from which all costs of the Settlement will be paid. Class Counsel is also pleased to report that, based upon the number of Claim Forms received to date, they reasonably expect claiming Class Members will receive nearly *full refunds* of the purchase price (approximately $30 per claimant) for the subject Software, and that the Settlement Fund will be entirely exhausted. Also, there is no on-going threat to Class Members (or the public more generally) of being exposed to the sorts of allegedly deceptive design and marketing practices upon which Plaintiff's claims are based because ZeoBIT has discontinued its marketing and sale

[1] Except as otherwise stated herein, defined terms used in this Memorandum shall have the same meanings as ascribed to them in the Parties' Stipulation of Class Action Settlement.

of the Software.[2] In the end, the Class ultimately achieved a full recovery under the Settlement, making it quite possibly the strongest when compared with the other classwide settlements reached with ZeoBIT's industry competitors.

With this relief for the Settlement Class as the backdrop, Plaintiff now moves the Court to approve an attorneys' Fee Award to Class Counsel in the amount of 33.3% of the Settlement Fund ($660,000.00) and a modest incentive award of $1,000 to herself for serving as Class Representative. The requested attorneys' fees are more than reasonable (i) under the factors used by courts in the Third Circuit to determine whether a percentage of the common fund is a reasonable award—as set forth in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) and *In re Prudential Ins. Co. Am. Sales Practice Litig.,* 148 F.3d 283, 333-34 (3d Cir. 1998); and (ii) when that figure is "cross-checked" against Class Counsel's lodestar. Similarly, in light of her contributions to the litigation and assistance in obtaining the Settlement, Yencha's request for a modest incentive award of $1,000 is reasonable and should be approved by the Court as well.

For these reasons, and as explained more fully below, Plaintiff requests that the Court approve her requested attorneys' Fee Award and incentive award.

II. FACTUAL AND PROCEDURAL BACKGROUND

A brief summary of the underlying facts and law involved in this Action, which lends context to the reasonableness of the requested Fee Award and incentive award, is outlined below.

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[2] Additionally and as previously explained to the Court, since the filing of this lawsuit ZeoBIT has discontinued its marketing and sale of the Software, selling its rights to the product to another entity that has itself discontinued selling the product in the form at issue in this case. As a result, there is no longer any threat of Class Members (or the public more generally) being exposed to the sorts of alleged deceptive design and marketing practices upon which Plaintiff's claims are based.

A. Plaintiff's Allegations and the Litigation History.

On May 6, 2014, Yencha filed suit against ZeoBIT alleging that it deceptively designed and marketed its MacKeeper Software to entice consumers into purchasing it by making promises that the Software could repair and enhance Mac computers suffering from various technical issues. (*See* dkt. 1 ("Compl.") ¶¶ 1-2.) Specifically, Yencha alleged that ZeoBIT advertised MacKeeper as being capable of increasing computer speed and performance, removing harmful errors, increasing computer stability, and protecting users' privacy. (*Id.* ¶¶ 4-7, 13-28.) Yencha further claimed that to convince consumers of MacKeeper's supposed utility, and to encourage them to purchase the full version of the Software, ZeoBIT recommended consumers download a free-trial version (valid for 15 days) and conduct a free "diagnostic scan" to detect issues and other problems existing on their computers. (*Id.* ¶¶ 2-6, 19-20, 23, 27.)

Through extensive investigation, Yencha and Class Counsel determined that the free-trial version of MacKeeper did not accurately identify errors, severe threats, or other problems on a user's computer, nor was it designed to do so. (*Id.* ¶¶ 2-7, 13-16, 21-34.) In fact, Yencha and Class Counsel believe that their investigation revealed that by design MacKeeper invariably reported the existence of numerous issues afflicting a user's Mac—without ever performing a true diagnostic scan. (*Id.* ¶¶ 4-7, 23-34.) Further, Yencha alleges she discovered that after the so-called scan, MacKeeper informed users that the trial version will only "fix" a limited number of the issues, and that to fully repair the Mac, the consumer must purchase the full version of MacKeeper for $39.95. (*Id.* ¶¶ 2, 21-24, 26-27.) That is because, according to Plaintiff's investigation, ZeoBIT intentionally designed MacKeeper to use arbitrary metrics to invariably report a Mac's "System Status" as "Critical" in order to scare the user into believing that the computer was damaged and that the purchase and continued use of the full version of

MacKeeper was necessary. (*Id.* ¶¶ 16, 22-32.)

Additionally, Yencha alleges that once purchased, the full version of MacKeeper operated in a nearly identical and deceptive manner and thus, lulled consumers into a false sense of security that it was functioning as advertised by, for example, identifying and "fixing" supposed errors. (*Id.* ¶¶ 2, 6, 7, 13-22, 26-27, 31-34.) But in reality, Yencha believes her investigation showed that MacKeeper was incapable of fixing all of the errors or problems it identified. ZeoBIT has at all times denied Yencha's allegations and has steadfastly taken the position that MacKeeper functioned as advertised.

Following the filing of Plaintiff's original complaint, at the September 29, 2014 scheduling conference, the Court instructed the Parties to designate a third-party neutral for a Court-mandated early neutral evaluation conference on liability and class certification issues. On that same day, the Parties met in-person (through counsel)[3] to discuss their respective views of the case and Class Counsel provided a presentation outlining the results of their forensic investigation into the Software and Plaintiff's views of the case more generally. (*See* Declaration of Benjamin H. Richman ¶ 8, attached as Exhibit 1.) At the close of the meeting, the Parties agreed to discuss an additional exchange of information related to their respective claims and defenses, and their proposals for potential early neutral evaluators. (*Id.* ¶ 9.)

On October 20, 2014, the Parties selected the Honorable Edward A. Infante (ret.) of JAMS in San Francisco as their early neutral evaluator. (Dkt. 20.) Judge Infante was a Magistrate Judge for the U.S. District Court for the Southern District of California (1972-1986), as well as the U.S. District Court for the Northern District of California (1990 – 2001). On January 6, 2015,

[3] One of Defendant's executives also attended the meeting in Pittsburgh, Pennsylvania. (Richman Decl. ¶ 8 n.1.)

the Parties—following extensive briefing submitted to Judge Infante regarding their respective positions—proceeded with the early neutral evaluation (and mediation) before Judge Infante, which consisted of a discussion regarding their views of the claims and defenses at issue, as well as the suitability of the claims for class certification. (Richman Decl. ¶ 10.) The early neutral evaluation and mediation proved informative for both sides and ultimately resulted in the Settlement. (*Id.* ¶ 11.) Indeed, after multiple rounds of negotiation with the assistance of Judge Infante, the Parties reached the key terms of a classwide settlement and executed a memorandum of understanding. (*Id.*) After several additional months of further back and forth that invariably accompanies the drafting of a complex classwide settlement agreement and its attachments, the Parties were able to execute the original Stipulation of Class Action Settlement on May 20, 2015. (*Id.* ¶ 12.)

B. The Settlement and Preliminary Approval.

As noted above, the Settlement creates a non-reversionary $2 million common fund for the benefit of the Settlement Class, which includes all persons in the United States and its territories who, prior to July 16, 2015, purchased a paid license to use MacKeeper. (Agreement §§ 1.29, 1.31.) Each Settlement Class Member who submits a valid Claim Form by November 30, 2015, will be entitled to receive a *pro rata* cash payment in an amount up to $39.95, which was the typical purchase price of the Software.[4] (*Id.* § 2.1(a).) Based on the current claims rate, it appears that after payment of all notice and settlement administration expenses, individual

[4] Based on the current number and rate of claims, Class Counsel estimates that each Settlement Class Member who submits a valid claim will receive approximately $30. This was well within the participation rate anticipated by Class Counsel when they agreed to settle for the creation of a $2,000,000 fund, and results in a significant percentage recovery for the Class. (Richman Decl. ¶ 16.) Class Counsel will provide the Court with updated claims figures at final fairness hearing.

settlement payments to Settlement Class Members, and the incentive award and Fee Award, the entirety of the Settlement Fund will be exhausted, leaving no residual funds for *cy pres* distribution. (Richman Decl. ¶ 17; *see also* Agreement §§ 1.31, 2.1.) In exchange for the relief to the Class, Defendant will be released from claims relating to the design, marketing and performance of the Software. (Agreement § 3.)

On March 12, 2015, Plaintiff moved for preliminary approval of the Parties' original class action settlement. (Dkt. 28.) At the April 16, 2015, preliminary approval hearing, the Court expressed some concerns about the fraud claims for which Plaintiff requested class certification for settlement purposes, the specificity of the notice documents, whether the settlement fund was of a sufficient size to pay claiming Class Members meaningful relief, and how Class Members could exercise their rights under the Agreement. (*See* dkt. 38 at 5-6.) After correcting certain of the notice documents and otherwise accounting for the Court's concerns (by, for example, dropping the fraud claim from the operative complaint and further explaining the expected claims rate and amount that Class Members are expected to receive), on June 17, 2015, Plaintiff filed a renewed motion for preliminary approval. (*Id.*) On July 16, 2015, the Court granted preliminary approval of the Settlement and directed that Notice be disseminated to the Settlement Class in accordance with the Agreement. (Dkt. 43.)

III. THE COURT SHOULD APPROVE THE REQUESTED ATTORNEYS' FEE AWARD BECAUSE IT IS REASONABLE.

Courts in the Third Circuit apply the percentage-of-recovery or lodestar method to determine the reasonableness of an attorneys' fee request. *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 330 (3d Cir. 2011) (en banc). "The percentage-of-recovery method applies a certain percentage to the settlement fund," while "[t]he lodestar method multiplies the number of hours class counsel worked on a case by a reasonable hourly billing rate for such services." *In re AT&T*

Corp., 455 F.3d 160, 164 (3d Cir. 2006). However, the percentage-of-recovery method has long been preferred in this Circuit in common-fund cases like this one. *In re Prudential*, 148 F.3d at 333-34 ("The percentage-of-recovery method is generally favored in cases involving a common fund, and is designed to allow courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure") (internal quotations and citations omitted); *Gunter*, 223 F.3d at 198 (noting the lodestar method arguably encourages lawyers to run up their billable hours where the percentage of recovery method "encourage[s] early settlements by not penalizing efficient counsel[.]"). Nevertheless, the Third Circuit has "recommended that district courts use the lodestar method to cross-check the reasonableness of a percentage-of-recovery fee award" while at the same time not displacing its primary reliance on the percentage method. *In re AT&T Corp.*, 455 F.3d at 164.

Here, application of the percentage-of-recovery method and a lodestar cross check demonstrate that Yencha's request for a Fee Award amounting to one-third of the Settlement Fund ($660,000.00) is eminently reasonable and may appropriately be approved.

A. The Requested Fee is Reasonable Under the Percentage-of-Recovery Method.

Because the Settlement creates a common fund of $2 million, to determine "what constitutes a reasonable percentage fee award, [the Court] must consider the [following] ten factors" identified in *Gunter* and *Prudential*: (1) the size of the fund created and the number of persons benefited; (2) the presence or absence of substantial objections by class members to the settlement and/or the fees requested; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiff's counsel; (7) the awards in similar cases; (8) the value of the benefits attributable to other groups such as government agencies conducting investigations; (9)

the percentage that would have been negotiated in a private contingent fee agreement; and (10) any innovative terms of the settlement. *In re Diet Drugs Prod. Liab. Litig.*, 582 F.3d 524, 541 (3d Cir. 2009).

