

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CHRISTOPHER FAIN, *et al.*, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

WILLIAM CROUCH, *et al.*,

Defendants.

CIVIL ACTION NO. 3:20-cv-00740

HON. ROBERT C. CHAMBERS

**PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
PURSUANT TO FED. R. CIV. P. 23**

Pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2), Plaintiffs Christopher Fain and Shauntae Anderson (“Plaintiffs”) respectfully move this Court for an order certifying the following class: All transgender people who are or will be enrolled in West Virginia Medicaid and who are seeking or will seek gender-confirming care barred by the Exclusion. In addition, Plaintiffs move the Court to appoint Plaintiffs as Class Representatives, and Nichols Kaster, PLLP; Lambda Legal Defense and Education Fund, Inc.; and The Employment Law Center, PLLP, as Class Counsel.

This Motion is made based on the accompanying Memorandum of Law, Declaration of Nicole J. Schladt and the exhibit affixed thereto, Declaration of Avatara Smith-Carrington and the exhibits affixed thereto, Declaration of Walt Auvil, and all of the files, records, and proceedings in this matter.

Dated: May 31, 2022

Respectfully submitted,

/s/ Walt Auvil

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, and any attachments, were served electronically on May 31, 2022 on the following counsel for Defendants in this case:

Lou Ann S. Cyrus (WVSB # 6558)
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*Attorneys for Defendants William Crouch; Cynthia Beane; and West Virginia Department of
Health and Human Resources, Bureau for Medical Services*

Dated: May 31, 2022

Respectfully submitted,

s/ Walt Auvil

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HON. ROBERT C. CHAMBERS, JUDGE

DECLARATION OF THE EMPLOYMENT LAW CENTER, PLLC

1. Counsel for the Plaintiffs, Walt Auvil, is the owner and sole member of The Employment Law Center, PLLC a three-lawyer firm practicing in Wood County, West Virginia.

2. Walt Auvil was admitted to the West Virginia State Bar and the State and Federal Courts of West Virginia in 1981.

3. Auvil is a founder and past president of the West Virginia Employment Lawyers Association, national affiliate of the National Employment Lawyers Association.

4. Auvil is the Chairman of the West Virginia State Bar Labor and Employment Law Committee.

5. Auvil has served as lead counsel on dozens of discrimination cases in State and Federal Courts throughout the State of West Virginia and has served as lead counsel on several class action matters during the past 30 years.

6. Auvil is a Fellow of the College of Labor and Employment Lawyers, the first such Fellow in West Virginia. Auvil is the past chair of the College of Labor and Employment Lawyers Fourth Circuit Credentials Committee.

7. Auvil is the co-author along with Eric Kinder of an article titled “Rule 30(b)(6) at 45: Is it still your Friend?” published by the American Bar Association, Section of Litigation Pre-Trial Practice and Discovery Newsletter in 2015.

8. Auvil is also contributing editor to several employment law publications of the American Bar Association and is a frequent speaker on matters of pre-trial procedure for state and National legal conventions.

Further Affiant Sayeth Not.

Date: May 31, 2022

/s/ Walt Auvil
WALT AUVIL

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**DECLARATION OF NICOLE J. SCHLADT IN SUPPORT OF PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION PURSUANT TO FED. R. CIV. P. 23**

I, Nicole J. Schladt, declare the following:

1. I am an attorney with the law firm of Nichols Kaster, PLLP and counsel for Plaintiffs in the above-captioned matter. I make this Declaration to support Plaintiffs' Motion for Class Certification Pursuant to Fed. R. Civ. P. 23.

2. To date, Plaintiffs have responded to multiple motions to dismiss, have filed two motions for leave to amend the complaint, and have engaged in significant and proactive discovery with Defendants.

3. Plaintiffs Christopher Fain and Shauntae Anderson will be exceptional Class Representatives. Their claims and legal interests are aligned with the members of the proposed class. They have remained actively engaged throughout the litigation. Mr. Fain assisted me and my co-counsel with preparing the Complaints, collected and produced documents, responded to written discovery, and sat for a deposition in which he demonstrated his adequacy as a class representative. Ms. Anderson has participated fully in the litigation by assisting with the preparation of the Amended Complaint, responding to discovery requests, collecting and

producing documents, and sitting for a deposition about her claims.

4. My co-counsel and I are also adequate to represent the proposed class. The accomplishments and experience of Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”) and The Employment Law Center, PLLC (“ELC”) are explained in their declarations, filed in support of this instant Motion. The resume for my firm, Nichols Kaster, PLLP (“NK”), is attached hereto as Exhibit A and summarized below.

5. NK has been engaged in the practice of law for over 40 years, and is devoted to plaintiff-side litigation, with extensive class action and collective action experience. The firm has been appointed lead counsel or co-counsel on hundreds of class and collective actions, and has recovered significant monetary and injunctive relief for its clients over the years. In 2020, the National Trial Lawyers and ALM named NK the Employment Rights Law Firm of the Year.

6. I graduated *summa cum laude* from the University of Kentucky in 2014 and graduated with honors from Emory University College of Law in Atlanta, Georgia, in 2018. Since 2019, I have practiced law with NK and have primarily handled civil rights class actions. *See, e.g., Amezcua Peregrina v. SEAM Group*, No. 1:20CV01032 (N.D. Ohio Aug. 30, 2021) (approving a \$1.25 million settlement on behalf of a class of TN visa holders alleging human trafficking violations); *Pearson, et al. v. Michigan Department of Corrections, et al.*, No. 19-10707, 2021 WL 3079898 (E.D. Mich. July 21, 2021) (denying defendants’ motions to dismiss in a proposed class action involving eighth amendment conditions of confinement claims); *Dale Carmen v. Health Carousel, LLC*, No. 1:20-CV-313, 2021 WL 2476882, at *1 (S.D. Ohio June 17, 2021) (denying defendant’s motions to dismiss and strike class allegations in a proposed class action on behalf of immigrant nurses). I also have experience with cases involving sex discrimination in public institutions. *See Doe v. Indep. Sch. Dist. 31*, No. 20-CV-226 (SRN/LIB), 2020 WL 4735503, at *1

(D. Minn. Aug. 14, 2020).

7. I shared responsibility for the prosecution of this action at my firm with Anna P. Prakash. Ms. Prakash graduated from Cornell Law School in Ithaca, New York, in 2005, and after working for the state and federal governments, she joined NK in March of 2009. She became a partner at the firm in 2016. She is one of the leaders of the firm's Civil Rights and Impact Litigation practice group, has led the firm's National Consumer Class Action practice group, has been a member of the firm's National Wage & Hour practice group, and has authored and argued class and individual appeals at the state and federal level. Ms. Prakash has extensive class action experience and has represented thousands of class and collective members in federal and state courts. *See e.g., Hart v. Rick's Cabaret Int'l, Inc.*, 60 F. Supp. 3d 447 (S.D.N.Y. 2014) (granting plaintiffs' affirmative motion for summary judgment on damages, holding that no reasonable jury could conclude that the Rule 23 class of approximately 2,200 employees were owed less than \$10.8 million dollars and denying decertification of the Rule 23 class and FLSA collective); *Monroe v. FTS USA, LLC*, Court File No. 08-cv-02100 (W.D. Tenn.) (jury verdict for an approximately 300-person collective); *Bible v. United Student Aid Funds, Inc.*, 799 F.3d 633 (7th Cir. 2015) (reversing motion to dismiss in proposed class action over student loan practices), reh'g en banc denied, 807 F.3d 839 (7th Cir. 2015), cert. denied, 136 S. Ct. 1607 (2016).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 31, 2022

By: Nicole Schladt
Nicole J. Schladt

EXHIBIT A



Nichols Kaster, PLLP

Firm Resume

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Firm Overview

For more than forty-five years, Nichols Kaster has enjoyed a sterling reputation as a top employment and consumer plaintiffs' litigation firm. We have represented hundreds of thousands of employees and consumers nationwide on a variety of legal issues arising under both state and federal laws.

The Firm's National **Wage and Hour** team represents employees in class and collective actions seeking to recover unpaid wages in circumstances where employers misclassify workers or otherwise fail to compensate them for all hours worked, pursuant to minimum wage and overtime rates, or as required by contract. The Firm also represents groups of employees seeking to recover unpaid commissions and unlawfully pooled tips.

Nichols Kaster represents people who have endured **discrimination**, who have had their **civil rights** violated, and who have suffered other unfair conditions and treatment in a variety of settings, including as a worker, consumer, student, new immigrant, and person incarcerated. The Firm's employment group is also dedicated to assisting individual employees in Minnesota and surrounding states with a variety of legal needs, including addressing discrimination; harassment; retaliation; accommodation and leave issues; contract, severance, and non-compete disputes; as well as defending against licensure complaints.

The Firm also assists employees and retirement plan participants in protecting their **401(k) investments and other benefits**. Nichols Kaster challenges breaches of fiduciary duty relating to

excessive fees, underperforming funds, imprudently managed accounts, and failure to properly pay benefits.

Nichols Kaster is dedicated to protecting **consumer rights**. Over the years, the Firm has represented consumers with a variety of violations, primarily on a class-wide basis. The Firm led the way in forced-placed flood and hazard litigation and with claims under the Fair Credit and Reporting Act.

Nichols Kaster also represents **whistleblowers and relators** who have "blown

Employee Representation

- Wage & Hour Violations
- 401(k) and Benefit Breaches
- Qui Tam/False Claims
- Wage Fixing
- Equal Pay Violations
- Harassment
- Discrimination
- Retaliation
- Medical leave
- Failure to Accommodate
- Federal Railway Safety Act Violations
- Breach of Contract
- Severance
- Non-Compete Agreements
- Defamation

Consumer Representation

- Forced-Placed Insurance
- Credit Reporting
- Improper Background Checks
- Student Loans
- Predatory Lending
- Interest Overcharges and Misapplication of Loan Payments
- Billing Practices
- Deceptive Practices
- Debt Collection Violations

the whistle” on illegal activity. These cases involve the reporting of possible government fraud, mishandling of toxic substances, violations of tax or securities laws, discrimination in education, failure to provide access to public facilities, and more. Nichols Kaster represents individuals who have brought claims on behalf of the government against entities who have defrauded the government under the False Claims Act (also known as “qui tam” lawsuits).

No matter the type of claim, Nichols Kaster helps everyday people seek redress against big corporations.

Accolades

The NATIONAL TRIAL LAWYERS AND ALM have named Nichols Kaster, PLLP the Employment Rights Law Firm of The Year. According to an ALM spokesperson,

[T]he lawyers and law firms selected this year from more than 250 submissions have demonstrated repeated success in cutting-edge work on behalf of plaintiffs over the last 15 months. They possess a solid track record of client wins over the past three to five years. The 2020 Elite Trial Lawyers finalists delivered results for clients across a wide range of cases with some of the most difficult sets of facts, very challenging circumstances, often filing uphill battles for years. Many were up against some of the most prominent defense firms on the globe... The winners stood out based on the uniqueness and importance of their cases as well as the results delivered for their clients.

The U.S. NEWS & WORLD REPORT has continued to name Nichols Kaster as a **Best Law Firm®** and honored individual lawyers at the Firm as **Best Lawyers®**, consecutively since 2012. LAW360 has listed Nichols Kaster as a top plaintiffs’ employment law firm, and MINNESOTA LAWYER has declared it one of Minnesota’s top 100 firms. In 2019, nine of Nichols Kaster’s attorneys were named as part of the 500 leading plaintiff employment lawyers on **Lawdragon.com**’s list of the nation’s best employment lawyers. In 2019, nine of Nichols Kaster’s attorneys were named **Super Lawyers®** and eight **Rising Stars** by SUPER LAWYERS MAGAZINE. Steve Smith and Matthew Frank were announced as the 2017 Minnesota Lawyers of the Year. On Martindale Hubbell, the firm has a 5 out of 5 peer rating.

Together the National Law Journal and LAW.COM named Nichols Kaster a top 50 firm for **Elite Trial Lawyers** “that are doing the most creative and substantial work on the plaintiffs side.” *Introducing America’s Elite Trial Lawyers*, THE NAT’L LAW J. (Sept. 8, 2014).

In 2009, Nichols Kaster was ranked as one of the top ten busiest FLSA firms in the country by Litigation Almanac 360, which conducted a study of over 500,000 federal cases and received input from more than 200 law firms. Nichols Kaster was the only plaintiffs’ firm in the top ten.

Judicial Recognition

Nichols Kaster provides employees and consumers with significant results, including substantial settlements, trial victories, and ground-breaking determinations on important legal questions. The Firm's attorneys fight hard for their clients, vigorously litigating complex actions against top national defense firms. Courts have recognized Nichols Kaster's successes and extensive experience and have appointed the Firm as lead or co-lead counsel on hundreds of **class and collective actions**. Below are just a few examples of this recognition.

"...Class Counsel is one of the relatively few firms in the country that has the experience and skills necessary to successfully litigate a complex ERISA action such as this."

The Honorable Judge Michael H. Watson

Karpik v. Huntington Bancshares Inc., No. 2:17-cv-1153 (S.D. Ohio, Feb. 18, 2021).

And it's not inappropriate to say, at this juncture, how deeply appreciative the Court is of the lawyering here, and I'm appreciative of the lawyering in two most important respects. One, there's been outstanding advocacy here. I have, um, wrestled with the matters in dispute, found them most challenging, and counsel has behaved throughout with both high ethics and zeal and true advocacy on the part of their clients, and I don't want that to go without saying I appreciate it. At the same time, and equally important, we sometimes lose track in advocacy of the desirability of resolving differences. You people have proved yourselves skilled negotiators willing to compromise, realistic, and the Court honors that as well.

The Honorable Judge William G. Young

Moitoso v. FMR, LLC, et al., No. 1:18-cv-12122-WGY (USDC MA., Jan. 12, 2021).

Class Counsel displayed skill and determination. It is unsurprising that only a few firms might invest the considerable resources to ERISA class actions such as this, which require considerable resources and hold uncertain potential for recovery.

The Honorable Judge Catherine C. Eagles

Sims v. BB&T Corp., No. 1:15-cv-841 (M.D.N.C., May 5, 2019).

[C]lass counsel achieved a strong result through skillful litigation and settlement negotiation. After filing a detailed complaint and amended complaint, working through a substantial discovery process, litigating a motion to dismiss, and undergoing mediation and settlement discussions, class counsel obtained a settlement of \$14 million and a mandatory request for proposal that will help ensure quality management of class members' 401(k) funds down the road. Regarding quality of representation, the litigation and settlement appear by all measures to be the work of skillful and experienced attorneys with significant expertise in the ERISA context.

The Honorable Judge Nathanael M. Cousins

Johnson v. Fujitsu Tech. & Bus. of Am., Inc., No. 5:16-cv-03698 (N.D. Cal., May 11, 2018).

The high quality of Nichols Kaster's representation strongly supports approval of the requested fees. The Court has previously commended counsel for their excellent lawyering. The point is worth reiterating here. Nichols Kaster was energetic, effective, and creative throughout this long litigation. The Court found Nichols Kaster's briefs and arguments first-rate. And the documents and deposition transcripts which the Court reviewed in the course of resolving motions revealed the firm's far-sighted and strategic approach to discovery . . . Further, unlike in many class actions, plaintiffs' counsel did not build their case by piggybacking on regulatory investigation or settlement . . . The lawyers at Nichols Kaster can genuinely claim to have been the authors of their clients' success.

The Honorable Judge Paul A. Engelmayer

Hart v. RCI Hospital Holdings, Inc., No. 09 Civ. 3043, 2015 WL 5577713 (S.D.N.Y. Sept. 22, 2015)

I want to commend all of you for the excellent work that you did in conjunction with the special master and the court's technical advisor . . . I'm satisfied that this settlement is fair and reasonable given all the risk and expense of further litigation . . .

Honorable Judge Kathryn Vratil

Sibley v. Sprint Nextel Corp., No. 08-cv-2063 (D. Kan. Dec. 20, 2018)

[T]he attorneys at Nichols Kaster, PLLP are qualified, experienced, and competent, as evidenced by their background in litigating class-action cases involving FCRA violations. . . . As noted above, Plaintiffs' attorneys are experienced and skilled consumer class action litigators who achieved a favorable result for the Settlement Classes.

The Honorable Chief Judge Deborah Chasanow

Singleton v. Domino's Pizza, LLC, 976 F. Supp. 2d 665 (D. Md. 2013)

[T]his case's early resolution can partly be attributed to counsel's experience representing thousands of employees in wage and hour cases for thirty years, particularly within the oil and gas industry.

The Honorable Judge Dale Drozd

McCulloch v. Baker Hughes Inteq Drilling Fluids, Inc., No. 1:16-cv-00157 (E.D. Cal. Nov. 2, 2017)

Plaintiffs retained counsel with significant experience in prosecuting force-placed insurance cases, and other courts in this district have appointed them class counsel in force-placed insurance cases . . . Counsel have worked vigorously to identify and investigate the claims in this case, and, as this litigation has revealed, understand the applicable law and have represented their clients vigorously and effectively.

The Honorable Magistrate Judge Laurel Beeler

Ellsworth v. U.S. Bank, N.A., No. C 12-02506, 2014 WL 2734953 (N.D. Cal. June 13, 2014)

Thank you for all of your good work here. I know that it was really an extraordinarily complex case, and so well done.

The Honorable Judge Kathryn Vratil

Harlow v. Sprint Nextel Corp., No. 08-2222 (D. Kan. Dec. 10, 2018)

[Nichols Kaster has] considerable experience in litigating wage and hour class and collective actions.

The award . . . follows efficient effort on the part of Class Counsel to achieve a sizeable recovery for the Class Members.

The Honorable Magistrate Judge Katherine Menendez

Allen v. All Temporaries, Inc., No. 16:cv-04409 (D. Minn. Feb. 14, 2018)

[T]he quality of representation, as evidenced by the substantial recovery and the qualifications of the attorneys, is high. As then District Judge Gerard E. Lynch recognized, Nichols Kaster is "a reputable plaintiff-side employment litigation boutique with a nationwide practice and special expertise prosecuting FLSA cases."

The Honorable Judge Sidney H. Stein

Febus v. Guardian 1st Funding Grp., LLC, 870 F. Supp. 2d 337 (S.D.N.Y. 2012)

*[T]his court finds that counsel possess more than sufficient experience to represent Plaintiffs fairly and adequately in reaching a fair and equitable settlement in this FLSA collective action . . . The parties are represented by **competent and reputable** counsel.*

The Honorable Judge Tony N. Leung
Mayfield-Dillard v. Direct Home Health Care, No. 1:16-cv-3489 (D. Minn., Dec. 18, 2017)

I think it was just some very efficient and good work on the part of the plaintiffs' attorney that brought you to the point [of settlement]."

The Honorable Judge Josephine L. Staton
Urakhchin v. Allianz Asset Mgm't of Am., L.P., No. 8:15-cv-01614 (C.D. Cal. July 27, 2018)

*Counsel's experience in vigorously litigating class/collective wage and hour actions, plus their **experience with this industry** were essential in obtaining this favorable and efficient result.*

The Honorable Magistrate Judge Jonathon E. Hawley
Woods v. Club Cabaret, Inc., 1:15-cv-01213, 2017 WL 4054523 (C.D. IL, May, 17, 2017)

*The settlement was the result of arm's-length negotiations between experienced counsel. Class Counsel is **well known** by this Court for their expertise in wage and hour litigation.*

The Honorable Judge Michael J. Davis
Burch v. Qwest Commc'ns Intl., No. 06-03523 (D. Minn. Sept. 14, 2012)

I want to say that both sides here have performed at an admirable level. And I wish that the lawyers of all cases would perform at your level. I say this to both of you, because you have you have been of assistance to the Court.

