

IN THE CIRCUIT COURT  
TWENTIETH JUDICIAL CIRCUIT  
ST. CLAIR COUNTY, ILLINOIS

ERIN SMID, STACY BOWLAND and )  
BRANDIE LEE, *individually and on behalf of* )  
*all others similarly situated,* )  
 )  
Plaintiffs, )  
 )  
v. ) **Case No. 20L0190**  
 )  
NUTRANEXT, LLC, NUTRANEXT )  
BUSINESS, LLC, NUTRANEXT EHEALTH, )  
LLC, RAINBOW LIGHT NUTRITIONAL )  
SYSTEMS, LLC, RENEW LIFE )  
FORMULAS, LLC, EVEREST NEOCELL )  
LLC, NUTRANEXT DIRECT, LLC, and )  
NATURE'S PRODUCTS, INC., )  
 )  
Defendants. )  

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**DECLARATION OF GARY E. MASON IN SUPPORT  
OF PLAINTIFFS' MOTION FOR  
ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

I, Gary E. Mason, being competent to testify, make the following declaration based on my personal knowledge, and where stated, upon information and belief. I declare:

1. I am currently a partner in the law firm Mason Lietz & Klinger LLP, which was founded on March 16, 2020. Prior to founding Mason Lietz & Klinger LLP ("MLK"), I was a founding partner in the law firm Whitfield Bryson & Mason, LLP ("WBM"). I am one of the lead attorneys for Plaintiffs and the Class in this matter. I respectfully submit this declaration in support of Plaintiffs' motion for attorneys' fees, costs and service awards. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. Prior to forming my current firm, I worked as an attorney at several prestigious national law firms. I was a founding partner at Whitfield Bryson Mason LLP, a partner at Cohen Milstein Sellers & Toll, and worked as an associate early in my career at Skadden Arps. My practice has largely been focused on consumer class actions and mass torts. I've attached a resume detailing my experience as Exhibit A.

3. I was actively involved in key aspects of litigation in this case, including developing case strategy, informal discovery work, review and analysis of data and documents, and the general prosecution of Plaintiffs' claims. I also participated in settlement negotiations and strategy, participated in the mediation process, and contributed in preparing the Settlement Agreement, Motion for Preliminary Approval, Motion for Final Approval, and Motion for Attorneys' Fees, Costs, and Service Awards.

4. My years of experience representing individuals in complex class actions contributed to an awareness Plaintiffs' settlement leverage, as well as the needs of Plaintiffs and the proposed Class. I believe that our clients would ultimately prevail in the litigation on a class-wide basis. However, I am also aware that a successful outcome is uncertain and would be achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn out appeals. It is my individual opinion, and that of the other Class Counsel, based on our substantial experience, the settlement provides significant relief to the Members of the Class and warrants the Court's preliminary approval.

5. Despite the early stage at which this case settled, Settlement Class Counsel expended significant hours in preparing and negotiating the claims. They conducted a pre-suit investigation, engaged in substantial informal discovery and pre-suit negotiations, participated in an all-day mediation in Chicago with Hon. Wayne R. Andersen of JAMS, preceded by detailed

briefing, and spent weeks thereafter negotiating and finalizing the settlement and ancillary papers.

6. Since the inception of this case, both my old and present firm have litigated vigorously on behalf of the class, expending substantial resources.

7. Prior to my co-founding Mason Lietz & Klinger LLP, Whitfield Bryson Mason LLP expended a total of \$9,527.57 in costs and expenses in prosecuting this action, for items including mediation fees, travel for mediation, and legal research charges for services such as Pacer and WestLaw pertaining to this case.

8. Mason Lietz & Klinger LLP has not incurred any costs or expenses.

9. The combined expenses of all Counsel for Plaintiffs as of June 11, 2020 is \$23,555.86.<sup>1</sup>

10. In my view, the proposed Settlement is fair and reasonable, and in the best interest of the Class Members. Additionally, neither the U.S. Attorney General nor any state attorney general has yet contacted my office or otherwise objected to the proposed fee award, and we have received no objection to the Settlement by any Class Member to date.

11. Class Counsel's requested fees in this case are reasonable in light of the percent of common fund/common benefit method of calculating fees.

12. Moreover, the fees requested are consistent with the terms outlined in my firm's representation agreements for cases in this Circuit, including for this case, and elsewhere, which generally fall within the one-third to 40% range.

13. Finally, I believe the proposed incentive awards to Plaintiffs are fair and reasonable. In addition to lending their names to this matter, and thus subjecting themselves to

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<sup>1</sup> See Declaration of Gary M. Klinger in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards ("Klinger MFAC Dec."), filed herewith, at ¶ 12.

public attention, Plaintiffs were actively engaged in this Action. Among other things, they (1) provided information to Class Counsel for the complaint and other pleadings; (2) reviewed pleadings and other documents, including the complaint; (3) communicated on a regular basis with counsel and kept himself informed of progress in the litigation and settlement negotiations; and (4) reviewed and approved the proposed settlement.

