Exhibit B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

BONNIE GILBERT, WENDY BRYAN, PATRICIA WHITE, DAVID GATZ, CRYSTAL HULLET, LORI GRADER, DARYL SWANSON, STEPHEN GABBARD, ALICIA DUNN, and on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BIOPLUS SPECIALTY PHARMACY SERVICES, LLC,

Defendant.

Case No. 6:21-cv-02158-RBD-DCI

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Under Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs Bonnie Gilbert, Wendy Bryan, Patricia White, David Gatz, Crystal Hullet, Lori Grader, Daryl Swanson, Stephen Gabbard, and Alicia Dunn (collectively, "Plaintiffs"), individually and on behalf of the Proposed Settlement Class ("Settlement Class Members" or "Settlement Class"), respectfully move for preliminary approval of class action settlement and preliminary certification of the Settlement Class ("Motion").[1] The Settlement Agreement ("S.A.") is filed herewith as **Exhibit 1** to

[1] Plaintiffs attempted to file this Unopposed Motion last night on June 30, 2023 after finalizing the settlement documents with Defendant, but the Court's ECF system noted it was unavailable from 6:00pm ET on June 30, 2023 until 6:00pm ET on July 1, 2023. Plaintiffs filed this Motion as soon as they were able to regain access to the ECF system on July 1, 2023 at 11:00am ET.

this Motion. The Declaration of Terence R. Coates in Support of Preliminary Approval of Class Action Settlement ("Coates Decl.") is included as **Exhibit 2** to this Motion. The Declaration of Kroll Settlement Administration ("Kroll Decl.") is included as **Exhibit 3**. Unless otherwise stated, all definitions herein are the same as in the Settlement Agreement.

LOCAL RULE 3.01(g) CERTIFICATION

Plaintiffs have met and conferred with Defendant, which does not oppose the relief requested in this Motion.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Plaintiffs and the proposed Class they seek to represent have reached a nationwide class action settlement with Defendant, BioPlus Specialty Pharmacy Services, LLC ("Defendant" or "BioPlus"), for a $1,025,000 non-reversionary common fund, and an additional $1,175,000 in the form of a reversionary fund, to resolve claims arising from the Data Security Incident taking place between October and November 2021 that impacted approximately 350,000 of its current and former patients and customers (the "Data Security Incident"). *See generally* S.A.; *see also* Coates Decl., ¶¶ 6-10.

The Settlement provides significant relief to Settlement Class Members and is well within the range of reasonableness necessary for this Court to grant preliminary approval of the class action settlement under Rule 23(e). The Court should preliminarily approve the Settlement, direct that notice be sent to all

Settlement Class Members in the reasonable manner outlined below, set deadlines for exclusions, objections, and briefing on Plaintiffs' Motion for Final Approval and petition for attorneys' fees and expenses, and set a date for the Final Approval Hearing.

II. BACKGROUND

BioPlus is a national specialty pharmacy. Plaintiffs allege that they are patients whose doctors and insurance providers shared their personally identifying information ("PII") and protected health information ("PHI") with BioPlus so Plaintiffs could use BioPlus's services. BioPlus experienced a data incident between October 25, 2021 and November 11, 2021 during which an unauthorized third party gained access to its network (the "Data Incident"). Plaintiffs allege that their PII and PHI was exposed as a result of the Data Incident. *See* ECF No. 60.

Plaintiffs allege that Defendant failed to adequately protect sensitive information about its patients and customers, including PII like names, dates of birth, addresses, and Social Security numbers, and PHI, including medical record numbers, current/former health plan member ID numbers, claims information, diagnosis and/or prescription medication information (collectively, "Private Information"). In total, BioPlus notified approximately 349,188 individuals who were potentially impacted by the Data Incident, including 130,438 individuals whose Social Security numbers were potentially included in the Data Incident. S.A. ¶¶ 1.7, 1.10.

A. History of Litigation

Plaintiff Bonnie Gilbert initiated the first filed case against BioPlus on December 27, 2021. ECF No. 1. Thereafter, the Court consolidated this case with four other actions then-pending against BioPlus in this District. ECF No. 21. Plaintiffs' Consolidated Class Action Complaint was filed on March 28, 2022. ECF No. 27.

On March 3, 2023, the Court granted in part and denied in part BioPlus's motion to dismiss. ECF No. 59. In doing so, the Court permitted Plaintiffs' negligence, breach of implied contract, and declaratory judgement claims to proceed without amendment and granted Plaintiffs leave to amend their state consumer protection claims. *See id.* However, the Court dismissed Plaintiffs' claims for negligence per se, breach of fiduciary duty, and breach of express contract. *See id.*

Plaintiffs subsequently filed a Third Amended Consolidated Class Action Complaint ("Complaint") or ("Compl.") on March 17, 2023. ECF No. 60. The Complaint asserted claims of (1) negligence, (2) breach of implied contract, (3) violations of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), and (4) declaratory judgment. On April 5, 2023, Defendant filed a motion seeking to dismiss Plaintiffs' claim under the FDUTPA. ECF No. 63. The Court has not had an opportunity to rule on that motion because on April 26, 2023, the parties filed a notice of settlement, ECF No. 64, and on April 27, 2023, the Court administratively closed this action, terminating all pending motions. ECF No. 65.

The entry administratively closing this action ordered that Plaintiffs move for preliminary approval of the proposed class action settlement no later than June 26, 2023. *See id.* Thereafter, the Court granted the Parties' joint motion to extend the deadline for Plaintiffs to move for preliminary approval of the proposed class action settlement to June 30, 2023. ECF No. 67.