The Honorable Judge William Alsup
Hofstetter v. Chase Home Fin., LLC, No. 10-01313 (N.D. Cal. Nov. 7, 2011) (transcript)

*The Court finds that counsel is **competent and capable** of exercising all responsibilities as Class Counsel for the Settlement Class.*

The Honorable Judge Richard H. Kyle
Bible v. Gen. Revenue Corp., 12-CV-1236 (D. Minn. Jan. 7, 2014)

*Over the past two years, Class Counsel has been active in all stages of litigation and has particularly benefitted Plaintiffs through **capable handling of motion practice**. For example, Plaintiffs obtained summary judgment on a key issue involving the Morillion doctrine and defeated summary judgment on Defendants' de minimis defense.*

The Honorable Judge Virginia A. Phillips
Cervantez v. Celestica Corp., No. 07-729, 2010 WL 11465133, *7 (C.D. Cal. Oct. 29, 2010)

*[T]he combined **experience** of Plaintiffs' counsel as well as the fact that employment law, particularly the representation of employees, forms a large part of both the firm and counsel's practice persuades this Court that the law firm of Nichols Kaster, PLLP, and its attorneys Steven Andrew Smith and Anna P. Prakash will more than adequately protect the interests of the Class Members.*

The Honorable Magistrate Judge Tony N. Leung
Fearn v. Blazin' Beier Ranch, Inc., No. 11-743 (D. Minn. Jan. 30, 2012)

*Plaintiffs have shown good cause under Rule 16(b) because Plaintiffs' new counsel has shown the necessary diligence. Plaintiffs brought on Nichols Kaster, an experienced employment law firm of **high repute** as lead counsel in May 2012. Since that time, Plaintiffs have made a concerted effort to comply with this Court's orders and deadlines.*

The Honorable Magistrate Judge Tony N. Leung
Alvarez v. Diversified Main. Sys., Inc., No. 11-3106 (D. Minn. Aug. 21, 2012)

*Plaintiff's counsel are qualified, experienced attorneys that are fully capable of conducting this class action litigation . . . they are highly **qualified, knowledgeable attorneys** that are willing to invest the resources necessary to fully prosecute this case.*

The Honorable Judge Gary Larson
Karl v. Uptown Drink, LLC, No. 27-CV-10-1926 (Minn. Dist. Ct. Nov. 17, 2010)

*Plaintiffs' Counsel are **qualified attorneys** with extensive experience in class action and wage and hour litigation and are hereby appointed as Class Counsel.*

The Honorable Judge Susan Richard Nelson of the U.S.D.C. D. Minn.:

Alvarez v. Diversified Main. Sys., Inc., No. 11-3106 (D. Minn. Feb. 14, 2013) (appointing class counsel and preliminarily certifying the class for settlement purposes).

*However, the difficulty of the legal issues involved [and] the **skill and experience** of Plaintiffs' counsel in FLSA cases . . . make an enhancement of the lodestar amount appropriate in this case.*

The Honorable Judge Thomas D. Schroeder

Latham v. Branch Banking & Trust Co., No. 1:12-cv-00007, 2014 WL 464236 (M.D.N.C. Jan. 14, 2014)

The Court must consider the work counsel has done in identifying or investigating potential claims in the actions, counsels' experience in handling class actions and other complex litigation and claims of the type asserted in the present action, counsels' knowledge of the applicable law, and the resources counsel will commit to representing the class. Fed.R.Civ.P. 23(g)(1)(C). After reviewing the record, the Court is satisfied that the firms of Nichols Kaster, PLLP and Stueve Siegel Hanson LLP satisfy these criteria and will adequately represent the interests of the class as counsel.

The Honorable Judge Kathryn Vratil

Sibley v. Sprint Nextel Corp., 254 F.R.D. 662, 677 (D. Kan. 2008)

*The Arbitrator also notes that the briefs submitted by Claimant's counsel and the performance at the hearing by Claimant's counsel were of a **very high quality**.*

Arbitrator Joel Grossman, Esq.

Green v. CashCall, Inc., JAMS Arbitration No. 1200047225 (JAMS Aug. 22, 2014)

Plaintiffs' counsel are adequate legal representatives for the class. They have done work identifying and investigating potential claims, have handled class actions in the past, know the applicable law, and have the resources necessary to represent the class. The class will be fairly and adequately represented.

The Honorable Judge Susan M. Robiner

Spar v. Cedar Towing & Auction, Inc., No. 27-CV-411-24993 (Minn. Dist. Ct. Oct. 16, 2012)

[Defendant] doesn't question whether Plaintiffs are represented by qualified and competent counsel, and it's obvious that they are. Plaintiffs' are represented by a national law firm, Nichols Kaster, that specializes in employment and class action law.

The Honorable Judge Larry Alan Burns
Norris-Wilson v. Delta-T Grp., Inc., 270 F.R.D. 596 (S.D. Cal. 2010)

Notable Litigation Results

| Settlement Results

In *Moitoso v. FMR LLC*, 1:18-cv-12122 (D. Mass. Jan. 22, 2021), the court granted final approval of the parties' **\$28.5 million** settlement in a case where plaintiffs alleged the defendants breached their fiduciary duties in violation of the Employee Retirement Income Security Act ("ERISA").

In *Intravaia v. National Rural Electric Cooperative Ass'n.*, No. 1:19-cv-00973 (E.D. Va. Feb. 2, 2021), the court granted final approval of the parties' **\$10 million** settlement in a case where plaintiffs alleged the defendants breached their fiduciary duties in violation of ERISA.

In *Karpik v. Huntington Bancshares, Inc.*, 2:17-cv-1153 (S.D. Ohio Feb. 18, 2021), the court granted final approval of the parties' **\$10.5 million** settlement, resolving plaintiffs' claims against defendants under ERISA.

In *Bhatia v. McKinsey & Co., Inc.*, 1:19-cv-01466 (S.D.N.Y. Feb. 17, 2021), the court granted final approval of the parties' **\$39.5 million** settlement for a class of current and former participants in the McKinsey & Company, Inc. Profit-Sharing Retirement Plan and the McKinsey & Company, Inc. Money Purchase Pension Plan.

In *Reetz v. Lowe's Companies Inc.*, 5:18-cv-00075 (W.D.N.C. September 9, 2021), the court granted final approval of the **\$12.5 million** settlement with defendant Lowe's Companies, Inc. for a class of current and former participants in the Lowe's 401(k) Plan.

In *Baker v. John Hancock Life Insurance Co. (U.S.A.)*, 1:20-cv-10397 (D. Mass. Sept. 30, 2021), the court granted final approval of the parties' **\$14 million** settlement in a case where plaintiffs alleged the defendants breached their fiduciary duties in violation of ERISA.

In *Bowers v. BB&T Corp.*, No. 1:15-cv-00732 (M.D.N.C. May 6, 2019), the court granted final approval of the parties' **\$24 million** settlement in a case where plaintiffs alleged the defendants breached their fiduciary duties in violation of ERISA.

In *Moreno v. Deutsche Bank Americas Holding Corp.*, 1:15-cv-09936 (S.D.N.Y. March 1, 2019), the court granted final approval of the parties' **\$21.9 million** settlement in a case where plaintiffs alleged the defendants breached their fiduciary duties in violation of ERISA.

In *Sibley v. Sprint Nextel Corp.*, No. 08-cv-2063 (D. Kan. Dec. 20, 2018), the court granted final approval of a commissions settlement for retail store sales employees totaling **\$30.5 million**.

In *Clark v. Oasis Outsourcing Holdings Inc.*, No. 9:18-cv-81101 (S.D. Fla. Dec. 20, 2018), the court granted final approval of the parties' **\$5.9 million** settlement in a case where plaintiffs alleged the defendants breached their fiduciary duties in violation of ERISA.

In *Harlow v. Sprint Nextel Corp.*, No. 08-2222 (D. Kan. Dec. 10, 2018), the court granted final approval of a commissions settlement of **\$3,650,000** for business channel sales employees.

In *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 8:15-cv-01614 (C.D. Cal. July 30, 2018), the court granted final approval of the parties' **\$12 million** settlement in a case where plaintiffs allege the defendants breached their fiduciary duties in violation of ERISA.

In *Johnson v. Fujitsu Technology Business of America, Inc.*, No. 5:16-cv-03698 (N.D. Cal. May 11, 2018), the court granted final approval of the parties' **\$14 million** settlement, and approved a class of current and former participants in the Fujitsu Group Defined Contribution and 401(k) Plan

In *Vongkhamchanh v. All Temporaries Midwest, Inc.*, 17:cv-00976 (D. Minn. Apr. 27, 2018), the court approved a settlement for health care workers who would receive over **84% of their unpaid overtime wages**, explaining that the Firm's "considerable experience litigating wage and hour class and collective actions, and informed opinions of the fairness of the settlement" provided support for approval of the hybrid state and federal action.

In *Main v. American Airlines, Inc.*, 4:16-cv-00473 (N.D. Tex. Feb. 21, 2018), the court granted final approval of the parties' **\$22 million** settlement for a class of current and former participants in the American Airlines, Inc. 401(k) Plan.

In *Allen v. All Temporaries, Inc.*, No. 16:cv-04409 (D. Minn. Feb. 14, 2018), the court granted final approval of a Rule 23 class action and FLSA collective action for settlement of home health workers' overtime claims. The court noted that "Class Members will recover over **99% of their unpaid overtime wages** after the deduction for attorneys' fees, costs, and a class-representative service payment."

In *Mayfield-Dillard v. Direct Home Health Care.*, No. 1:16-cv-3489 (D. Minn. Dec. 18, 2017) the court approved the parties' joint motion for settlement approval finding that the settlement was a **substantial benefit** to the collective as the eligible individuals who accept the settlement will receive all their alleged overtime wage loss. The court found that "counsel possess more than sufficient experience to represent Plaintiffs fairly and adequately in reaching a fair and equitable settlement in this FLSA collective action" and that "[t]he parties are represented by competent and reputable counsel."

In *McCulloch v. Baker Hughes Inteq Drilling Fluids, Inc.*, No. 1:16-cv-00157 (E.D. CA, Nov. 22, 2017), the court approved the settlement finding that **\$3,000,000** was fair and reasonable and reflected

a settlement payoff of 92% of the estimated potential value of the class members' claims. The judge commended Nichols Kaster stating, "[T]his case's early resolution can partly be attributed to counsel's experience representing thousands of employees in wage and hour cases for thirty years, particularly within the oil and gas industry."

In *Andrus v. New York Life Ins. Co.*, 1:16-cv-05698 (S.D.N.Y. June 15, 2017), the court granted final approval of the parties' \$3,000,000 settlement in a case where plaintiffs alleged that the defendants breached their fiduciary duties in violation of ERISA.

In *Henderson v. 1400 Northside Drive, Inc.*, No. 1:13-cv-03767 (N.D. Ga. Mar. 17, 2017), the Firm achieved a \$1,360,000 settlement on the eve of trial on behalf of 37 male exotic dancers who were misclassified as independent contractors and required to pay to work through the imposition of mandatory house fees, fines, and tip-outs of other workers.

In *Vaughan v. M-Entermt Props., LLC*, No. 1:14-CV-914 (N.D. Ga. May 16, 2017), the court approved a \$1,100,000 settlement a week before trial for 28 female exotic dancers who the Court previously found were misclassified as independent contractors and were required to pay to work through fines, fees, and tip-outs to other workers.

In *Febus v. Guardian First Funding Group, LLC*, 90 F. Supp. 3d 240 (S.D.N.Y. Mar. 4, 2015), plaintiffs brought a motion to enforce a wage and hour settlement from which one of the individual defendants defaulted. The court ordered the defendant pay the amount due, imposed an additional thirty percent penalty on the amount due, and awarded interest. The court noted that Nichols Kaster had been "attempting, in vain, to collect," and emphasized that defendant "cannot avoid his contractual obligations because he has decided that the settlement terms no longer suit his interests."

In *Hart v. Rick's Cabaret Int'l, Inc.*, No. 09 Civ. 3043, 2015 WL 5577713 (S.D.N.Y. Sept. 22, 2015), the court granted final approval of a class-wide \$15,000,000 gross settlement, finding the settlement to be fair, reasonable, and adequate and further awarding plaintiffs' counsel's attorneys' fees, expenses, and service awards to the named plaintiffs and discovery participants.

In the consolidated lawsuits of *Casey v. Citibank, N.A.*, No. 5:12-cv-0820 (N.D.N.Y. Aug. 21, 2014) and *Coonan v. Citibank, N.A.*, No. 1:13-cv-00353, 2014 WL 4120599 (N.D.N.Y. Aug. 21, 2014), the court granted final approval of an approximately \$110,000,000 settlement on behalf of settlement classes who were force-placed with flood or hazard insurance by Citibank, N.A. The settlement also provides substantial injunctive relief, forbidding Citibank and its affiliates from accepting commissions or any other form of compensation in connection with force-placed insurance for a period of six years, places limits on the amount of insurance coverage that Citibank may require borrowers to maintain, and requires Citibank to offer class members the opportunity to reduce their flood insurance coverage if Citibank had increased their coverage amount to an amount in excess of the amount required under federal law. The court found the settlement to be "fair, reasonable, and adequate, in the best interests of the Settlement Classes" and overruled nine objections.

In *Bible v. General Revenue Corp.*, No. 12-cv-01236 RHK (D. Minn. June 27, 2014), the court granted final approval of a \$1,250,000 settlement on behalf of approximately 134,000 class members, more than double the statutory cap for a Fair Debt Collection Practices Act class action.

In *Farmer v. Bank of America, N.A.*, No. 5:11-cv-00935 (W.D. Tex. Oct. 18, 2013), the court granted final approval of the parties' multi-million-dollar settlement with significant prospective injunctive relief, finally certifying a class of 25,000 Texas mortgagors who had been sent letters requesting proof of hazard insurance in violation of the language of their deeds of trust, and appointing Nichols Kaster as class counsel.

In *Singleton v. Domino's Pizza, LLC*, No. 8:11-cv-01823 (D. Md. Oct. 2, 2013), the court approved the parties' \$2,500,000 million settlement for a class of over 50,000 under the Fair Credit Reporting Act in a case where plaintiffs alleged that the defendant employer had improperly procured consumer reports on employees and applicants and had failed to comply with the pre-adverse action notice requirements of the Act.

In *Ulbrich v. GMAC Mortgage*, No. 11-CIV-62424, 2013 WL 8692404 (S.D. Fla. May 10, 2013), the court granted final settlement approval and appointed Nichols Kaster as class counsel for a 2,000+ nationwide class. The case involved claims against GMAC Mortgage, LLC and Balboa Insurance Services, Inc. relating to force-placed wind insurance.

In *Eldredge v. City of Saint Paul*, No. 09-2018 (D. Minn. Aug. 29, 2011), plaintiff Eldredge reached a settlement of his case that was the second largest paid by the City of Saint Paul in an employment lawsuit.

In *Hofstetter v. JPMorgan Chase Bank, N.A.*, No. C- 10-01313, 2011 WL 1225900 (N.D. Cal. Mar. 31, 2011), Nichols Kaster was appointed class counsel for four classes encompassing approximately 40,000 mortgagors against Chase Bank. In the same case, Nichols Kaster secured an approximately \$10,000,000 settlement for the classes. *Hofstetter*, 2011 WL 5545912 (N.D. Cal. Nov. 14, 2011).

| Appellate Achievements

In *Oman v. Delta Air Lines, Inc.*, 2021 WL 351960 (9th Cir. Feb. 2, 2021) and the companion case *Ward v. United Airlines, Inc.*, 2021 WL 345578 (9th Cir. Feb. 2, 2021), the Ninth Circuit held that California's wage statement and pay timing requirements apply to flight attendants who are based at California airports, rejecting the airlines' argument that compliance with these state laws would impermissibly burden interstate commerce. This ruling followed a decision from the California Supreme Court on certified questions, which held that California's wage statement and pay timing statutes apply to interstate employees who work less than 50% of their time in any one state if the employee's base of operations is in California. *See Oman v. Delta Air Lines, Inc.*, 9 Cal. 5th 762 (2020); *Ward v. United Airlines, Inc.*, 9 Cal. 5th 732 (2020).

In *Brotherston v. Putnam Investments, LLC*, 907 F.3d 17 (1st Cir. 2018), the First Circuit reversed the district court's grant of defendants' directed verdict motion, holding that plaintiffs had met their burden of proving loss causation, and that plaintiffs' damages model constituted a viable measurement of the losses suffered by Putnam's employees as a result of defendants' fiduciary breaches. The defendant filed a writ of certiorari to the U.S. Supreme Court, and in *Putnam Investments, LLC v. Brotherston*, No. 18-926, 2020 WL 129535 (U.S. Jan. 13, 2020), the Supreme Court denied defendants' petition. The case is remanded to the district court for continued trial proceedings under the First Circuit's holding that the burden to prove causation is on defendants and plaintiffs presented sufficient evidence of losses to the plan as a result of defendants' mismanagement.

In *Ray v. County of Los Angeles*, 935 F.3d 703 (9th Cir. 2019), the Ninth Circuit ruled for the plaintiffs on two distinct issues. First, the Court upheld the District Court's ruling that the County of Los Angeles was not entitled to Sovereign Immunity as an arm of the state for its role in implementing the In-Home Supportive Services program for homecare workers in Los Angeles County. In so holding, the Court declined to overturn long-standing Ninth Circuit precedent outlining the "arm of the state" doctrine, and it determined that, under the existing five-factor test, four of the factors weighed against immunity for the County. In the second part of its ruling, the Court reversed the District Court's holding regarding the effective date of Department of Labor regulations governing homecare workers employed by third parties, holding that the regulations at issue were effective January 1, 2015, despite industry challenges to the regulations that were successful at the district court level but ultimately unsuccessful on appeal.

In *Wingate v. Metropolitan Airport Commission* A19-0226 (August 19, 2019), Wingate appealed the district court's summary judgment finding in favor of Metropolitan Airport Commission (MAC) dismissing the whistleblower claim. The court of appeals reversed the district court's decision ruling the evidence presented by Wingate including his positive performance reviews, his supervisor's remarks, MAC's promotion patterns, and a sergeant's similar report of retaliatory conduct support an inference that Wingate's engagement in protective activity was the true reason that MAC did not promote him to sergeant, thus raising a material fact dispute on the issue of pretext.

In *Moore v. City of New Brighton*, A18-2111, (July 29, 2019), the parties filed cross appeals where Moore appealed the district court's summary judgment decision and the city appealed the district court and the Court of Appeals subject-matter jurisdiction over the case. In a published decision, the Minnesota Court of Appeals reversed the district court's summary judgment decision, finding that the evidence showing the city maintained the administrative, home-bound leave for a period so long and so inconsistent with its purported reason for commencing the leave creates a material fact dispute as to whether the city's actions "penalized" the sergeant under the Minnesota Whistleblower Act and whether the city's reason is pretextual. Further, both the district court and the court of appeals rejected the city's jurisdictional argument and held that both courts have subject-matter jurisdiction over Moore's claim under the Minnesota Whistleblower Act.

Frost v. BNSF Railway, Co., 914 F.3d 1189 (9th Cir. 2019), was tried to a jury in Montana in December 2016. Mr. Frost alleged that he was retaliated against when BNSF terminated his

employment after he reported suffering from PTSD. Mr. Frost was diagnosed with PTSD after he was nearly struck by an oncoming train while repairing a section of the track after his supervisor released track authority but failed to inform him and his fellow crew members. Pursuant to the Defendant's request, the jury was provided an honest belief instruction and a defense verdict resulted. Mr. Frost appealed, arguing that the instruction was error because it conflicted with the clear language of the Federal Railway Safety Act ("FRSA") and granted the jury a short-cut to rule for BNSF while ignoring evidence of retaliation. The Ninth Circuit agreed. In a unanimous decision, the Ninth Circuit definitively held there was no requirement that FRSA plaintiffs separately prove discriminatory intent under the FRSA's contributing factor standard, and thus the instruction was error. The Ninth Circuit reversed the trial verdict and remanded for a new trial.

In *McKeen-Chaplin v. Provident Savings Bank, FSB*, 862 F.3d 847 (9th Cir. 2017), the Ninth Circuit reversed the district court's grant of summary judgment to the defendant, finding that the defendant's mortgage underwriters did not fit within the administrative exemption to the Fair Labor Standards Act and remanding for judgment in the plaintiffs' favor on the issue.

In *Clark v. Centene Co. of Texas, L.P.*, 656 F. App'x 688 (5th Cir. 2016) (per curiam), the U.S. Court of Appeals for the Fifth Circuit affirmed a lower court decision that appeals nurses do not fall within the administrative or professional exemptions of the FLSA overtime requirements.

In *Carter v. HealthPort Technologies, LLC*, 822 F.3d 47 (2d Cir. 2016), the U.S. Court of Appeals for the Second Circuit vacated and remanded the district court's dismissal of plaintiff's complaint, finding that plaintiff's had Article III standing to bring this action regarding the excessive fees for providing copies of plaintiffs' medical records charged by defendants, and stating that "because the complaint alleged that each name plaintiff "through [her or his] counsel" had "paid" the charges demanded for the records, and that the "ultimate expense" was borne by the plaintiffs, the complaint plausibly alleged that plaintiffs, as principals acting through their agents, had been injured by the alleged overcharges."

In *Monroe v. FTS USA, LLC*, 815 F.3d 1000 (6th Cir. 2016), the U.S. Court of Appeals for the Sixth Circuit upheld the lower court's denial of defendant's motion to decertify the collective and affirmed the trial verdict in favor of plaintiffs. The Sixth Circuit ruled that Plaintiff's presentation of representative testimony was appropriate at trial for proving liability for the collective and estimated average approach to calculating damages.

