

**IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW JERSEY**

MARILYN DELAHOY, MARY  
DUNAHOE, FRANK TASTINGER,  
TERRY TIGHE, JOANNE  
MICHANOWICZ, CORY HIGHTOWER,  
and ERIC BOSCH, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

SAMSUNG ELECTRONICS AMERICA,  
et al.,

Defendants.

Case 2:22-cv-04132-CCC-CLW

**PLAINTIFF MASON'S  
APPLICATION FOR  
APPOINTMENT OF MILBERG AS  
INTERIM LEAD CLASS  
COUNSEL**

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ROBERT A. MASON, on behalf of himself  
and all others similarly situated,

Plaintiffs,

v.

SAMSUNG ELECTRONICS AMERICA,  
et al.,

Defendants.

Case 2:22-CV-06186-CCC-CLW

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KAYCE KLEEHAMER, on behalf of  
himself and all others similarly situated,

Plaintiffs,

v.

SAMSUNG ELECTRONICS AMERICA,  
et al.,

Defendants.

Case 2:22-cv-06312-CCC-CLW

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Plaintiffs Robert A. Mason and Kayce Kleehamer<sup>1</sup> respectfully submit this Application to have this Court appoint interim lead counsel pursuant to Rule 23(g)(3) of the Federal Rules of Civil Procedure and the Court’s November 14, 2022 Order. For the reasons set forth herein, this Court should grant Plaintiffs’ Application and appoint Milberg Coleman Bryson Phillips Grossman PLLC (“Milberg”), as interim lead class counsel.

## I. INTRODUCTION

Before this Court are three consolidated cases against Defendant Samsung Electronics America, Inc. and Samsung Electronics Co., Ltd.: *Delahoy, et al. v. Samsung Electronics America, Inc., et al.*, No. 2:22-cv-04132-CCC-CLW (the “*Delahoy* Action”); *Mason v. Samsung Electronics America, Inc., et al.*, No. 2:22-CV-06186-CCC-CLW (the “*Mason* Action”); and *Kleehamer v. Samsung Electronics America, Inc., et al.*, No. 2:22-CV-06312-CCC-CLW (the “*Kleehamer* Action”). Each of these Actions have overlapping claims, brought on behalf of overlapping classes, based on the same underlying factual dispute. Without effective coordination, the Plaintiffs, and the respective classes they seek to represent, will have their interests compromised through disparate efforts and duplication. Selecting interim lead counsel is appropriate at this stage of the litigation.

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<sup>1</sup> Plaintiffs Mason and Kleehamer represent two of the three cases on file. In other words, they represent the majority of the cases.

As demonstrated herein, Milberg is the right firm to guide this litigation. Milberg has the requisite experience and resources to vigorously represent the proposed classes. Milberg has deep experience in successfully prosecuting consumer class actions, before both trial and appellate courts, across the country and has represented clients in lengthy and contentious cases similar to the one at bar. Indeed, Milberg's experience in prosecuting appliance and product defect class actions just like this case is unmatched by any law firm before this Court. In fact, Milberg has taken product defects cases just like this to trial on a classwide basis. Put simply, Milberg is able to litigate against the largest corporations, at the highest level, due to the fact that it employs over one hundred attorneys who focus exclusively on representing plaintiffs in complex litigations and arbitrations. It is perhaps not surprising then that *Milberg has the majority support of the cases involved in this consolidated litigation.*

In addition, Milberg has already undertaken substantial investigation into the facts giving rise to these claims and has worked with consultants to confirm its allegations. These efforts, combined with Milberg's considerable attempt to privately order this case, demonstrate its ability to organize and manage the efforts of several firms. Accordingly, because appointing Milberg as interim class counsel satisfies the requirements of Rule 23(g) and will promote the orderly resolution of this action, Plaintiff Mason respectfully requests that the Court grant this



Application.