B. Negotiations and Settlement

The parties first attempted mediation on August 23, 2022 under the supervision of Rodney A. Max from Upchurch Watson White & Max Mediation Group. ECF No. 46. However, the parties were unable to reach an agreement. *Id.* The parties returned to mediation on April 12, 2023. Coates Decl., ¶ 11. Following hours of hard bargaining on both sides, the parties reached the settlement in principle that is the subject of this motion for preliminary approval. *Id.*

C. Summary of Settlement Terms

The Settlement Class is defined as "all persons who were notified that their information may have been impacted in the Data Incident." S.A. ¶ 1.30. The Settlement Class specifically excludes: (i) BioPlus and its respective officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge and/or magistrate assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads nolo contender to any such charge. *Id.*

BioPlus has agreed to create a non-reversionary common fund ("SSN Settlement Fund") in the amount of $1,025,000.00 to pay the claims of the approximately 130,438 Settlement Class Members who were notified of the Data Incident and who were notified that their Social Security numbers may have been impacted in the Data Incident ("SSN Class Members"). *Id.* ¶ 1.10. From the $1,025,000.00 SSN Settlement Fund, SSN Class Members will be able to claim (1) compensation of $25 per hour for up to three hours of time spent dealing with issues related to the Data Incident; (2) reimbursement of documented out of pocket expenses or losses up to $7,500; and (3) a pro rata distribution of funds remaining in the SSN Settlement Fund (which is projected to be approximately $50 per SSN Class Member). *Id.* ¶ 2.2. The SSN Settlement Fund shall not be reduced by any award of costs, fees, or expenses, which shall be paid separately (subject to Court approval). *See id.* ¶ 1.6.

BioPlus has also agreed to create a reversionary settlement fund ("Non-SSN Settlement Fund") in the amount of $1,175,000 to settle claims of the approximately 218,750 Settlement Class Members who were notified that their information may have been impacted in the Data Incident, and whose Social Security numbers were not impacted in the Data Incident ("Non-SSN Class Members"). *Id.* ¶ 1.7. From the Non-SSN Settlement Fund, BioPlus will pay all approved attorneys' fees, costs, and expenses. *Id.* ¶ 2.1.3. From the remaining funds, Non-SSN Settlement Class Members are permitted to claim (1) compensation of $25 per hour for up to two hours of time spent dealing with issues

related to the Data Incident and (2) reimbursement of documented out of pocket expenses or losses up to $750. *Id.* ¶ 2.1.2. Following the payment of attorneys' fees and expenses, settlement administration expenses, and claims made by Non-SSN Class Members, any funds remaining under the $1,175,000 cap will revert to Defendant. *See id.* ¶ 2.1.

D. Scope of the Release

Plaintiffs and Settlement Class Members who do not opt-out of the settlement agree to release BioPlus and all of its agents, parents, subsidiaries, and affiliates from any liability "relating to, concerning or arising out of the Data Incident and alleged theft of other personal information or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation." S.A. ¶ 1.24; *see also id.* ¶¶ 1.35, 7.1. This is a mutual release, with Defendant agreeing to release Plaintiffs and Settlement Class Members from claims related to this action as well. *Id.* ¶ 7.2.

E. The Notice and Administration Plans

The parties have agreed to provide notification to Settlement Class Members in the forms attached as Exhibits B-1, B-2, and C to the Settlement Agreement. S.A. ¶¶ 9.1-10.1. Dissemination of the settlement notice shall be the responsibility of the Settlement Administrator, Kroll, which shall provide notice both directly to Settlement Class Members and online at the dedicated settlement website where Settlement Class Members may access important case documents, learn about the settlement, and submit claims for any benefits that they may be entitled to. *See id.*

The costs of Settlement Administration shall be borne by BioPlus, made exclusively from the Non-SSN Settlement Fund. S.A. ¶ 1.6.

F. Attorneys' Fees and Expenses

Plaintiffs have agreed to not request attorneys' fees in excess of $733,333.33, which represents one-third (1/3) of the combined maximum value of the Settlement Funds ($2,200,000). Coates Decl., ¶¶ 10, 16. Defendant has agreed that attorneys' fees, costs, expenses, and settlement administration fees, including without limitation the cost of Fed. R. Civ. P. 23 notice to the class and claims administration, will be paid from the amount allocated for the Non-SSN Class Member Fund. S.A. ¶ 2.1.3. Plaintiffs will file a separate motion for approval of attorneys' fees, costs, expenses ahead of the Final Approval Hearing. Coates Decl., ¶ 16. Settlement Class Members will have an opportunity to review that motion and submit objections to Plaintiffs' requested fees and expenses before the final approval hearing. *See id.* ¶ 18; S.A. ¶ 5.

III. LEGAL STANDARD

Under Fed. R. Civ. P. 23(e), a class action may be settled only with court approval, which requires the court to find the settlement "fair, reasonable, and adequate." *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1273 (11th Cir. 2021). Fed. R. Civ. P. 23(e) provides three steps for the approval of a proposed class action settlement: (1) the Court must preliminarily approve the proposed settlement; (2) members of the class must be given notice of the

proposed settlement; and (3) a fairness hearing must be held, after which the court must determine whether the proposed settlement is fair, reasonable, and adequate. *See generally* Fed. R. Civ. P. 23(e).

First, the Court should conduct a preliminary review to determine whether the proposed class settlement "is within the range of possible approval." *Fresco v. Auto Data Direct, Inc.*, No. 03–61063–CIV, 2007 WL 2330895, at *4 (S.D. Fla. May 11, 2007) (internal citations omitted); *see also* MANUAL FOR COMPLEX LITIGATION (Third) § 30.41 (1995). This involves both preliminary certification of the class and an initial assessment of the proposed settlement. *Id.* Plaintiffs request that the Court preliminarily approve the proposed Settlement, the first step in approving a class action settlement under Fed. R. Civ. P. 23(e).