1. The Size of the Fund Created and the Number of Persons Benefited.

First, the Settlement creates a common fund of $2 million for a Settlement Class of approximately 513,000 individuals. At the time of filing, more than 36,000 individuals have submitted Claim Forms (a 7% claims rate).[5] (Richman Decl. ¶ 15.) As a result, Class Counsel expects the per class member recovery to be approximately $30 depending on the number of additional claims submitted before the November 30, 2015 Claims Deadline, or approximately 75% of the typical purchase price of the Software. (*Id*. ¶ 16.) Such a percentage recovery is entirely appropriate, because while consumers paid $39.95 for MacKeeper, Yencha was not seeking to recover the full purchase price of the Software—her theory of liability was never that the Software was worthless. Rather, Yencha sought recovery of the amount she and other consumers overpaid for the Software (*see* dkt. 1 ¶¶ 73, 81, 87)—on the theory that although the Software could perform some of the advertised benefits, it could not perform all of the advertised functions. (Dkt. 38-4 ¶ 20.) In other words, the Software was overhyped. As such, the anticipated 75% recovery per claiming Class Member should actually be viewed as a full recovery on account of the claims (breach of contract and unjust enrichment) brought in this case, and is likely more than Yencha and the Class could have hoped to recover at trial.

Notably, the substantial cash relief secured here also surpasses the individual relief to class members in other similar court-approved utility software settlements. *See, e.g.*, *Webb v.*

[5] Though more than 36,000 claims were submitted, it has not yet been determined how many of those claims are valid. (Richman Decl. ¶ 15 n.2.) If certain claims are not found to be valid, the individual amount paid for valid claims will increase. (Agreement § 2.1(a).)

Cleverbridge, Inc., No. 11-cv-04141 (N.D. Ill.) (providing for $12.50 cash payments and prospective relief); *Gross v. Symantec Corp.*, No. 12-cv-00154-CRB (N.D. Cal.) (providing for $9 cash payments and prospective relief); *Drymon, et al. v. Cyberdefender Corp.*, No. 11 CH 16779 (Cir. Ct. Cook Cnty.) (providing for $10 cash payments and prospective relief); *LaGarde v. Support.com, Inc.*, No. 3:12-cv-00609-JSC (N.D. Cal.) (providing for $10 cash payments and prospective relief); *Ledet v. Ascentive LLC*, No. 2:11-CV-294-PBT (E.D. Pa.) (providing for $10 and $18 cash payments and prospective relief); *Rottner v. AVG Techs. CZ, s.r.o.*, No. 12-cv-10920-RGS (D. Mass.) (providing for $15 cash payments and prospective relief).

In light of the significant monetary relief and the tens of thousands of Settlement Class Members who stand to benefit, the first *Gunter* factor weighs in favor of approval of the requested one third Fee Award. *See In re AT&T Corp.*, 455 F.3d at 169-70 (finding this factor satisfied where several thousand claims were filed in relation to a settlement class of more than one million people and claimants only recovered 4% of their total damages); *see also Erie Cnty. Retirees Ass'n v. Cnty. of Erie*, 192 F. Supp. 2d 369, 379 (W.D. Pa. 2002) (finding the size of the class and the fund posed "no danger of an inflated fee award due to a very large class or recovery" and awarding 38% of a $350,000 common fund as attorneys' fees); *In re Safety Components, Inc. Sec. Litig.*, 166 F.Supp.2d 72, 95 (D.N.J. 2001) (settlement creating $4.5 million common fund did not require reduction in the typical percentage award) (citing *Cullen v. Whitman Medical Corp.*, 197 F.R.D. 136, 148 (E.D. Penn. 2000) ($5.9 million cash fund did not necessitate reduction in typical percentage award)); *see also Gunter*, 223 F.3d 190, 191-92, 201 n.6 ($9.5 million common fund was "mainstream" not warranting reduction in percentage of recovery).[6]

[6] As discussed further in Section III.A.7, *supra*, in class action settlements in the Third Circuit where the common settlement fund ranges from $350,000 to $9.5 million, fee awards

2. There Have Been No Objections to the Settlement Terms.

Next, as of the date of this filing, there has not been a single objection to the terms of the Settlement or the requested attorneys' fees, the amount of which was included in the class Notice. (*See* Richman Decl. ¶ 15.) However, because Rule 23(h) requires that class members have the opportunity to review (and potentially object to) any petition for attorneys' fees, the deadline for objections is not until September 21, 2015. Nevertheless, given the strength of the Settlement, Class Counsel do not anticipate receiving a substantial number of last-minute objections, if any. (*Id*. ¶ 15 n.3.) Accordingly, the second *Gunter* factor presently favors approval of the requested fees. *See Erie Cnty. Retirees Ass'n*, 192 F. Supp. 2d at 379 (finding "this factor weighs in favor of the percentage requested by Plaintiff's counsel" when there are no objections).

3. Class Counsel Have Extensive Experience and Were Efficient.

With regard to the third factor, Class Counsel regularly engage in major complex litigation and have extensive experience prosecuting consumer class actions of similar size and complexity to this one, including numerous cases involving allegedly fraudulent software marketed and sold by ZeoBIT's industry competitors. (Richman Decl. ¶ 19; *see also* Firm Resume of Edelson PC, attached as Exhibit 1-A to the Richman Declaration). Class Counsel's considerable experience with this type of action allowed them to conduct an extensive pre-suit investigation into the Software's functionality, which they were then able to leverage to obtain favorable settlement terms for the Class. Further, Class Counsel were efficient in their litigation of this matter, engaging in settlement negotiations early on in the process—both informally and

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typically range between 30% and 43% of the common fund. That percentage decreases only as the settlement fund increases. Thus, in addition to the other factors discussed herein, the $2 million non-reversionary common fund secured under the Settlement here places this case squarely in the typical 30% to 43% range for attorneys' fees.

through the Court-mandated neutral evaluation conference—instead of engaging in unnecessarily protracted litigation just to drive up their lodestar. (Dkt. 38 at 5.) Though the key terms of the Settlement were reached relatively early in the life of the litigation, the Parties still put a great deal of time and effort into negotiating its terms and finalizing the agreement. Indeed, counsel for the Parties engaged in months of negotiations and several exchanges of draft settlement agreements following their ENE with Judge Infante. (Richman Decl. ¶ 12.) It was only with those efforts that they were able to come to the favorable resolution of the Settlement Class's claims. (Dkts. 20, 38 at 5.) And even after having reached a final Settlement, the Parties spent considerable time discussing and addressing the Court's stated-concerns following the initial preliminary approval hearing, and preparing their amended Settlement papers for presentation to the Court. (Richman Decl. ¶ 14.) Finally, Class Counsel has at all times been engaged in the settlement process, responding to class member inquiries, assisting in the filing of class member claims, and otherwise exercising all the duties required of Class Counsel in connection with the settlement of a class action. (*Id*. ¶ 29.)

Accordingly, this factor supports approval of the requested Fee Award as well.

4. The Litigation was Complex.

As to the fourth factor, this case is a complex action that involves both the highly technical and sophisticated functionality of the MacKeeper Software and its underlying source code, as well as how that technology is presented to the public. As noted above, Class Counsel's experience with similar cases allowed them to engage in an extensive pre-suit investigation into the Software that would have required most attorneys to engage in lengthy and expensive discovery, including the hiring of various experts. That investigation included examining numerous consumer complaints about the Software and engaging in a forensic review of the

Software—through Class Counsel's in-house computer forensic technicians—in relation to ZeoBIT's marketing and sales materials. (Richman Decl. ¶ 3.)

Further, the briefing ahead of the early neutral evaluation dealt with numerous complex issues of law and fact regarding the MacKeeper Software and its marketing and required the Parties to seriously consider, *inter alia*, (i) the appropriateness of class certification, (ii) the discovery that would need to be completed regarding the functionality of the Software, (iii) the difficulty that would present itself in future litigation given ZeoBIT's sale of the MacKeeper Software to a foreign entity, and (iv) valuing the Software and determining the total amount of damages at stake. And, of course, both leading up to and following the Settlement, Class Counsel engaged in the informal exchange of information with ZeoBIT's counsel over the course of several months in order to confirm the facts relied upon to reach the Settlement. (*See id*. ¶¶ 12, 14.)

Given the complexity of the issues and Class Counsel's extensive investigation into the facts, as well as their participation in the months of negotiations that led to the Settlement, this *Gunter* factor also weighs in favor of approving the requested Fee Award.

5. The Risk of Non-Payment.

Next, although there is a risk of non-payment associated with any action involving contingency fees, this *Gunter* factor relates both to whether the defendant is in a precarious financial position and whether the risk counsel undertook in prosecuting the case was likely to result in non-payment. *See Gunter*, 223 F.3d at 199 (finding risk of non-payment to be high when "the defendants were close to insolvency" and "because other classes of plaintiffs in similar cases against defendants had lost on similar legal theories"); *Erie Cnty Retirees Ass'n*, 192 F. Supp. 2d at 380 (same). As to the former, ZeoBIT's ability to pay is not in question.

Nevertheless, the risk of securing ultimate victory at trial or summary judgment is considerable. First, during the initial preliminary approval hearing the Court indicated that Plaintiff would have been unable to certify her fraud-based claims because they would require proof of individualized reliance. (Dkt. 38 at 5-6, citing Exhibit 5 (Transcript of April 16, 2015 Hearing) at 5:13-6:1.) Second, risk also stems from the inherent complex and technological nature of this case, which would require additional extensive investigation into the underlying source code and overall functionality of the Software, further formal discovery and the hiring of experts. (Richman Decl. ¶ 18.) Still other risks stem from the challenges ZeoBIT is almost certain to raise in the future—including arguments based on the more than 17 affirmative defenses raised. (*See* dkt. 44.) And even if Yencha succeeded in overcoming these obstacles, given the amount at issue and its reputational interests, ZeoBIT would likely appeal any decision on the merits, adding to the uncertainty of recovery.

Accordingly, the risk of failing to secure even a similar outcome as provided under the Settlement clearly weighs in favor of approval of the requested Fee Award.

6. Class Counsel Devoted Substantial Time and Resources to this Case.

Plaintiff's counsel devoted over 800 hours of uncompensated attorney and staff time and $17,965.58 in out-of-pocket expenses investigating, litigating and attempting to resolve this case. (Richman Decl. ¶¶ 20, 28.) The time expended on this case represents a substantial commitment to this litigation, especially in light of the risks associated with the litigation (as described above) and the fact that they have not been paid for their efforts thus far. Accordingly, this factor also weighs in favor of approval.