## II. BACKGROUND AND PROCEDURAL HISTORY

The *Delahoy* Action was filed on June 17, 2022, in the United States District Court for the District of New Jersey, by a single Plaintiff (Marilyn Delahoy) asserting violations of the New Jersey Consumer Fraud Act (“NJCFA”) and a fraud claim, on behalf of a national class, as well as violations of N.Y. Gen. Bus. Law §§ 349 & 350, breach of implied and express warranty claims, and unjust enrichment claims for a New York subclass. *See Delahoy* Complaint [No. 2:22-cv-04132, ECF No. 1], at ¶¶ 90, 104-174.

About a month later, on July 18, 2022, the *Mason* Action was filed in the United States District Court for the Central District of California. *See Mason. v. Samsung Electronics America, Inc., et al.*, No. 5:22-cv-01244 (C.D. Cal.), ECF No. 1 (the “*Mason* Compl.”). *Mason* asserts several causes of action on behalf of a class of California purchasers, including breach of implied warranty and violations of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.* (“MMWA”); California’s Song-Beverly Warranty Act, Cal. Civ. Code §§ 1792 *et seq.*; False Advertisement Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* (“FAL”); Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* (“CLRA”); and Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”). While the putative class in the *Delahoy* Action nominally included Plaintiff Mason, he believed that California

consumers would be better served through a class action, that actually pled claims based on California consumer protection laws, led by a California class representative. *See* Declaration of Gary M. Klinger, concurrently filed herewith (“Klinger Decl.”), at ¶ 5.

On August 5, 2022, Milberg and Defendants’ counsel conferred regarding Defendant Samsung Electronics Co., Ltd. executing a waiver of service and agreeing to an extension of the deadlines for Defendant Samsung Electronics America, Inc. to respond to the Complaint. *Id.*, at ¶ 6. It was also at this time that the *Mason* parties began discussing the possibility of transferring and consolidating their case before this Court with the *Delahoy* Action. *Id.*, at ¶ 7. The parties ultimately agreed to transfer the *Mason* Action, with a stipulation confirming the parties’ agreement filed on August 9, 2022. *See Mason v. Samsung Electronics America, Inc., et al.*, No. 5:22-cv-01244 (C.D. Cal.), ECF No. 19. *Id.*

Defendants’ effort to consolidate the *Delahoy* and *Mason* Actions was not surprising. Milberg recognized that that consolidation of *Mason*’s California claims with the *Delahoy* Action was a possibility. *Id.*, at ¶ 8. Therefore, shortly after the *Mason* Complaint was filed, Milberg attorneys affirmatively engaged plaintiff’s counsel for *Delahoy* to discuss possible joint prosecution of the pending Samsung actions. *Id.* Milberg believed that a joint prosecution agreement would be beneficial for both Plaintiffs and the proposed classes. *Id.*, at ¶ 15. Based on Milberg’s

experience, multi-state consumer class actions can be both time consuming and expensive. *Id.* Having multiple firms, working as a united front, is often beneficial. *Id.* Moreover, based on conversations with Defendants’ counsel, Milberg believes that Defendants were prepared to vigorously defend these Actions and were not likely to agree to an early resolution of the case. *Id.* In fact, defense counsel represented that Samsung would vigorously defend itself in this case but also acknowledged that Milberg had experience litigating similar appliance defect cases, including one in particular that lasted over five (5) years. *Id.* Milberg recognized that coordinating efforts with plaintiff’s counsel in *Delahoy* would be beneficial for the class as well as avoid a protracted and unnecessary leadership dispute. But Plaintiff counsel in *Delahoy* would suddenly stop engaging with Milberg. *Id.*, at ¶ 8.