During the preliminary approval proceedings, "the questions are simpler, and the court is not expected to, and probably should not, engage in analysis as rigorous as is appropriate for final approval." ANNOTATED MANUAL FOR COMPLEX LITIGATION (Fourth) § 21.662 (2012). There is a strong judicial and public policy favoring the voluntary conciliation and settlement of complex class action litigation. *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992). Generally, a large amount of discretion is afforded to courts in approving class action settlements. *See In re Equifax*, 999 F.3d at 1273.

IV. ARGUMENT

A. Certification of the Settlement Class is Appropriate.

The Supreme Court has recognized that the benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). For the Court to certify a class, Plaintiffs must satisfy all of the requirements of Rule 23(a), and one of the requirements of Rule 23(b). The four requirements of Rule 23(a) are numerosity, commonality, typicality, and adequacy. *See* Fed. R. Civ. P. 23(a). Here, Plaintiffs seek certification of the Settlement Class under Rule 23(b)(3), which provides that certification is appropriate when common question of law or fact for plaintiff's claims predominate over any individual issues and a showing that the class action mechanism is the superior method efficiently handling the case. Fed. R. Civ. P. 23(b)(3). As discussed below, these requirements are met here for settlement purposes.

1. Numerosity

Numerosity requires "the class [be] so numerous that joinder of all members is impractical." Fed. R. Civ. P. 23(a)(1). The Eleventh Circuit holds that class sizes exceeding 40 are typically sufficient to satisfy this requirement. *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986). Plaintiffs should make reasonable estimates with support as to the size of the proposed class. *Legg v. Spirit Airlines, Inc.*, 315 F.R.D. 383 (S.D. Fla. 2015). However, "a plaintiff need not show the precise number of members in the class." *Manno v. Healthcare Revenue Recovery Grp., LLC*, 289 F.R.D. 674, 684 (S.D. Fla. 2013). Here, the joinder of

approximately 350,000 Settlement Class Members would certainly be impracticable, and thus, the numerosity element is satisfied.

2. Commonality

"The threshold for commonality under Rule 23(a)(2) is not high." *In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 659 (S.D. Fla. 2011). Rule 23(a)(2) simply requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This requirement is satisfied where the plaintiffs assert claims that "depend upon a common contention" that is "of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011). Courts in this Circuit have previously addressed this requirement in the context of cybersecurity incident class actions and found it satisfied. *See, e.g., Desue v. 20/20 Eye Care Network, Inc.*, No. 21-CIV-61275-RAR, 2022 WL 17477004, at *4 (S.D. Fla. Dec. 5, 2022); *In re Brinker Data Incident Litig.*, No. 3:18-CV-686-TJC-MCR, 2021 WL 1405508, at *8 (M.D. Fla. Apr. 14, 2021); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *11 (N.D. Ga. Mar. 17, 2020).

Here, as in the cases cited above, the claims turn on whether Defendant's security environment was adequate to protect Settlement Class Members' Private Information. Resolution of that inquiry revolves around evidence that does not

vary from Class Member to Class Member, and so can be fairly resolved—at least for purposes of settlement—for all Settlement Class Members at once.

3. Typicality

To satisfy the typicality requirement of Rule 23(a)(3), the claims or defenses of the representative parties must be typical of the claims or defenses of the class. "The commonality and typicality analyses often overlap as they are both focused on 'whether a sufficient nexus exists between the legal claims of the named class representatives and those of individual class members to warrant class certification.'" *In re Brinker*, 2021 WL 1405508, at *8 (citation omitted). As in *Brinker*, *Desue*, and *Equifax*, Plaintiffs' claims are typical of other class members because they are based on the same legal theories and underlying events. *See id.*; *In re Equifax*, 2020 WL 256132, at *12; *Desue*, 2022 WL 17477004, at *5.

4. Adequacy of Representation

The final requirement of Rule 23(a) is that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "To determine whether the adequacy requirement is met, we ask: '(1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action.'" *In re Equifax*, 999 F.3d at 1275 (citation omitted). Here, Plaintiffs have no conflicts with the Settlement Class and have actively participated in this case despite not receiving any special treatment. *See generally* S.A.; Coates Decl., ¶ 14. Plaintiffs have also adequately prosecuted this action through Class Counsel, which is

comprised of attorneys with significant experience litigating class and other complex cases, especially in the data privacy context. *See* Coates Decl., ¶ 15.

5. Certification under Rule 23(b)(3) is appropriate.

Plaintiffs seek to certify a Class under Rule 23(b)(3), which has two components: predominance and superiority. Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *In re Equifax*, 999 F.3d at 1275. When assessing predominance and superiority, the court may consider that the class will be certified for settlement purposes only, and that a showing of manageability at trial is not required. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not Inquire whether the case, if tried, would present intractable management problems, *see* Fed. Rule Civ. Pro. 23(b)(3)(D), for the proposal is that there be no trial.").

a. Common Questions of Law and Fact Predominate.

In this case, the common factual and legal questions all cut to the issues at the heart of the litigation. This case is no different from *Desue*, in which the Southern District of Florida held that,

> Rule 23(b)(3)'s predominance requirement is satisfied because liability questions common to all Settlement Class Members substantially outweigh any possible issues that are individual to each Settlement Class Member. As an example, each Class Member's claims are based on the alleged failure of the Defendants to

> appropriately maintain the confidentiality of their PII, which they allege was caused by the same actions and inactions of Defendants. Other key, common factual and legal questions predominate in this matter, including whether Defendants' data systems and security policies and practices were adequate and reasonable; the extent of Defendants' knowledge regarding any potential vulnerabilities in its data systems; and whether Plaintiffs and the Class Members suffered losses because of Defendants' actions.