In *Bible v. United Student Aid Funds, Inc.*, 799 F.3d 633 (7th Cir. 2015), *reh'g. en banc denied*, 807 F.3d 839 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 1607 (2016), the U.S. Court of Appeals for the Seventh Circuit reversed the district court's dismissal of plaintiff's complaint against a student loan guarantor for wrongfully charging collection fees on a defaulted student loan, finding that plaintiff's claims for breach of contract and for violations of the RICO Act were not preempted by the Higher Education Act, and stating that "a guaranty agency may not impose collection costs on a borrower who is in default for the first time but who has timely entered into and complied with an alternative repayment agreement."

In *Perez v. Mortgage Bankers Assoc.*, 135 S. Ct. 1199 (2015), the United States Supreme Court ruled unanimously in favor of a group of employees represented by Nichols Kaster. The Court upheld a Department of Labor interpretation granting minimum wage and overtime compensation for mortgage loan officers.

In *Karl v. Uptown Drink, LLC*, 835 N.W.2d 14 (Minn. Aug. 14, 2013), the Minnesota Supreme Court ruled that under Minnesota law, employers cannot require employees to reimburse them from their tips for items such as cash register shortages, unsigned credit card receipts, and customer walk outs. The Court also found that employees do not have to show that because of the deductions their wages fell below the minimum wage in order to prove a violation of Minn. Stat. § 181.79. In this case, the plaintiffs were over 750 employees who worked at three different bars/night clubs in Minneapolis. At a jury trial in 2011, the plaintiffs prevailed on their record-keeping and certain minimum wage claims, but lost on the unlawful deductions claims. Nichols Kaster appealed the deductions issue, and took it all the way to the Minnesota Supreme Court, where the Court agreed with plaintiffs and instructed the lower court to enter judgment on the plaintiffs' behalf on this claim.

In *Boaz v. Federal Express Customer Info. Services, Inc.*, 725 F.3d 603 (6th Cir. 2013), the U.S. Court of Appeals for the Sixth Circuit ruled that plaintiff, a FedEx project manager who had claimed that FedEx had failed to pay her overtime wages, in violation of the Fair Labor Standards Act, and paid her less than male coworkers performing the same job, in violation of the Equal Pay Act, could pursue her overtime and gender discrimination claims. The federal laws at issue provide employees three years to file a lawsuit and FedEx had plaintiff sign an application which stated that lawsuits had to be brought within 6 months or claims were lost. The lower court had dismissed plaintiff's claims, citing the application. The Sixth Circuit unanimously sided with plaintiff, reversed the dismissal and remanded the case for trial.

In *Calderon v. GEICO General Insurance Co.*, 809 F.3d 111 (4th Cir. 2015), the U.S. Court of Appeals for the Fourth Circuit affirmed a district court's grant of affirmative summary judgment in favor of approximately one hundred current and former Security Investigators, finding that they were not covered by the administrative exemption. Specifically, the Appellate Court found that plaintiffs' primary job duty was not the performance of work directly related to general business operations.

In *Lass v. Bank of America, N.A.*, 695 F.3d 129 (1st Cir. 2012), the U.S. Court of Appeals for the First Circuit struck down the district court's ruling that had dismissed plaintiff's claims. The court found that plaintiff's allegations regarding excessive flood insurance and improper kickbacks had been properly alleged and that the case should proceed.

In *Kasten v. Saint-Gobain Performance Plastics Corp.*, 131 S. Ct. 1325 (2011), the U.S. Supreme Court found in favor of the plaintiff and held that "an oral complaint of a violation of the Fair Labor Standards Act is protected conduct under the [Act's] anti-retaliation provision." This was a huge win for employees all over the country, as the Supreme Court's decision set a new FLSA anti-retaliation standard.

| Trial Verdicts and Arbitration Awards

In *Cummings v. Chevron Corp.*, JAMS Case No. 1100086694 (June 8, 2018), an arbitrator issued a final award in the amount of \$511,533.95 in favor of Donnie Cummings, a Well Site Supervisor who worked for Chevron. The arbitrator ruled that Chevron misclassified Cummings as an independent contractor and also misclassified him as exempt from the overtime provisions of state and federal law. The arbitrator awarded Cummings \$284,270.15 in unpaid overtime, liquidated damages, and meal and rest period premiums, and awarded attorneys' fees and costs in the amount of \$227,263.80.

In *Kaiser v. Gortmaker et al.*, No. 15-cv-01030, (District of South Dakota, Dec. 21, 2017) following a five-day trial in Aberdeen, South Dakota, a six-person jury returned a \$1.2 million verdict in favor of former South Dakota Division of Criminal Investigation agent, Laura Zylstra-Kaiser. At the conclusion of trial, the jury found in favor of Kaiser on both her retaliation and gender discrimination claims. The jury awarded Kaiser \$311,812.00 in lost wages, \$498,929.00 in lost retirement benefits, and \$400,000.00 in emotional distress damages.

In *Clark v. Centene Company of Texas, LP*, 104 F. Supp. 3d 813 (W.D. Tex. 2015), upon the conclusion of a bench trial, the court awarded damages to a collective action of utilization review nurses. The court found that plaintiffs submitted sufficient evidence to create a just and reasonable inference as to overtime hours worked by the collective and awarded liquidated damages. This victory followed the court's order on the parties' cross-motions for summary judgment and defendant's motion for decertification last year, holding that the defendant misclassified its utilization nurses. 44 F. Supp. 3d 674 (W.D. Tex. 2014). The court ruled that plaintiffs are not exempt from the Fair Labor Standards Act's overtime laws and are thus eligible for overtime pay. The court further held that defendant's claim that each plaintiff's claim would need to be analyzed individually to determine liability and damages was without merit.

In *Rhodes v. CashCall*, JAMS Ref. No. 1200047475, *Garcia v. CashCall*, JAMS Ref. No. 1200047422, *Good v. CashCall*, JAMS Ref. No. 1200047220, and *Green v. CashCall, Inc.*, JAMS Ref. No. 1200047225 (2014), a JAMS arbitrator ruled that CashCall misclassified Rhodes and Green, loan processors, and Garcia and Good, underwriters, as exempt from the overtime requirements of California and federal law. The arbitrator awarded Rhodes \$15,000 in unpaid overtime plus an additional \$15,000 in liquidated damages, along with \$88,179 in attorneys' fees and costs, Green was awarded \$15,067.72 in damages, as well as \$54,165.50 in attorneys' fees and costs. The arbitrator also awarded Garcia \$10,000 in unpaid overtime plus an additional \$10,000 in liquidated damages, along with \$98,709 in attorneys' fees and costs, and Good was awarded \$43,631 in unpaid overtime, as well as \$50,627.49 in attorneys' fees and costs.

In *Walsten v. Shank Power Products Co., Inc.*, No. 19HA-CV-12-1094 (Minn. Dist. Ct., Sept. 9, 2013), a minority shareholder case, an advisory jury returned a \$700,000 verdict for the plaintiff, finding for him on his claims for breach of fiduciary duty and violation of his reasonable expectation of continuing employment. The trial judge subsequently issued an order sustaining the \$700,000 advisory verdict and awarding \$200,000 in attorneys' fees.

In *Monroe v. FTS USA, LLC*, No. 2:08-cv-21 (W.D. Tenn. Oct. 2011), the jury found that defendants willfully violated the Fair Labor Standards Act by failing to pay nearly 300 cable installers for all overtime hours worked. The district court entered judgment with damages for the plaintiffs.

| Summary Adjudication

In *Mass v. Regents of the University of California*, No. RG17879223 (Cal. Super. Ct., Alameda Cnty. Nov. 19, 2021), the court denied defendants' motion for summary judgment, finding that there were triable issues of material fact as to whether defendants as trustee/plan administrator owed a duty to the UCRP beneficiaries and the contours of any such duty, whether defendants breached the alleged owed duty, and whether any breach by defendants caused members of the class to suffer any injury.

In *Deluca v. Farmers Ins. Exchange*, 386 F.Supp.3d 1235 (N.D. Cal. 2019), the court granted in part Plaintiffs' affirmative summary judgment motion and denied Defendant's summary judgment motion. The court found that Farmers could not satisfy either duties prong of the administrative exemption. As a result, the court determined that plaintiffs and class members were misclassified as exempt under state and federal law and are entitled to overtime premiums.

In *Rego v. Liberty Mutual Managed Care, LLC*, 367 F. Supp. 3d 849 (E.D. Wis. 2019), the court found as a matter of law that a defendant insurance company misclassified its utilization management nurses as exempt from overtime protections under the administrative and the professional exemptions. The plaintiffs primary job duty consisted of reviewing medical authorization requests against well-established guidelines to determine whether the criteria for medical necessity are satisfied. The court held in part that this work involved the performance of routine mental work, likened to inspection-type duties as opposed to bedside nursing.

In *Henderson v. 1400 Northside Drive, Inc.*, No. 1:13-cv-3767, 2016 WL 3125012 (N.D. Ga. June 3, 2016), the district court granted in part Plaintiffs' affirmative motion for summary judgment on the issues of: (1) whether the owner qualified as a joint employer, (2) the viability of the defendants' counterclaims, and (3) whether minimum wage damages includes recovery for fines, fees, and tipouts paid by the employee to the employer. In an earlier order, the court also the court granted plaintiffs' motion for partial summary judgment on the issues of: (1) the creative professional exemption, finding that defendants misclassified adult entertainers as exempt from the overtime and minimum wage requirements of the FLSA; and (2) offset, finding that defendants could not offset their minimum wage obligations with tips paid by customers to adult entertainers. 110 F. Supp. 3d 1318 (N.D. Ga. 2015).

In *Vaughan v. M-Enterm't Props., LLC*, No. 1:14-CV-914, 2016 WL 7365201 (N.D. Ga. Mar. 15, 2016), the district court granted in part exotic dancer plaintiffs' affirmative motion for summary judgment on the issues of (1) whether entertainers qualify as employees under the FLSA, (2) whether related entity defendants qualified as joint employers, (3) the viability of the defendants' offset defense, and (4) the viability of the defendants' counterclaims.

In *Heaton v. Social Finance, Inc.*, No. 3:14-cv-05191-the, 2015 WL 6003119 (N.D. Cal. Oct. 15, 2015), the court denied defendants' motion for summary judgment, finding that there were triable issues of fact as to whether defendants had violated the statutes at issue, whether the alleged violations were willful, and finding that defendants had failed to meet their burden as to plaintiffs' claims under the California Unfair Competition Law.

In *Hart v. Rick's Cabaret Int'l, Inc.*, the court denied decertification of the FLSA Collective and Rule 23 Class of approximately 2,300 adult entertainers at Rick's Cabaret in New York and granted, in part, plaintiffs' affirmative motion for partial summary judgment on damages, finding that no reasonable jury could conclude the Class was owed less than \$10.8 million. No. 09-Civ-3043, 2014 WL 6238175 (S.D.N.Y. Nov. 14, 2014). This significant ruling came approximately one year after the court ruled that the Class and Collective Members are employees as a matter of law under the FLSA and New York Labor Law and that Rick's Cabaret violated both laws by failing to pay wages. The court further held that the money entertainers received from Rick's Cabaret's customers were tips and not service charges that could offset wage obligations and that Rick's Cabaret violated New York Labor Law by charging Class and Collective Members fines and fees as a condition of employment. 967 F. Supp. 2d 901 (S.D.N.Y. Sept. 10, 2013).

In *Wolfram v. PHH Corp.*, No. 1:12-cv-599, 2014 WL 2737990 (S.D. Ohio June 17, 2014), the court granted plaintiffs' motion for partial summary judgment, finding that the assigned real estate offices from where plaintiffs, who are current or former loan officers employed by defendant, worked where all serving as the "employer's place of business" under the outside sales exemption of the Fair Labor Standards Act. This established that an employee may work from multiple sites, not technically owned or operated by the employer, and each of those sites can be considered the "employer's place of business" under the regulations, therefore any work performed at these sites is not "outside" work under the outside sales exemption.

In *MacIntyre v. Lender Processing Services, Inc.*, No. 3:13-cv-89-J-25JBT (M.D. Fla. Apr. 29, 2014), the court granted affirmative summary judgment to plaintiff (a Minnesota resident) on a breach of contract claim for an unpaid bonus and used its discretion to enforce Minnesota state law for defendant's (a Florida company) failure to promptly pay wages. The court simultaneously denied defendant's motion to dismiss plaintiff's gender discrimination claims ruling, in part, that defendant's actions toward plaintiff constituted direct evidence of gender discrimination.

In *Huff v. Pinstripes, Inc.*, 972 F. Supp. 2d 1065 (D. Minn. 2013), the court ruled in plaintiffs' favor on cross-motions for summary judgment, finding that Pinstripes had violated the Minnesota Fair Labor Standards Act's provisions on tip-pooling by requiring its servers to share their tips with "server assistants," who act as servers' support staff at the restaurant.

In *Ernst v. DISH Network, LLC*, No. 12-8794-LGS (S.D.N.Y. Sept. 22, 2014), the court ruled on plaintiff's and two of the defendants' cross-motions for partial summary judgment, granting plaintiff's motion and denying defendants' motion. The court ruled that the summary report received by two of the defendants was a "consumer report" for purposes of the Fair Credit Reporting Act because it

“communicated information bearing on Plaintiff’s character, general reputation, or mode of living, and the information was collected and expected to be used for ‘employment purposes.’”

In *Kirsch v. St. Paul Motorsports, Inc.*, No. 11-cv-02624, 2013 WL 1900620 (D. Minn. May 7, 2013), the court denied defendants’ motion for summary judgment in its entirety, finding that plaintiff had put forth sufficient evidence for a prima facie claim of age discrimination.

In *Bollinger v. Residential Capital*, 863 F. Supp. 2d 1041 (W.D. Wash. 2012), the court granted plaintiffs’ motion for partial summary judgment, finding that defendants misclassified the underwriter plaintiffs under the administrative exemption, and rejected defendants’ argument that there was no evidence of willful violation of the FLSA, stating that “a jury could conclude that Defendants knowingly and recklessly” misclassified plaintiffs.

In *Clincy v. Galardi South Enterprises, Inc.*, 808 F. Supp. 2d 1326 (N.D. Ga. 2011), the court granted plaintiffs’ motion for partial summary judgment on the issue of misclassification, finding that defendants misclassified adult entertainers as independent contractors and that the entertainers were in fact employees covered by the FLSA.

| Class and Collective Certification

In *Brayman v. Keypoint Government Solutions*, No. 18-cv-550-WJM-NRN Dkt 365 (D. Colo. March 31, 2022) the court granted Plaintiffs’ Amended Motion for Final Certification of the FLSA Collective and Plaintiffs’ Amended Motion for Rule 23 Class Certification and denied Defendant’s Amended Motion for Decertification. The court found that the material terms of Plaintiffs’ employment, including policies and practices to which they were uniformly subjected to, as well as the similarities of the Plaintiffs’ job functions, weighed in favor of finding Plaintiffs to be similarly situated for purposes of maintaining an FLSA collective. Further, Plaintiffs met all four requirements of a Rule 23 class and the court found that all class members’ claims arise from the same course of conduct favoring certification and granted Plaintiffs’ Motion for Rule 23 Class Certification.

In *MacDonald, et al. v. CashCall, Inc., et al.*, No. 2:16-cv-02781-MCA-ESK, Dkt 102 (D. N.J. Oct. 31, 2019) the court granted Plaintiffs’ motion for class certification and appointed Nichols Kaster, PLLP class counsel in case involving more than 11,000 borrowers where Defendants are alleged to have violated usury law, the New Jersey Consumer Fraud Act, and RICO.

In *Brotherston v. Putnam Investments, LLC*, No. 1:15-cv-13825 (D. Mass. Dec. 13, 2016), the court certified a class of current and former participants in the Putnam Retirement Plan and appointed Nichols Kaster as class counsel. Plaintiffs alleged that Defendants mismanaged the plan and engaged in prohibited transactions in breach of their fiduciary duties under ERISA.

In *Harris v. Union Pac. R.R. Co.*, 329 F.R.D. 616, 620 (D. Neb. 2019), Nichols Kaster won class certification and was appointed class counsel for a class of over 7,000 railroad employees who plaintiffs alleged had been removed from their jobs in violation of the Americans with Disabilities Act

In *Ayala v. GEICO*, No. 7:18-cv-03583 (Dec. 5, 2018), the district court certified a collective class under the FLSA for Auto Adjuster Trainees who alleged they were not paid for all their overtime worked during training.

In *Bell v. Michigan Civil Service Commission and Jan Winters, State Personnel Director*, No. 17-003861-CV (Mich. Cir. Ct., Nov. 17, 2018), Nichols Kaster won class certification and was appointed class counsel for a class of over 600 African-American applicants who plaintiffs alleged had been discriminated against by defendants through the use of their entry-level law enforcement examination.

In *Dunham-Sunde v. The Copper Hen Cakery*, No. 27-CV-17-17288 (Minn. Dist. Ct., Aug. 28, 2018), the court certified a class of over one hundred restaurant servers to pursue claims against a local restaurant for its unlawful tip-sharing practices in violation of the Minnesota Fair Labor Standards Act.

In *Deluca v. Farmers Ins. Exch.*, No. 17-cv-00034, 2018 WL 1981393 (N.D. Cal. Feb. 27, 2018), the court granted class certification of California state law overtime claims and related claims for a group of special investigators who allege that Farmers misclassified them as exempt from overtime. The court previously granted conditional certification of the plaintiffs' FLSA overtime claims.

In *Wildman v. American Century Serv., LLC*, 2017 WL 6045487 (W.D. Mo. Dec. 6, 2017), the court certified a class of current and former participants in the American Century Retirement Plan and appointed Nichols Kaster as class counsel. Plaintiffs alleged that defendants breached their fiduciary duties and engaged in prohibited transactions.

In *Ganci v. MBF Inspection Svcs., Inc.*, 323 F.R.D. 249 (S.D. Ohio 2017), the court granted class certification of a class of pipeline inspectors who worked for MBF and were paid based on a day rate, who sought unpaid overtime under Ohio state law. The court had previously granted conditional collective certification of the plaintiffs' FLSA overtime claims. 2016 WL 5104891 (S.D. Ohio Sept. 20, 2016).

In *Moreno v. Deutsche Bank Americas Holding Corp.*, 1:15-cv-09936, 2017 WL 3868803 (S.D.N.Y. Sept. 5, 2017), the court certified a class of current and former participants in the Deutsche Bank Matched Savings Plan and appointed Nichols Kaster as class counsel. Plaintiffs alleged that Defendants mismanaged the plan in breach of their fiduciary duties under ERISA.

In *Sims v. BB&T Corp.*, No. 1:15-cv-732, 2017 WL 3730552 (M.D.N.C. Aug. 28, 2017), the district court certified a class of current and former participants in the BB&T Corporation 401(k) Savings Plan and appointed Nichols Kaster as co-class counsel. Plaintiffs alleged that Defendants breached their fiduciary duties to the Plan.

In *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 8:15-cv-01614, 2017 WL 2655678 (C.D. Cal. June 15, 2017), the district court certified a class of current and former participants in the Allianz Asset Management of America L.P. 401(k) Savings and Retirement Plan and appointed Nichols Kaster as class

counsel. Plaintiffs alleged that defendants improperly managed plan assets and breached their fiduciary duties.

In *Mayfield-Dillard v. Direct Home Health Care, Inc.*, No. 0:16-cv-3489, 2017 WL 945087 (D. Minn. Mar. 10, 2017), the district court granted Plaintiffs' motion for conditional certification, certifying a group of home health care workers who challenged Defendant's practice of paying straight-time only, for overtime hours worked.

In *McQueen v. Chevron*, No. C 16-02089, 2017 WL 8948943 (N.D. Cal. Feb. 21, 2017), the Court granted conditional certification of an FLSA collective for well site managers and drill site managers who performed services for Chevron throughout the country, rejecting Chevron's arguments that the various intermediary staffing companies and differing contractual terms put the workers on different footing.

In *Tamez v. BHP Billiton Petroleum (Americas), Inc.*, No. 5:15-cv-330, 2015 WL 7075971 (W.D. Tex. Oct. 5, 2015), the court granted plaintiffs' motion for conditional certification, conditionally certifying a class of employees alleging violations of the overtime wage provisions of the Fair Labor Standards Act by a multinational corporation that produces major commodities including oil and gas.