\* \* \*

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct, and that this declaration was executed in Bethesda, Maryland on June 16, 2020.

          /s/ Gary E. Mason            
Gary E. Mason

# EXHIBIT A

# Gary E. Mason

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## Education

1984 Bachelor of Arts (Honors, Phi Beta Kappa)  
Brown University, Providence, Rhode Island

1987 J.D.  
Duke University School of Law, Durham, North Carolina

## Bar Memberships

Bar of the District of Columbia (1989)  
State Bar of New York (1988)  
State Bar of Maryland (2001)  
Supreme Court of the United States (2001)  
U.S. Court of Appeals for the D.C. Circuit (1989)  
U.S. Court of Appeals for the Fourth Circuit (1993)  
U.S. Court of Appeals for the Fifth Circuit (2019)  
U.S. Court of Appeals for the Sixth Circuit (2006)  
U.S. Court of Appeals for the Ninth Circuit (2011)  
U.S. District Court for the District of Columbia (1989)  
U.S. District Court for the District of Maryland (2001)  
U.S. District Court for the Northern District of Ohio (2004)  
U.S. District Court for the Northern District of New York (2006)  
U.S. District Court for the District of Colorado (2009)  
U.S. District Court for the Western District of New York (2013)  
U.S. District Court for the Western District of Pennsylvania (2016)  
U.S. District Court for the Northern District of Illinois (2019)  
U.S. Court of Federal Claims (2017)

## Professional Experience

Mason Lietz & Klinger LLP  
2020 – present  
Founding Partner

Whitfield Bryson & Mason LLP  
2012 – 2020  
Managing and Founding Partner

Mason LLP  
2002-2011  
President and Founding Partner

Cohen Milstein Hausfeld & Toll, P.L.L.C.  
1990-2002  
Partner and Co-Chair, Product Liability and Consumer Protection Practice Group

**Skadden Arps Meagher & Flom, LP**  
1988-1990  
Litigation Associate

**U.S. District Court for the District of Alaska**  
1987-1988  
Clerk, Hon. Andrew J. Kleinfeld

## **Honors**

District of Columbia SuperLawyer (2012-2018)

Urban Justice Center Award for Litigation Excellence (2009)

LawDragon 500 (2006)

"Young Guns: 40 Lawyers Under 40 Who Are Making Names For Themselves,"  
*Washingtonian* (Sept. 1998)

Who's Who in American Law (1998-2018)

Public Justice Achievement Award, Trial Lawyers For Public Justice (July 1997)

Martindale-Hubbell – AV Preeminent Rating (2011-2018)

National Association of Legal Fee Analysis, Top Attorney Fees Experts (2017,  
2018)

## **Memberships**

American Association for Justice

- Chair, Rule 23 Subcommittee of Class Action Litigation Group (2014-19)
- Co-Chair, Class Action Litigation Group (2013-14)
- Co-Vice-Chair, Class Action Litigation Group (2012-13)
- AAJ Wiedemann & Wysocki Award (2017) for outstanding efforts to advance AAJ's political outreach projects and priorities.

American Bar Association

Public Justice

National Association of Legal Fee Analysts

## Articles

"Unveiling the New Class Action Rule," *Trial* (Nov. 2018).

"The Proper Measure of The Value of Class Actions," *Law360* (Aug. 2017).

"What's Wrong with Consumer Class Action Settlements?," *Law360* (Apr. 2017).

"Environmental Contamination Treatise: Overview of the Litigation Process," *The Environmental Law Reporter* (Jan. 2007).

"New Studies Provide Further Proof Diet Drugs Cause Valve Damage," *Fen-Phen Litigation Strategist* (Nov. 1998).

"How to Evaluate a Potential Product Liability Class Action," *Leader's Product Liability Law & Strategy* (Feb. 1998).

"Don't Judge All Class Actions By Some Failures," *The National Law Journal* (Jan. 19, 1998).

"A Management Question: Recent Decisions Tougher Standards for Class Certification," *Legal Times* (Feb. 18, 1997).

"The Reaction to Class Action," *Legal Times* (July, 1997).

"Nuisance and the Recovery of 'Stigma' Damages: Eliminating the Confusion," *The Environmental Law Reporter* (Feb. 1996).

## SEMINARS

Panelist, Data Beach and Privacy Litigation Round-Up, Mass Torts Made Perfect Conference (Las Vegas, Nevada, April 12, 2019).

Panelist, New Amendments to Federal Rule 23: Impact on Class Action Practice, Strafford Webinars (Feb. 13, 2019).

Panelist, HarrisMartin's Marriott Data Breach Litigation Conference (Miami, Florida, Jan. 29, 2019).