Desue, 2022 WL 17477004, at *5. Indeed, the answers to the key questions in this case are not tangential or theoretical such that the litigation will not be advanced by certification. Rather, they go right to the center of the controversy, and the answers will be the same for each Settlement Class Member. As such, because the class-wide determination of this issue will be the same for everyone and will determine whether any class member has a right of recovery, the predominance requirement is readily satisfied for purposes of this settlement.

b. A Class is the Superior Method of Adjudicating this Case.

The second prong of Rule 23(b)(3)—that a class action is superior to other available methods for the fair and efficient adjudication of the controversy—is also readily satisfied for the purpose of this settlement. *See* Fed. R. Civ. P. 23(b)(3). A superiority analysis pursuant to rule 23(b)(3) involves an examination of "the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs." *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1183-84 (11th Cir. 2010) (internal quotation omitted). This District has previously recognized the particular superiority of the class mechanism in the context of litigation stemming from a

data breach. *See In re Brinker*, 2021 WL 1405508, at *13 ("[N]ot only is a class action a superior method of bringing Plaintiffs' claims, it is likely the only way Plaintiffs and class members will be able to pursue their case.").

The Settlement Agreement provides all Settlement Class Members with robust relief and contains well-defined administrative procedures to ensure due process. This includes the right of any Settlement Class Member to object to it or to request exclusion. S.A. ¶¶ 4-5. Moreover, adjudicating individual actions here is impracticable: the amount in dispute for individual class members is too small, the technical issues involved are too complex, and the required expert testimony and document review too costly. Thus, the Court may certify the Settlement Class for settlement under Rule 23(b)(3).

B. The Proposed Settlement Satisfies the Standard for Preliminary Approval.

After it has been determined that certification of the Settlement Class is appropriate, the Court must then determine whether the Settlement Agreement is worthy of preliminary approval of providing notice to the class. Courts in this Circuit have held that preliminary approval is appropriate "where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies, and the settlement falls within the range of reason." *In re Checking Acct. Overdraft Litig.*, 275 F.R.D. at 661 (internal quotations omitted).

Other courts have looked to the *Bennett* factors to determine whether preliminary approval is appropriate. The *Bennett* factors include (1) the likelihood

of success at trial; (2) the range of possible recoveries; (3) the point on or below the range of possible recoveries at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and degree of opposition to the settlement; and (6) the stage of the proceedings at which the settlement was achieved. *See Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). The Settlement warrants preliminary approval under either approach.

1. The proposed Settlement was reached after serious, informed, and arm's-length negotiations.

First, arm's-length negotiations conducted by competent counsel constitute *prima facie* evidence of fair settlements. In this case, the Settlement was the result of intensive, arm's-length negotiations over the course of several months between experienced attorneys with vast experience handling data breach class action cases. Coates Decl., ¶¶ 11-12, 15. There is no evidence that any collusion or illegality existed during settlement negotiations. *See id.* The Parties' Counsel support the Settlement as fair and reasonable, and all certify that it was reached at arm's-length. *See id.*

2. The proposed Settlement falls within the range of reasonableness and has no obvious deficiencies, and thus, warrants issuance of notice and a hearing on final approval of settlement.

Although Plaintiffs believe that the claims asserted in the Class Action are meritorious and the Settlement Class would ultimately prevail at trial, continued litigation against Defendant poses significant risks that make any recovery for the

Settlement Class uncertain. The Settlement's fairness is underscored by consideration of the obstacles that the Settlement Class would face in ultimately succeeding on the merits, as well as the expense and likely duration of the litigation. Despite the risks involved with further litigation, the Settlement Agreement provides outstanding benefits as Settlement Class Members have the ability to claim significant settlement benefits. Moreover, there are no grounds to doubt the fairness of the Settlement or other obvious deficiencies, such as unduly preferred treatment of Plaintiffs or excessive attorney compensation. Plaintiffs, like all other Settlement Class Members, will receive their settlement benefits consistent with the Settlement Agreement. They will not seek payment of any incentive or service awards.

3. The *Bennett* factors support preliminary approval.

Although typically a consideration at the final approval stage, here, the *Bennett* factors still point towards preliminary approval. *First*, the benefits of settlement outweigh the risk of trial given the substantial relief that Settlement Class Members will be afforded.

Second and *Third*, the Settlement is within the range of possible recoveries and is fair, adequate, and reasonable. The second and third *Bennett* factors are often considered together. *See Burrows v. Purchasing Power, LLC*, No. 1:12-CV-22800, 2013 WL 10167232, at *6 (S.D. Fla. Oct. 7, 2013). In determining whether a settlement is fair and reasonable, the court must also examine the range of possible damages that Plaintiffs could recover at trial and combine this with an

analysis of Plaintiffs' likely success at trial to determine if the settlements fall within the range of fair recoveries. *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 559 (N.D. Ga. 2007). Here, SSN Class Members have the ability to claim documented losses up to $7,500, and Non-SSN Class Members (given the less risk that they face) have the ability to claim documented losses up to $750. All Settlement Class Members are also entitled to compensation for time spent dealing with consequences of the Data Incident, and SSN Class Members are entitled to additional *pro rata* payments (projected to be approximately $50 each) from the Non-SSN Settlement Fund. S.A. ¶¶ 2.1-2.3; Coates Decl., ¶¶ 7-9. Accordingly, the Settlement is eminently reasonable, especially considering that it avoids the potential contingencies of continued litigation, and the size of the breach, itself.