In *Miller v. Fleetcor Technologies Operating Co., LLC*, 118 F. Supp. 3d 1351 (N.D. Ga. 2015), the court denied defendant's motion for decertification, agreeing with plaintiffs that each individual claim and the case as a whole should be kept together, allowing plaintiffs to move forward as a collective group.

In *Pearsall-Dineen v. Freedom Mortgage Corp.*, No. 13-cv-06836-JEI-JS, 2014 WL 2873878 (D. N.J. June 25, 2014), the court conditionally certified the Fair Labor Standards Act overtime case as a collective action. The judge's order authorized notice of the lawsuit to be disseminated to all mortgage underwriters who worked for Freedom Mortgage in the last three years, providing them the opportunity to join the lawsuit and to assert their overtime claims against the defendant for failing to pay them overtime hours.

In *Ellsworth v. U.S. Bank, N.A.*, No. C 12-2506-LB, 2014 WL 2734953 (N.D. Cal. June 13, 2014), the court issued a broad class certification ruling on behalf of plaintiff-borrowers who were force-placed with flood insurance. In its order, the court certified multi-state classes of borrowers spanning forty different states to pursue claims against U.S. Bank for breach of their mortgage agreements stemming from U.S. Bank's force-placed insurance practices. In addition, the court separately certified classes of borrowers in California and New Mexico to pursue claims against U.S. Bank and its force-placed insurance vendor, ASIC, for unjust enrichment, unfair business practices, and/or breach of the covenant of good faith and fair dealing.

In *Arnett v. Bank of America, N.A.*, No. 3:11-cv-01372-SI (D. Or. Apr. 17, 2014), the court preliminarily approved a \$31 million settlement for approximately 625,000 class members, the largest common fund settlement ever negotiated in a case involving force-placed flood insurance.

In *Ernst v. DISH Network, LLC*, No. 12-8794-LGS (S.D.N.Y. July 23, 2013), the court appointed Nichols Kaster as interim class counsel for the putative class with claims against Defendant Sterling Infosystems, Inc., finding that Nichols Kaster had “demonstrated it is able fairly and adequately to represent the interests of the putative class.

In *Gustafson v. BAC Home Loan Services, LP*, No. 8:11-cv-00915 (C.D. Cal. Feb. 27, 2013), Judge Josephine Staton Tucker appointed Nichols Kaster as co-lead interim class counsel for multiple putative classes in a force-placed insurance case against Bank of America and other defendants.

In *Spar v. Cedar Towing & Auction, Inc.*, Case No. 27-CV-11-24993 (Minn. Dist. Ct., Oct. 16, 2012), Nichols Kaster won class certification and was appointed class counsel for a class of approximately six thousand Minneapolis consumers who plaintiffs alleged had been charged illegal towing fees by defendant.

| Denial of Motions to Dismiss

In *Carmen v. Health Carousel, LLC*, No. 1:20-cv-313 (DRC) (S.D. Ohio June 17, 2021), the court denied a healthcare recruiting company’s motion to dismiss and strike class allegations of labor trafficking.

In *Fain v. Crouch*, No. 3:20-0740 (RCC) (D. W. Va. May 19, 2021), the court denied defendants’ motion to dismiss and strike class allegations that defendants discriminated against and violated the rights of transgender people by failing to provide gender confirming health care coverage.

In *Padilla v. Caliper Building Systems, LLC et al.*, No. 20-cv-00658 (SRN/KMM) (D. MN, Sep. 21, 2020) the court denied defendant’s motion to dismiss, holding that construction laborers working for a framing subcontractor through a labor broker plausibly alleged facts supporting joint employer status under federal and state law.

In *Jane Doe 1 et al v. Independent School District 31*, No. 20-cv-226(SRN/LIB) (D. MN, August 14, 2020) the court denied defendant’s motion to dismiss, finding that plaintiffs pled sufficient facts to support plausible Title IX, Section 1983, negligence, negligent supervision, and negligent retention claims. Specifically, the court found that the complaint plausibly alleged a duty of care arising from a special relationship between the school district and plaintiffs, taking into account the elevated status of the school official who sexually exploited plaintiffs, the egregiousness of the sexual exploitation that occurred on district-owned devices, and the fact that the district had clear notice. Further, the court found that plaintiffs plausibly alleged that the district’s own conduct created a foreseeable risk of injury to plaintiffs and that the district owed them a duty to prevent the sexual harassment and bullying faced by plaintiffs after the school official’s arrest. Additionally, the court held that the complaint plausibly alleged that the district acted with deliberate indifference, resulting in a hostile education environment and peer harassment under Title IX and Section 1983. Finally, plaintiffs sufficiently alleged a pattern of constitutional violations that put the district on notice that “its employees’ responses to recurring sex discrimination were insufficient to protect Plaintiffs’ constitutional rights.”

In *Intravaia v. National Rural Electric Cooperative Association*, No. 1:19-CV-973, 2020 WL 58276 (E.D. Va. Jan. 2, 2020), the court denied defendants' motion to dismiss in full, holding plaintiffs adequately alleged breaches of fiduciary duty and prohibited transactions under ERISA relating to the administration of the National Rural Electric Cooperative Association's 401(k) plan.

In *Reetz v. Lowe's Companies, Inc.*, No. 518CV00075, 2019 WL 4233616 (W.D.N.C. Sept. 6, 2019), the court denied defendants' motion to dismiss in substantial part, holding plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management of the Lowe's 401(k) plan.

In *Karpik v. Huntington Bancshares Inc.*, No. 2:17-CV-1153, 2019 WL 7482134 (S.D. Ohio Sept. 26, 2019), the court denied defendants' motion to dismiss in substantial part and held that plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management and monitoring of Huntington Bank's 401(k) plan.

In *Belt v. P.F. Chang's*, No. 18-cv-03831 (E.D. Pa. Aug. 15, 2019), the court denied defendant's motion for judgment on the pleadings, holding that the DOL's new interpretation of the FLSA was unreasonable and not subject to deference, confirming that Plaintiffs had stated a claim for minimum wage violations due to P.F. Chang's failing to pay its servers the full minimum wage when they performed related yet untipped labor, such as side work, for more than 20% of their time in a workweek.

In *Nelsen v. Principal Global Investors Trust Co.*, No. 4:18-cv-00115 (S.D. Iowa, Jan. 24, 2019), the court denied defendants' motion to dismiss in substantial part, holding plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management of Principal's collective investment trusts.

In *In re M&T Bank Corp. ERISA Litig.*, No. 16-cv-375, 2018 WL 4334807 (W.D.N.Y. Sept. 11, 2018), the court denied defendants' motion to dismiss in substantial part, holding plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management of the M&T Bank Corporation Retirement Savings Plan.

In *Velazquez v. Massachusetts Fin. Servs. Co.*, 320 F. Supp. 3d 252 (D. Mass. 2018), the court denied defendants' motion to dismiss in substantial part and held that plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management of the Massachusetts Financial Services Company MFSavings Retirement Plan and the Massachusetts Financial Services Company Defined Contribution Plan.

In *Beach v. JP Morgan Chase Bank*, No. 1:17-cv-00563 (S.D.N.Y. Mar. 28, 2018), the court denied defendants' motion to dismiss in substantial part and held that plaintiffs adequately alleged breaches of fiduciary duty under ERISA.

In *Wildman v. American Century Serv., LLC*, 237 F. Supp. 3d 902 (W.D. Mo. 2017), the court denied defendants' motion to dismiss, finding that plaintiffs adequately alleged breaches of fiduciary duty and prohibited transactions by defendants in connection with the American Century Retirement Plan.

In *Johnson v. Fujitsu Technology Business of America, Inc.*, 250 F. Supp. 3d 460 (N.D. Cal. April 11, 2017), the court denied defendants' motions to dismiss, and held that plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management of the Fujitsu Group Defined Contribution and 401(k) Plan.

In *Moreno v. Deutsche Bank Americas Holding Corp.*, 1:15-cv-09936, 2016 WL 5957307 (S.D.N.Y. Oct. 13, 2016), the court denied defendants' motion to dismiss in substantial part and held that plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management of the Deutsche Bank Matched Savings Plan.

In *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 8:15-cv-01614, 2016 WL 4507119 (C.D. Cal. Aug. 5, 2016), the court denied defendants' motion to dismiss in substantial part and held that plaintiffs adequately alleged breaches of fiduciary duty under ERISA relating to the management of the Allianz Asset Management of America L.P. 401(k) Savings and Retirement Plan.

In *Bowers v. BB&T Corporation*, No. 1:15-cv-732-CCE-JEP (M.D.N.C. Apr. 18, 2016), the court denied defendant's motion to dismiss, finding that plaintiff's allegations regarding Employment Retirement Income Security Act ("ERISA") violations related to defendant's management of plaintiffs' 401(k) Savings Plans are sufficient for litigation to move forward.

In *Brotherston v. Putnam Investments, LLC*, No. 1:15-cv-13825, 2016 WL 1397427 (D. Mass. Apr. 7, 2016), the court denied defendant's motion to dismiss, finding that plaintiff's allegations regarding Employment Retirement Income Security Act ("ERISA") violations related to defendant's management of plaintiffs' 401(k) Savings Plans are sufficient for litigation to move forward.

In *Johnson v. Casey's Gen. Stores, Inc.*, 116 F. Supp. 3d 944 (W.D. Mo. 2015), the court denied defendant's motion to dismiss, finding that plaintiff's allegations regarding Fair Credit Reporting Act violations and the willfulness of defendant's conduct sufficient for litigation to move forward.

In *Lengel v. HomeAdvisor, Inc.*, 102 F. Supp. 3d 1202 (D. Kan. 2015), the court denied defendant's motion to dismiss, finding that plaintiff's allegations regarding Fair Credit Report Act violations and the willfulness of defendant's conduct sufficient for litigation to move forward.

In *Holmes v. Bank of America, N.A.*, No. 3:12-cv-00487, 2013 WL 2317722 (W.D.N.C. May 28, 2013), the court denied four motions to dismiss plaintiffs' claims regarding force-placed insurance and allowing the case to proceed.

In *Walls v. JPMorgan Chase Bank, N.A.*, No. 3:11-cv-00673, 2012 WL 3096660 (W.D. Ky. July 30, 2012), a case regarding force-placed flood insurance, the court denied defendant's motion to dismiss, stating that the plaintiff's mortgage agreement did not explicitly provide that the lender's flood insurance requirement could change at will and that Kentucky contracts contain provisions which can impose limits on discretion afforded by a contract, thus rejecting defendant's interpretation of plaintiff's mortgage agreement for purposes of the motion.

| Defeat of Motions to Compel Arbitration

In *Doll House, Inc. v. Tapia*, Nos. 5D16-4235, 5D16-4455 (Fla. DCA Nov. 21, 2017), the Florida District Court of Appeal for the Fifth District affirmed per curiam a trial court ruling denying defendant's motion to compel arbitration. The court of appeals found that the parties never formed a binding agreement, and alternatively that the agreement at issue was unconscionable and therefore unenforceable.

In *Payne v. WBY, Inc.*, 141 F. Supp. 3d 1344 (N.D. Ga. 2015) the court denied defendant's motion to compel arbitration of opt-in plaintiffs in an FLSA conditionally certified collective action. The court held that the defendant's alleged posting of an arbitration agreement on a bulletin board in the breakroom without additional notice to workers of its existence, its terms, or its binding nature was insufficient to establish an offer or acceptance of its terms.

Nichols Kaster Attorneys

| Partner Biographies

James H. Kaster is a Civil Trial Law Specialist who has tried well over 100 cases to verdict or decision. He has also handled many significant cases on appeal, including a successful case in front of the United States Supreme Court (*Kasten v. Saint-Gobain Performance Plastics Corp.*). He was ranked by Chambers USA as number one among plaintiffs' employment lawyers in Minnesota, was named Lawyer of the Year by Best Lawyers in 2012, and 2016, and has been listed by Super Lawyers of Minnesota as one of the top 10 lawyers in the State. Jim's success in the courtroom includes earning many million dollar and multi-million dollar recoveries for plaintiffs. Jim is also a frequent lecturer before local, state, and national organizations on damage recovery and trial skills. He was selected as a Fellow of the American College of Trial Lawyers, a premier professional trial organization in America whose membership is limited to 1% of the trial lawyers in any state or province. He was also selected to be a member of the College of Labor and Employment Lawyers. **Education:** B.A. Marquette University 1976, J.D. Marquette University 1979.

Lucas J. Kaster is a skilled and seasoned trial lawyer focused on aggressive advocacy, creative solutions, and responsiveness to clients. As a member of Nichols Kaster's individual rights team, Lucas represents clients in a wide-range of employment matters, including harassment, retaliation and discrimination claims. Lucas also represents clients in civil rights claims, such as police misconduct and prisoner rights. Over his career, Lucas has tried many cases to verdict or decision. Most recently, Lucas represented a South Dakota law enforcement officer in a retaliation and sexual harassment lawsuit that resulted in a \$1.2 million jury verdict. In a separate lawsuit, Lucas represented four golf course employees who were subject to harassment and retaliation in a court trial that resulted in a plaintiff's verdict and treble damages under the Minnesota Human Rights Act ("MHRA"). Lucas uses this unique trial experience to drive litigation strategy and provide his clients the best possible representation. Lucas is also an experienced appellate advocate. In 2018, Lucas successfully argued before the Ninth

Circuit Court of Appeals in *Michael Frost v. BNSF Railway Co.*, 9:15-cv-000124-DWM. The Ninth Circuit's decision addressed a hotly debated subject under the Federal Railway Safety Act ("FRSA"). The question before the Court was whether the honest belief instruction was proper because the FRSA's contributing factor standard required plaintiffs to separately prove discriminatory intent. In the opinion, the Ninth Circuit definitively held that there is no requirement that FRSA plaintiffs separately prove discriminatory intent, and thus the instruction was error. Due to his experience, Lucas is a well-respected and sought-after speaker. Lucas is a frequent presenter at the ABA's Labor and Employment and Employment Rights and Responsibilities conferences. In February 2019, Lucas also spoke at the College of Labor and Employment Lawyer's Regional Program for the 4th and 11th Circuits in Charleston, South Carolina. Lucas participated in a three-member panel titled: *The #MeToo Movement One Year Later: Where Are We Now?* Lucas is a member Twin Cities Diversity in Practice's Emerging Leaders Group and a contributor to Nichols Kaster's training and marketing committees. **Education:** B.A. Villanova University 2004, J.D. Marquette University Law School 2011.

Paul J. Lukas is one of the co-leaders of the firm's ERISA Class Action Team. Mr. Lukas also has extensive experience litigating class and collective actions and has tried over 50 cases over the course of his career. Mr. Lukas has been recognized by his peers as one of "The Best Lawyers in America" and is frequently named to the Minnesota Super Lawyers list. He also has had many publications and speaking engagements about issues and strategies for plaintiff class action lawyers and the plaintiffs' bar. **Education:** B.A. St. John's University 1988, J.D. William Mitchell College of Law 1991.

Brandon T. McDonough is a member of Nichols Kaster's ERISA litigation team where he represents current and former employees whose retirement accounts have been shortchanged due to excessive fees, imprudent investments, employer self-dealing, and general mismanagement. Prior to joining the firm, Brandon practiced plaintiffs-side consumer and civil rights law. **Education:** B.A. University of Chicago 2007, J.D. University of Minnesota Law School 2012 *cum laude*.

Steven Andrew Smith has been named "Lawyer of the Year" for Employment Law in Minneapolis by Best Lawyers for 2021 and 2022, named "Attorney of the Year" twice by Minnesota Lawyer for his work protecting employees' rights, named one of "The Best Lawyers in America" for the last eight years, named to the Minnesota Super Lawyers "Top 100" list five times, and named to the Minnesota Super Lawyers list for 20 consecutive years. In 2020, Steve was elected as a Fellow of the College of Labor and Employment Lawyers. Steve was honored by the Minnesota Chapter of the National Employment Lawyers Association as the recipient of the 2014 Karla Wahl Dedicated Advocacy Award. The Award is given to recipients "for their ceaseless and courageous efforts" to protect and advance the rights of Minnesota employees. Steve was also the recipient of the 2011 Distinguished Pro Bono Service Award from the United States District Court for the District of Minnesota, was selected for the Merit Selection Panel regarding the Re-Appointment of U.S. Magistrate Judge Arthur J. Boylan (D. Minn. 2012), was further recognized in 2014 by the United States District Court and Chief Judge Michael J. Davis for his involvement in the Pro Se Project, a project by the United States District Court of Minnesota for assisting individuals representing themselves in federal court, and has received the Martindale Hubble AV Preeminent rating. Steve's trial experience includes trials to verdict in sexual

harassment, whistleblower, reprisal/retaliation, commission, contract, gender discrimination, marital status discrimination, disability, and wage and hour claims. Steve has also litigated several notable cases having substantial effect on employees' rights under state and federal employment laws. Steve is often invited to lecture on employment issues both nationally and locally. He has also authored a number of articles on employment law issues such as sexual harassment in the workplace. **Education:** B.A. Concordia College 1990, J.D. William Mitchell College of Law 1995 *cum laude*.

Michele R. Fisher is a managing partner, and Chair of the Firm's Business Development and Marketing Groups, which originate class and collective actions and market the firm. She has dedicated her career to litigating wage and hour cases in an aggressive, creative, and strategic manner. She is one of the leaders of a practice group that has been described as a "powerhouse" for mass wage and hour litigation and arbitration. Michele has the experience, resources, and staff to take on any company regardless of size. She has handled several jury trials and arbitrations in her fight for employee rights and prides herself on the firm's reputation as a leader in national wage and hour class and collective action litigation. Michele has litigated hundreds of class and collective actions involving positions such as home health aides, loan officers, retail salespersons, oil and gas workers, assistant managers, field service engineers, call center representatives, exotic dancers, inside sales representatives, restaurant workers, insurance adjusters, property specialists, property managers, installers, service technicians, and road construction laborers. She is additionally admitted to practice before the United States Court of Federal Claims.

Michele is active in several organizations. She is a Co-Chair and faculty member of the Practicing Law Institute's Wage & Hour Litigation and Compliance conference, and the Co-Chair of the ABA Labor and Employment Law Section's Annual Conference Planning Committee. She has served as the Co-Chair of the ABA Labor and Employment Law Section's Federal Labor Standards Legislation Committee, Co-Editor-in-Chief of the ABA Labor and Employment Law Section's Federal Labor Standards Legislation Committee FLSA Midwinter Report, the Co-Chair of the ABA Labor and Employment Law Section's Revenue and Partnership Development Committee, Track Coordinator for the ABA Labor and Employment Law Section's annual conference, an editorial board member for BNA's the Fair Labor Standards Act Treatise, and a chapter editor for BNA's Wage and Hour Laws: A State-by-State Survey. She is a Fellow in the College of Labor and Employment Lawyers, has been named to the Best Lawyers, Super Lawyers, Top Women Attorneys, Lawyers of Distinction, and Rising Star lists repeatedly, is a member of the Top 10 Wage and Hour Lawyers, Top 100 National Trial Lawyers, Top 100 High Stakes Litigators, and LawDragon 500 Leading Plaintiff Employment Lawyers. Michele volunteers as an attorney for a foster child through the Children's Law Center. She also created and administers arbitratorater.com. **Education:** B.A. St. Cloud State University 1997, J.D. William Mitchell College of Law 2000.

Matthew H. Morgan is a managing partner at the Firm and a Minnesota State Bar Association Civil Trial Specialist. Much of Matt's career has focused on litigating class and collective actions on behalf of individuals seeking minimum wage and overtime pay and fighting discrimination. Recently, Matt first-chaired a nineteen-day age discrimination class action trial on behalf of nearly 1000 people against the federal government. Matt has been recognized as a Super Lawyer every year since 2014,

and has been named to the Who's Who in Employment Law by Minnesota Law and Politics. Matt formerly served as an adjunct faculty member at William Mitchell College of Law (now Mitchell Hamline) teaching representation skills to first-year students and advanced advocacy to second- and third-year students. Matt is a frequent lecturer at legal seminars, focusing on litigation-related topics including trials and taking 30(b)(6) depositions. **Education:** B.A. University of Minnesota 1996, J.D. William Mitchell College of Law 2000.