7. Class Counsel's Fee Request Fits Squarely Within the Range of What is Regularly Approved in Similar Cases.

In this Circuit, "fee awards under the percentage-of-recovery approach typically range

from 19% to 45% of the settlement fund, with 25% being the median award." *Lazy Oil Co. v. Wotco Corp.*, 95 F. Supp. 2d 290, 341 (W.D. Pa. 1997) *aff'd sub nom. Lazy Oil Co. v. Witco Corp.*, 166 F.3d 581 (3d Cir. 1999) However, in class action settlements where the common settlement fund ranges from $400,000 to $6.5 million, fee awards are typically 30% to 43% of the common fund. *Erie Cnty. Retirees*, 192 F. Supp. 2d at 381;[7] *see also In re Ravisent Tech., Inc. Sec. Litig.*, No. 00-cv-1014, 2005 WL 906361, at *10-12 (E.D. Pa. Apr. 18, 2005) (granting fee award equal to 33% of a $7 million settlement); *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484 (E.D. Pa. 2003) (granting fee award equal to 33.3% of a $7 million settlement); *Erie Forge & Steel, Inc. v. Cyprus Minerals Co.*, Civ.A. No. 94-404 (W.D. Pa. 1996) (granting fee award equal to 33.3% of a $3.6 million settlement); *Fox v. Integra Fin. Corp.*, No. 90-cv-1504 (W.D. Pa. 1996) (granting fee award equal to 33.3% of a $6.5 million settlement); *In re Greenwich Pharmaceutical Sec. Litig.*, No. 92-cv-3071, 1995 WL 251293 (E.D. Pa. Apr. 26, 1995) (granting fee award equal to 33.3% of a $4.375 million settlement and noting the award was "in line with fee awards approved by other courts").

Here, Yencha's request for one-third of the $2 million Settlement Fund falls squarely within what numerous courts have found to be reasonable for a settlement of this size.

8. *The Settlement Benefits Cannot be Attributed to Other Groups or Government Agencies.*

Next, no government agency or other plaintiff has brought a similar action or investigation against ZeoBIT. As such, the benefits flowing from the Settlement are solely the

[7] The rationale for the slight increase in the range of percentages is that it "is appropriate to give a higher percentage [fee award in cases involving smaller common funds] than that awarded in cases which have resulted in substantially larger funds" because "class counsel should not be penalized for undertaking and pursuing" smaller cases which would not result in an astronomical settlement. *Erie Cnty. Retirees Ass'n*, 192 F. Supp. 2d at 381.

product of Yencha's and Class Counsel's efforts.

9. *Plaintiff's Private Contingent Fee Agreement with Class Counsel is for 33% of the Recovery.*

As to the ninth factor, the actual fee agreement between Yencha and Class Counsel supports an award of fees equal to one third of the Settlement Fund. Courts often look at the actual fee agreement between the client and her counsel to determine if a requested percentage fee award is reasonable. *Assessment Techs. of WI, LLC v. WIREdata, Inc.*, 361 F.3d 434, 438 (7th Cir. 2004) ("The best evidence of the value of the lawyer's services is what the client agreed to pay him."). Here, the fee agreement between Yencha and Class Counsel is structured as a contingency arrangement whereby Class Counsel is to receive up to one-third of any common fund created. (Richman Decl. ¶ 4 ("The lawyers will represent both you and the class on a contingent basis . . . you agree that a fair award of attorneys' fees from a fund recovered for the class would be one-third of the total recovery [plus costs].").) Accordingly, this factor supports a finding that the requested Fee Award of one third of the $2 million common fund is reasonable.

10. *Innovative Terms of the Settlement.*

Finally and as noted above, this Settlement follows a well-worn path of settlements with ZeoBIT's competitors involving similar claims. So while the terms of this Settlement are not necessarily "innovative," they are certainly strong. This factor is therefore neutral, at worst.

B. A Lodestar Crosscheck Confirms the Reasonableness of the Requested Fee.

The requested attorneys' fees are equally reasonable under the lodestar method. The lodestar is calculated by multiplying the number of hours class counsel worked on a case by a reasonable hourly billing rate for such services. *In re AT&T Corp.*, 455 F.3d at 164. The resulting base lodestar may then be enhanced by application of a reasonable risk-multiplier to account for the contingent nature of the action and/or other factors—namely, the risk of non-

payment, and quality of counsel's work. *Id.* ("The crosscheck is performed by dividing the proposed fee award by the lodestar calculation, resulting in a lodestar multiplier."); *see also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306 (3d Cir. 2005) (allowing for a multiplier to be applied to "account for the contingent nature or risk involved in a particular case and the quality of the attorneys' work.").

As reflected in the chart included within the Richman Declaration, Class Counsel's adjusted lodestar as of September 7, 2015 is $348,755.00.[8] (Richman Decl. ¶¶ 21, 26); *see also* Third Circuit Task Force, *Selection of Class Counsel*, 105 (2002) (when using the lodestar as a cross-check, "the court should be satisfied with a summary of the hours expended by all counsel…."). This attorney time was reasonably spent and necessary for the successful prosecution of this case. (Richman Decl. ¶ 22.) The attorney and staff rates used to calculate Class Counsel's base lodestar are also comparable to those charged by attorneys with equivalent experience, skill, and reputation for similar services in the Pittsburgh and Chicago legal markets, as well as other comparable markets throughout the country, and they have previously been approved by courts in this Circuit and nationwide. (Richman Decl. ¶ 23.) Additionally, the hourly rates used to calculate Class Counsel's lodestar are the same as those charged to Class Counsel's hourly-paying clients, which supports a finding that their fee request is reasonable. (*Id.* ¶ 22); *see also Uphoff v. Elegant Bath. Ltd.*, 176 F.3d 399, 407 (7th Cir. 1999) (where the base lodestar is reflective of the rates charged to hourly-paying clients, there is a presumption of reasonableness). And, of course, given the contingent nature of the Fee Award, Class Counsel had no incentive to "overbill" or

[8] As noted above, Class Counsel have also incurred $17,965.58 in reimbursable expenses (including filing and appearance fees, and case administration expenses), but they are not seeking to recover that amount separate or apart from their fee request. (Richman Decl. ¶ 28.)

expend unnecessary time or resources on this litigation. As such, there should be no question that Class Counsel's base lodestar is both fair and reasonable.

Again, the lodestar calculation does not end with this base amount. Instead, the base lodestar is often enhanced with a reasonable risk-multiplier. Although "the multiplier need not fall within any pre-defined range," *id.* at 307, courts in this Circuit have approved multipliers of up to 2.99 in even relatively simple cases. *See Milliron v. T-Mobile USA, Inc.*, 423 F. App'x 131, 135 (3d Cir. 2011); *In re Prudential*, 148 F.3d at 341 ("[M]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.") (internal quotation and citations omitted); *Frederick v. Range Resources-Appalachia, LLC*, No. 08-cv-288, 2011 WL 1045665, at *13 (W.D. Pa. Mar. 17, 2011) ("Federal courts in this circuit have frequently approved fee award multipliers in the range of 1 to 4."); *In re Linerboard Antitrust Litig.*, MDL 1261, 2004 WL 1221350, at *16 (E.D. Pa. June 2, 2004) *amended*, MDL No. 1261, 2004 WL 1240775 (E.D. Pa. June 4, 2004) (citing 30-year study in which multipliers in common-fund cases averaged 3.89). In this case, a multiplier of only 1.89 need be applied to Class Counsel's base lodestar in order to yield the requested one-third Fee Award. Such a multiplier has not only been found to be reasonable in similar cases, but is particularly reasonable (and warranted) here given the exceptional results Class Counsel were able to obtain on behalf of the Settlement Class. *See id.*; *see also supra* Section III.A.1.

As such, the requested Fee Award is undeniably reasonable in this regard as well.

IV. THE COURT SHOULD APPROVE THE REQUESTED INCENTIVE AWARD.

Finally, subject to the Court's approval, the Settlement provides that Plaintiff Holly Yencha shall receive an incentive award of one thousand dollars ($1,000.00) to be paid out of the Settlement Fund for her efforts as Class Representative. (Agreement § 8.3.) "Courts routinely

approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Cullen*, 197 F.R.D. at 145 (internal citations omitted); *see also, Foster v. Kraft Foods Group, Inc.*, No. 09-cv-00453, 2013 WL 440992, at *2 (W.D. Pa. Jan. 15, 2013) (approving incentive awards between $5,000 and $15,000 for each class representative); *Lan v. Ludrof*, No. 06-cv-114, 2008 WL 763763, at *18 (W.D. Pa. Mar. 21, 2008) (approving incentive awards of $2,000 and $5,000 to each named representative); *Palamara v. Kings Family Restaurants*, No. 07-cv-317, 2008 WL 1818453, at *6 (W.D. Pa. Apr. 22, 2008) (approving $2,000 incentive award to class representative).

Here, Yencha's involvement was critical to the resolution of this litigation and ultimate success of the Settlement. (Richman Decl. ¶¶ 30-32.) Plaintiff assisted Class Counsel by helping in the investigation of her claims and providing valuable information relating to her purchase and use of ZeoBIT's Software. (*Id.*) Plaintiff's willingness to make the time commitment and undertake the responsibilities and risks involved in bringing a representative action resulted in a substantial benefit to her fellow Settlement Class Members. Accordingly, the requested incentive award is reasonable and should be approved as well.

V. CONCLUSION.

For the foregoing reasons, Plaintiff Yencha respectfully requests that the Court enter an Order approving the requested attorneys' Fee Award of $660,000.00 (inclusive of reimbursable expenses), a modest incentive award of $1,000.00, and granting such other and further relief as the Court deems reasonable and just.

Respectfully submitted,

HOLLY YENCHA, individually, and on behalf of a class of similarly situated individuals,

Dated: September 7, 2015

By: /s/ Benjamin H. Richman
One of Plaintiff's Attorneys

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**Admitted Pro Hac Vice*

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICIT OF PENNSYLVANIA

HOLLY YENCHA, individually and on behalf of all others similarly situated, *Plaintiff*, *v.* ZeoBIT LLC, a California limited liability company, *Defendant*.	Case No. 2-14-cv-00578-JFC Honorable Joy Flowers Conti

DECLARATION OF BENJAMIN H. RICHMAN IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD

Pursuant to 28 U.S.C. § 1746, I hereby declare and state as follows:

1. I am an attorney admitted to practice *pro hac vice* in the United States District Court for the Western District of Pennsylvania. I am entering this declaration in support of Plaintiff's Motion and Memorandum of Law in Support of Motion for Approval of Attorneys' Fees, Expenses, and Incentive Award (the "Motion"). This declaration is based upon my personal knowledge unless otherwise indicated. If called upon to testify as to the matters stated herein, I could and would competently do so.

2. I am a Partner in the law firm of Edelson PC, which has been retained to represent the named Plaintiff in this matter, Holly Yencha. I, along with my colleagues Rafey S. Balabanian and Courtney C. Booth, have been appointed Class Counsel in this matter.

The Litigation and Settlement History

3. My firm's involvement in this case has spanned more than two years, beginning in 2013 with our investigation into consumer complaints regarding the ability of Defendant

ZeoBIT LLC's ("ZeoBIT") MacKeeper Software to accurately report and repair various computer errors and other problems as advertised. As a part of that investigation, we used a computer forensics expert to analyze the Software and determine whether it could and would function as advertised.

4. In late 2013, my firm also began communicating with Plaintiff Yencha. We ultimately executed a retainer agreement with Ms. Yencha which, relevant here, contains a contingency fee arrangement whereby we would receive up to one third of any settlement fund secured on behalf of Ms. Yencha and the putative class she sought to represent, plus the costs of the suit. Specifically, the agreement reads, "The lawyers will represent both you and the class on a contingent basis . . . you agree that a fair award of attorneys' fees from a fund recovered for the class would be one-third of the total recovery [plus costs]."

5. Shortly thereafter, we secured the computer upon which Ms. Yencha downloaded and used the Software at issue, and analyzed that to, among other things, confirm the relevant Software was present on the machine and preserve it for evidentiary purposes.