Instead, on October 2, 2022, the *Delahoy* Counsel filed an Amended Complaint. The *Delahoy* First Amended Complaint [No. 2:22-cv-04132, ECF No. 18] (the “*Delahoy* FAC”). For the first time, the *Delahoy* Action included a California plaintiff or a California putative class in a clear attempt to subsume the *Mason* case. *See generally id.* The *Delahoy* Action added six additional named-plaintiffs and subclass (*i.e.* the California Electric Sub-Class, Florida Electric Sub-Class; Michigan Gas Sub-Class; Missouri Electric Sub-Class; Nebraska Electric Sub-Class; and Texas Electric Sub-Class). Each of these subclasses alleged

additional state specific causes of action. *Id.*

On October 28, 2022, the *Kleehamer* Action was filed. *Id.*, ECF No. 1. Like the *Delahoy* Action, the *Kleehamer* Action seeks a national class of purchasers of Samsung ranges. *Id.*

With Defendants' counsel assistance, the parties eventually agreed to consolidation of all three Actions. *Id.*, at ¶ 13; Letter Brief, No. 2:22-cv-04132, ECF No. 20. On November 14, 2022, the Court granted the stipulated relief, and ordered that plaintiffs' counsel submit applications for interim class counsel. Stipulation and Order, Letter Brief, No. 2:22-cv-04132, ECF No. 20.

As it has always done throughout this case, Milberg conferred with plaintiff's counsel for *Kleehamer* (the Chestnut Cambronne law firm) to discuss coordinating their efforts for the benefit of the Class.. Klinger Decl., at ¶ 14. Counsel for *Kleehamer* agreed that Milberg was the right firm to lead this litigation because of its expertise in prosecuting similar class actions and because it had the necessary resources to take on a powerful corporation like Samsung. Accordingly, *Kleehamer's* counsel agreed to support this application. *Id.* Additionally, on November 18, 2022, Milberg had a telephone call with counsel for *Delahoy*. During that call, Milberg once again offered to prosecute the cases jointly and on equal footing, but that offer was once again rejected. *Id.*, at ¶ 14. While Milberg has tried to privately order the Actions, and has the agreement of the plaintiffs in two of the

three Actions, the inability to reach an agreement with the *Delahoy* Plaintiffs has unfortunately necessitated this Application.

### III. ARGUMENT

#### A. **Appointing Interim Lead Class Counsel Is Appropriate Under Rule 23(g) and Will Protect the Interests of the Putative Plaintiff Class**

Rule 23(g)(3) provides that the Court “may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.” FED. R. CIV. P. 23(g)(3). “[D]esignation of interim counsel clarifies responsibility for protecting the interests of the class during precertification activities[.]” Manual for Complex Litigation (Fourth) § 21.11 (2004). The appointment of interim lead counsel is particularly appropriate when there is competing actions, with overlapping classes, consolidated within the same court. *Id.*; *In re LIBOR–Based Fin. Instruments Antitrust Litig.*, 11 Md. 2262, 2011 WL 5980198, at \*2 (S.D.N.Y. Nov. 29, 2011) (“The designation of interim class counsel is especially encouraged in cases ... where there are multiple, overlapping class actions that require extensive pretrial coordination.”).

In this case, the designation of interim lead counsel is particularly important since the amendment of the *Delahoy* Action. While the *Delahoy* Complaint was amended to include a California subclass, it is unclear to the extent it would cover Plaintiff Mason’s claims. Plaintiff Mason purchased a gas range (Model No.

NX60A6511SS). *See Mason* Compl., at ¶¶ 9-10. This Model Number was not specifically included in the *Delahoy* Action. *Delahoy* FAC, at ¶ 102. And the operative *Delahoy* Complaint’s “California Electric Sub-Class” only includes California consumers who purchased a new electric range. *Delahoy* FAC, at ¶ 180. Yet, the “National Gas Class” in the *Delahoy* Action would likely include Plaintiff Mason. *Id.* This National Gas Class, however, does not plead any claims under California’s consumer protection statutes (*i.e.* the UCL, FAL, CLRA). *Id.*, at ¶ 255-284. Nor does the “California Electric Sub-Class” include claims under the FAL or Song-Beverly Warranty Act. *Id.* Accordingly, the *Delahoy* Plaintiffs seem unwilling or unable to assert the same claims included in the *Mason* Action.<sup>2</sup>