Panelist, HB Litigation Conferences, Class Action Mastery (New York, NY, May 9, 2018).

Co-Chair & Moderator, HarrisMartin's Equifax Data Breach Litigation Conference (Atlanta, GA, Nov. 10, 2017).

Moderator, AAJ Education and NACA's Consumer Warranty Class Action Litigation Seminar (Washington, DC, June 4, 2014).

Panelist, ABA Class Action Institute (Chicago, IL, Oct. 24, 2014).

Faculty/Speaker, "What You Need to Know About the Economic Loss Rule," AAJ Chinese Drywall – MDL 2047 Seminar (New Orleans, LA, Aug. 11, 2009).

Speaker, "Construction Defect Class Actions," HarrisMartin's Drywall Litigation Conference (Orlando, FL, June 4, 2009).

Speaker, "Emerging Issues in Class Actions," Mealey's Construction Defect and Mold Litigation Conference (Lake Las Vegas, NV, Dec. 10, 2004).

Faculty/Speaker, Mealey's "Construction Defects in 2002: EIFS, CCA Treated Wood and Mold" (Oct. 14, 2002).

Panelist, "Litigating Mortgage Servicing Issues," NCLC Consumer Rights Litigation Conference (Baltimore, MD, Oct. 28, 2001).

Panelist Faculty, 4<sup>th</sup> Annual Mass Tort Litigation Institute (Georgetown University Law Center, Washington, DC, Nov. 4-5, 1999).

Panelist/Faculty, ABA Third Annual Symposium on Class Actions (Washington, DC, Oct. 9, 1999).

Speaker, "Inspection Issues Symposium: Exterior Insulation and Finish Systems," US Inspect (June 1999).

Panelist, "Road Warriors and Their Tools," Association of Legal Administrators Educational Expo (June 1999).

Panelist, NOVASHOC EIFS Seminar (May 1999).

Speaker, Advanced EIFS Litigation Seminar, North Carolina Bar Association (May 1999).

Speaker, "ADR and Mass Torts," Georgetown University Law Center (Washington, DC, Apr. 5, 1999).

## NOTABLE CASES

*In re Hill's Pet Nutrition, Inc., Dog Food Prods. Liab. Litig.*, MDL No. 2887, No. 19-md-2887-JAR-TJJ (D. Kan.) (court appointed Co-Lead Counsel).

*Pepicelli v. Fedex Corp. Servs., Inc.*, No. 18-cv-03653-PWG (D. Md.) (Co-Lead Counsel; class action alleging violation of TCPA).

*Bell v. WestRock, CP, LLC*, No. 3:17-cv-829-JAG (E.D. Va.) (Co-Lead Counsel in litigation alleging nuisance from wood dust from paper mill; class certification motion pending; class certified; \$700,000 settlement).

*MacDougall v. American Honda Motor Co.*, No. 8:17-cv-01079-AG (C.D. Cal.) (Co-Lead Counsel in litigation alleging damages from defective transmissions; discovery ongoing).

*Falk v. Nissan N. Am., Inc.*, No. 4:17-cv-04871 (N.D. Cal.) (Co-Lead Counsel in litigation alleging damages from defective transmissions; national settlement extending warranty for 1.5 million vehicles).

*Abalos v. United States*, No. 1:17-cv-00163-LKG (Fed. Cl.) (direct representation of 2000 Customs and Border Agents alleging violations of FLSA).

*Roy v. Titeflex Corp. & Ward Mfg., LLC*, No. 384003V (Md. Cir. Ct. 2017) (Lead Counsel; statewide settlement providing safety inspections and subsidized repairs for 130,000 homes).

*In re GNC Picamilon/BMPEA Litig.*, No. 2:15-cv-1391 (W.D. Pa.) (court-appointed Co-Lead Counsel).

*In re U.S. Office of Pers. Mgmt. (OPM) Data Sec. Breach Litig.*, MDL No. 2664, No. 1:15-cv-01394 (D.D.C.) (court-appointed Liaison Counsel).

*In re Chinese Manufactured Drywall Prods. Liab. Litig.*, MDL No. 2047, No. 2:09-md-02047 (E.D. La.) (litigation arising out of defective drywall; +1 billion remediation settlement) (appointed Co-Chair, Insurance Committee).

*Hobbie v. RCR Holdings, II, LLC*, MDL No. 2047, No. 10-113 (E.D. La. 2013) (Lead Counsel on behalf of owners of 326 condominium units with Chinese Drywall; \$30 million settlement for complete remediation of building).

*Young v. Nationwide Mut. Ins.*, 693 F.3d 532 (6th Cir. 2012) (Lead Counsel; affirming lower court's opinion certifying class action; multiple settlements).