Fourth, continued litigation would be lengthy and expensive. Data breach litigation is often difficult and complex. A settlement is beneficial to all parties, including the Court. *See Woodward v. NOR–AM Chem. Co.*, No. Civ-94-0870, 1996 WL 1063670, at *21 (S.D. Ala. May 23, 1996) ("Complex litigation . . . 'can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.'") (quoting *In re U.S. Oil & Gas Litig.*, 967 F.2d at 493).

Fifth, there has not been an opposition to the Settlement. This factor is better considered after notice has been provided to Settlement Class Members and they are given the opportunity to object. *See Columbus Drywall*, 258 F.R.D. at 561.

Thus, this factor need not be considered at this stage.

Sixth, despite resolving at an early stage, Plaintiffs have sufficient information to evaluate the merits and negotiate a fair, adequate and reasonable settlement. Courts have approved settlements at early stages of the litigation. *See, e.g., Cotton v. Hinton*, 559 F.2d 1326, 1332 (5th Cir. 1977) (affirming approval of settlement with little discovery); *see also Mashburn v. Nat'l Healthcare, Inc.*, 684 F. Supp. 660, 669 (M.D. Ala. 1988) (holding that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery is required to determine the fairness of the settlement). This case has been thoroughly investigated by counsel experienced in data breach litigation. Coates Decl., ¶¶ 11-12. Moreover, Class Counsel's informal exchange of discovery and mediation under the supervision of a mediator has ensured a fair, reasonable, and adequate settlement worthy of preliminary approval. *See id.*

Accordingly, the Court should find that the proposed Settlement is fair, reasonable, and adequately protects the interests of the Settlement Class Members.

C. The Court Should Appoint the Proposed Class Representatives, Class Counsel, and Settlement Administrator.

Plaintiffs seek to be appointed as Class Representatives for the Class. As discussed above, Plaintiffs have cooperated with counsel, provided informal discovery, and assisted in the preparation of the numerous complaints filed in this action. Moreover, Plaintiffs are committed to continuing to vigorously prosecute this case, including overseeing the Notice Plan, and defending the Settlement

Agreement against any objectors, all the way through the Court's final approval. Because Plaintiffs are adequate, the Court should appoint them as class representatives. Second, for the reasons previously discussed with respect to adequacy of representation, the Court should designate John A. Yanchunis and Ryan D. Maxey of Morgan & Morgan Complex Litigation Group; Terence R. Coates and Dylan J. Gould of Markovits, Stock & DeMarco, LLC; Nicholas A. Migliaccio of Migliaccio & Rathod, LLP; Joseph M. Lyon of The Lyon Firm, LLC; Gary E. Mason of Mason LLP; J. Gerard Stranch, IV, of Stranch, Jennings & Garvey, PLLC; and M. Anderson Berry and Gregory Haroutunian of Clayeo C. Arnold, APC, as Class Counsel.

Finally, the parties have agreed that Kroll shall act as Settlement Administrator. Kroll and its principals have a long history of successful settlement administrations in class actions. Kroll Decl., ¶ 2. The Court should appoint Kroll as the Settlement Administrator here.

D. The Proposed Form and Manner of Notice to the Class is Reasonable and Should be Approved.

Under Rule 23(e), the Court should "direct notice in a reasonable manner to all class members who would be bound" by the proposed settlement. Fed. R. Civ. P. 23(e)(1). Notice of a proposed settlement to class members must be the "best notice practicable." Fed. R. Civ. P. 23(c)(2)(B). "[B]est notice practicable" means "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). The best practicable notice

is that which "is reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The Notice Plan set forth in the Settlement Agreement provides the best notice practicable under the circumstances. The Parties negotiated the form of the Notice with the aid of a professional notice provider, Kroll. The Notice will be disseminated to all persons who fall within the definition of the Settlement Class and whose names and addresses can be identified with reasonable effort from Defendant's records, and through databases tracking nationwide addresses and address changes. In addition, Kroll will administer the Settlement Website containing important and up-to-date information about the Settlement. Kroll Decl., ¶ 12.

Moreover, Rule 23(h)(1) requires that "[n]otice of the motion [for attorneys' fees] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner." The proposed Notice Plan satisfies the requirements of Rule 23(h)(1), as it notifies Settlement Class Members that Class Counsel will apply to the Court for attorneys' fees of no more than $733,333.33, which represents one-third (1/3) of the combined maximum value of the Settlement Funds ($2,200,000), plus reimbursement of litigation expenses up to $15,000. Coates Decl., ¶ 10. The Notice Plan complies with Fed. R. Civ. P. 23 and due process because, among other things, it informs Settlement

Class Members of: (1) the nature of the action; (2) the essential terms of the Settlement, including the definition of the Class, the claims asserted, and the benefits offered; (3) the binding effect of a judgment if the Settlement Class Member does not request exclusion; (4) the process for objection and/or exclusion, including the time and method for objecting or requesting exclusion and that Settlement Class Members may make an appearance through counsel; (5) information regarding the payment of proposed Class Counsel fees and expenses; and (6) how to make inquiries. Fed. R. Civ. P. 23(c)(2)(B).

Accordingly, the Notice Plan and Notices are designed to be the best practicable under the circumstances, apprises Settlement Class Members of the pendency of the action, and gives them an opportunity to object or exclude themselves from the Settlement. *See Agnone v. Camden Cnty.*, No. 2:14-cv-00024-LGW-BKE, 2019 WL 1368634, at *9 (S.D. Ga. Mar. 26, 2019) (finding class notice mailed directly to settlement class members was the best practicable and satisfied concerns of due process). Thus, the Notice Plan should be approved. Fed. R. Civ. P. 23(c)(2)(A).