Thus, the *Delahoy* and *Mason* Actions involve similar, but not identical claims, made on behalf of the same class. Similarly, the *Delahoy* Action also overlaps with the *Kleehamer* Action, which asserts a national class based on the same implied warranty, MMWA, NJCFA, and equitable claims. *Compare Delahoy* FAC with *Kleehamer* Compl. Because of these competing efforts, uncertainty as to which attorney will handle matters on the way to class certification, such as making and responding to motions, conducting any necessary discovery, moving for class

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<sup>2</sup> The *Delahoy* plaintiffs’ counsels attempt to artificially divide the classes’ claims into gas and electric purchasers, with different causes of action, may be detrimental to the overall interests of the proposed classes. *See In re Parking Heaters Memorandum Antitrust Litig.*, 310 F.R.D. 54, 58 (E.D.N.Y. 2015).

certification, and negotiating settlement, makes formal designation of interim counsel appropriate. Manual for Complex Litigation (Fourth) § 21.11 (2004); Rule 23(g) 2003 Advisory Committee Notes; *Moehrl v. Nat'l Ass'n of Realtors*, No. 19-CV-01610, 2020 WL 5260511, at \*1 (N.D. Ill. May 30, 2020) (“Instances in which interim class counsel is appointed are those in which overlapping, duplicative, or competing class suits are pending before a court, so that appointment of interim counsel is necessary to protect the interests of class members.” (internal quotation omitted)).

#### **B. Milberg is Uniquely Qualified as Interim Lead Counsel**

Although Rule 23 does not expressly provide so, it is well accepted that the considerations set out in Rule 23(g)(1)(C), which governs appointment of class counsel once a class is certified, apply equally to the designation of interim class counsel. *See, e.g., In re Crude Oil Commodity Futures Litig.*, 11 Civ. 3600, 2012 WL 569195, at \*1 (S.D.N.Y. Feb. 14, 2012); *Walker v. Discover Fin. Servs.*, No. 10-cv-6994, 2011 WL 2160889, at \*2 (N.D. Ill. May 26, 2011); *Milkboy Ctr. City LLC v. Cincinnati Cas. Co.*, No. 20-cv-2036, 2020 WL 7633975, at \*3-4 (E.D. Pa. Dec. 22, 2020). Accordingly, the Court should consider:

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

FED. R. CIV. P. 23(g)(1)(A)(i)–(iv). The court may also consider “counsel’s willingness and ability to commit to a time-consuming process and to work cooperatively with others.” *In re Apple Inc. Device Performance Litig.*, No. 18-MD-02827-EJD, 2018 WL 11360203, at \*2 (N.D. Cal. May 15, 2018) (citing FED. R. CIV. P. 23(g)(1)(B)).

1. Proposed Co-Lead Counsel Performed Substantial Work Investigating This Action

Milberg has been actively investigating this case since May 2022 and filed the first California action, involving an actual California Plaintiff, asserting claims arising out of California law, on behalf of a California class.<sup>3</sup> *See* Klinger Decl., at ¶¶ 2-3.

Before filing a complaint, Milberg interviewed potential clients and investigated the facts surrounding the controversy. *Id.*, ¶ 2. As part of this investigation, Milberg communicated with consultants who are professionals in the field of product liability. *See id.*, ¶ 39.

Since filing, Milberg led the effort to organize and consolidate the related actions. To ensure the orderly progress of the action, Milberg has also communicated with all counsel in the related actions as well as with defense counsel concerning

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<sup>3</sup> Indeed, the *Mason* Action includes a number of California causes of action that the *Delahoy* Action is unwilling to assert. Klinger Decl., at ¶ 10.



early case management issues. *Id.*, ¶¶ 8, 14. Milberg has also prepared a proposed protocol for the recording, exchange, and review of attorneys’ fees and expenses incurred by counsel for the Plaintiffs in this action. *Id.*, ¶ 17, Ex. A. This protocol requires quarterly reports to the Court of attorney time expended, and limits the recovery of attorneys’ fees and expenses to the law firms authorized by interim class counsel to perform specific work on this case. *Id.* Milberg, therefore, has performed substantial work to advance this action.<sup>4</sup>