*In re Google Buzz Privacy Litig.*, No. CV 10-00672 (N.D. Cal. 2011) (court-appointed Lead Class Counsel; \$8.5 million *cy pres* settlement).

*In re Dep't of Veterans Affairs (VA) Data Theft Litig.*, MDL No. 1796 (D.D.C. 2008) (\$20 million dollar settlement with the United States Department of Veterans Affairs arising from the theft of computer equipment which was reported to contain personal information of military veterans, spouses of military veterans and military personnel; court appointment Co-Lead Counsel).

*In re Zurn PEX Plumbing Liab. Litig.*, No. 08-md-1958 (D. Minn.) (\$20 million settlement; class action arising out of defective brass fittings; court-appointed member of Plaintiffs' Steering Committee).

*Sutton v. The Federal Materials Co.*, No. 07-CI-00007 (Ky. Cir. Ct.) (\$10.1 million class settlement for owners of residential and commercial properties constructed with defective concrete).

*Stillman v. Staples, Inc.*, No. 07-849 (D.N.J. 2009) (FLSA collective action, plaintiffs' verdict for \$2.5 million; \$42 million national settlement).

*Nnadili v. Chevron U.S.A., Inc.*, No. 02-cv-1620 (D.D.C. filed July 2002) (\$6.2 million settlement for owners and residents of 200 properties located above underground plume of petroleum from former Chevron gas station).

*In re Gen. Motors Corp. Speedometer Prods. Liab. Litig.*, MDL No. 1896 (W.D. Wash., filed 2006) (national settlement for repairs and reimbursement of repair costs incurred in connection with defective speedometers).

*In re Rail Freight Fuel Surcharge Antitrust Litig.*, No.1:07-mc-00489 (PLF) (D.D.C. 2008) (court-appointed co-lead counsel for indirect purchaser plaintiff class).

*Penobscot Indian Nation v. United States Dep't of Hous. & Urban Dev.*, N. 07-1282 (PLF) (D.D.C. 2008) (represented charitable organization which successfully challenged regulation barring certain kinds of down-payment assistance; Court held that HUD's promulgation of rule violated the Administrative Procedure Act).

*Nichols v. Progressive Direct Ins. Co.*, No. 2:06-cv-00146 (E.D. Ky. 2008) (Class Counsel; class action arising from unlawful taxation of insurance premiums; statewide settlement with Safe Auto Insurance Company and creation of \$2 million Settlement Fund; statewide settlement with Hartford Insurance Company and tax refunds of \$1.75 million ).

*Lubitz v. Daimler Chrysler Corp.* (national settlement for repairs and reimbursement of repair costs incurred in connection with defective brake system; creation of \$12 million fund; 7th largest judgment or settlement in New Jersey in 2007).

*Turner v. Gen. Elec.* (national settlement for repairs or replacement of defective refrigerators).

*Galanti v. Goodyear Tire & Rubber Co.* (national settlement and creation of \$330 million fund for payment to owners of homes with defective radiant heating systems).

*Synthetic Stucco (EIFS) Litig.* (represented over 100 individual homeowners in lawsuits against homebuilders and EIFS manufacturers).

*Diet Drug (Fen Phen) Litig.* (represented over 100 individuals with personal injuries from exposure to diet drugs).

*Posey v. Dryvit Sys., Inc.*, No. 17-715-IV (Tenn. Cir. Ct) (Co-Lead Counsel; national class action settlement provided cash and repairs to more than 7,000 claimants).

*In re Swanson Creek Oil Spill Litig.*, No. 00-1429 (D. Md.) (Lead Counsel; \$2.25 million settlement of litigation arising from largest oil spill in history of State of Maryland).

*Baird v. Thomson Consumer Elec., Inc.*, No. 00-L-00701 (Ill. Sup. Ct. 2001) (defective television sets; \$100 million settlement).

*In re Synthetic Stucco Litig.*, No. 5:96-CV-287-BR(2) (E.D.N.C.) (member of Plaintiffs' Steering Committee; settlements with four EIFS Manufacturers for North Carolina homeowners valued at more than \$50 million).

*Cox v. Shell Oil Co.*, No. 18-844 (Tenn. Ch. Ct., Obion Cty.) (defective polybutylene pipe; \$950 million settlement).

*Stockbridge Cmty. Ass'n v. Star Enter.*, No. 108514 (Va. Cir. Ct., Fairfax Cty.) (represented over 200 homeowners in individual cases arising from leak from petroleum storage facility; +\$50 million settlement and +\$200 million in property value protection).

*In re the Exxon Valdez*, No. A89-095 Civ. (D. Alaska) (represented Alaska Native Class; \$20 million settlement; \$5 billion punitive damages).

*Morris v. Osmose Wood Pres. Inc.*, No. 069721 (Md. Cir. Ct., Montgomery Cty.) (defective FRT plywood).