E. The Court Should Approve a Schedule Leading Up to the Final Approval Hearing

Plaintiffs request that the Court set a schedule, leading up to a Final Approval Hearing, that would include, *inter alia*, deadlines for notice to Settlement Class Members, for Settlement Class Members to object to the Settlement, to opt out of the Settlement, and to make claims under the Settlement; and deadlines

for the filing of papers in support of final approval, and in support of attorneys' fees and expenses.[2] At the Final Approval Hearing, the Court should hear all evidence and argument necessary to make its final evaluation of the Settlement. *See* Fed. R. Civ. P. 23(e)(2). Proponents of the Settlement may offer argument in support of final approval. Additionally, Settlement Class Members who have properly objected to the Settlement may be heard at this hearing. The Court should determine through the Final Approval Hearing whether the Settlement will be approved.

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court enter an Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

/s/ Terence R. Coates
Terence R. Coates (pro hac vice)
Dylan J. Gould (pro hac vice)
MARKOVITS, STOCK & DEMARCO, LLC
119 East Court Street, Suite 530
Cincinnati, Ohio 45202
Tel.: (513) 651-3700
tcoates@msdlegal.com
dgould@msdlegal.com

John A. Yanchunis
Ryan D. Maxey
MORGAN & MORGAN COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602

[2] A proposed timeline is attached to the Settlement Agreement as Exhibit D.

Tel.: (813) 223-5505
jyanchunis@ForThePeople.com
rmaxey@ForThePeople.com

M. Anderson Berry
Gregory Haroutunian
CLAYEO C. ARNOLD,
A PROFESSIONAL
CORPORATION
865 Howe Avenue
Sacramento, CA 95825
Telephone: (916) 239-4778
aberry@justice4you.com
gharoutunian@justice4you.com

Nicholas A. Migliaccio
MIGLIACCIO & RATHOD LLP
412 H Street, N.E.
Washington, D.C. 20002
Tel: (202) 470-3520
nmigliaccio@classlawdc.com

Joseph M. Lyon
THE LYON FIRM, LLC
2754 Erie Avenue
Cincinnati, Ohio 45208
Tel.: (513) 381-2333
jlyon@thelyonfirm.com

Gary E. Mason
MASON LLP
5301 Wisconsin Avenue, NW. Suite 305
Washington, DC 20016
Phone: (202) 429-2290
gmason@masonllp.com

Counsel for Plaintiffs

Certificate of Service

I hereby certify that on July 1, 2023, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ *Terence R. Coates*
Terence R. Coates

EXHIBIT 2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

BONNIE GILBERT, WENDY BRYAN, PATRICIA WHITE, DAVID GATZ, CRYSTAL HULLET, LORI GRADER, DARYL SWANSON, STEPHEN GABBARD, ALICIA DUNN, and on behalf of themselves and all others similarly situated, Plaintiffs, vs. BIOPLUS SPECIALTY PHARMACY SERVICES, LLC, Defendant.	Case No. 6:21-cv-02158-RBD-DCI

DECLARATION OF TERENCE R. COATES IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Terence R. Coates, hereby state that the following is true and accurate and based on my personal knowledge:

1. I am the managing partner of the law firm Markovits, Stock & DeMarco, LLC ("MSD"). I am one of the proposed Class Counsel in this case representing Plaintiffs Bonnie Gilbert, Wendy Bryan, Patricia White, David Gatz, Crystal Hullet, Lori Grader, Daryl Swanson, Stephen Gabbard, and Alicia Dunn (collectively, "Plaintiffs") and the putative Class and have monitored my firm's

participation in this matter from 2021 to the present. The contents of this Declaration are based upon my own personal knowledge, my experience in handling many class action cases, and the events of this litigation.

2. As a member of proposed Class Counsel, my firm has been centrally involved in all aspects of this litigation from the initial investigation to the present. I have been one of the primary points of contact for Plaintiffs and Class Counsel with counsel for Defendant BioPlus Specialty Pharmacy Services, LLC ("Defendant" or "BioPlus"). Class Counsel and Defendant's counsel are experienced in class action litigation. Class Counsel thoroughly investigated this case including researching and drafting potential causes of action against BioPlus, finalizing and filing three amended class action complaints, opposing a motion to dismiss, evaluating the strengths and weaknesses of Plaintiffs' claims, resolving the case on a classwide basis, negotiating and drafting the Settlement Agreement, and preparing the preliminary approval filings.

3. I have been practicing law since 2009 and have extensive experience handling complex class action cases. I am currently the Secretary of the Cincinnati Bar Association's Board of Trustees and the Executive Director of the Potter Stewart Inn of Court. I am a frequent speaker for the plaintiffs' perspective on recent trends in data privacy class action cases having recently spoken at the Trial Lawyers of Mass Tort's conference in Big Sky, Montana in March 2023, the NetDiligence

cybersecurity summit in Ft. Lauderdale, Florida in February 2023, and the Beazley Insurance national conference in Ft. Lauderdale, Florida in March 2023.

4. I am currently participating as a member of plaintiffs' counsel in over 70 data breach and data privacy cases pending around the country, including serving as co-lead counsel or a member of plaintiffs' counsel in: *In re Cerebral, Inc. Privacy Practices*, No. 2:23-cv-1803 (C.D. Cal.) (court-appointed interim class counsel in a pixel privacy class action); *Phillips v. Bay Bridge Administrators, LLC*, No. 1:23-CV-022 (W.D. Tex.) (court-appointed interim class counsel); *Abrams v. Savannah College of Art & Design*, No. 1:22-CV-04297 (N.D. Ga.) (court-appointed class counsel for preliminarily-approved class action settlement); *Phelps v. Toyotetsu North America*, No. 6:22-cv-00106 (E.D. Ky.) (court-appointed class counsel for a $400,000 non-reversionary common fund class action settlement); *John v. Advocate Aurora Health, Inc.*, No. 22-CV-1253-JPS (E.D. Wis.) (court-appointed interim co-lead class counsel for plaintiffs that has reached a class-wide settlement in principle); *In re U.S. Vision Data Breach Litigation*, No. 22-cv-06558 (D.N.J.) (court-appointed interim co-lead class counsel for plaintiffs); *Tucker v. Marietta Area Health Care, Inc.*, No. 2:22-cv-00185 (S.D. Ohio) (court-appointed co-lead class counsel for plaintiffs for a preliminarily-approved $1.75 million non-reversionary common fund settlement); *Vansickle v. C.R. England*, No. 22-cv-00374 (D. Utah; Doc. 22, August 16, 2022) (court-appointed interim co-lead counsel in consolidated data breach class