2. Proposed Interim Lead Counsel Have Relevant Experience and Knowledge of the Applicable Law.

Notably, Milberg has successfully litigated numerous class actions and other complex cases, and the attorneys at these firms are knowledgeable about product defect cases and appliance defect cases, in particular. Klinger Decl., at ¶ 21, Ex. B. The firm’s ability to effectively lead this case and work cooperatively with other attorneys is demonstrated by our efforts to both consolidate the Actions and organize their joint prosecution. *See id.*, at ¶¶ 8, 14 (Milberg reached out to the *Delahoy* and

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<sup>4</sup> While *Delahoy* was the first to file, when cases are filed with a month of each other, and there is no evidence to suggest that any firm has done substantially more in identifying or investigating potential claims, *Delahoy* first-to-file status only does not weigh it in favor. *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 07-5944 SC, 2008 WL 2024957, at \*2 (N.D. Cal. May 9, 2008); *Outten v. Wilmington Tr. Corp.*, 281 F.R.D. 193, 199 (D. Del. 2012) (“first-filer” status disregarded where there was 6-week gap between first and second filed complaints). Courts do not wish to encourage a “race to the courthouse.” *Outten, supra*, citing *In re Scrap Metal Antitrust Litig.*, 1:02–CV–0844, 2002 WL 31988203, at \*1 (N.D. Ohio Aug. 5, 2002).

*Kleehamer* counsel, in order to see if they would cooperatively prosecute their respective claims); *see also Benkle v. Ford Motor Co.*, No. SACV-16-1569-DOC-JCGx, 2017 WL 8220707, at \*5 (C.D. Cal. Apr. 28, 2017) (“The Court is persuaded that this extensive support demonstrates the [proposed interim class counsel’s] ability to work cooperatively with the plaintiffs and attorneys involved in this case in the best interests of the class.”); *see also* MCL § 21.272 (describing the “private ordering” method, which is favored). Indeed, *Kleehamer’s* Counsel joins *Milberg* in this Application, and it is only the *Delahoy* counsel that resists. *Klinger Decl.*, at ¶ 14; *In re Lenovo Adware Litig.*, No. 15-MD-02624, 2015 WL 10890657, at \*2 (N.D. Cal. July 27, 2015) (support of “substantial majority” of plaintiffs’ counsel “demonstrates their ability to work cooperatively with the many plaintiffs and attorneys involved in this case, and to do so in the best interests of the class.”)<sup>5</sup>

*Milberg* further has the requisite legal knowledge and experience to manage and prosecute the Actions through class certification, and ultimately trial. *Milberg’s* credentials are detailed more fully in the accompanying declaration and firm resume. *Klinger Decl.*, at ¶ 21, Ex. B. Indeed, *Milberg’s* experience when it comes to

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<sup>5</sup> Indeed, the *Delahoy* counsel seeming inability to work with other counsel, instead coveting this case, should give this Court pause. *In re Parking Heaters Memorandum Antitrust Litig.*, 310 F.R.D. at 58 (noting while Hagens Berman was the-first-filed case and was experienced in Class actions, its unwillingness to cooperate with other counsel precluded its appointment as interim lead).

prosecuting large and complex class actions just like this case is unmatched. It has served as lead or co-lead counsel in several large class actions involving product defects and appliance defects, in particular, including, *inter alia*:

- *Ersler, et. al v. Toshiba America et. al*, No. 07- 2304 (D.N.J.) (settlement of claims arising from allegedly defective television lamps) (2009).
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- *Maytag Neptune Washing Machines* (class action settlement for owners of Maytag Neptune washing machines).
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- *Stalcup, et al. v. Thomson, Inc.* (Ill. Cir. Ct.) (\$100 million class settlement of claims that certain GE, PROSCAN and RCA televisions may have been susceptible to temporary loss of audio when receiving broadcast data packages that were longer than reasonably anticipated or specified) (2004).
- *Turner v. General Electric Company*, No. 2:05-cv-00186 (M.D. Fla.) (national settlement of claims arising from allegedly defective refrigerators).
- *Michael Hamm, et al. vs. Sharp Electronics Corporation*, No. 5:19-cv-00488-JSM-PRL (M.D. Fla.) (defective microwave – settlement value \$103,049, 520.00 to \$113,884,064.00).
- *Ellen Berman, et al. v. General Motors LLC*, No. 2-18-CV-14371 (S.D. Fla.) (defective vehicle – GM paid more than \$45 Million in claims).
- *Kenneth Chapman, et al. v. TriStar Products, Inc.* No. 1:16-cv-1114 (N.D. Ohio) (defective pressure cooker – settlement value \$4,480,856.50).
- *Shawn Roberts, et al. v. Electrolux Home Products, Inc.*, No. SACV12-1644-CAS (C.D. Cal.) (defective dryer - full utilization value of over \$155 million and a projected utilization value of over \$35 million).

- *Rebecca Rysewyk, et al. vs. Sears Holdings Corporation, et al.* No. 1:15-cv-4519 (N.D. Ill.) (defective riding lawn mower/fire - \$38 Million).
- *Elisabeth Cleveland, et al. vs. Whirlpool Corporation*, No. 20-cv-1906 (D. Minn.) (Settlement value of \$16,954,568 to \$22,577,040).
- *Billy Glenn, et al. vs. Hyundai Motor America, et al.* No. 8:15-cv-02052 (C.D. Cal.) (defective panoramic sunroof – valued over \$40M).
- *Wendy Grasso, et al. vs. Electrolux Home Products, Inc.*, No. 8:16-cv-00911 (M.D. Fla.) (defective washing machines - settlement exceeds \$35 Million.)

*Id.*, at ¶ 21. Indeed, Milberg has been successfully pursuing claims on behalf of consumers against even against the large appliance manufacturers. Time and time again Milberg has won contested class certification and even shown it is willing to take a class action to trial—a feat that the vast majority of class action firms have not accomplished. *Id.*, at ¶ 21. In other words, the Class will benefit most from having Milberg lead this litigation. Conversely, the Class will suffer is Milberg is not chosen to lead this litigation.

### 3. Proposed Interim Co-Lead Counsel Are Committed to Protecting and Advancing the Interest of the Class.

The best predictor of the time and resources an attorney or law firm will devote to a case is what they have delivered in the past. Milberg has demonstrated its willingness to assert the interest of the Classes, no matter how intense and long-lasting the litigation. Klinger Decl., at ¶ 21. Indeed, in a similar case, Milberg has litigated the classes claims for over several years: shepherding the case from

pleadings through class certification. *Id.*, at ¶ 21 (citing *Wendy Grasso, et al. vs. Electrolux Home Products, Inc.*, No. 8:16-cv-00911 (M.D. Fla.)).

Indeed, since Milberg's founding in 1965, it has repeatedly taken the lead in landmark cases that have set groundbreaking legal precedents, prompted changes in corporate governance, and recovered over \$50 billion in verdicts and settlements.<sup>6</sup> Milberg has been instrumental in obtaining precedent setting decisions at every level, including at the United States Supreme Court.<sup>7</sup> Milberg has obtained outstanding results in this Court. *See In re Prudential Insurance Co. Sales Practice Litigation*, No. 95-4704 (D.N.J.) (serving as lead counsel and recovering more than \$4 billion for policyholders). The firm pioneered federal class action litigation and is widely recognized as a leader in defending the rights of victims of corporate and other large-scale wrongdoing. Milberg has more than 100 attorneys and has offices across the U.S. and the European Union.

Milberg is dedicating two Partners, Gary Klinger and Nick Suciu, along with their respective practice groups, to oversee the day-to-day litigation. *Id.*, at ¶¶ 22-23, 36, 38, 40. But as stated earlier, Milberg has more than 100 attorneys (as well as over 100 staff members) with offices across the U.S., which are available to

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<sup>6</sup> *See, e.g., In re Tyco International Ltd., Securities Litigation*, MDL 1335 (D.N.H.) (serving as lead counsel and obtaining approval of \$3.2 billion settlement); *see also* <https://milberg.com/outstanding-recoveries/>.