6. Our investigation ultimately led to the filing of this case on May 6, 2014.

7. At the September 29, 2014 scheduling conference, the Court instructed the Parties to designate a third-party neutral for a Court-mandated early neutral evaluation conference on liability and class certification issues.

8. On that same day, the Parties met in-person (through counsel)[1] to discuss their respective views of the case and Class Counsel provided a presentation outlining the results of their forensic investigation into the Software and Plaintiff's views of the case more generally.

[1] One of Defendant's executives also attended the meeting in Pittsburgh, Pennsylvania.

9. At the close of the meeting, the Parties agreed to discuss an additional exchange of information related to their respective claims and defenses, and their proposals for potential early neutral evaluators.

10. On January 6, 2015, Plaintiff and ZeoBIT—following extensive briefing on their positions—proceeded with an early neutral evaluation conference and mediation with the Honorable Edward A. Infante (ret.) of JAMS in San Francisco to discuss their respective positions on the claims and defenses at issue as well as their suitability for class certification.

11. The early neutral evaluation and mediation proved informative for both sides and ultimately resulted in the settlement of this Action. Indeed, after a full day of discussions and negotiation with the assistance of Judge Infante, the Parties were able to reach an agreement in principle on the key terms of a class-wide settlement.

12. After months of further negotiations, exchanges of a draft settlement agreement, and communications, the Parties were able to finalize their settlement in the form of the Stipulation of Class Action Settlement initially filed on March 12, 2015.

13. On April 16, 2015, the Court held a hearing on Plaintiff's initial motion for preliminary approval to determine whether the settlement was fair, reasonable, and adequate, and whether preliminary approval should be granted. During the hearing, the Court expressed concerns about the claims for which Yencha requested class certification for settlement purposes, the specificity of the notice documents, and how Settlement Class Members could exercise their rights under the Agreement.

14. Following the hearing, the Parties conferred (via several telephone conferences and correspondence) regarding the Court's stated-concerns in an effort to appropriately address them in revised settlement papers. After those discussions and correcting certain of the notice

documents and otherwise accounting for the Court's concerns (by, for example, dropping the fraud claim from the complaint and further explaining the expected claims rate and amount that class members are expected to receive), on June 17, 2015, Plaintiff filed her renewed motion for preliminary approval, which the Court granted on July 16, 2015.

The Settlement Benefits and Anticipated Payouts

15. At the time of filing Plaintiff's Motion, the reaction of the Settlement Class to the Settlement has been overwhelmingly favorable. Over 36,000 Settlement Class Members have submitted claims under the Settlement (a 7% claims rate),[2] only four requests for exclusion have been submitted, and no objections having been raised.[3]

16. Based on the current rate of claims, Class Counsel reasonably estimates that each Settlement Class Member who submits a valid claim will receive approximately $30, subject to the number of additional claims submitted before the deadline of November 30, 2015. This was well within the participation rate anticipated by Class Counsel when they agreed to settle for the creation of a $2 million common fund, and results in a significant percentage recovery for the Class.

17. It also appears that after payment of all notice and settlement administration expenses, individual settlement payments to claiming Settlement Class Members, and the incentive award and Fee Award, the entirety of the Settlement Fund will be exhausted, leaving no residual funds for *cy pres* distribution.

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[2] Though more than 36,000 claims were submitted, it has not yet been determined how many of those claims are valid.

[3] The deadline for Class Members to request to be excluded or to comment upon (or object to) the Settlement is set as September 21, 2015. (Dkt. 43.) Nevertheless, given the strength of the Settlement, Class Counsel do not anticipate receiving a substantial number of last-minute objections, if any.

The Nature of Class Counsel's Representation of Plaintiff and the Settlement Class

18. In this case, Class Counsel (and our local counsel) agreed to undertake Plaintiff's case on a contingent fee basis, as the amount of individual recovery at issue would never justify retention on an hourly basis. We knew from the outset that we would be required to spend potentially thousands of hours investigating and litigating Plaintiff's claims with absolutely no guarantee of success, while simultaneously foregoing other opportunities. We also understood that the inherent complex and technological nature of this case could have required extensive litigation into the underlying source code and overall functionality of the Software, lengthy and similarly complex and technical formal discovery, and the hiring of various experts.

19. Nevertheless, we have a proven record of effectively and successfully prosecuting complex nationwide class actions such as this (*see* Firm Resume of Edelson PC, attached as Exhibit 1-A hereto)—including prosecuting numerous cases involving allegedly fraudulent software marketed and sold by ZeoBIT's industry competitors—and believed that experience would be useful and ultimately beneficial to the Settlement Class in prosecuting this case.

20. To date, we (along with our local counsel) have logged over 800 hours representing Plaintiff and the Settlement Class without compensation.

21. Our total lodestar of $348,755.00 represents the work that we have undertaken since the inception of this case, and does not include the additional work that will be necessary through final approval (i.e., preparing Plaintiff's motion for final approval, appearing at the Final Fairness Hearing, responding to Class member concerns and inquiries, and otherwise overseeing the Settlement).

22. Our billable rates and a general outline of the hours of each attorney and the law clerks that worked on this matter are incorporated in the chart below. In my opinion the

expenditure of time by the attorneys and law clerks that worked on this case was reasonable and necessary. Although my law firm's primary focus is plaintiff's class action work, we also represent clients on an hourly basis in complex litigation and other matters, including from time to time, the defense of certain non-consumer class actions. The hourly rates used to calculate the lodestar figure are the same as those charged to our firm's hourly-paying clients.

23. I know that the rates for the attorneys and law clerks listed below correlate to their respective experience and are at or below the typical rates of attorneys with similar backgrounds and experience practicing in the Pittsburgh and Chicago legal markets. Additionally, our hourly billing rates have been approved in substantially similar litigation by state and federal courts, as well as judges in this Circuit. *See, e.g., Ledet v. Ascentive, LLC*, No. 2:11-cv-00294-PBT, Dkt. 46 (E.D. Penn. Nov. 29, 2012); *Kulesa v. PC Cleaner, Inc.*, No. 12-cv-725, Dkt. 101 (C.D. Cal. Aug. 26, 2014); *Gross v. Symantic Corp.*, No. 3:12-cv-00154-CRB, Dkt. 88 (N.D. Cal. March 21, 2014) (finding Edelson PC's "hourly rates are reasonable and have previously been approved by other courts throughout the country" in awarding fees based on the lodestar method).

24. At the time of filing this Action, we knew that we could spend hundreds of hours of attorney time in contested litigation with no guarantee of success. I believe that my firm assumed a significant risk of non-payment in initiating and prosecuting this case given the novelty of legal issues involved and the willingness of Defendant and its highly skilled counsel to vigorously defend this Action. Indeed, setting aside the amount in controversy and Defendant's reputational interests at stake, as the Court pointed out during the initial preliminary approval hearing, class certification and recovery on the merits of certain of Plaintiff's claims (i.e., Plaintiff's fraud-based claims) were sure to be an uphill battle.

25. Further, in performing the work required in this case, the lawyers involved had to forgo several others opportunities.

26. The hours, rates, and experience of the primary attorneys and law clerks involved in this matter are provided in the chart below:[4]

ATTORNEY (Position)	YEARS OF EXPERIENCE	HOURS	HOURLY RATE	TOTAL
Jay Edelson (Managing Partner)	19	48.2	$685	$32,948.50
Rafey S. Balabanian (Partner & General Counsel)	10	79.4	$570	$45,258.00
Ryan D. Andrews (Partner)	10	49.1	$570	$27,987.00
Benjamin H. Richman (Partner)	6	248.0	$450	$111,600.00
Chandler R. Givens (Former Associate)	4	152.1	$350	$53,235.00
David I. Mindell (Associate)	3	65.4	$335	$21,909.00
Courtney C. Booth (Associate)	2	79.9	$295	$23,570.50
Law Clerks	n/a	115.3	$215	$24,789.50
Local Counsel – Caroselli Beachler McTiernan & Coleman				
William Caroselli (Partner)	47	4.0	$650	$2,600.00
David Senoff (Partner)	23	3.7	$600	$2,200.00
David McGowan (Partner)	27	2.0	$600	$1,200.00
Paralegals	n/a	11.5	$125	$1,437.50
	TOTAL	**858.5**		**$348,755.00**

27. Based on my experience with several similar settlements, I anticipate that approximately 100 additional hours will be required to be performed through final approval and administration of the Settlement, should the Court approve it. Class Counsel must still draft a

[4] Class Counsel have reviewed the hours expended by the attorneys and staff working on this Action and reduced any hours deemed duplicative or excessive.

final approval motion, prepare and attend the Final Fairness Hearing, contend with any potential objectors, and handle various issues related to claims administration.

28. In addition, Class Counsel have incurred $17,965.58 in unreimbursed expenses, which include the costs of travel, meals, lodging, postage/FedEx, courier service, copying fees for courtesy copies, mediation fees, *pro hac vice* fees, filing fees, and the additional expenses required to see this matter through final approval.

29. Furthermore, we continue to expend resources and time in an effort to ensure that Class Members secure the relief available under the Settlement. This includes, *inter alia*, remaining in communication with Settlement Class Members by answering questions regarding the claims process, assisting Class Members with completing Claim Forms, and otherwise overseeing the administration of the Settlement.

Holly Yencha's Contributions as Class Representative

30. Finally, I believe that Plaintiff Yencha has represented and continues to zealously represent the interests of the Class in this case, and that the $1,000.00 incentive award sought on her behalf is entirely reasonable considering her involvement in the ultimate success of this Action.

31. Ms. Yencha devoted her own time and effort in pursuing her claims, both for herself and for the benefit of the Class. From the moment the case began she exhibited a willingness to participate and assume the responsibilities of a class representative, namely to ensure the protection of and benefit to the Class as a whole rather than simply furthering her own interests.

32. Ms. Yencha provided Class Counsel with critical information about her personal experiences in downloading and using the Software at issue, which ended up being important facts in the litigation.

Attachments

33. Attached hereto as Exhibit 1-A is a true and accurate copy of the Firm Resume of Edelson PC.

* * *

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of September 2015.

/s/ Benjamin H. Richman

Exhibit 1-A

EDELSON PC FIRM RESUME

EDELSON PC is a plaintiffs' class action and commercial litigation firm with attorneys in Illinois and California.

Our attorneys have been recognized as leaders in these fields by state and federal courts, legislatures, national and international media groups, and our peers. Our reputation has led state and federal courts across the country to appoint us lead counsel in many high-profile cases, including in cutting-edge privacy class actions against comScore, Netflix, Time, Microsoft, and Facebook; Telephone Consumer Protection Act class actions against technology, media, and retail companies such as Google, Twentieth Century Fox, Simon & Schuster, and Steve Madden; data security class actions against LinkedIn and AvMed; banking cases against Citibank, Wells Fargo, and JP Morgan Chase related to reductions in home equity lines of credit; fraudulent marketing cases against software companies such as Symantec and Ascentive; mobile content class actions against all major cellular telephone carriers; and product liability cases, including the Thomas the Tank Engine lead paint class actions and the tainted pet food litigation.