action); *Migliaccio v. Parker Hannifin Corp.*, No. 1:22-CV-00835 (N.D. Ohio; Doc. 15, July 20, 2022) (court-appointed interim lead counsel for preliminarily-approved $1.75 million non-reversionary common fund class action settlement); *Sherwood v. Horizon Actuarial Services, LLC*, No. 1:22-cv-1495 (N.D. Ga.; Doc. 16, May 12, 2022) (court-appointed interim class counsel); *Tracy v. Elekta, Inc.*, No. 1:21-cv-02851-SDG (N.D. Ga.) (court-appointed interim class counsel); *In re Luxottica of America, Inc. Data Security Breach Litigation*, No. 1:20-cv-00908-MRB (S.D. Ohio) (court-approved interim co-liaison counsel); *Tate v. EyeMed Vision Care, LLC*, No. 1:21-cv-00036 (S.D. Ohio) (court-approved liaison counsel); *In re 20/20 Eye Care Network Inc. Data Breach Litigation*, No. 21-cv-61275 RAR (S.D. Fla.) (Plaintiffs' Executive Committee); *Baker v. ParkMobile, LLC*, No. 1:21-cv-02182 (N.D. Ga.) (Plaintiffs' Steering Committee); *Lutz v. Electromed, Inc.*, No. 0:21-cv-02198 (D. Minn.) (court-appointed co-lead counsel for preliminarily-approved class action settlement); *In re Herff Jones Data Security Breach Litigation*, No. 1:21-cv-01329-TWP-DLP (S.D. Ind.) (plaintiffs' counsel in approved $4.35 million common fund settlement); *In re CaptureRx Data Breach Litigation*, No. SA-21-CV-00523 (W.D. Tex.) (plaintiffs' counsel in a $4.75 million common fund settlement); *In re Netgain Technology, LLC, Consumer Data Breach Litigation*, No. 21-cv-1210, (D. Minn.; Plaintiffs' Executive Committee); *Medina v. PracticeMax Inc.*, No. CV-22-01261 (D. Ariz.) (court-appointed Executive Leadership Committee); *Bae v. Pacific*

City Bank, No. 21STCV45922 (Los Angeles County Superior Court) (co-lead counsel for a $700,000 non-reversionary common fund settlement); and *In re Pawn America Consumer Data Breach Litigation*, No. 0:21-cv-02554 (D. Minn.) (plaintiffs' counsel).

5. Federal courts have recognized me and my firm as experienced in handling complex cases including class actions. *See, e.g., Shy v. Navistar Int'l Corp.*, No. 3:92-CV-00333, 2022 WL 2125574, at *4 (S.D. Ohio June 13, 2022) ("Class Counsel, the law firm Markovits, Stock & DeMarco, LLC, are qualified and are known within this District for handling complex including class action cases such as this one."); *Bechtel v. Fitness Equip. Servs., LLC*, 339 F.R.D. 462, 480 (S.D. Ohio 2021) ("plaintiffs' attorneys have appeared in this Court many times and have substantial experience litigating class actions and other complex matters."); *Schellhorn v. Timios, Inc.*, No. 2:221-cv-08661, 2022 WL 4596582, at *4 (C.D. Cal. May 10, 2022) (noting that Class Counsel, including "Terence R. Coates of Markovits, Stock & DeMarco, LLC, have extensive experience litigation consumer protection class actions …."); *Bedont v. Horizon Actuarial Services, LLC*, No. 1:22-CV-01565, 2022 WL 3702117, at *2 (N.D. Ga. May 12, 2022) (noting that class counsel, including Mr. Coates, "are well qualified to serve as Interim Co-Lead Class Counsel and that they will fairly, adequately, responsibly, and efficiently represent all Plaintiffs in the Cases in that role.").

THE SETTLEMENT

6. The Settlement Agreement is the result of hard bargaining and was negotiated at arm's-length. It will resolve claims arising from the Data Incident that occurred between October 25, 2021 and November 11, 2021, impacting the private information of approximately 349,188 BioPlus patients.

7. The Settlement provides benefits to two group of Settlement Class Members: those who were notified that their Social Security numbers were potentially accessed in the Data Incident ("SSN Class Members"), and those who were notified that their Social Security numbers were not involved in the Data Incident ("Non-SSN Class Members").

8. SSN Class Members may submit a claim for the following benefits from the Settlement: (1) $50 cash payment, adjusted up or down depending upon the number of claims approved, *and* (2) reimbursement for up to $7,500 for (a) documented out-of-pocket expenses, and (b) up to three (3) hours of lost time spent dealing with the Data Incident (at $25 per hour). The claims of SSN Class Members will be paid from a $1,025,000 non-reversionary common ("SSN Settlement Fund"). This SSN Settlement Fund shall be dedicated solely to the payment of claims by SSN Class Members and will not be reduced by any other claims, attorneys' fees, or expenses. No money from the SSN Settlement Fund will revert to Defendant.