Rachhana T. Srey is a Partner at Nichols Kaster, PLLP who has extensive litigation experience, primarily dedicating her legal practice to national wage and hour complex class and collective action employment litigation. She has been a zealous advocate for thousands of employees over her 14-year career, representing a wide variety of workers in many industries including those who work in healthcare, insurance, financial services, communications, retail, manufacturing, and security industries as well as federal sector employees. Rachhana's exceptional case management and advocacy skills, dedication to her clients, strong work ethic and outgoing personality have earned her the respect of her clients and of her colleagues in the legal community. Rachhana has tried several wage and hour cases, most notably obtaining a jury verdict that was upheld by the Sixth Circuit in favor of a group of nearly three hundred cable installers. In addition to her wage and hour practice, Rachhana is also currently litigating a large age discrimination class case venued at the EEOC. She is active in several organizations, holding leadership positions in a few. Rachhana is currently the Co-Chair of the National Employment Lawyer Association's ("NELA") Wage & Hour Committee and Practice Group and the Co-Chair of the Association of Justice's ("AAJ") Wage & Hour Litigation Group. She is also an active Board Member of Mid-Minnesota Legal Aid. Rachhana is often invited to speak nationally and locally on a wide range of topics including class and collective action litigation strategies, wage and hour litigation, discovery issues, recent developments in the law, and age and gender discrimination. **Education:** B.A. University of Minnesota 2000, J.D. William Mitchell College of Law 2004 *cum laude*.

Matthew C. Helland is an experienced and tenacious litigator who has fought for workers' and consumers' rights throughout his career. Matt serves as the managing partner of Nichols Kaster's San Francisco office, where he focuses his practice on class and collective wage and hour cases filed in California and throughout the country. Handling both large class actions and individual matters throughout this career, Matt has developed a record of success in significant and complex litigation. Matt litigates each of his cases with the same zealous advocacy and passionate protection of his clients' rights, whether the case involves millions of dollars and thousands of clients, or thousands of dollars and one individual. In addition to representing workers across the country in wage and hour actions, Matt has also handled cases involving WARN Act violations, breach of contract, and severance negotiations. Matt is licensed in both California and Minnesota. Matt is an active volunteer at Workers' Rights Clinics through Legal Aid Work, where he supervises student attorneys in providing legal assistance to low wage workers. While attending the University of Minnesota Law School, Matt was a staff member and Managing Tribute Editor of the University of Minnesota Journal of Global Trade. He also participated in the Child Advocacy Clinic, representing the interests of children as a student attorney in both Family and Juvenile Court. **Education:** B.A. Rhodes College 2002 *magna cum laude*, J.D. University of Minnesota Law School 2005 *magna cum laude*.

David E. Schlesinger David Schlesinger is an experienced attorney who has been recognized for the quality of his work for employees. He is an MSBA Certified Employment Law Specialist who has been selected as a Super Lawyer for the last seven years. He teaches Law in Practice at the University of Minnesota Law School and is the former president of the Minnesota Chapter of the National Employment Lawyers Association. David has successfully litigated a wide variety of employment claims, including several significant cases involving gender discrimination, cases under the Americans with Disabilities Act, and many other claims. His practice also includes an emphasis on the intersection of employment and business disputes, including litigation of breach of fiduciary duty and minority shareholder claims. He has effectively defended employees from non-compete and trade secret claims brought by their former employers. **Education:** B.A. Mary Washington College 2001 *cum laude*, J.D. University of Minnesota Law School 2006 *cum laude*.

Anna P. Prakash is one of the leaders of the firm's Civil Rights and Impact Litigation practice group. Her practice focuses on complex class and multi-plaintiff actions on behalf of protected groups. Over the course of her time at the firm, Anna has led the firm's National Consumer Class Action practice group, been a member of the firm's National Wage & Hour practice group, and authored and argued class and individual appeals. She fights for her clients, brings a high level of skill and intellect to the fight, and has achieved success for her clients in state and federal courts around the country, including and as referenced above: the summary judgment victories in *Huff*, *Hart*, and *Clincy*; the successful appeal in *Bible v. United Student Aid Funds*; class certification in *MacDonald v. CashCall, Inc.*; considerable settlements in each of those cases; the defeat of motions to dismiss and strike class allegations in *Carmen* and *Fain*; and the trial verdict in *FTS*. Anna is also involved in numerous professional organizations. She serves on the Board of Directors of the People's Parity Project, as well as the Board of Directors of the Public Justice Foundation, a nationwide organization supporting high-impact lawsuits to combat injustice. Anna is also a member of Twin Cities Diversity and Practice's Professional Development Committee, the employee-side co-chair of the American Bar Association's Occupational Safety and Health Committee, and a member of the Nominating Committee for the National Association of Consumer Advocates. Anna previously served on the Board of Directors of Standpoint, an organization that exists to serve domestic and sexual violence survivors and professionals working within the justice system in Minnesota, and is also a past board member of the Minnesota Chapter of the National Employment Lawyers' Association. She is a frequent speaker at national legal seminars and an adjunct professor of legal writing at the University of Minnesota Law School. **Education:** B.A. University of Michigan 2002, J.D. Cornell Law School 2005.

Rebekah L. Bailey is a tireless advocate dedicated to civil rights and social justice. She has helped tens of thousands of employees and consumers recover millions of dollars primarily in complex class and collective actions across the country. Rebekah has worked on the firm's wage and hour team and was a founding member of the consumer practice area as well as the firm's civil rights and impact litigation group. Rebekah has been recognized as a Minnesota Super Lawyer every year since 2014. Over the years, she has served on numerous trial and arbitration teams, successfully first-chairing her first bench trial. Rebekah has achieved several affirmative summary judgment determinations and certification

decisions, including in *Rego*, *Dunham-Sunde*, *Henderson*, *Vaughan*, *Spar*, and *Norris-Wilson*, mentioned above. Rebekah leads the firm's e-discovery committee. She has spoken at national seminars on various topics, including electronic discovery, class litigation, arbitration, equal pay, and various wage and hour issues. Rebekah is a practical instructor for the University of Minnesota's Law & Practice course. She is a member of the District of Minnesota's Federal Practice Committee, and a board member for the Complex Litigation eDiscovery Forum. She is very involved in the ABA's Labor and Employment Law section. She serves as the employee vice chair of the section's treatise committee; she is an associate editor for the FLSA Committee's Mid-Winter Report; and she serves as a FLSL liaison to the ABA/LEL CLE Coordinating & Resources Committee. **Education:** B.S. Grand Valley State University 2004 *magna cum laude*, J.D. University of Minnesota Law School 2008 *magna cum laude*.

Reena I. Desai is a partner at Nichols Kaster, PLLP, in the firm's Minneapolis office. She is a skilled and meticulous litigator, who has represented thousands of employees in class and collective actions to recover unpaid overtime, minimum wages, commissions, and other types of compensation. Reena has also advocated for employees in cases involving race, age and disability discrimination. She is a board member of a legal non-profit and frequently speaks at legal seminars and conferences across the country. Reena has dedicated the majority of her career to helping employees combat wage theft and recover unpaid overtime compensation, minimum wages, and other unpaid compensation. She has represented employees in a variety of industries, including investigators, home health care workers, loan officers, mortgage underwriters, field service technicians, sales representatives, and restaurant workers. Reena has also litigated discrimination cases on both a class and individual level, advocating for employees whose employers have discriminated against them because of their age, race or disability. Reena has been asked to share her knowledge and experience with her peers, serving as a speaker at several national conferences. She has lectured on topics including wage and hour litigation, electronic discovery issues, attorney-client privilege and mediation/settlement. Reena also serves on the Board of Directors for the Minnesota Justice Foundation, a legal non-profit in Minnesota, and has been named a Rising Star by Minnesota Super Lawyers every year since 2014. **Education:** B.A. George Washington University 2002 *magna cum laude*, J.D. University of Minnesota Law School 2007 *cum laude*.

Robert L. Schug is a partner on Nichols Kaster's Civil Rights and Impact Litigation team. Robert has more than a decade of experience litigating cases through trial in both court and arbitration. He has represented employees across the country on a variety of issues, including race, gender, and disability discrimination, employee misclassification, unpaid overtime, and unpaid wages. Robert previously served as Director of Litigation at the Impact Fund, a nationally recognized non-profit law firm in Berkeley, California devoted to achieving social justice through large scale impact litigation. He has been recognized as a Rising Star by Northern California and Minnesota Super Lawyers. He is licensed in California and Minnesota. **Education:** B.S. Middle Tennessee State University 2003 *summa cum laude*, J.D. William Mitchell College of Law 2006 *summa cum laude*.

Brock J. Specht is partner on Nichols Kaster's ERISA litigation team. He represents retirees in lawsuits against some of the country's largest corporations, holding these companies accountable when

they fail to deal fairly and honestly with their employees and customers. His recent cases have led to the recovery of millions of dollars in retirement benefits for thousands of participants in 401(k) plans nationwide. Prior to joining the firm, Brock worked with a major Twin Cities law firm, and as a law clerk for two judges on the Minnesota Court of Appeals. Brock also has worked as a Special Assistant State Public Defender, *pro bono*, and as an Adjunct Professor of Law at the University of St. Thomas School of Law. **Education:** B.A. University of Minnesota 2002, J.D. University of St. Thomas School of Law 2007 *magna cum laude*.

| Associate Biographies

Ben J. Bauer is a member of Nichols Kaster's ERISA litigation team where he represents employees whose retirement accounts have been shortchanged due to excessive fees, imprudent investments, employer self-dealing, and general mismanagement. Prior to joining the firm, Ben clerked for Judge Tom Fraser in Hennepin County District Court. During law school, he interned for the Minnesota Department of Human Rights, the ACLU of Minnesota, and earned the Law School Public Service Award. Prior to law school, Ben taught 7th grade English in Tulsa, Oklahoma and continued to work in schools while completing his law degree in Mitchell Hamline's night program. **Education:** B.A., St. John's University, 2011, *magna cum laude*, J.D., Mitchell Hamline School of Law, 2017, *magna cum laude*.

Caroline E. Bressman is a member of the firm's national wage and hour litigation team where she fiercely advocates for workers' rights. Caroline is dedicated to furthering social justice and equity in the workplace on behalf of employees challenging their employers' unfair practices. Caroline is a contributing editor to the Fair Labor Standards Act Midwinter Report of the ABA Section of Labor and Employment Law. During law school, Caroline served as a staffer, and subsequently Symposium Articles Editor, for the *Minnesota Law Review* and clerked for a nonprofit legal and policy advocacy organization focused on addressing gender inequality. Caroline was also the recipient of the ABA-Bloomberg BNA Award for Excellence in Health Law. **Education:** B.A. St. Olaf College 2015 *magna cum laude*, J.D. University of Minnesota Law School 2018 *cum laude*.

Daniel S. Brome worked with the California Labor Commissioner while in law school and served as the Editor-in-Chief of the Berkeley Journal of Employment and Labor Law, and as Director of the Workers' Rights Clinic. After law school, Daniel worked with a California law firm representing workers and unions in arbitrations and litigation. Daniel continues pursuing his passion for employment law at Nichols Kaster, working with the firm's national wage and hour team out of the San Francisco office. **Education:** B.A. Princeton University 2005, J.D. University of California Berkeley School of Law 2011.

Grace Chanin is a member of Nichols Kaster's ERISA litigation team where she represents employees whose retirement accounts have been shortchanged due to excessive fees, imprudent investments, employer self-dealing, and general mismanagement. Prior to joining the firm, Grace clerked for Judge Connolly, Judge Larkin, and Judge Bjorkman at the Minnesota Court of Appeals. She graduated *magna cum laude* from the Mitchell Hamline School of Law and received three separate CALI awards for her work as the top-performing student in a class. During law school, she was a member of

the Mitchell Hamline law review, worked as a law clerk for a Minneapolis business law firm, and received the Law School Public Service Award for her work as a pro bono law clerk at a top Minneapolis law firm. **Education:** B.A., Minnesota State University 2012 *magna cum laude*, J.D. Mitchell Hamline School of Law 2018 *magna cum laude*

H. Clara Coleman is a member of Nichols Kaster's National Wage and Hour litigation Team where she fights for employees' right to hard-earned wages. Prior to joining Nichols Kaster, Clara served as an Attorney-Advisor to the Honorable Christopher Larsen at the U.S. Department of Labor, Office of Administrative Law Judges in San Francisco where she collaborated with ALJ Larsen to manage and decide employment-related matters. Clara also focused on the advancement of workers' rights throughout law school. She advocated for employees in her two clerkship positions at plaintiff-side employment firms, and represented a wage and hour client as a student-attorney for the Public Justice Advocacy Clinic. **Education:** B.A., Loyola University Maryland, *summa cum laude*; J.D., George Washington University School of Law, *with honors*.

Patricia C. Dana is a member of Nichols Kaster's ERISA litigation team where she represents current and former employees whose retirement accounts have been shortchanged due to excessive fees, imprudent investments, employer self-dealing, and general mismanagement. Prior to joining Nichols Kaster, she clerked for Justice Anne McKeig on the Minnesota Supreme Court. During law school, she was an editor of the *University of St. Thomas Law Journal*, worked as a law clerk at Mid-Minnesota Legal Aid, clerked for Judge Michael Browne in Hennepin County District Court, and received the Judge Earl R. Larson Award for excellence in the study of federal law and practice. Prior to law school, Patty represented Medicare and Medicaid recipients in administrative appeals at The Legal Aid Society in New York. **Education:** B.A., Carleton College, *cum laude*; J.D., University of St. Thomas, *summa cum laude*.

Charles A. Delbridge is a member of Nichols Kaster's Civil Rights and Impact Litigation Team where Charlie focuses on class actions on behalf of employees, consumers, and other protected groups. Charlie's cases challenge discrimination of all types, fraud, and other unfair practices. He has nearly a decade of experience as a civil litigator across a broad range of substantive practice areas. Charlie has been recognized as a "Minnesota Rising Star" by *Super Lawyers* magazine, and an "Up & Coming Attorney" by *Minnesota Lawyer*. He is active in professional organizations, having served as a member of the Board of Directors of both the Minnesota State Bar Association and Minnesota Continuing Legal Education. **Education:** B.A. University of Wisconsin-Madison 2003, J.D. William Mitchell College of Law 2006 *magna cum laude*.

Laura A. Farley is a member of Nichols Kaster's individual rights litigation team and is dedicated to protecting the rights of current and former employees who face a wide-range of employment-related issues, including discrimination, harassment, retaliation, minority shareholder, and contract disputes. Prior to joining Nichols Kaster, Laura worked as an associate for a Minneapolis litigation firm, focusing on minority shareholder, employment, and contract disputes. During law school, Laura was on the Executive Board of the *Minnesota Law Review*, the board of the Women's Legal Student Association, and volunteered with the Advocates for Human Rights. Prior to attending law school, Laura worked for a

Fortune 100 company in business-to-business sales supporting operations and logistics in small businesses. **Education:** B.A. University of St. Thomas 2010 *magna cum laude*, J.D. University of Minnesota Law School 2015.

Kate Fisher is a Case Development Attorney for the Nichols Kaster's Civil Rights and Impact Litigation Practice Group. In this role, she investigates new cases and works with other members of the Group to advance litigation. Kate formerly served as an Associate Attorney for the firm's Individual Practice Group, where she represented employees in a wide range of employment-related matters, including but not limited to, allegations of discrimination, harassment, retaliation, violations of the Family and Medical Leave Act, and whistleblower claims. In addition to her practice, Kate has also served as an Adjunct Professor at St. Thomas Law School and Mitchell Hamline School of Law. **Education:** B.A. College of St. Catherine 2006 *summa cum laude*, J.D. University of St. Thomas School of Law 2011 *cum laude*.

Matthew A. Frank was named a 2017 Minnesota Lawyer of the Year. Matt attended the University of Michigan Law School as a Clarence Darrow Scholar. At graduation, he received the Robert S. Feldman Award for outstanding work in labor and employment law. Prior to joining Nichols Kaster in 2016, Matt clerked for the Hon. Susan N. Burke in Hennepin County District Court and practiced plaintiffs' employment law at another Twin Cities firm. Matt is part of Nichols Kaster's individual rights team. **Education:** B.A. University of Colorado Boulder 2002 *summa cum laude*, Philosophy Ph.D. (ABD) University of Minnesota, J.D. University of Michigan Law School 2013 *cum laude*.

Melanie A. Johnson is a member of Nichols Kaster's Civil Rights and Impact Litigation team. Prior to joining the firm, Melanie clerked for Judge Matthew E. Johnson at the Minnesota Court of Appeals. During law school, she served as a managing editor of the *Minnesota Law Review*, student director of the Child Advocacy and Juvenile Justice Clinic, research assistant in the area of juvenile law, and board member of the student chapter of the Minnesota Justice Foundation. She received the Mondal Hall Engagement Award in 2019. **Education:** B.A. University of Oregon 2010 *magna cum laude*, J.D. University of Minnesota Law School 2019 *cum laude*.

Kayla M. Kienzle is a member of Nichols Kaster's National Wage and Hour Litigation Team where she advocates on behalf of workers seeking unpaid wages in class and collective actions across the country. Kayla is also a contributing author to the ABA Fair Labor Standards Act Midwinter Report. Prior to joining the firm, Kayla clerked for the Honorable John R. Rodenberg and the Honorable Michelle A. Larkin at the Minnesota Court of Appeals. During law school, she served as Submissions Editor for the University of St. Thomas Law Journal and as President of the Women Law Students Association. She also worked as a law clerk at the Hennepin County Public Defender's Office and a legal intern at the United States Department of Justice, Office of Justice Programs, Office for Civil Rights. Prior to attending law school, Kayla worked in retail management. **Education:** B.A., Iowa State University, J.D., University of St. Thomas School of Law, *cum laude*.

Michelle L. Kornblit is a member of Nichols Kaster's individual rights practice group and assists employees with a wide-range of claims, including discrimination, harassment, retaliation and whistleblower protection. Michelle has been dedicated to employee rights and challenging unfair employment practices her entire career. While in law school, Michelle interned with an Administrative Law Judge of the U.S. Equal Employment Opportunity Commission, and with the Women's Rights Project of the American Civil Liberties Union. Prior to joining Nichols Kaster, Michelle was an associate with a leading employment litigation firm in New York, representing employees in individual, multi-party and class action cases. **Education:** B.A. New York University 2010 *cum laude*, J.D. Benjamin N. Cardozo School of Law 2014 *cum laude*.

Jennifer K. Lee is a member of the firm's national class-action ERISA team. She is a skilled litigator who has dedicated her legal career to advocating on behalf of the vulnerable. As a member of Nichols Kaster's ERISA practice, she is proud to represent employees whose hard-earned retirement savings have been squandered due to excessive fees, imprudent investments, and employer self-dealing. Through class action litigation, Jenny has helped recover tens of millions of dollars in retirement savings for her clients. Prior to joining Nichols Kaster, Jenny worked as Pro Bono Counsel at a national law firm, a staff attorney with the American Civil Liberties Union's national office in New York, and as an associate at the corporate law firm Cravath, Swaine and Moore in New York City. During law school, Jenny served as Editor-in-Chief of the *University of Chicago Legal Forum* and interned for New York's Legal Aid Society's Prisoners' Rights Project, Planned Parenthood Federation of America, and the ACLU of Illinois. **Education:** B.A. Yale University 2010 *cum laude*, J.D. University of Chicago Law School 2006 with honors.

Neil Pederson has been practicing law with the firm since October 2017. Prior to that, he clerked for the Honorable Karen A. Janisch in Hennepin County State District Court. His practice has focused on national class action employment discrimination litigation and national wage and hour class and collective action litigation. He has represented hundreds, if not thousands, of workers who have been discriminated against or who are seeking to recover lost wages, including overtime pay and minimum wages, through collective, class, and hybrid actions. Since he started at Nichols Kaster, Neil has worked on multiple class and collective actions, involving positions such as railroad workers, home health aides, delivery drivers, oil field workers, and nurses. Neil has handled managing discovery and filing class certification and other motions in these cases. In addition to being a litigation associate at the firm, Neil also works with its Business Development Group, which originates class and collective actions. Neil is also a contributing editor to the ABA Section of Labor and Employment Law's Fair Labor Standards Act Midwinter Report. Neil volunteers as an attorney for the Mid-Minnesota Legal Aid's Housing Section. **Education:** B.A. University of Minnesota 2007 *summa cum laude*, Political Science Ph.D. work University of Chicago 2008-2010, J.D. William Mitchell College of Law 2015 *summa cum laude*.

Chloe A. Raimey is a member of Nichols Kaster's Civil Rights and Impact Litigation group. Prior to joining Nichols Kaster, she clerked for Justice Anne McKeig on the Minnesota Supreme Court. During law school, Chloe served as the editor-in-chief of the *University of St. Thomas Law Journal*, worked as a litigation law clerk for the League of Minnesota Cities, interned with the Advocates for Human

Rights, and represented consumers in Chapter 7 bankruptcy proceedings. Prior to law school, Chloe gained additional writing experience as well as employee benefits knowledge as a communications specialist with a focus on human resources topics. **Education:** B.A. University of Florida 2008 *summa cum laude*, J.D. University of St. Thomas School of Law 2016 *magna cum laude*.