We have testified before the United States Senate on class action issues and have repeatedly been asked to work on federal and state legislation involving cellular telephony, privacy, and other consumer issues. Our attorneys have appeared on dozens of national and international television and radio programs to discuss our cases and class action and consumer protection issues more generally. Our attorneys speak regularly at seminars on consumer protection and class action issues, lecture on class actions at law schools, and serve as testifying experts in cases involving class action and consumer issues.

PLAINTIFFS' CLASS AND MASS ACTION PRACTICE GROUP

EDELSON PC is a leader in plaintiffs' class and mass action litigation, with a specialized focus on consumer technology. Our firm is "known for securing multi-million dollar settlements against tech giants" (Chicago Daily Law Bulletin, September 2013), and has been specifically recognized as "pioneers in the electronic privacy class action field, having litigated some of the largest consumer class actions in the country on this issue." *See In re Facebook Privacy Litig.*, No. C 10-02389 (N.D. Cal. Dec. 10, 2010) (order appointing us interim co-lead of privacy class action); *see also In re Netflix Privacy Litig.*, No. 11-cv-00379 (N.D. Cal. Aug. 12, 2011) (appointing us sole lead counsel due, in part, to our "significant and particularly specialized expertise in electronic privacy litigation and class actions. . . .").We have also been recognized by courts for our uniquely zealous and efficient approach to litigation, which lead the then-Chief Judge of the United States Court for the Northern District of Illinois to praise our work as "consistent with the highest standards of the profession" and "a model of what the profession should be. . . ." *In re Kentucky Fried Chicken Coupon Marketing & Sales Practices Litig.*, No. 09-cv-7670, MDL 2103 (N.D. Ill. Nov. 30, 2011). Likewise, in appointing our firm interim co-lead in one of the most high profile banking cases in the country, a federal court pointed to our ability to be "vigorous advocates, constructive problem-solvers, and civil with their adversaries." *In Re JPMorgan Chase Home Equity Line of Credit Litig.*, No. 10 C 3647 (N.D. Ill. July 16, 2010). After hard fought litigation, that case settled, resulting in the reinstatement of between $3.2 billion and $4.7 billion in home credit lines. In addition, the firm is uniquely able to try cases, especially those involving sophisticated technology issues. Lead by a deputy chief of the

cybercrime unit for the United States Attorney's Office, our trial team has handled both jury and bench trials on issues ranging from general consumer matters to complex cyber crimes (including hacking and cyber intrusions, data breaches, and large-scale identity theft cases) that rested on sophisticated computer forensics.

We have several sub-specialties within our plaintiffs' class action practice:

PRIVACY/DATA LOSS

Data Loss/Unauthorized Disclosure of Data

We have litigated numerous class actions involving issues of first impression against Facebook, Apple, Netflix, Sony, Redbox, Pandora, Sears, Storm 8, Google, T-Mobile, Microsoft, and others involving failures to protect customers' private information, security breaches, and unauthorized sharing of personal information with third parties. Representative settlements and ongoing cases include:

- *Dunstan v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.): Lead counsel in certified class action accusing Internet analytics company of improper data collection practices. The court has finally approved a $14 million settlement.

- *Resnick v. Avmed*, No. 10-cv-24513 (S.D. Fla.): Lead counsel in data breach case filed against health insurance company. Obtained landmark appellate decision endorsing common law unjust enrichment theory, irrespective of whether identity theft occurred. Case also resulted in the first class action settlement in the country to provide data breach victims with monetary payments irrespective of identity theft.

- *In re Netflix Privacy Litigation*, No. 11-cv-00379 (N.D. Cal.): Sole lead counsel in suit alleging that defendant violated the Video Privacy Protection Act by illegally retaining customer viewing information. Case resulted in a $9 million dollar *cy pres* settlement that has been finally approved (pending appeal).

- *Halaburda v. Bauer Publishing Co.*, No. 12-cv-12831 (E.D. Mich.); *Grenke v. Hearst Communications, Inc.*, No. 12-cv-14221 (E.D. Mich.); *Fox v. Time, Inc.*, No. 12-cv-14390 (E.D. Mich.): Consolidated actions brought under Michigan's Preservation of Personal Information Act, alleging unlawful disclosure of subscribers' personal information. In a ground-breaking decision, the court denied three motions to dismiss finding that the magazine publishers were covered by the act and that the illegal sale of personal information triggers an automatic $5,000 award to each aggrieved consumer. In January and July of 2015, final approval was granted to a settlement reached in the *Bauer Publishing* matter and an adversarial class was certified in the *Time* case, respectively.

- *Standiford v. Palm*, No. 09-cv-05719-LHK (N.D. Cal.): Sole lead counsel in data loss class action, resulting in $640,000 settlement.

- *In re Zynga Privacy Litig.*, No. 10-cv-04680 (N.D. Cal.): Appointed co-lead counsel in suit against gaming application designer for the alleged unlawful disclosure of its users' personally identifiable information to advertisers and other third parties.

- *In re Facebook Privacy Litigation*, No. 10-cv-02389 (N.D. Cal.): Appointed co-lead counsel in suit alleging that Facebook unlawfully shared its users' sensitive personally identifiable information with Facebook's advertising partners.

- *In re Sidekick Litigation*, No. C 09-04854-JW (N.D. Cal.): Co-lead counsel in cloud computing data loss case against T-Mobile and Microsoft. Settlement provided the class with potential settlement benefits valued at over $12 million.

- *Desantis v. Sears*, No. 08 CH 00448 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in injunctive settlement alleging national retailer allowed purchase information to be publicly available through the Internet.

Telephone Consumer Protection Act

Edelson has been at the forefront of TCPA litigation for over six years, having secured the groundbreaking *Satterfield* ruling in the Ninth Circuit applying the TCPA to text messages. *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009). In addition to numerous settlements totaling over $100 million in relief to consumers, we have over two dozen putative TCPA class actions pending against companies including Santander Consumer USA, Inc., Walgreen Co., Path, Inc., Nuance Communications, Inc., Stonebridge Life Insurance, Inc., GEICO, DirectBuy, Inc., and RCI, Inc. Representative settlements and ongoing cases include:

- *Rojas v CEC*, No. 10-cv-05260 (N.D. Ill.): Lead counsel in text spam class action that settled for $19,999,400.

- *In re Jiffy Lube Int'l Text Spam Litigation*, No. 11-md-2261, 2012 WL 762888 (S.D. Cal.): Co-lead counsel in $35 million text spam settlement.

- *Ellison v Steve Madden, Ltd.*, No. cv 11-5935 PSG (C.D. Cal.): Lead counsel in $10 million text spam settlement.

- *Kramer v. B2Mobile*, No. 0-cv-02722-CW (N.D. Cal.): Lead counsel in $12.2 million text spam settlement.

- *Pimental v. Google, Inc.*, No. 11-cv-02585 (N.D. Cal.): Lead counsel in class action alleging that defendant co-opted group text messaging lists to send unsolicited text messages. $6 million settlement provides class members with an unprecedented $500 recovery.

- *Robles v. Lucky Brand Dungarees, Inc.*, No. 10-cv-04846 (N.D. Cal.): Lead counsel in $10 million text spam settlement.

- *Miller v. Red Bull*, No. 12-CV-04961 (N.D. Ill.): Lead counsel in $6 million text spam settlement.

- *Woodman v. ADP Dealer Services*, No. 2013 CH 10169 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in $7.5 million text spam settlement.

- *Lockett v. Mogreet, Inc.*, No 2013 CH 21352 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in $16 million text spam settlement.

- *Lozano v. 20th Century Fox*, No. 09-cv-05344 (N.D. Ill.): Lead counsel in class action alleging that defendants violated federal law by sending unsolicited text messages to cellular telephones of consumers. Case settled for $16 million.

- *Satterfield v. Simon & Schuster*, No. C 06 2893 CW (N.D. Cal.): Co-lead counsel in in $10 million text spam settlement.

- *Weinstein v. Airit2me, Inc.*, No. 06 C 0484 (N.D. Ill): Co-lead counsel in $7 million text spam settlement.

CONSUMER TECHNOLOGY

Fraudulent Software

In addition to the settlements listed below, EDELSON PC has consumer fraud cases pending in courts nationwide against companies such as McAfee, Inc., Avanquest North America Inc., PC Cleaner, AVG, iolo Technologies, LLC, among others. Representative settlements include:

- *Drymon v. Cyberdefender*, No. 11 CH 16779 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for $9.75 million.

- *Gross v. Symantec Corp.*, No. 12-cv-00154-CRB (N.D. Cal.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for $11 million.

- *LaGarde v. Support.com, Inc.*, No. 12-cv-00609-JSC (N.D. Cal.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for $8.59 million.

- *Ledet v. Ascentive LLC*, No. 11-CV-294-PBT (E.D. Pa.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for $9.6 million.

- *Webb v. Cleverbridge, Inc.*, No. 1:11-cv-04141 (N.D. Ill.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for $5.5 million.

Video Games

EDELSON PC has litigated cases video-game related cases against Activision Blizzard Inc., Electronic Arts, Inc., Google, and Zenimax Media, Inc., and has active litigation pending, including:

- *Locke v. Sega of America*, No. 13-cv-01962-MEJ (N.D. Cal.): Pending putative class action alleging that Sega of America and Gearbox Software released video game trailer that falsely represented the actual content of the game.

MORTGAGE & BANKING

EDELSON PC has been at the forefront of class action litigation arising in the aftermath of the federal bailouts of the banks. Our suits include claims that certain banks unlawfully suspended home credit lines based on pre-textual reasons, and that certain banks have failed to honor loan modification programs. We achieved the first federal appellate decision in the country recognizing the right of borrowers to enforce HAMP trial plans under state law. The court noted that "[p]rompt resolution of this matter is necessary not only for the good of the litigants but for the good of the Country." *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 586 (7th Cir. 2012) (Ripple, J., concurring). Our settlements have restored billions of dollars in home credit lines to people throughout the country. Representative cases and settlements include:

- *In re JP Morgan Chase Bank Home Equity Line of Credit Litig.*, No. 10-cv-3647 (N.D. Ill.): Court appointed interim co-lead counsel in nationwide putative class action alleging illegal suspensions of home credit lines. Settlement restored between $3.2 billion and $4.7 billion in credit to the class.

- *Hamilton v. Wells Fargo Bank, N.A.*, No. 09-cv-04152-CW (N.D. Cal.): Lead counsel in class actions challenging Wells Fargo's suspensions of home equity lines of credit. Nationwide settlement restores access to over

$1 billion in credit and provides industry leading service enhancements and injunctive relief.

- *In re Citibank HELOC Reduction Litig.*, No. 09-cv-0350-MMC (N.D. Cal.): Lead counsel in class actions challenging Citibank's suspensions of home equity lines of credit. The settlement restored up to $653,920,000 worth of credit to affected borrowers.

- *Wigod v. Wells Fargo*, No. 10-cv-2348 (N.D. Ill.): In ongoing putative class action, obtained first appellate decision in the country recognizing the right of private litigants to sue to enforce HAMP trial plans.

GENERAL CONSUMER PROTECTION CLASS ACTIONS

We have successfully prosecuted countless class actions against computer software companies, technology companies, health clubs, dating agencies, phone companies, debt collectors, and other businesses on behalf of consumers. In addition to the settlements listed below, EDELSON PC have litigated consumer fraud cases in courts nationwide against companies such as Motorola Mobility, Stonebridge Benefit Services, J.C. Penney, Sempris LLC, and Plimus, LLC. Representative settlements include:

Mobile Content

We have prosecuted over 100 cases involving mobile content, settling numerous nationwide class actions, including against industry leader AT&T Mobility, collectively worth over a hundred million dollars.