<sup>7</sup> *See* <https://milberg.com/precedent-setting-decisions/page/3/>.

address the needs of this case. *Id.*, at ¶ 40. Most directly relevant, Milberg has attorneys with experience in each of the States relevant to this case. Milberg has attorneys licensed to practice in California, Florida, Michigan, Ohio, New York, New Jersey, and Missouri. *Id.*, at ¶ 41. Additionally, the firm has counsel that has been admitted to United States District Courts in Texas and Nebraska. *Id.* Accordingly, Milberg has the national reach, resources, and experience necessary to prosecute a multi-state or national class action like this one.

Milberg will efficiently pursue the best interests of the proposed classes. The firm is committed to the prosecution of their claims and will make the investment of time and resources necessary to bring the Actions to a successful conclusion. *Id.*, at ¶ 39. Milberg also recognizes that the other firms in this litigation may also be helpful in representing the proposed classes. If appointed and authorized by the Court, Milberg would draw upon the experience of these other firms, with strong controls in place to ensure efficiency and lack of duplication. *See, e.g., In re: Interest Rate Swaps Antitrust Litig.*, No. 16-MC-2704 (PAE), 2016 WL 4131846, at \*4 (S.D.N.Y. Aug. 3, 2016) (designating firms to be “on-call” “at interim co-lead counsel’s sole discretion, as a resource.”). Indeed, Milberg submits with this Application a detailed timekeeping and cost reporting protocol designed to promote efficient work. Klinger Decl., at ¶ 17, Ex. A.

**C. In the alternative, Milberg Proposes that Milberg and Morgan & Morgan serve as Interim Co-Lead Counsel**

Milberg believes that a single firm will adequately serve as Interim Lead Counsel and that a “co-lead” appointment can even lead to unnecessary duplication of efforts and wasted resources in some circumstances.<sup>8</sup> Based on its experience and deep resources, Milberg believes it is the right firm for the job. Still, Milberg recognizes that a joint effort of multiple, well-resourced plaintiffs firms can be advantageous in a complex litigation if the appropriate controls are in place (which is why Milberg has submitted a time and expense protocol). *Id.*, at ¶ 15. If this Court is inclined to select two firms to lead this litigation, Milberg submits, in the alternative, that this Court should appoint Milberg and Morgan & Morgan to serve as Interim Co-Lead Counsel. Both firms have worked well together in the past to achieve outstanding results for class members. *See, e.g., Aguallo v. Kemper Corporation*, No. 1:21-cv-01883 (N.D. Ill.) (where Mr. Klinger of Milberg and attorneys from Morgan & Morgan obtained a class settlement valued at \$17.1 million).

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<sup>8</sup> *See Kjessler v. Zaappaaz, Inc.*, No. 4:17-CV-3064, 2018 WL 8755737, at \*5 (S.D. Tex. Aug. 31, 2018) (noting that appointing a single firm may be beneficial when the consolidated actions assert nearly identical claims); *In re Nest Labs Litig.*, 2014 WL 12878556, at \*2 (explaining that, in the absence of inter-firm conflict, “greater efficiency and clarity can only be realized if the Court appoints one firm as interim class counsel”).

#### IV. CONCLUSION

For the foregoing reasons, this Court should appoint Milberg as sole Interim Lead Counsel for the putative classes in the consolidation Actions or, in the alternative, Milberg and Morgan & Morgan as Co-Lead Interim Class Counsel.

Dated: November 21, 2022

Respectfully submitted,

/s/ Vicki J. Maniatis

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Application Forthcoming

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 21, 2022, a true and accurate copy of the foregoing Plaintiff Mason's Application for Appointment of Milberg as Interim Lead Class Counsel has been electronically filed with the Clerk of this Court via this Court's CM/ECF System, which will send notice to all counsel of record registered with this Court's Electronic Case Filing System.

/s/ Vicki J. Maniatis

Vicki J. Maniatis