Nicole J. Schladt is a member of Nichols Kaster's Civil Rights and Impact Litigation group. Prior to joining Nichols Kaster, Nicole served as a judicial law clerk for the Honorable Susan M. Robiner in Minnesota's Fourth Judicial District. During her time in law school, Nicole co-founded Emory LGBTQ Legal Services (ELLS), an organization created to provide pro bono legal assistance to members of Atlanta's queer community. Her work with ELLS led to her receiving the 2018 Marion Luther Brittain Award, Emory University's highest student honor, as well as the 2018 National LGBT Bar Association Student Leadership Award. Nicole's academic research prior to law school explored the intersections of international human rights law, feminist theory, and international politics. **Education:** B.A. University of Kentucky 2014 *summa cum laude*, M. Phil. University of Cambridge 2015, J.D. Emory University School of Law 2018 *with honors*.

Jacob T. Schutz is a member of Nichols Kaster's ERISA litigation team where he represents current and former employees whose retirement accounts have been shortchanged due to excessive fees, imprudent investments, employer self-dealing, and general mismanagement. In law school, Jacob was an editor of the ABA Journal of Labor & Employment Law and published an article on the association provision of the Americans with Disabilities Act. Prior to joining Nichols Kaster, he was an associate in a firm acting as general counsel for Taft-Hartley employee benefit funds. **Education:** B.A. University of Pennsylvania 2010, J.D. University of Minnesota Law School 2013 *magna cum laude*.

Mark E. Thomson is a member of Nichols Kaster's ERISA team where he represents current and former employees whose retirement accounts have been shortchanged due to excessive fees, imprudent investments, employer self-dealing, and general mismanagement. Prior to joining Nichols Kaster, he clerked for Justice David Lillehaug and Justice Anne McKeig on the Minnesota Supreme Court. During law school, Mark was an editor of the *Harvard Civil Rights-Civil Liberties Law Review* and interned with the Consumer Financial Protection Bureau, the National Consumer Law Center, and the Massachusetts Attorney General's Office. **Education:** B.A. University of Minnesota 2011 *summa cum laude*, J.D. Harvard Law School 2016.

| Staff Attorney and Of Counsel Biographies

Laura A. Baures is a staff attorney dedicated to fighting for employees and applicants who have been discriminated against for unlawful reasons including on the bases of their age, disability, race, color, national origin, religion, and sex. In addition, she helps employees pursue their fair and equal wages owed in the eyes of the law. Her work focuses primarily on representing classes fighting against discrimination. Laura has experience in both federal and private sector matters. During law school, Laura won the MSBA Labor and Employment Law Section Law Student Award in Labor Law. Laura participated in the AAJ Regional Trial Competition, was president of the Women Law Students Association, and volunteered for over 100 hours through the Minnesota Justice Foundation working as

certified student attorney for the Washington County Public Defender's Office and at Eldercare Rights Alliance. She also completed an externship with the Honorable Gail Chang Bohr at Minnesota's Second Judicial District. Before law school, Laura worked for a local company that provides residential care for people with disabilities where she discovered her passion for employment law. *Education:* B.A. University of Wisconsin – Eau Claire *cum laude*, J.D. William Mitchell College of Law.

Carl F. Engstrom is of counsel and a subject matter expert on Nichols Kaster's ERISA Litigation Team. As a founding member of the ERISA litigation group, Carl has been counsel of record in every case brought by the group since its inception in 2015. In that time, the ERISA litigation group has negotiated settlements totaling approximately \$80 million on behalf of retirement plan participants shortchanged by excessive fees and imprudent retirement plan investments. Before joining Nichols Kaster, Carl clerked for judges at both the Minnesota Court of Appeals and Hennepin County District Court. Prior to entering the legal profession, he spent six years working as a financial advisor, providing retirement and investment advice to hundreds of clients, and earning the Certified Financial Planner™ designation. *Education:* B.A. Harvard College 1998, J.D. University of Minnesota Law School 2012 *magna cum laude*.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CHRISTOPHER FAIN, *et al.*, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

WILLIAM CROUCH, *et al.*,

Defendants.

CIVIL ACTION NO. 3:20-cv-00740

HON. ROBERT C. CHAMBERS, JUDGE

**DECLARATION OF AVATARA SMITH-CARRINGTON IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

I, Avatara Smith-Carrington, declare as follows:

1. I am a Staff Attorney with Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”), and counsel for Plaintiffs in this litigation. I have practiced law since 2019, and have maintained a full-time practice in civil rights issues for lesbian, gay, bisexual, and transgender people since then. I am licensed to practice law in the State of Maryland, and am practicing before this Court as a Visiting Attorney in accordance with the requirements of Local Rule of Civil Procedure 83.6. I submit this declaration in support of Plaintiffs’ Motion for Class Certification. I make this declaration of my own personal knowledge, and, if called as a witness, I could and would testify competently to the matters stated herein.

2. Lambda Legal is committed to the vigorous, effective, and efficient prosecution of the interests of Plaintiffs and the proposed class (the “Class”).

3. Based on my co-representation of Plaintiffs in this matter with the law firms of The Employment Law Center, PLLC (“ELC”) and Nichols Kaster, PLLP (“NK”), it is my belief that the attorneys of ELC and NK are likewise committed to the vigorous, effective, and efficient

prosecution of this matter.

4. Since the filing of the complaint in this action, Lambda Legal, ELC, and NK (collectively, “Plaintiffs’ counsel”) have dedicated many hours to the investigation and research of Plaintiffs’ claims, motion practice, written discovery, and fact and expert depositions.

5. Lambda Legal has dedicated, and will continue to commit, substantial resources to the representation of the Class.

6. Plaintiffs’ counsel have agreed to act jointly as Class counsel, if the Court so designates them.

I. Experience of Lambda Legal

7. ***Lambda Legal’s experience with civil rights cases on behalf of transgender people.*** Lambda Legal has extensive experience in the law surrounding the civil rights of transgender people. Lambda Legal is the oldest and largest legal organization committed to achieving full recognition of the civil rights of LGBT people and everyone living with HIV through impact litigation, education, and public policy work. Lambda Legal has been party counsel and counsel for *amici curiae* in numerous constitutional and civil rights law challenges seeking equal treatment for transgender people. Lambda Legal’s work to secure equal treatment and dignity for transgender people has included:

A. Representing transgender individuals facing healthcare discrimination, *Kadel v. Folwell*, No. 19-cv-00272 (M.D.N.C.); *C.P. v. Blue Cross Blue Shield of Illinois*, No. 20-cv-06145-RJB (W.D. Washington); *Fain v. Crouch*, No. 3:20-cv-00740 (S.D. W.Va.); *Fletcher v. State of Alaska*, 443 F. Supp. 3d 1024, 1026 (D. Alaska 2020); *Simonson v. Oswego Cty.*, No. 5:17-cv-01309-MAD-DEP (N.D.N.Y.); *Conforti v. St. Joseph’s Healthcare System*, No. 2:17-cv-

00050 (D.N.J.); *Esquivel v. State of Oregon*, No. 11C17487 (Or. Cir. Ct. 2011); *Lawrence v. Cobert*, No. 510-2014-00396X (E.E.O.C.).

B. Representing transgender athletes and students denied access to participation in scholastic sports, *B.P.J. v. West Virginia State Board of Education*, No. 21-cv-00316 (S.D. W.Va.); *L.E. v. Lee*, No. 21-cv-00835 (M.D. Tenn.); *Hecox v. Little*, No. 20-35813 (9th Cir.) (*amicus*).

C. Representing transgender soldiers and prospective enlistees challenging the President's ban on their open service in the military and seeking access to gender-confirming healthcare, *Karnoski v. Trump*, 926 F.3d 1180 (9th Cir. 2019).

D. Representing transgender students seeking access to restrooms matching their gender identity, *Adams v. St. Johns County School District*, No. 18-13592 (11th Cir.); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267 (W.D. Pa. 2017); *Carcaño v. McCrory*, 315 F.R.D. 176 (M.D.N.C. 2016).

E. Representing school administrators as *amici curiae*, along with colleagues at Pillsbury, Winthrop, Shaw, Pittman, LLP ("Pillsbury"), in cases involving transgender students' access to sex-separated facilities, *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017); *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709 (4th Cir. 2016), *cert. granted in part*, 137 S. Ct. 369, 196 L. Ed. 2d 283 (2016), *and vacated and remanded*, 137 S. Ct. 1239, 197 L. Ed. 2d 460 (2017); *Bd. of Educ. of the Highland Local Sch. Dist. v. United States Dep't of Educ.*, 208 F. Supp. 3d 850, 870 (S.D. Ohio 2016).

F. Representing transgender employees facing anti-transgender job discrimination, *Roberts v. Clark Cty, Sch. Dist.*, 215 F. Supp. 3d 1001 (D. Nev. 2016) (*amicus*);

Chavez v. Credit Nation Auto Sales, 49 F. Supp. 3d 1163, 1168 (N.D. Ga. 2014), *aff'd in part, rev'd in part sub nom. Chavez v. Credit Nation Auto Sales, LLC*, 641 F. App'x 883 (11th Cir. 2016) (*amicus*); *Glenn v. Brumby*, 663 F.3d 1312, 1314 (11th Cir. 2011); *Lopez v. River Oaks Imaging & Diagnostic Group, Inc.*, 542 F. Supp. 2d 653 (S.D. Tex. 2008).

G. Representing transgender prisoners denied basic respect for their gender identity, *Yoakam v. Virginia Dep't of Corrections*, No. 3:21-cv-31 (W.D. Va.); *Rosati v. Igbinoso*, 791 F.3d 1037 (9th Cir. 2015); *Hicklin v. Precynthe*, No. 4:16-CV-01357-NCC, 2018 WL 806764 (E.D. Mo. Feb. 9, 2018).

H. Representing transgender people seeking the ability to correct their identity documents, *Corbitt v. Taylor*, No. 21-10486 (11th Cir.) (*amicus*); *Fowler v. Stitt*, No. 22-cv-00115-GFK-SH (N.D. Okla.); *Campos v. Cohen*, No. 21-cv-00880 (M.D.N.C.); *Gore v. Lee*, No. 19-cv-00328 (M.D. Tenn.); *Ray v. McCloud*, 507 F. Supp. 3d 925, 929 (S.D. Ohio 2020); *Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327 (D.P.R. 2018); *F.V. v. Barron*, 286 F. Supp. 3d 1131 (D. Idaho 2018).

8. Lambda Legal's work on behalf of transgender people also is integrally tied to Lambda Legal's 45-year history of advancing sex and sexual orientation anti-discrimination doctrines on behalf of the LGBT community, which has led to Lambda Legal's involvement as party counsel, and on behalf of *amici curiae*, in leading Supreme Court cases addressing the rights of LGBT people. *See Bostock v. Clayton County*, 140 S. Ct. 1731 (2020) (*amicus*); *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (party counsel); *United States v. Windsor*, 133 S. Ct. 2675 (2013) (*amicus*); *Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661 (2010) (*amicus*); *Lawrence v. Texas*, 539 U.S. 558 (2003) (party counsel); *Romer v. Evans*, 517 U.S. 620 (1996) (party counsel).

9. ***Lambda Legal's experience with class action cases.*** Lambda Legal also has experience handling both putative and certified class action suits, including *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014) (counsel for plaintiff-intervenor class); *Diaz v. Brewer*, 656 F.3d 1008 (9th Cir. 2011) (counsel for plaintiff class certified in subsequent proceedings); *Thornton v. Comm'r of Soc. Sec.*, No. C18-1409JLR, 2020 WL 5494891 (W.D. Wash. Sept. 11, 2020) (counsel for plaintiff class); *Ely v. Saul*, No. 18-cv-0557, 2020 WL 2744138 (D. Ariz. May 27, 2020), appeal dismissed (Nov. 2, 2021) (counsel for plaintiff class); *Being v. Crum*, No. 3:19-cv-00060 (D. Alaska filed March 4, 2019) (counsel for putative plaintiff class); *Birchfield v. Armstrong*, No. 4:15-cv-00615, 2017 WL 1433032, at *1 (N.D. Fla. Mar. 23, 2017) (counsel for plaintiff class); *Torres v. Rhoades*, No. 3:15-cv-00288-bbc (N.D. Ill. filed May 13, 2015) (counsel for putative plaintiff class); *Inniss v. Aderhold*, No. 1:14-cv-01180-WSD (N.D. Ga. filed April 22, 2014) (counsel for putative plaintiff class); *Lee v. Orr*, No. 1:13-cv-08719, 2014 WL 683680 (N.D. Ill. Feb. 21, 2014) (counsel for plaintiff class); *East v. Blue Cross & Blue Shield of La.*, No. 3:14-CV-00115 (M.D. La. filed Feb. 20, 2014) (counsel for putative plaintiff class).

II. Experience of Counsel in this Case

10. I, Avatara Smith-Carrington graduated from the University of Maryland Francis King Carey School of Law in 2019, and I have practiced law continuously since that time. I have worked full-time at Lambda Legal on civil rights cases for the LGBT community and people living with HIV since 2019. In addition to serving as lead counsel in this case, I also am counsel in, most relevant here, *B.P.J. v. West Virginia State Board of Education*, No. 21-cv-00316 (S.D. W.Va.), a federal lawsuit challenging West Virginia's law banning girls and women who are transgender from participating in school sports and *Campos v. Cohen*, No. 21-cv-00880

(M.D.N.C.), a federal lawsuit challenging North Carolina’s policy requiring transgender people to have undergone “sex reassignment surgery” in order to obtain an accurate birth certificate. A true and correct copy of my resume is attached hereto as Exhibit A.

11. Tara L. Borelli graduated from the University of California, Berkeley School of Law in 2001, and has practiced law continuously since that time, including at the Los Angeles office of Proskauer Rose, LLP and the Seattle law firm of Newman & Newman, LLP (now, Newman DuWors, LLP). Ms. Borelli has worked full-time at Lambda Legal on civil rights cases for the LGBT community since 2006. Ms. Borelli has worked on an extensive number of cases involving equal treatment for transgender people, including most relevant here: serving as lead counsel in *Fletcher v. State of Alaska*, 443 F. Supp. 3d 1024, 1026 (D. Alaska 2020), in which she secured summary judgment for the plaintiff and eliminated the exclusion for gender-confirming surgical care in the Alaska state employee health plan; serving as lead counsel in *Kadel v. Folwell*, No. 19-cv-00272 (M.D.N.C.), challenging the blanket exclusion of gender-confirming care in the North Carolina state employee health plan; serving as counsel in *Being v. Crum*, No. 3:19-CV-00060-HRH (D. Alaska), a federal lawsuit and putative class action that secured removal of the exclusion of coverage for gender-confirming care in the State of Alaska’s Medicaid program; and serving as lead counsel in *Adams v. St. Johns County School District*, No. 18-13592 (11th Cir.), securing judgment after a trial on behalf of a young transgender man seeking equal access to boys’ restrooms at school. Ms. Borelli also was co-counsel in *Karnoski v. Trump*, 926 F.3d 1180 (9th Cir. 2019), which helped secure access to gender-confirming care for transgender service members and established that heightened scrutiny applies to discrimination based on transgender status.

12. In addition, among the putative and certified class action cases listed above, Ms. Borelli has been counsel in *Bostic v. Schaefer*; *Diaz v. Brewer*; *Ely v. Saul*; *Thornton v. Comm'r of Soc. Sec.*; *Being v. Crum*; *Birchfield v. Armstrong*; and *Inniss v. Aderhold*. A true and correct copy of Ms. Borelli's resume is attached hereto as Exhibit B.

13. Carl S. Charles graduated from the University of Denver Sturm College of Law in Denver, Colorado in 2013, and has practiced law continuously since that time. Mr. Charles has practiced civil rights law at several nonprofit legal advocacy groups and government entities, including the Jon L. Stryker and Slobodan Randjelovic LGBT & HIV Project at the American Civil Liberties Union, the New York City Commission on Human Rights, A Better Balance, and Lambda Legal. Mr. Charles has worked full-time at Lambda Legal on civil rights cases for the LGBT community since 2019. Mr. Charles has worked on several cases involving equal treatment for transgender people, including most relevant here: serving as lead counsel in *Being v. Crum*, No. 3:19-CV-00060-HRH (D. Alaska), a federal lawsuit and putative class action challenging the State of Alaska's Medicaid program's exclusion of coverage for gender confirming care; counsel in *B.P.J. v. West Virginia State Board of Education*, No. 21-cv-00316 (S.D. W.Va.), a federal lawsuit challenging West Virginia's law banning girls and women who are transgender from participating in school sports; and counsel in *Kadel et al. v. Folwell et al.*, No. 19-cv-00272 (M.D.N.C.), a federal lawsuit challenging North Carolina's State Employee Health Insurance Plan's exclusion of coverage for gender affirming care for state employees and their dependents. A true and correct copy of his resume is attached hereto as Exhibit C.

14. Sasha Buchert graduated from Willamette Law School in 2005 and has practiced law since 2007. Ms. Buchert has maintained a full-time practice in civil rights issues for lesbian, gay, bisexual, and transgender people since 2013. Prior to joining Lambda Legal, full-time, in

2017, Ms. Buchert practiced civil rights law at the Transgender Law Center. Ms. Buchert has worked on several cases involving equal treatment for transgender people, including most relevant here: *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017), a federal challenge to a school policy in Kenosha, Wisconsin prohibiting students from using restrooms in accordance with their gender identity; *Karnoski v. Trump*, 926 F.3d 1180 (9th Cir. 2019), a federal challenge to a ban imposed by the Department of Defense prohibiting transgender people from enlisting, denying healthcare or living openly as transgender; *Gore v. Lee*, No. 19-cv-00328 (M.D. Tenn.), a federal challenge to the State of Tennessee's policy of denying birth certificate amendments of gender on birth certificates issued in the state; *Yoakam v. Virginia Dep't of Corrections*, No. 3:21-cv-31 (W.D. Va.); *L.E. v. Lee*, No. 3:21-cv-835 (M.D. Tenn), a federal challenge to the State of Tennessee's ban on the participation of transgender students in sex-specific sports in middle school and high school. A true and correct copy of her resume is attached hereto as Exhibit D.

15. Nora Huppert graduated from Columbia Law School in 2019 and has practiced law continuously since that time. Ms. Huppert has worked on several cases involving equal treatment for transgender people, including most relevant here: *Being v. Crum*, No. 3:19-CV-00060-HRH (D. Alaska); *F.V. v. Jeppesen*, 477 F. Supp. 3d 1144 (D. Idaho 2020); and *Chandler v. Cal. Dep't of Corrs. & Rehab.*, 1:21-CV-01657-NE-HBK (E.D. Cal.) (representing Proposed Intervenors). A true and correct copy of her resume is attached hereto as Exhibit E.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 31, 2022


Avatara Smith-Carrington

Exhibit A

AVATARA SMITH- CARRINGTON

asmith-carrington@lambdalegal.org ✉
www.linkedin.com/in/avatara-smith-
carrington in

Licensed to Practice in Maryland

EXPERIENCE

Staff Attorney | Lambda Legal Defense and Education Fund

09.2019 – PRESENT

- Handling all aspects of litigation including, but not limited to, client and case development, legal research, pleadings, motions practice, written discovery, depositions, expert witness work, administrative work, settlement negotiation, and amicus work. Maintaining issue area leadership and expertise, engaging stakeholders, collaborating with other movement organizations, and pursuing opportunities that specifically address and remedy inequities and disparities in both law and policy for TLGBQIA Black, Indigenous and People of Color (“BIPOC”) and BIPOC living with HIV.
- Current casework includes serving as lead counsel in *Fain v. Crouch*, a federal lawsuit challenging West Virginia’s blanket exclusion of coverage for gender-confirming care in its state health insurance plans; counsel in *B.P.J. v. West Virginia Board of Education*, a federal lawsuit challenging West Virginia’s law banning girls and women who are transgender from participating in school sports; counsel in *Campos v. Cohen*, a federal lawsuit challenging North Carolina’s policy requiring transgender people to have undergone “sex reassignment surgery” in order to obtain an accurate birth certificate; and counsel in *The Diversity Center v. Trump*, a federal lawsuit challenging the Trump administration’s Executive Order on Combating Race and Sex Stereotyping that prohibits federal contractors and grantees from conducting workplace diversity trainings or engaging in grant-funded work that explicitly acknowledges and addresses the existence and persistence of structural racism and sexism in the United States.
- Member of the legal team that secured the release of two asylum seekers living with HIV whose detention at an ICE detention facility in eastern Texas placed them in grave danger of illness and/or death from COVID-19.
- Within my first year as the former Tyron Garner Memorial Law Fellow, I secured a settlement against a multiple employer trust providing employee benefits on behalf of a nonbinary person whose plan excluded coverage for gender confirming care. The settlement agreement included compensatory damages; removal of the exclusion from the plan; inclusion of an express statement that gender confirming care is covered for all plan participants; and the provision of notice on the insurer’s website of the policy change to all plan participants.