- *McFerren v. AT&T Mobility, LLC*, No. 08-CV-151322 (Fulton Cnty. Super. Ct., Ga.): Lead counsel class action settlement involving 16 related cases against largest wireless service provider in the nation. "No cap" settlement provided virtually full refunds to a nationwide class of consumers who alleged that unauthorized charges for mobile content were placed on their cell phone bills.

- *Paluzzi v. Cellco Partnership*, No. 07 CH 37213 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action settlement involving 27 related cases alleging unauthorized mobile content charges. Case settled for $36 million.

- *Gray v. Mobile Messenger Americas, Inc.*, No. 08-CV-61089 (S.D. Fla.): Lead counsel in case alleging unauthorized charges were placed on cell phone bills. Case settled for $12 million.

- *Parone v. m-Qube, Inc.*, No. 08 CH 15834 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action settlement involving over 2 dozen cases alleging

the imposition of unauthorized mobile content charges. Case settled for $12.254 million.

- *Williams v. Motricity*, *Inc.*, No. 09 CH 19089 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action settlement involving 24 cases alleging the imposition of unauthorized mobile content charges. Case settled for $9 million.

- *VanDyke v. Media Breakaway, LLC*, No. 08 CV 22131 (S.D. Fla.): Lead counsel in class action settlement alleging unauthorized mobile content charges. Case settled for $7.6 million.

- *Gresham v. Cellco Partnership*, No. BC 387729 (L.A. Super. Ct., Cal.): Lead counsel in case alleging unauthorized charges were placed on cell phone bills. Settlement provided class members with full refunds.

- *Abrams v. Facebook, Inc.*, No. 07-05378 (N.D. Cal.): Lead counsel in injunctive settlement concerning the transmission of allegedly unauthorized mobile content.

Deceptive Marketing

- *Van Tassell v. UMG*, No. 1:10-cv-2675 (N.D. Ill.): Lead counsel in negative option marketing class action. Case settled for $2.85 million.

- *McK Sales Inc. v. Discover Bank*, No. 10-cv-02964 (N.D. Ill.): Lead counsel in class action alleging deceptive marketing aimed at small businesses. Case settled for $6 million.

- *Farrell v. OpenTable*, No. 11-cv-01785 (N.D. Cal.): Lead counsel in gift certificate expiration case. Settlement netted class over $3 million in benefits.

- *Ducharme v. Lexington Law*, No. 10-cv-2763 (N.D. Cal): Lead counsel in CROA class action. Settlement resulted in over $6 million of benefits to the class.

- *Pulcini v. Bally Total Fitness Corp*., No. 05 CH 10649 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in four class action lawsuits brought against two health clubs and three debt collection companies. A global settlement provided the class with over $40 million in benefits, including cash payments, debt relief, and free health club services.

- *Kozubik v. Capital Fitness, Inc.*, 04 CH 627 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in state-wide suit against a leading health club chain, which settled in 2004, providing the over 150,000 class members with between

$11 million and $14 million in benefits, consisting of cash refunds, full debt relief, and months of free health club membership.

- *Kim v. Riscuity*, No. 06 C 01585 (N.D. Ill.): Co-lead counsel in suit against a debt collection company accused of attempting to collect on illegal contracts. The case settled in 2007, providing the class with full debt relief and return of all money collected.

- *Jones v. TrueLogic Financial Corp.*, No. 05 C 5937 (N.D. Ill.): Co-lead counsel in suit against two debt collectors accused of attempting to collect on illegal contracts. The case settled in 2007, providing the class with approximately $2 million in debt relief.

- *Fertelmeyster v. Match.com*, No. 02 CH 11534 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in a state-wide class action suit brought under Illinois consumer protection statutes. The settlement provided the class with a collective award with a face value in excess of $3 million.

- *Cioe v. Yahoo!, Inc.*, No. 02 CH 21458 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in a state-wide class action suit brought under state consumer protection statutes. The settlement provided the class with a collective award with a face value between $1.6 million and $4.8 million.

- *Zurakov v. Register.com*, No. 01-600703 (N.Y. Sup. Ct., N.Y. Cnty.): Co-lead counsel in a class action brought on behalf of an international class of over one million members against Register.com for its allegedly deceptive practices in advertising on "coming soon" pages of newly registered Internet domain names. Settlement required Register.com to fully disclose its practices and provided the class with relief valued in excess of $17 million.

PRODUCTS LIABILITY CLASS ACTIONS

We have been appointed lead counsel in state and federal products liability class settlements, including a $30 million settlement resolving the "Thomas the Tank Engine" lead paint recall cases and a $32 million settlement involving the largest pet food recall in the history of the United States and Canada. Representative settlements include:

- *Barrett v. RC2 Corp.*, No. 07 CH 20924 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in lead paint recall case involving Thomas the Tank toy trains. Settlement is valued at over $30 million and provided class with full cash refunds and reimbursement of certain costs related to blood testing.

- *In re Pet Food Products Liability Litig.*, No. 07-2867 (D.N.J.): Part of mediation team in class action involving largest pet food recall in United

States history. Settlement provided $24 million common fund and $8 million in charge backs.

INSURANCE CLASS ACTIONS

We have prosecuted and settled multi-million dollar suits against J.C. Penney Life Insurance for allegedly illegally denying life insurance benefits under an unenforceable policy exclusion and against a Wisconsin insurance company for terminating the health insurance policies of groups of self-insureds. Representative settlements include:

- *Holloway v. J.C. Penney*, No. 97 C 4555 (N.D. Ill.): One of the primary attorneys in a multi-state class action suit alleging that the defendant illegally denied life insurance benefits to the class. The case settled in or around December 2000, resulting in a multi-million dollar cash award to the class.

- *Ramlow v. Family Health Plan* (Wisc. Cir. Ct., WI): Co-lead counsel in a class action suit challenging defendant's termination of health insurance to groups of self-insureds. The plaintiff won a temporary injunction, which was sustained on appeal, prohibiting such termination and eventually settled the case ensuring that each class member would remain insured.

MASS/CLASS TORT CASES

Our attorneys were part of a team of lawyers representing a group of public housing residents in a suit based upon contamination related injuries, a group of employees exposed to second-hand smoke on a riverboat casino, and a class of individuals suing a hospital and national association of blood banks for failure to warn of risks related to blood transfusions. Representative settlements include:

- *Aaron v. Chicago Housing Authority*, No. 99 L 11738 (Cir. Ct. Cook Cnty., Ill.): Part of team representing a group of public housing residents bringing suit over contamination-related injuries. Case settled on a mass basis for over $10 million.

- *Januszewski v. Horseshoe Hammond*, No. 2:00CV352JM (N.D. Ind.): Part of team of attorneys in mass suit alleging that defendant riverboat casino caused injuries to its employees arising from exposure to second-hand smoke.

The firm's cases regularly receive attention from local, national, and international media. Our cases and attorneys have been reported in the Chicago Tribune, USA Today, the Wall Street Journal, the New York Times, the LA Times, by the Reuters and UPI news services, and BBC International. Our attorneys have appeared on numerous national television and radio programs, including ABC World News, CNN, Fox News, NPR, and CBS Radio, as well as television and

radio programs outside of the United States. We have also been called upon to give congressional testimony and other assistance in hearings involving our cases.

GENERAL COMMERCIAL LITIGATION

Our attorneys have handled a wide range of general commercial litigation matters, from partnership and business-to-business disputes to litigation involving corporate takeovers. We have handled cases involving tens of thousands of dollars to "bet the company" cases involving up to hundreds of millions of dollars. Our attorneys have collectively tried hundreds of cases, as well as scores of arbitrations and mediations.

OUR ATTORNEYS

JAY EDELSON is the founder and Managing Partner OF EDELSON PC. He has been recognized as one of the nation's leading class action lawyers, especially in the areas of privacy, technology, and consumer advocacy. His notable cases include ones involving the national banks' suspensions of home equity lines of credit in the aftermath of the housing collapse, which resulted in the restoration of billions of dollars of consumer credit lines. He has developed much of the positive law under the Telephone Consumer Protection Act, especially in the area of text message spam, resulting in settlements collectively worth over a hundred millions of dollars and earning him the moniker, "the Spam Slammer." Jay has been recognized as a "pioneer" in the emerging field of electronic privacy, having established key precedent in cases throughout the country and reaching some of the most important settlements in this space. Based primarily on his success in bringing consumer technology class actions, the national press has dubbed Jay and his firm the "most feared" litigators in Silicon Valley and, according to the New York Times, tech's "babyfaced … boogeyman." The international press has called Jay one of the world's "profiliertesten (most prominent)" privacy class action attorneys.

In addition to complex defense-side litigation, which he handles only in select cases, Jay also offers strategic support to start-ups, including several that have become national brands.

Jay is a frequent speaker and writer on class action issues, the practice of law more generally, and training and law firm management — the latter earning him recognition by the ABA as one of "the most creative minds in the legal industry". He is an adjunct professor at Chicago-Kent School of Law, where he has taught seminars on class actions and negotiation. He has written a blog for Thomson Reuters, called Pardon the Disruption, where he focused on ideas necessary to reform and reinvent the legal industry.

RYAN D. ANDREWS is a Partner at EDELSON PC. He presently leads the firm's complex case resolution and appellate practice group, which oversees the firm's class settlements, class notice programs, and briefing on issues of first impression.

Ryan has been appointed class counsel in numerous federal and state class actions nationwide that have resulted in over $100 million dollars in refunds to consumers, including: *Satterfield v. Simon & Schuster*, No. C 06 2893 CW (N.D. Cal.): *Ellison v Steve Madden, Ltd.*, No. cv 11-5935 PSG (C.D. Cal.); *Robles v. Lucky Brand Dungarees, Inc.*, No. 10-cv-04846 (N.D. Cal.); *Lozano*

v. 20th Century Fox, No. 09-cv-05344 (N.D. Ill.): *Paluzzi v. Cellco Partnership*, No. 07 CH 37213 (Cir. Ct. Cook Cnty., Ill.); and *Lofton v. Bank of America Corp*., No. 07-5892 (N.D. Cal.).

Representative reported decisions include: *Lozano v. Twentieth Century Fox*, 702 F. Supp. 2d 999 (N.D. Ill. 2010), *Satterfield v. Simon & Schuster, Inc.* 569 F.3d 946 (9th Cir. 2009), *Kramer v. Autobytel, Inc.*, 759 F. Supp. 2d 1165 (N.D. Cal. 2010); *In re Jiffy Lube Int'l Text Spam Litig.*, 847 F. Supp. 2d 1253 (S.D. Cal. 2012); *Lee v. Stonebridge Life Ins. Co*., 289 F.R.D. 292 (N.D. Cal. 2013); and *Kristensen v. Credit Payment Servs*., 12 F. Supp. 3d 1292 (D. Nev. Mar. 26, 2014).

Ryan graduated from the University of Michigan, earning his B.A., with distinction, in Political Science and Communications. Ryan received his J.D. with High Honors from the Chicago-Kent College of Law and was named Order of the Coif. Ryan has served as an Adjunct Professor of Law at Chicago-Kent, teaching a third-year seminar on class actions. While in law school, Ryan was a Notes & Comments Editor for The Chicago-Kent Law Review, earned CALI awards for the highest grade in five classes, and was a teaching assistant for both Property Law and Legal Writing courses. Ryan externed for the Honorable Joan B. Gottschall in the United State District Court for the Northern District of Illinois.