Researcher | Institute for Technology Law & Policy at Georgetown Law

01.2020 – 06.2020

- As a Researcher on the Institute’s project on algorithmic fairness and disability rights, I explored, analyzed, and provided written work on the use of risk and threat assessments in the K-12 setting.

Linda Kennedy Fellow in Advocacy | Homeless Persons Representation Project

09.2018 – 05.2019

- Engaged in community-led, strategic policy advocacy aimed at funding the Ending Youth Homelessness Act and drafted policy recommendations for State agencies and nongovernmental entities that promote an end to homelessness in the state of Maryland.

Research Assistant to Professor. Taunya L. Banks | Francis King Carey School of Law

05.2018 – 07.2019

- Researched, analyzed, and drafted memoranda pertaining to hostile work environment jurisprudence in both conventional tort law and constitutional law with an emphasis on remedies available for employees experiencing race- and/or gender-based verbal harassment in the workplace.

Intern | Whitman-Walker Health

05.2018 – 08.2018

- Researched and drafted memoranda, compliance guidelines, and informed consent forms to ensure competent and informed care for transgender, nonbinary and/or gender-nonconforming adolescents seeking medical interventions for gender-confirming purposes.

Intern | FreeState Justice

09.2017 – 05.2018

- Conducted legal research and drafted policy materials as part of a comprehensive advocacy model that encompasses community outreach and education.

Case Alert Author | ABA Standing Committee on Federal Judicial Improvements' Media Alerts Project

08.2017 – 01.2018

- Drafted and edited case summaries on recent decisions issued by the United States Court of Appeals for the Fourth Circuit for publication on the American Bar Association's digital platform.

Access to Justice Tech Fellow | Maryland Volunteer Lawyers Service

05.2017 – 08.2017

- Retrieved and compiled judicial data using Structured Query Language to assist attorneys with various data-driven impact litigation projects.

EDUCATION

Juris Doctor | University of Maryland Francis King Carey School of Law

MAY 2019

Honors & Activities: Maryland Law Review, Associate Editor; Rose Zetzer Fellow; CALI Excellence for the Future Award (Advanced Legal Research); CALI Excellence for the Future Award (Citizenship Seminar); Co-Chair, OutLaw; Community Service Chair, Black Law Students Association

Bachelor of Arts | Rutgers, The State University of New Jersey

MAY 2015

PROFESSIONAL ACTIVITIES

- 2020-Present | Board Member | Transgender Education Network of Texas
- 2019-Present | Advisory Board Member | Kairos Fellowship
- 2018-2019 | Student Member to the Executive Board of Directors | FreeState Justice

SELECTED PRESENTATIONS AND PANELS

- 2021 | American Bar Association, Young Lawyers Division | “The Lawyer’s Role in Social Movements”
- 2021 | The LGBTQ+ Project at Indiana University Maurer School of Law | “Let’s Talk About Gender: Racialization & Liberation in LGBT Rights Work”
- 2021 | Silicon Flatirons Center at University of Colorado Law School | “Categories of Control: The Regulation of Sexuality & Gender”
- 2021 | Law for Black Lives | “Black History is Now: Building the Power of Black Lead Movements”
- 2020 | ACLU of Texas | “Empowering Trans Voters in Texas”
- 2020 | Nelson Mullins Riley & Scarborough LLP | “Beyond Bostock: Protections and Barriers for the LGBTQ+ Community”
- 2020 | Texas Child Protection Services | “Disproportionality Series: LGBTQ and Race Equity”
- 2020 | Outten & Golden LLP | “Employment Discrimination and the Transgender Community”
- 2020 | Fried, Frank, Harris, Shriver & Jacobson LLP | Michael R. Diehl Civil Rights Forum “Pride Was a Riot: Reflecting on the History and Progress of the LGBTQ+ Movement”
- 2020 | State Bar of Texas Annual Meeting - Diversity Forum | “The Promises of the 15th and 19th Amendments in the Wake of Shelby, Voter Suppression, and Disenfranchisement: How You Can Secure Reform”
- 2020 | Columbia University in the City of New York | Lavender Graduation Keynote Speaker
- 2020 | Creating Change | “Policing of the Sex Trade: Advocacy Skills for Local, State, and Federal Policy Change”
- 2020 | Creating Change | “Texas Trans Kids: Creative Strategies for Advancing Trans Rights”
- 2020 | Creating Change | Day-Long Policing Institute
- 2019 | Resource Center | “LGBT Workers and the Supreme Court: What You Need to Know and What You Can Do”

SELECTED PUBLICATIONS AND MEDIA CREDITS

- 2021 | [“Texas governor orders investigation of ‘pornographic’ books in schools”](#) | Courthouse News
- 2021 | [“In Pursuit of Trans Liberation”](#) | American Constitution Society, Broken Law Podcast
- 2021 | [“‘Children will die’: Transgender advocates warn about risks as more states consider banning gender-affirming care for kids”](#) | USA Today
- 2021 | [“How AI lets bigots and trolls flourish while censoring LGBTQ+ voices”](#) | Mic
- 2020 | [“Donald Trump executive order banning diversity training blocked by federal judge”](#) | USA Today
- 2020 | [“The Legal Discrimination Still Keeping LGBTQ People Out of Work”](#) | Bloomberg

Exhibit B

TARA L. BORELLI

Pronouns: she/hers

Lambda Legal:
making the case for equality



CONTACT



Tel: 470-225-5341
Fax: 404-506-9320



tborelli@lambdalegal.org



1 West Court Square,
Ste. 105
Decatur, GA 30030



www.lambdalegal.org

PROFILE SUMMARY

Tara Borelli is Senior Counsel in the Southern Regional Office of Lambda Legal Defense and Education Fund, Inc., the oldest and largest national legal organization committed to achieving full recognition of the civil rights of LGBTQ people and people with HIV. Her work focuses on bringing test cases to advance equality and liberty for LGBTQ people.

EXPERIENCE

L.E. v. Lee, No. 3:21-cv-00835 (M.D. Tenn.)
Counsel in challenge to state law banning transgender students from interscholastic sports.

B.P.J. v. West Virginia State Bd. of Educ., No. 2:21-cv-11111 (S.D.W.V.)
Counsel in challenge to state law banning all transgender girls from interscholastic sports.

Fain v. Crouch, No. 3:20-cv-00740 (S.D.W.V.) (putative class action)
Counsel in challenge to discriminatory exclusions of gender-confirming health care in state employee and Medicaid health plans.

Kadel v. Folwell, No. 1:19-cv-00272 (M.D.N.C.)
Counsel for North Carolina state employees and dependents denied access to gender-confirming health care under state employee insurance plan.

Adams v. St. Johns Cty. Sch. Dist., Fla., 968 F.3d 1286 (11th Cir. 2020)
Counsel for transgender boy seeking the right to use the boys' restroom at his high school.

Gore v. Lee, No. 3:19-cv-00328 (M.D. Tenn.)
Counsel in challenge to Tennessee statute prohibiting transgender people from obtaining accurate birth certificates.

Lawrence v. Rigas, No. 510-2014-00396X (E.E.O.C.)
Counsel for transgender retiree in federal sector EEO proceedings seeking non-discriminatory access to health insurance coverage under Title VII.

EDUCATION

UNIVERSITY OF CALIFORNIA
Berkeley, J.D., 2001

UNIVERSITY OF CALIFORNIA
Davis, B.A., 1998

BAR ADMISSIONS

Georgia

Washington

California



TARA L. BORELLI

COURT ADMISSIONS



U.S. Supreme Court	Ely v. Saul , No. 4:18-cv-00557, 2020 WL 2744138 (D. Ariz. May 27, 2020) (class action)
U.S. Court of Appeals for the Fourth Circuit	Colosimo v. Saul , No. 1:18-cv-00170 (W.D.N.C.) Gonzales v. Saul , No. 1:18-cv-00603 (D.N.M.) Counsel in suits securing access to Social Security benefits for same-sex spousal survivors blocked from qualifying by unconstitutional marriage laws. <i>Ely</i> was certified as a class action, and declared the denial of benefits unconstitutional.
U.S. Court of Appeals for the Ninth Circuit	
U.S. Court of Appeals for the Eleventh Circuit	Thornton v. Comm’r of Social Security , No. 2:18-cv-01409, 2020 WL 5494891 (W.D. Wash. Sept. 11, 2020) (class action) Counsel in class action lawsuit securing access to Social Security benefits for unmarried same-sex survivors blocked from qualifying by unconstitutional marriage laws.
U.S. Court of Appeals for the D.C. Circuit	
U.S. Court of Appeals for the Federal Circuit	Grimm v. Gloucester Cty. Sch. Bd. , 972 F.3d 586 (4th Cir. 2020) Parents for Privacy v. Barr , 949 F.3d 1210 (9th Cir. 2020) Doe v. Boyertown Area Sch. Dist. , 897 F.3d 518 (3d Cir. 2018) Whitaker v. Kenosha Unified Sch. Dist. , 858 F.3d 1034 (7th Cir. 2017) Highland v. U.S. Dep’t of Educ. , 208 F. Supp. 3d 850 (S.D. Ohio 2016) Counsel for amici curiae school administrators explaining why policies inclusive of transgender students are critical to uphold educators’ obligation to treat all students equally.
U.S. District Court for the Central, Southern, and Northern Districts of California	
U.S. District Court for the Western District of Washington	Rolfingsmeyer v. OPM , No. 20-1735 (Fed. Cir.) Counsel for amici curiae supporting a surviving spouse of a federal employee blocked from a survivor’s annuity by unconstitutional marriage laws; the case was resolved.
U.S. District Court for the Northern District of Georgia	
U.S. District Court for the Northern District of Florida	Mize v. Pompeo , 482 F. Supp. 3d 1317 (N.D. Ga. 2020) Local counsel in successful challenge to the U.S. State Department’s refusal to recognize the citizenship of a married same-sex couple’s daughter.
Supreme Court of Georgia	Being v. Crum , No. 3:19-cv-00060 (D. Ak.) (putative class action) Counsel in putative class action challenging exclusion of transition-related care in Alaska’s Medicaid program; resulted in a settlement agreement eliminating the exclusion and awarding damages to plaintiffs.
Georgia Court of Appeals	
Superior Court of DeKalb County, State of Georgia	



TARA L. BORELLI



Gender and Sexuality Alliance v. Spearman, No. 2:20-00847, 2020 WL 1227345 (D.S.C. March 11, 2020)

Counsel in challenge resulting in consent decree declaring South Carolina anti-LGBTQ curriculum law unconstitutional and barring its enforcement.

Fletcher v. Alaska, 443 F. Supp. 3d 1024 (D. Alaska 2020)

Counsel in case securing summary judgment on Title VII claim for transgender woman denied gender-confirming surgery by state employer.

Karnoski v. Trump, 926 F.3d 1180 (9th Cir. 2019)

Counsel in challenge to ban on open military service by transgender people; resulted in Ninth Circuit ruling that discrimination against transgender people receives heightened scrutiny.

Carcaño v. Cooper, No. 1:16-cv-236, 2019 WL 3302208 (M.D.N.C. July 23, 2019)

Counsel in case challenging North Carolina's H.B. 2, which targeted transgender people for discriminatory treatment in sex-separated facilities; secured consent decree ensuring nondiscriminatory access to public facilities.

Birchfield v. Armstrong, No. 4:15-cv-00615, 2017 WL 1433032 (N.D. Fla. March 23, 2017) (class action)

Counsel in class action case holding that State of Florida must provide corrected death certificates to same-sex widows and widowers who had been denied recognition of their marriage.

Carson v. Heigel, No. 3:16-cv-00045, 2017 WL 624803 (D.S.C. Feb. 15, 2017)

Counsel in suit holding that South Carolina's refusal to recognize same-sex spouses on birth certificates violates the Fourteenth Amendment.

Lively v. Fletcher Hospital, Inc., D/B/A Park Ridge Health, No. 1:16-CV-00031 (W.D.N.C. 2016)

Counsel in Title VII case challenging denial of spousal health coverage to employee's same-sex spouse; the matter was resolved.

Hall v. BNSF Ry. Co., No. 13-cv-2160, 2014 WL 4719007 (W.D. Wash. Sept. 22, 2014)

Counsel for amicus curiae supporting successful opposition to motion to dismiss complaint in challenge to employer's discriminatory denial of same-sex spousal health coverage.

Sevcik v. Sandoval, consolidated for decision with **Latta v. Otter**, 771 F.3d 496 (9th Cir. 2014)

Counsel in federal constitutional challenge that secured the freedom to marry for same-sex couples in Nevada and throughout the Ninth Circuit.

Inniss v. Aderhold, No. 1:14-cv-01180 (N.D. Ga. 2014)

Counsel in federal putative class action; secured judgment declaring Georgia's ban on marriage for same-sex couples unconstitutional.



TARA L. BORELLI



Bostic v. Schaefer, 760 F.3d 352 (4th Cir. 2014)

Counsel for intervenor plaintiff class, certified in **Harris v. Rainey**, 299 F.R.D. 486 (W.D. Va. 2013), in case that secured access to marriage for same-sex couples in Virginia and throughout the Fourth Circuit.

GlaxoSmithKline v. Abbott Laboratories, 740 F.3d 471 (9th Cir. 2014)

Counsel for amici curiae arguing that sexual orientation-based peremptory strikes warrant heightened constitutional scrutiny and violate the federal Equal Protection Clause under *Batson v. Kentucky*, 476 U.S. 79 (1986), which the court held in its decision.

United States v. Windsor, 133 S. Ct. 2675 (2013)

Counsel for amici curiae arguing that Section 3 of the federal Defense of Marriage Act (“DOMA”) required meaningful constitutional scrutiny.

Diaz v. Brewer, 656 F.3d 1008 (9th Cir. 2011)

Counsel in federal class action suit that protected domestic partner health coverage for Arizona state employees after the legislature voted to strip that coverage from lesbians and gay men.

Golinski v. U.S. Office of Personnel Management, 824 F. Supp. 2d 968 (N.D. Cal. 2012)

Counsel for plaintiff challenging DOMA; obtained district court ruling that DOMA is unconstitutional, and that classifications based on sexual orientation are entitled to heightened constitutional review.

Esquivel v. State of Oregon, No. 11C17487 (Or. Cir. Ct. 2011)

Counsel in a first-of-its-kind lawsuit deploying state anti-discrimination law to obtain insurance coverage for a transgender public employee denied transition-related care; resulted in settlement removing restrictions on transition-related care for all transgender employees of the State of Oregon.

Young v. Abercrombie, No. 10-1-1621-07 (Haw. Cir. Ct. 2010)

Counsel in a challenge seeking civil unions for same-sex couples in Hawaii, which the legislature approved in 2011 after Lambda Legal filed its lawsuit.

Munson v. Del Taco, Inc., 46 Cal. 4th 661 (2009)

Counsel for amici curiae HIV service providers throughout California, successfully arguing that California’s public accommodations law does not impose a separate intent requirement for individuals who have proven a violation of the Americans with Disabilities Act.

Strauss v. Horton, 46 Cal. 4th 364 (2009)

Counsel for petitioners in writ of mandate involving California’s Prop. 8; the court ruled that the 18,000 same-sex couples who married before Prop. 8’s enactment remain validly married.



TARA L. BORELLI

EXPERIENCE, CONT'D ...

Cal. Educ. Comm. v. Schwarzenegger, No. 07-02246 (S.D. Cal. 2008)

Cal. Educ. Comm. v. Schwarzenegger, No. 37-2008-00077546 (Cal. Super. Ct. San Diego 2008)

Cal. Educ. Comm. v. O'Connell, No. 34-2008-00026507 (Cal. Super. Ct. Sacramento 2009)

Counsel for proposed intervenor and amici curiae seeking to defend California laws that protect lesbian, gay, bisexual and transgender students; after initial proceedings in each case, defendants voluntarily dismissed all challenges.

Ellis v. Arriaga, 162 Cal. App. 4th 1000 (Cal. App. 4th 2008)

Counsel in appeal confirming that registered domestic partners have the same rights and responsibilities as different-sex spouses under California state law.

deGroen v. City of Bellevue, No. 07-2-12286-9 (Wash. Super. Ct. 2007)

Counsel for plaintiff city employees seeking domestic partner health coverage; resulted in a city policy change granting the relief sought in the suit.

RECOGNITION AND AWARDS

Distinguished Service to the Community Award, Georgia Stonewall Bar Association (2021)

Barry Goldwater Human Rights Award, Equality Arizona (2013)

Top 100 Lawyers in California, *Daily Journal* (2012)

Top Women Lawyers of 2012, *Daily Journal* (2012)

2012 Legal Service Award, Bay Area Lawyers for Individual Freedom (2012)

Honoree, EEOC San Francisco District Office LGBT Pride Celebration (2012), for work on *Golinski v. OPM*

Certificates of Recognition presented by the California State Assembly (2012) and California State Senate (2012), for work on *Golinski v. OPM*

Best Lesbian, Gay, Bisexual and Transgender (LGBT) Lawyers Under the Age of 40 Award, National LGBT Bar Association (2011)

Chancellor's Community Service Award, University of California, Berkeley (2001)

PROFILED

"Top 100 Lawyers in California," *Daily Journal* (September 12, 2012)

"Tara Borelli Is A Valued Lambda Legal Team Member," LawCrossing.com (June 8, 2012)

"Top Women Lawyers of 2012," Tara L. Borelli, *Daily Journal* (May 9, 2012)



TARA L. BORELLI

OTHER RELEVANT EMPLOYMENT

Newman DuWors LLP, then Newman & Newman, LLP, Seattle, Washington (2005-2006)
Contract attorney and associate at law firm with an emphasis on intellectual property litigation.

Break the Cycle, Los Angeles, California (2003-2005)
Senior Staff Attorney with a focus on assisting young adult survivors of domestic violence with restraining order and family law proceedings.

Proskauer Rose LLP, Los Angeles, California (2001-2003)
Associate in the Litigation Department.

A P P O I N T M E N T S

Gay & Lesbian Medical Association (2013, 2011)
Member of the Gay & Lesbian Medical Association's ("GLMA") Conference Peer-Review Committee, which reviews and evaluates workshop proposals for GLMA's Annual Conference.

The Joint Commission (Sept. 2010 – Oct. 2011)
Member of Expert Advisory Panel for publication, "The Joint Commission: Advancing Effective Communication, Cultural Competence, and Patient- and Family-Centered Care for the Lesbian, Gay, Bisexual, and Transgender (LGBT) Community: A Field Guide," released Oct. 2011.

Mautner Project, National Lesbian Health Organization (March 2010 – March 2011)
Member of the Mautner Project's Technical Advisory Council.

LifeWorks Mentoring, now with the L.A. Gay & Lesbian Center (Dec. 2007 – Dec. 2008)
Member of the Board of Directors and Program Committee Chair.

C O M M U N I T Y E N G A G E M E N T

Nelson, Mullins, Riley & Scarborough LLP, "Third Annual Pride Seminar: Housing, Healthcare, and Education in the Covid-19 Pandemic," October 8, 2021 (virtual)
Participated in firm's third annual pride seminar regarding the effect of the Covid-19 pandemic on access to resources for the LGBTQ community.

Eversheds Sutherland, "Trends in LGBTQ+ Rights Litigation," June 29, 2021 (virtual)
Provided CLE regarding cutting edge developments in impact litigation for the LGBTQ community.



TARA L. BORELLI

 COMMUNITY ENGAGEMENT, CONT'D ... 

Nelson, Mullins, Riley & Scarborough LLP, “Beyond Bostock: Protections and Barriers for the LGBTQ+ Community,” October 8, 2020 (virtual)

Participated in panel discussion regarding challenges and opportunities for the LGBTQ opportunity after the Supreme Court’s landmark ruling in *Bostock v. Clayton County*.

LGBTQ+ Lawyers Association of Los Angeles, August 20, 2020 (virtual)

Provided CLE course regarding the Eleventh Circuit’s ruling in *Adams v. St. Johns County School Board*, and the status of protections for transgender students throughout the country.

Grady Health System Gender Center, May 4, 2020 (virtual)

Provided presentation to medical providers who serve the Grady Health System Gender Center in Atlanta, Georgia health care protections for transgender people, and related impact litigation.

Merrill Lynch, March 12, 2020, Chattanooga, Tennessee

Provided presentation regarding Lambda Legal’s work to Merrill Lynch employees, with a focus on the organization’s impact litigation in the South.

Vanderbilt Law School, “Social Justice and the Legal Profession,” October 21, 2019, Nashville, Tennessee

Participated in panel discussion discussing public interest lawyering to enforce *Obergefell v. Hodges*, and advancing LGBT rights.

Osborn Maledon, P.A., “Transgender Students: Bathrooms and Beyond,” April 18, 2019, Phoenix, Arizona

Provided presentation to clients of the firm’s education law practice about developments in the law regarding transgender students.

State Bar of Georgia, Institute of Continuing Legal Education, Family Law Issues for the Modern Family, “Surveying the Landscape of Current Legal Cases Relevant to Your Transgender Client,” March 14, 2019, Atlanta, Georgia

Provided CLE course reviewing current legal issues facing families with transgender children.

Stonewall National Education Project, Plenary, “Looking Ahead: Where We Are in the Courts Towards Achieving Trans Equity in Schools,” March 5, 2019, Boca Raton, Florida

Participated in plenary panel discussion of status of federal legal protections for transgender students.

Virginia Equality Bar Association, “How Transgender Litigation is Shaping Sex Discrimination Law,” October 26, 2018, webinar

Provided CLE presentation regarding the way in which sex discrimination jurisprudence is being shaped by cases on behalf of transgender plaintiffs.

Voices for Trans Youth Campaign, “Legal Rights Workshop,” March 24, 2018, Knoxville, Tennessee

Participated in panel discussion regarding the status of federal protections for transgender youth.



TARA L. BORELLI

COMMUNITY ENGAGEMENT, CONT'D ...

State Bar of Georgia, Institute of Continuing Legal Education, Family Law Issues for the Modern Family, March 15, 2018, Atlanta, Georgia

Provided update on family-law related impact cases seeking to implement *Obergefell v. Hodge's* mandate of equal access to marriage.

Morehouse College, April 19, 2018, Atlanta, Georgia

Provided lecture to sociology course on civil rights and social movements, as illustrated by the LGBT advocacy movement.

Eversheds Sutherland, "Transgender Rights," June 29, 2017, Atlanta, Georgia

Participated in panel broadcast to Eversheds Sutherland's offices across the country regarding the state of transgender rights and litigation developments.

Emory University School of Law, OUTLaw Conference, "State of the Union," January 14, 2017, Atlanta, Georgia

Participated in panel discussion focusing on the state of marriage equality after *Obergefell v. Hodges*, and ongoing efforts to implement that landmark ruling.

National Organization of Lawyers for Education Associations, "Transgender Student Rights: Cutting Edge Legal Developments & Best Practices," October 6, 2016, Boston, Massachusetts

Provided session on the current state of legal protections for transgender students, and best practices for supporting them in schools.

Vanderbilt Law School, "Practicing Public Interest Law in the South Conference," September 10, 2016, Nashville, Tennessee

Participated in panel discussion regarding public interest career pathways to LGBTQ+ advocacy.

White & Case LLP, "Civil Rights Roundtable," June 15, 2016, Miami, Florida

Participated in panel discussion regarding recent legal developments in cases involving the LGBT community, gender equity, and racial equality.

Georgia State University College of Law, March 9, 2016, Atlanta, Georgia

Provided guest lecture on the strategy behind the marriage equality victory in *Obergefell v. Hodges*.

U.S. Equal Employment Opportunity Commission, Select Task Force on the Study of Harassment in the Workplace, December 7, 2015, Washington, D.C.

Provided testimony regarding dynamics unique to harassment based on sexual orientation and gender identity in the workplace.

Bryan Cave LLP, Retreat for LGBT Attorneys, October 24, 2014, Washington D.C.

Speaker for firm reception regarding the state of marriage equality litigation, and the role of private law firms in such litigation across the country.



TARA L. BORELLI

COMMUNITY ENGAGEMENT, CONT'D ...

American Association for Justice, “Same Sex Marriage—Changing Laws, Societal Needs, and the Impact on Marriage, Divorce and Child Custody,” July 20, 2013, San Francisco, California

Panel discussion analyzing the effect of *United States v. Windsor*, *Hollingsworth v. Perry*, and other national developments on family law issues for same-sex couples.

Anti-Defamation League, “State of the Union: Marriage Equality Cases at the Supreme Court,” April 4, 2013, Los Angeles, California

CLE course analyzing the March 26 and 27, 2013 oral arguments the Supreme Court held in *United States v. Windsor* and *Hollingsworth v. Perry*.

Sheppard Mullin Richter & Hampton LLP, Retreat for LGBT Attorneys, Oct. 19, 2012, Los Angeles, California

CLE course reviewing trends in litigation surrounding marriage equality, Section 3 of DOMA, and health coverage for domestic partners and transgender employees.

State Bar of Texas Annual Meeting, “Breaking News: Updates on DOMA and Beyond,” June 15, 2012, Houston, Texas (via teleconference)

CLE course on developing litigation and jurisprudence surrounding the federal “Defense of Marriage Act,” and marriage equality litigation for same-sex couples.

Morrison & Foerster, LLP, “LGBT Legal Update: Is the Door Closing on DOMA?” December 6, 2011, San Francisco, California

Panel discussion analyzing legal challenges across the country to Section 3 of DOMA.

Irell & Manella, LLP, December 6, 2010, Los Angeles, California

Panel discussion analyzing the U.S. Ninth Circuit Court of Appeals oral arguments in *Perry v. Brown*, the federal marriage equality challenge to California’s Proposition 8.

Davis Wright Tremaine, LLP and Microsoft Corporation, “Marriage, Democracy, The First Amendment and Federalism,” October 25, 2010, Seattle and Redmond, Washington

Panel discussions at the law firm of Davis Wright Tremaine, LLP and the Microsoft Corporation campus regarding marriage equality and free speech developments in Washington and the U.S. Supreme Court.

Gay & Lesbian Medical Association, September 22-23, 2010, San Diego, California

Workshop entitled “Legal Trends in Fighting Health Care Discrimination: Eliminating Insurance Barriers for LGBT People and People with HIV,” and led a luncheon discussion reviewing recent relationship recognition developments for same-sex couples.

Lesbian and Gay Psychotherapy Association of Los Angeles, “Civil Rights Litigation Update,” June 27, 2010, Beverly Hills, California

Continuing education course for mental health professionals regarding marriage equality litigation across the country.



TARA L. BORELLI

 COMMUNITY ENGAGEMENT, CONT'D ... 

University of Southern California, Transgender Studies Class, November 4, 2009, Los Angeles, California
Participated in a panel discussing best practices in representation of and advocacy for transgender adolescents.

Equality Hawaii, “Family Equality Coalition Community Forum: Legal Perspectives on the Equality Movement,” August 13, 2009, Honolulu, Hawaii
Panel discussing the evolving relationship recognition landscape nationally for same-sex couples, and Hawaii’s unique contribution to that movement. The panel included Hawaii Supreme Court Justice Levinson (Ret.), who authored *Baehr v. Lewin*, which launched the modern marriage equality movement.

Southern California Lambda Medical Association Banquet, Keynote Address, June 15, 2008, Los Angeles, California
Keynote address regarding the California Marriage Cases and litigation relating to healthcare fairness, including legal considerations relating to the intersection of state civil rights laws and physicians’ religious objections.

Washington Appellate Judges’ Conference, “Update on Marriage Litigation, Legislation and the State of Same Sex Unions,” April 7, 2008, Hood Canal, Washington
Forum for Washington appellate judges regarding the status of marriage litigation for same-sex couples and recent legislative changes to registered domestic partnership in Washington.

American Academy of Matrimonial Lawyers, “Custody Litigation with Same-Sex Couples and Domestic Partnership Update,” March 21, 2008, Seattle, Washington
CLE course regarding relationship recognition protections for same-sex couples nationally, and recent legislative changes to registered domestic partnership in Washington.

Annual Southern California Employment Round Table, “Transgender Discrimination – Understanding a Very Complex Topic,” Nov. 8, 2007, Los Angeles, California
CLE course regarding employment protections in California for transgender people and developments in Title VII cases involving transgender plaintiffs nationally.

MCLE Course, “Update on Marriage Litigation/Legislation and the State of Same Sex Unions,” Oct. 16, 2007, Seattle, Washington
CLE course about relationship recognition for same-sex couples, developments in domestic partnership laws in California and Washington, and issues raised by cross-jurisdiction actions for dissolution of same-sex relationships.

Press Conference Announcing the Filing of Amicus Curiae Brief by 63 Asian American Organizations in the “In Re Marriage Cases” California Marriage Equality Case Before the California Supreme Court, Sept. 26, 2007, Los Angeles, California
Provided comments on behalf of the party counsel and clients in the California marriage equality case recognizing the historic and uniquely authoritative amicus curiae brief filed by a coalition of Asian American advocacy organizations.



TARA L. BORELLI



COMMUNITY ENGAGEMENT, CONT'D ...



Medical Student Training, USC Keck School of Medicine, “An Introduction to Culturally Competent Healthcare for Lesbian, Gay, and Bisexual Patients,” Sept. 10, 2007; Sept. 18, 2006, Los Angeles, California

Provided training about disparate health outcomes for LGBT patients, and culturally sensitive practices for medical care providers treating LGBT patients.

MCLE Course, “Volunteer Attorney Educator Training: Domestic Violence and the Law,” Sept. & Oct. 2003, March 2004, January 2005, Los Angeles, California

CLE course about dynamics of domestic violence experienced by teens, preventive strategies, and laws related to mandated reporting.

In-Service Training, Youth Organizations Understanding Today’s Health Risks Conference, “Transgendered & Intersex Youth and Domestic Violence,” April 30, 2004, Los Angeles, California

Training about unique dynamics experienced by transgender and intersex youth in abusive relationships, and legal and non-legal remedies for youth seeking protection from an abusive partner.

Legislative Testimony, May 8, 2003, Sacramento, California

Legislative testimony before a hearing of the California Assembly Select Committee on Domestic Violence regarding proposed legislation Senate Bill 874. Testified about issues raised by current status of legislation providing habeas relief for women who have been battered.

Exhibit C

CARL S. CHARLES

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EDUCATION

University of Denver Sturm College of Law, Denver, CO

J.D., December 2013

Honors: Skadden Fellow Class of 2014; Most Outstanding Evening Student; Evening Division Class Rank No. 7; Rocky Mountain Legal Diversity Merit Scholarship Recipient.

Activities: University of Denver College of Law OUTLaws Co-President; Student Bar Association Evening Division Vice President.

University of Northern Colorado, Greeley, CO

B.A. in English (Emphasis Secondary Education), December 2006

Honors: Dean's List, 2002-2003, Awarded for 4.0 G.P.A.

EXPERIENCE

Lambda Legal, Atlanta, GA

February 2019 to Present

Senior Attorney

Advocate for LGBTQ people and people living with HIV through litigation, policy advocacy, and public education. Pursue complex litigation strategies using federal constitutional and statutory employment law. Engage in complaint drafting, client interviews, drafting of client declarations, retaining and interviewing expert witnesses, drafting, filing and oral argument of both procedural and dispositive motions and other briefs, discovery practice, including taking and defending expert witness and client depositions. Lead settlement negotiations and case mediation.

A Better Balance, New York, NY

July 2018 to February 2019

Staff Attorney

Serve as legal counsel for state and federal legislative campaigns advocating for paid sick time and paid family and medical leave for workers. Draft municipal, state, and federal legislation to present to lawmakers at their respective levels of government. Review and analyze other municipal, state, and federal legislation, and existing legal landscape in each relevant jurisdiction. Review and interpret relevant case law, monitor recently filed and pending litigation for impacts on draft legislation. Provide legal analysis in answer to complex questions of state and municipal employment and labor law.

Lambda Legal, New York, NY

June 2017 to July 2018

Transgender Rights Project Fellow

Serve as legal counsel in a variety of cases seeking legal remedies for discrimination against transgender people using city, state, or federal policies or laws. Initiate litigation using state and federal anti-discrimination law on behalf of transgender people experiencing discrimination in employment, healthcare, education and state custody. Spearhead plaintiff search and complaint drafting, shepherd plaintiff employment complaints through regional EEOC offices, respond to and prepare discovery requests, engage in motions practice, assist in preparations for trial and participate in settlement negotiations.

NYC Commission on Human Rights, New York, NY

August 2016 to May 2017

Staff Attorney, Law Enforcement Bureau

Enforcing and upholding the New York City Human Rights Law, the most comprehensive municipal anti-discrimination law. Meet with potential victims/complainants at intake meetings, investigate individual factual allegations, draft and serve complaints on defendants, dual file employment claims with the EEOC regional office, make recommendations to the Commissioner about the strength of cases and whether they should be referred to the Office of Administrative Trials and Hearings for further adjudication, settled between the parties, or dismissed. Maintain a case load of approximately 65 cases which included allegations of discrimination across a wide variety of protected classes and in various settings but focused primarily upon employment discrimination.

American Civil Liberties Union, New York, NY

September 2014 to August 2016

LGBT & HIV Project Skadden Legal Fellow and Staff Attorney

Draft state and federal district court complaints challenging discrimination based on sex and transgender status and engage in fact investigation in support of claims of discrimination. Conduct interviews of service providers, watch criminal and juvenile court proceedings (when not closed to the public), and interview youth while working with their case workers, social workers, or legal aid attorneys to learn about how and where discrimination may have occurred. Provided legal research, legal memo drafting, draft brief writing in other cases that the ACLU LGBT & HIV Project was litigating or preparing to litigate and other potential matters regarding transgender people's right to access public accommodations, including restrooms, free from discrimination. Provide continuing legal education trainings to attorneys primarily practicing employment law in New York State, California, and Pennsylvania through conferences focused on the provision of legal services to LGBT people.

BAR and COURT ADMISSIONS

Massachusetts, New York

E.D.N.Y, S.D.N.Y, Second Circuit Court of Appeals, Fourth Circuit Court of Appeals, Ninth Circuit Court of Appeals, Eleventh Circuit Court of Appeals

Exhibit D

Sasha J. Buchert

1776 K Street, N.W., 8th Floor, Washington DC, 20006 | (202) 804-6245 ext. 7595 | sbuchert@lambdalegal.org

PROFESSIONAL EXPERIENCE, LEGAL:

Lambda Legal, Senior Attorney, 2017 – Present

- Conducted extensive federal and state legislative and policy efforts on a wide range of issues including judicial nominations, criminal justice reform policy and health care initiatives.
- Built extensive relationships with congressional offices and oversight committees, commented on a wide range of administrative rules, reviewed and edited state and federal legislation, led our day-to-day work on reviewing judicial nominations and managed numerous opposition campaigns. Worked closely with numerous coalitions. Helped lead a team that sent out a weekly email amplifying recent regulatory, legislative and litigation developments. Worked closely with litigation teams to disseminate information about impending regulations and congressional activity. Helped prepare members of congress for numerous hearings. [Testified](#) on behalf of Lambda Legal before the U.S. House of Representatives Education and Labor Subcommittee on Civil and Human Services. Contributed to publications such as the international Trans Legal Mapping Report and Trans Bodies Trans Selves.
- Spearheaded successful legislative campaigns in California and in D.C.
- Provided extensive media appearances on behalf of LGBTQ people, including video appearances on [CSPAN](#), [CNN](#), [BBC](#), [PBS NewsHour](#), [Vox](#), and [Newsy](#). Wrote numerous op-eds for a wide range of publications, including for [Fox News](#), [Them](#), [USA Today](#), and [Out.com](#), and radio appearances on [NPR](#) and many other outlets.
- Litigated cases expanding and solidifying federal civil rights protections for LGBTQ people, including a lawsuit challenging the ban on open transgender military service, a challenge to a discriminatory birth certificate policy in Tennessee, challenges to rulemaking by the U.S. Health and Human Services Agency, and other litigation. I have deposed two experts and have defended a client in a deposition. I have worked on numerous legal briefs.

Transgender Law Center, Staff Attorney, 2014 – 2017

- Spearheaded state legislation that reduced barriers to identity documents and criminal justice reform on behalf of transgender and gender nonconforming people.
- Conducted key litigation that helped advance the clarification that sex discrimination protections encompass protections for LGBTQ people and expanded protections for transgender prisoners.

Basic Rights Oregon, Communications Manager, 2012-2014

- Helped develop effective messaging on marriage equality and transgender health care.
- Managed the organization's social media platforms.
- Educated members of the legislature on issues relating to transgender people.
- Served as a member of the Legal Advisory Committee for the organization that helped to inform the organization's strategic planning.

EDUCATION:

- Willamette Law School, Juris Doctorate.
- Portland State University, Bachelor of Arts, Master of Arts in English Literature.

ADDITIONAL:

- First openly transgender person to be appointed to an Oregon state board (served as Chair on the Oregon State Hospital Advisory Board).
- Served proudly in the United States Marine Corps.

Exhibit E

NORA HUPPERT (she/her)

65 E. Wacker Pl., Suite 2000, Chicago, IL 60601 • nhuppert@lambdalegal.org

ADMISSIONS

Admitted in California and Illinois.

Admitted to the Ninth, Tenth, and Eleventh Circuit Courts of Appeals.

EDUCATION

COLUMBIA LAW SCHOOL, New York, NY

Juris Doctor, May 2019

Honors: Harlan Fiske Stone honors (2017-2018 & 2018-2019)

Allan Morrow Sexuality and Gender Law Prize

Activities: *Columbia Journal of Law and Social Problems* (articles editor)

Publication: “The Illinois Millionaire’s Exemption and the Utility of Campaign Contribution Limits,”
(COLUM. J.L. & SOC. PROBS., 2019)

Association: National Trans Bar Association (member)

FRANKLIN & MARSHALL COLLEGE, Lancaster, PA

Bachelor of Arts in Government, *cum laude*, May 2014

EXPERIENCE

Lambda Legal

Staff Attorney, Chicago, IL

Sept. 2021 – present

Renberg Fellow, Los Angeles, CA

Sept. 2019 – Sept. 2021

Responsible for developing and executing impact litigation advancing LGBT rights. Engaged in litigation that halted enforcement of Idaho’s 2020 anti-transgender birth certificate law. Participated in litigation challenging exclusion of gender-confirming care in Alaska Medicaid health plan. Represented transgender employee in EEOC proceedings. Drafted complaints, various motions, demand letters, declarations, and interviewed potential plaintiffs in various LGBTQ+ rights cases. Assisted in drafting amicus briefs, including in immigration matters. Represented Lambda Legal on coalition that drafted and advocated for SB132, which enacted housing protections for trans people incarcerated in California. Helped to obtain consent decree enjoining South Carolina anti-LGBT curriculum law.

Transgender Rights Project, Lambda Legal

New York, NY

Legal Intern

Spring 2019

Conducted legal research and drafted research memos.

Sexuality and Gender Law Clinic, Columbia Law School

New York, NY

Clinic Student

Spring 2019

Represented trans asylee in seeking asylum. Assisted in research project into New York Family Court system in partnership with Bronx Defenders.

New York City Campaign Finance Board

New York, NY

Legal Intern

Summer 2018

Conducted legal research and drafted memoranda for staff. Assisted in drafting filings in Board’s enforcement and collections proceedings in state court.

Criminal Appeals Externship, Center for Appellate Litigation

New York, NY

Extern

Spring Term 2018

Drafted and edited appellant's brief in a criminal appeal. Argued the appeal at oral argument before an Appellate Term panel in March 2019.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CHRISTOPHER FAIN, *et al.*, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

WILLIAM CROUCH, *et al.*,

Defendants.

CIVIL ACTION NO. 3:20-cv-00740

HON. ROBERT C. CHAMBERS

ORDER GRANTING CLASS CERTIFICATION

THIS MATTER comes before the Court by way of Plaintiffs' Motion for Class Certification Pursuant to Federal Rule of Civil Procedure 23. The Court, having reviewed the papers submitted and arguments of counsel, issues the following Order:

1. Plaintiffs' Motion for Class Certification Pursuant to Fed. R. Civ. P. 23 is GRANTED;

2. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2), the Court certifies the following class:

Medicaid Class

All transgender people who are or will be enrolled in West Virginia Medicaid and who are seeking or will seek gender-confirming care barred by the Exclusion.

3. The Medicaid Class is certified as to all Counts in the First Amended Class Action Complaint.

4. The Court appoints Christopher Fain and Shauntae Anderson as Class Representatives.

5. The Court appoints Nichols Kaster, PLLP; Lambda Legal Defense and Education Fund, Inc.; and The Employment Law Center, PLLC, as Class Counsel.

IT IS SO ORDERED.

Dated: _____

Honorable Robert C. Chambers
U.S. District Court Judge