Ryan is licensed to practice in Illinois state courts, the United States District Court for the Northern District of Illinois, the U.S. Court of Appeals for the Seventh Circuit, and the U.S. Court of Appeals for the Ninth Circuit.

RAFEY S. BALABANIAN is a Partner and General Counsel at EDELSON PC. Rafey's practice focuses upon a wide range of complex consumer class action litigation, as well as general business litigation. In the class action context, Rafey has extensive experience both prosecuting and defending class actions.

On the plaintiff's side, Rafey has been appointed lead counsel in numerous class actions, and has achieved landmark settlements involving the telecom industry worth hundreds of millions of dollars, including nationwide settlements in the cases *Pimental, et al. v. Google, Inc.*, No. 11-cv-2585 (N.D. Cal.); *Van Dyke v. Media Breakaway, LLC*, No. 08-cv-22131 (S.D. Fla.); *Williams v. Motricity, Inc., et al*., No. 09 CH 19089 (Cir. Ct. Cook Cnty., Ill.); and *Walker v. OpenMarket, Inc., et al*., No. 08 CH 40592 (Cir. Ct. Cook Cnty., Ill.).

Rafey's plaintiff's class action practice also focuses on consumer privacy issues and some of his most notable accomplishments include nationwide settlements reached with companies such as Netflix (*In re Netflix Privacy Litig.*, No. 11-cv-379 (N.D. Cal.)) and RockYou (*Claridge v. RockYou, Inc.*, No. 09-cv-6030 (N.D. Cal.)). Rafey also led the effort to secure adversarial class certification of what is believed to be the largest privacy class action in the history of U.S. jurisprudence in the case of *Dunstan, et al. v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.).

On the business side, Rafey has counseled clients ranging from "emerging technology" companies, real estate developers, hotels, insurance companies, lenders, shareholders and attorneys. He has successfully litigated numerous multi-million dollar cases, including several

"bet the company" cases. And, with respect to the defense of class action, Rafey's practice focuses mainly on the defense of corporate clients facing wage and hour lawsuits brought under the Fair Labor Standards Act.

Rafey received his J.D. from the DePaul University College of Law in 2005. While in law school, he received a certificate in international and comparative law. A native of Colorado, Rafey received his B.A. in History, with distinction, from the University of Colorado – Boulder in 2002.

CHRISTOPHER L. DORE is a Partner at EDELSON PC where he focuses his practice on emerging consumer technology issues, with his cases relating to online fraud, deceptive marketing, consumer privacy, negative option membership enrollment, and unsolicited text messaging. Chris is also a member of the firm's Incubation and Startup Development Group wherein he consults with emergent businesses.

Chris has been appointed class counsel in multiple class actions, including one of the largest text-spam settlements under the Telephone Consumer Protection Act, groundbreaking issues in the mobile phone industry and fraudulent marketing, as well as consumer privacy. *See Kramer v. Autobytel, Inc.*, No. 10-cv-02722-CW (N.D. Cal.); *Turner v. Storm8, LLC*, No. 09-cv-05234 (N.D. Cal.); *Standiford v Palm, Inc.*, No. 09-cv-05719-LHK (N.D. Cal.); and *Espinal v. Burger King Corp.*, No. 09-cv-20982 (S.D. Fla.). In addition, Chris has achieved groundbreaking court decisions protecting consumer rights. Representative reported decisions include: *Claridge v. RockYou, Inc*., 785 F. Supp. 2d 855 (N.D. Cal. 2011); *Kramer v. Autobytel, Inc*., 759 F. Supp. 2d 1165 (N.D. Cal. 2010); and *Van Tassell v. United Marketing Group, LLC*, 795 F. Supp. 2d 770 (N.D. Ill. 2011). In total, his suits have resulted in hundreds of millions of dollars to consumers.

Outside of consumer class actions, Chris actively advises technology related startups, including providing compliance and marketing guidance, as well as hands-on concept and business development.

Prior to joining EDELSON PC, Chris worked for two large defense firms in the areas of employment and products liability. Chris graduated *magna cum laude* from The John Marshall Law School, where he served as the Executive Lead Articles for the Law Review, as well as a team member for the D.M. Harish International Moot Court Competition in Mumbai, India. Chris has since returned to his alma mater to lecture on current issues in class action litigation and negations.

Before entering law school, Chris received his Masters degree in Legal Sociology, graduating *magna cum laude* from the International Institute for the Sociology of Law, located in Onati, Spain. Chris received his B.A. in Legal Sociology from the University of California, Santa Barbara.

ALEXANDER T.H. NGUYEN is a Partner at EDELSON PC and leads the firm's Complex Trials Team.

Before joining the firm, Alex served as federal prosecutor and deputy chief of the cybercrime unit for the United States Attorney's Office in the Eastern District of Virginia in Alexandria, Virginia. In that capacity, he investigated, prosecuted, supervised, and tried a wide range of computer crime and intellectual property matters, including hacking and cyber intrusions, data breaches, intellectual property violations, large-scale identity theft and online fraud, national security, trade secrets, and online child exploitation matters. Before that, he also served as a federal prosecutor for the United States Attorney's Office in the Eastern District of Pennsylvania in Philadelphia, Pennsylvania, where he prosecuted criminal matters, including tax evasion, political corruption, fraud, money laundering, terrorism, narcotics, and violent crime.

In 2010 and 2011, he served in the Office of the White House Counsel to help manage and implement key White House law and public policy initiatives, helped respond to congressional oversight investigations, provided ethics advice to senior officials, and assisted with political appointments.

Alex graduated *magna cum laude* from Harvard University and received his J.D. from Yale Law School. He has previously served on the board of the Asian Pacific American Bar Association Educational Fund and was the president of the Vietnamese American Bar Association in Washington, D.C.

BENJAMIN H. RICHMAN is a Partner at EDELSON PC. He handles plaintiffs'-side consumer class actions, focusing mainly on technology-related cases, represents corporate defendants in class actions, and handles general commercial litigation matters.

On the plaintiff's side, Ben has brought industry-changing lawsuits involving the marketing practices of the mobile industry, print and online direct advertisers, and Internet companies. He has successfully prosecuted cases involving privacy claims and the negligent storage of consumer data. His suits have also uncovered complex fraudulent methodologies of Web 2.0 companies, including the use of automated bots to distort the value of consumer goods and services. In total, his suits have resulted in hundreds of millions of dollars to consumers.

On the defense side, Ben has represented large institutional lenders in the defense of employment class actions. He also routinely represents technology companies in a wide variety of both class action defense and general commercial litigation matters.

Ben received his J.D. from The John Marshall Law School, where he was an Executive Editor of the Law Review and earned a Certificate in Trial Advocacy. While in law school, Ben served as a judicial extern to the Honorable John W. Darrah of the United States District Court for the Northern District of Illinois, in addition to acting as a teaching assistant for Prof. Rogelio Lasso in several torts courses. Ben has since returned to the classroom as a guest-lecturer on issues related to class actions, complex litigation and negotiation. He also lectures incoming law students on the core first year curriculums. Before entering law school, Ben graduated from Colorado State University with a B.S. in Psychology.

Ben is also the director of EDELSON PC'S Summer Associate Program.

ARI J. SCHARG is a Partner at EDELSON PC and leads the firm's Data Security Litigation Group. He handles technology-related class actions, focusing mainly on cases involving privacy and data security issues, including the illegal collection, storage, and disclosure of personal information and text message spam. Ari has been appointed class counsel by state and federal courts in several nationwide class actions, including *Fox v. Time, Inc.*, No. 12-cv-14390 (E.D. Mich. July 27, 2015); *Halaburda v. Bauer Publishing Co.*, No. 12-cv-12831 (E.D. Mich.); *Resnick v. Avmed*, No. 10-cv-24513 (S.D. Fla.); *In re: LinkedIn User Privacy Litigation*, No. 5:12-cv-03088 (N.D. Cal.); *Coffman v. Glide Talk, Ltd.*, No. 14 CH 08513 (Cir. Ct. Cook Cnty, Ill.); *Webb v. Cleverbridge, et al.*, No. 11-cv-4141 (N.D. Ill.); *Ledet v. Ascentive*, No. 11-cv-294 (E.D. Penn.); and *Grant v. Commonwealth Edison Company*, No. 13-cv-8310 (N.D. Ill.), and was appointed sole-lead class counsel in *Loewy v. Live Nation*, No. 11-cv-4872 (N.D. Ill.), where the court praised his work as "impressive" and noted that he "understand[s] what it means to be on a team that's working toward justice." Ari was selected as an Illinois Rising Star (2013, 2014, 2015) by Super Lawyers.

Prior to joining the firm, Ari worked as a litigation associate at a large Chicago firm, where he represented a wide range of clients including Fortune 500 companies and local municipalities. His work included representing the Cook County Sheriff's Office in several civil rights cases and he was part of the litigation team that forced Craigslist to remove its "Adult Services" section from its website.

Ari received his B.A. in Sociology from the University of Michigan – Ann Arbor and graduated magna cum laude from The John Marshall Law School where he served as a Staff Editor for THE JOHN MARSHALL LAW REVIEW and competed nationally in trial competitions. During law school, he also served as a judicial extern to The Honorable Bruce W. Black of the U.S. Bankruptcy Court for the Northern District of Illinois.

COURTNEY BOOTH is an Associate at EDELSON PC where her practice focuses on consumer and tech-related class actions.

Courtney received her J.D., *magna cum laude*, from The John Marshall Law School. While in law school, she was a staff editor of The John Marshall Law Review, a teaching assistant for Legal Writing and Civil Procedure, and a member of the Moot Court Honor Society. Courtney represented John Marshall at the Mercer Legal Ethics and Professionalism Competition where she was a semi-finalist and won Best Respondent's Brief and at the Cardozo/BMI Entertainment and Communications Law Competition where she placed in the top three oralists. Courtney was a 2013 Member of the National Order of Scribes.

Courtney focuses her public service efforts on providing settlement-related assistance to *pro se* plaintiffs. In one of her recent *pro bono* cases, the Court recognized Courtney's efforts and "express[ed] its appreciation" to her, stating that "[t]he work she has done for the plaintiff is of the highest order and the way she has conducted herself in court is to be commended." *See Sroga v. City of Chicago*, No. 12-cv-9288, Dkt. 65 (N.D. Ill. Aug. 6, 2014).

Prior to law school, Courtney attended Saint Louis University where she earned a B.A. in Communication. While there, she was a community relations intern for the St. Louis Blues.

JONATHAN W. HODGE is an Associate at EDELSON PC where his practice focuses on complex consumer class actions.

Prior to joining EDELSON PC, Jonathan handled complex commercial litigation at an Am Law 100 defense firm, where he drove successful outcomes in matters with as much as $100,000,000 in controversy. Previously, Jonathan served as a consultant for a tech incubator where he helped clients form new business based on patent-protected technologies developed at the University of Michigan. He also served in the accounting department of Nucor Steel-Hertford, where his IT skillsets helped him largely automate the monitoring of the largest cost at a multibillion-dollar division of America's largest steel company.

Jonathan received his J.D. from the University of Michigan Law School. While in law school, Jonathan participated in the Campbell Moot Court and the Frank Murphy Society 1L Oral Advocacy Competition. He was awarded Legal Practice Honors for performing in the top 20% of his first-year legal research and writing classes.

Jonathan graduated *summa cum laude* from Chowan University, earning his B.S. in Business Administration with a double concentration in Information Systems and Accounting.

JAMIE J. R. HOLZ is an Associate at EDELSON PC where his practice focuses on tech and privacy-related class actions.

Jamie received his J.D., *magna cum laude*, from The John Marshall Law School. While attending law school, Jamie participated in The John Marshall Law Review and the Moot Court Honors Council, and was a Board Member for The John Marshall Trial Advocacy and Dispute Resolution Honors Board. Jamie competed nationally on several alternative dispute resolution teams, was the Herzog Moot Court Competition champion and a two-time Triple Crown Alternative Dispute Resolution Competition champion.

Jamie was an extern to the Honorable Arlander Keys in the United States District Court for the Northern District of Illinois and with the Cook County State's Attorney's Office. Jamie completed his time at John Marshall as a David R. Sargis Scholar and walked away with CALI awards in property law and civil procedure.

Prior to law school, Jamie attended Loras College where he earned a B.A. in Creative Writing and English Literature.

ALICIA HWANG is an Associate at EDELSON PC. Alicia practices in the area of consumer class action and general litigation.

Alicia received her J.D. from the Northwestern University School of Law, where she was an articles editor for the Journal of Law and Social Policy. During law school, Alicia was a legal intern for the Chinese American Service League, served as president of the Asian Pacific

American Law Student Association and the Student Animal Legal Defense Fund, and was Chair of the Student Services Committee. She also worked as a student in the Northwestern Entrepreneurship Law Clinic and Complex Civil Litigation and Investor Protection Clinic.

Prior to joining EDELSON PC, Alicia worked as an Executive Team Leader for the Target Corporation, as well as a public relations intern for a tourism-marketing agency in London.

Alicia graduated *magna cum laude* from the University of Southern California, earning her B.A. in Communication. She is a member of the Phi Beta Kappa honor society.

NICK LARRY is an Associate at EDELSON PC where his practice focuses on technology and privacy class actions.

Nick has been appointed class counsel in multiple class actions that have resulted in tens of millions of dollars in refunds to consumers, including: *In re LinkedIn User Privacy Litig.*, No. 12-cv-3088 (N.D. Cal.); *Halaburda v. Bauer Publishing Co., LP*, No. 12-cv-12831 (E.D. Mich.); *Dunstan v. comScore*, No. 11-cv-5807 (N.D. Ill.); and *In re Netflix Privacy Litig.*, No. 11-cv-379 (N.D. Cal.).

Nick received his J.D., *cum laude*, from Northwestern University School of Law, where he was a senior editor of the Northwestern University Journal of International Law and Business. His student Comment, which examines the legal issues that may arise from National Hockey League players' participation in the 2014 Olympic Winter Games, appears in Vol. 32, No. 3A of the Northwestern University Journal of International Law and Business.

Nick attended Michigan State University, where he graduated with a B.A. in General Business Administration/Pre-law and played on the school's rugby team.

J. AARON LAWSON is an Associate at EDELSON PC where his practice focuses on appeals and complex motion practice.

Before coming to Edelson, Aaron served for two years as a Staff Attorney for the United States Court of Appeals for the Seventh Circuit, handling appeals involving a wide variety of subject matter, including consumer-protection law, employment law, criminal law, and federal habeas corpus. While at the University of Michigan Law School, Aaron served as the Managing Editor for the Michigan Journal of Race & Law, and participated in the Federal Appellate Clinic. In the clinic, Aaron briefed a direct criminal appeal to the United States Court of Appeals for the Sixth Circuit, and successfully convinced the court to vacate his client's sentence.

DAVID I. MINDELL is an Associate at EDELSON PC where he helps direct a team of attorneys and engineers in investigating and litigating cases involving complex tech fraud and privacy violations. His team's research has led to lawsuits involving the fraudulent development, marketing, and sale of computer software, unlawful tracking of consumers through mobile-devices and computers, unlawful collection, storage, and dissemination of consumer data, mobile-device privacy violations, large-scale data breaches, and the Bitcoin industry. On the other side, David also serves as a consultant to a variety of emerging technology companies.

Prior to joining EDELSON PC, David co-founded several tech, real estate, and hospitality related ventures, including a tech startup that was acquired by a well-known international corporation within its first three years. David has advised tech companies on a variety of legal and strategic business-related issues, including how to handle and protect consumer data. He has also consulted with startups on the formation of business plans, product development, and launch.

While in law school, David was a research assistant for University of Chicago Law School Kauffman and Bigelow Fellow, Matthew Tokson, and for the preeminent cyber-security professor, Hank Perritt at the Chicago-Kent College of Law. David's research included cyberattack and denial of service vulnerabilities of the Internet, intellectual property rights, and privacy issues.

David has spoken to a wide range of audiences about his investigations and practice.

AMIR MISSAGHI is an Associate at EDELSON PC where he focuses on technology and privacy class actions.

Amir received his J.D. from the Chicago-Kent College of Law, where he was a member of the Moot Court Honor Society and a teaching assistant in Property. Before law school, he attended the University of Minnesota, where he received his B.S. and M.S. in Applied Economics. He then began working at a Fortune 50 company as a programmer and data analyst. During that time Amir started working on his graduate studies in Applied Economics where he focused on analyzing consumer choice in healthcare markets.

JOHN OCHOA is an associate at EDELSON PC where his practice focuses on protecting consumers with a special emphasis on privacy class action litigation.

John has secured important court decisions protecting the rights of consumers, including *Elder v. Pacific Bell Telephone Co*, 205 Cal. App. 4th 841 (2012), where the California Court of Appeal held that consumers may pursue claims against telecommunications companies for placing unauthorized charges on consumers' telephone bills, a practice known as "cramming." John was also appointed class counsel in *Lee v. Stonebridge Life Insurance Co*, 289 F.R.D. 292 (N.D. Cal. 2013), a case where the defendants are alleged to have caused the transmission of unauthorized text messages to the cellular telephones of thousands of consumers.

He graduated *magna cum laude* from The John Marshall Law School in May 2010 and served as Managing Editor for The John Marshall Law Review. His student Comment, which examines bicycling and government tort immunity in Illinois, appears in Vol. 43, No. 1 of The John Marshall Law Review. While in law school, John served as a research assistant, externed with Judge Thomas Hoffman at the Illinois Court of Appeals, and competed in the ABA National Appellate Advocacy Competition. John was awarded a Herzog scholarship for his academic performance and earned CALI awards for the highest grade in Torts, Property, and Administrative Law.

John is active in the Illinois legal community, and serves as Co-Chair of the Membership Committee on the Young Professionals Board of Illinois Legal Aid Online (ILAO). ILAO is a

non-profit organization committed to using technology to increase access to free and pro bono legal services for underserved communities throughout Illinois.

He received his B.A. with Honors in Political Science from the University of Iowa in 2004.

ROGER PERLSTADT is an Associate at EDELSON PC, where he concentrates on appellate and complex litigation advocacy. He has briefed and argued appeals and motions in both federal and state appellate courts.

Prior to joining the firm, Roger was a law clerk to United States District Court Judge Elaine E. Bucklo, an associate at a litigation boutique in Chicago, and a Visiting Assistant Professor at the University of Florida Levin College of Law. He has published articles on the Federal Arbitration Act in various law reviews.

Roger has been named a Rising Star by *Illinois Super Lawyer Magazine* four times since 2010.

Roger graduated from the University of Chicago Law School, where he was a member of the University of Chicago Law Review. After law school, he served as a clerk to the Honorable Elaine E. Bucklo of the United States District Court for the Northern District of Illinois.

EVE-LYNN J. RAPP is an Associate at EDELSON PC, focusing her practice in the areas of class action and general litigation.

Prior to joining the firm, Eve-Lynn was involved in numerous class action cases in the areas of consumer and securities fraud, debt collection abuses, and public interest litigation. Eve-Lynn has substantial experience in both state and federal courts, including successfully briefing issues in both the United States and Illinois Supreme Courts.

Eve-Lynn received her J.D. from Loyola University of Chicago-School of Law, graduating *cum laude*, with a Certificate in Trial Advocacy. During law school, Eve-Lynn was an Associate Editor of Loyola's International Law Review and externed as a "711" at both the Cook County State's Attorney's Office and for Cook County Commissioner Larry Suffredin. Eve-Lynn also clerked for both civil and criminal judges (Honorable Yvonne Lewis and Plummer Lott) in the Supreme Court of New York.

Eve-Lynn graduated from the University of Colorado, Boulder, with distinction and Phi Beta Kappa honors, receiving a B.A. in Political Science.

BEN THOMASSEN is an Associate at EDELSON PC. At the firm, Ben's practice centers on the prosecution of class actions cases that address federally protected privacy rights and issues of consumer fraud—several of which have established industry-changing precedent. Among other high profile cases, Ben recently played key roles in delivering the winning oral argument before the United States Court of Appeals for the Eleventh Circuit in *Curry v. AvMed*, 693 F.3d 1317 (11th Cir. 2012) (a data breach case that has, following the Eleventh Circuit's decision, garnered national attention both within and without the legal profession) and securing certification of a massive consumer class in *Dunstan v. comScore*, No. 11 C 5807, 2013 WL 1339262 (N.D. Ill.

Apr. 2, 2013) (estimated by several sources as the largest privacy case ever certified on an adversarial basis).

Ben received his J.D., *magna cum laude*, from the Chicago-Kent College of Law, where he also earned his certificate in Litigation and Alternative Dispute Resolution and was named Order of the Coif. At Chicago-Kent, Ben was Vice President of the Moot Court Honor Society and earned (a currently unbroken firm record of) seven CALI awards for receiving the highest grade in Appellate Advocacy, Business Organizations, Conflict of Laws, Family Law, Personal Income Tax, Property, and Torts.

Before settling into his legal career, Ben worked in and around the Chicago and Washington, D.C. areas in a number of capacities, including stints as a website designer/developer, a regular contributor to a monthly Capitol Hill newspaper, and a film projectionist and media technician (with many years experience) for commercial theatres, museums, and educational institutions. Ben received his Bachelor of Arts, *summa cum laude*, from St. Mary's College of Maryland and his Master of Arts from the University of Chicago.

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Prior to joining Edelson PC, Shawn worked for Motorola Solutions in the Security and Federal Operations Centers as an Information Protection Specialist. Shawn's responsibilities included network and computer forensic analysis, malware analysis, threat mitigation, and incident handling for various commercial and government entities.

Shawn has been a member of the adjunct faculty of the School of Applied Technology at the Illinois Institute of Technology (IIT) since December of 2013. Additionally, Shawn is a faculty member of the IIT Center for Cyber Security and Forensics Education which is a collaborative space between business, government, academia, and security professionals. Shawn's contributions aided in IIT's designation as a National Center of Academic Excellence in Information Assurance by the National Security Agency.

Shawn graduated with high honors from the Illinois Institute of Technology with a Masters of Information Technology Management with a specialization in Computer and Network Security. During graduate school, Shawn was inducted into Gamma Nu Eta, the National Information Technology Honor Society.