9. Non-SSN Class Members may submit a claim for reimbursement for up to $750 for (a) documented out-of-pocket expenses and (b) reimbursement for up to two (2) hours of lost time spent dealing with the Data Incident (at $25 per hour). Claims for lost time and expenses by Non-SSN Class Members may be stacked up to a maximum of $750. The claims of Non-SSN Class Members will be paid from a separate $1,175,000 reversionary settlement fund ("Non-SSN Settlement Fund").

10. BioPlus has agreed to pay Court-approved attorneys' fees and expenses and settlement administration expenses from the Non-SSN Settlement Fund. Class Counsel has agreed not to request attorneys' fees exceeding $733,333.33, which represents one-third (1/3) of the combined maximum value of the Settlement Funds ($2,200,000). Class Counsel has also agreed not to seek reimbursement of expenses in excess of $15,000. Defendant has reserved the right to challenge any request for fees or expenses by Class Counsel.

11. The Settlement was reached only after several months of negotiation and exchanges of Rule 408 discovery. The parties first attempted mediation on August 23, 2022 under the supervision of Rodney A. Max from Upchurch Watson White & Max Mediation Group. ECF No. 46. However, the parties were unable to reach an agreement. *Id.* The parties returned to mediation on April 12, 2023. Following hours of hard bargaining on both sides, the parties reached the settlement in principle that is the subject of this motion for preliminary approval. The

Settlement in principle was not finalized in the form of a full settlement agreement until June 30, 2023. Based on these facts, there was no collusion or illegality within the settlement process.

12. The informal discovery conducted for settlement purposes in this case included BioPlus producing information about the Data Incident, the number of individuals impacted, the notice program, and the incident response. Through the receipt of this information, Plaintiffs were able to properly evaluate the potential for damages on a class-wide basis. Class Counsel are not aware of any individual cases related to the Data Incident being pursued against BioPlus.

THE NOTICE IS ADEQUATE

13. The proposed Notices are adequate, providing all Class Members with Notice via Regular U.S. mail and/or email to the extent emails are available. The Notices clearly and concisely inform Settlement Class Members of the Settlement Benefits (including the difference between benefits available to SSN Class Members and Non-SSN Class Members), and that all Settlement Class Members will have to submit a claim for the Settlement Benefits after the Court grants Final Approval. The Notices will inform Class Members that they may do nothing and be bound by the settlement, that they may object to the Settlement, or they may exclude themselves by completing the exclusion form and not be bound by the settlement.

THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE AND PRELIMINARY APPROVAL IS APPROPRIATE

14. Class Counsel and Counsel for BioPlus believe the Settlement is fair, reasonable, and adequate. Plaintiffs were also informed about the status of settlement negotiations and remained engaged as the Class Representatives at all times during the pendency of this matter. They support the terms of the Settlement and have no conflicts with the Class they seek to represent.

15. In my experience in handling over 70 data breach class action cases for plaintiffs, I am confident in concluding that the settlement is fair and reasonable in that it provides all Settlement Class Members with significant potential compensation, including reimbursement for what will likely be the full amount of any individual's actual losses or expenses fairly traceable to the Data Incident. I am also aware that my co-counsel have significant experience litigating data breach class actions for plaintiffs and also opine that the Settlement is fair and reasonable. My firm's biography is attached to this Declaration as **Exhibit A**. The biographies of the other members of Class Counsel may be located at:

a. John A. Yanchunis of Morgan & Morgan:

https://www.forthepeople.com/attorneys/john-yanchunis/

b. Ryan D. Maxey of Morgan & Morgan:

https://www.forthepeople.com/attorneys/ryan-dennis-maxey/

c. Nicholas A. Migliaccio of Migliaccio & Rathod, LLP; https://classlawdc.com/team/nicholas-migliaccio/

d. Joseph M. Lyon of The Lyon Firm, LLC: https://www.thelyonfirm.com/joseph-lyon/

e. J. Gerard Stranch, IV, of Stranch, Jennings & Garvey, PLLC: https://stranchlaw.com/our-attorneys/j-gerard-stranch-iv/

f. Gary E. Mason of Mason LLP: https://www.masonllp.com/staff/gary-e-mason/

g. M. Anderson Berry of Clayeo C. Arnold, A Professional Corp.: https://www.justice4you.com/m-anderson-berry.html

h. Gregory Haroutunian of Clayeo C. Arnold, A Professional Corp.: https://www.justice4you.com/gregory-haroutunian.html

CLASS COUNSEL'S PROPOSED ATTORNEYS' FEES & EXPENSES ARE REASONABLE AND SHOULD PERMIT PRELIMINARY APPROVAL

16. Class Counsel agree not to request attorneys' fees exceeding $733,333.33, which represents one-third (1/3) of the combined maximum value of the Settlement Funds ($2,200,000). Class Counsel has also agreed not to seek reimbursement of expenses in excess of $15,000. Defendant has reserved the right to challenge any request for fees or expenses by Class Counsel.

17. Class Counsel have undertaken this case on a contingency fee basis and have not received any payment for their work in this case to date and have not been reimbursed for any of their litigation expenses.

18. Following Preliminary Approval, Class Counsel will file a separate motion with relevant facts and authorities supporting their request for fees and expenses. Settlement Class Members will have an opportunity to review this motion before the deadline to object or opt out of the Settlement.

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Executed on June 30, 2023, at Cincinnati, Ohio.

/s/ Terence R. Coates
Terence R. Coates

EXHIBIT A

MARKOVITS
STOCK
DeMARCO

MARKOVITS, STOCK & DeMARCO, LLC

Markovits, Stock & DeMarco, LLC is a boutique law firm whose attorneys have successfully represented clients in some of the largest and most complex legal matters in U.S. history. Our deep and varied experience extends from representing businesses, public pension funds, and individuals in federal and state courts across the nation, to successfully arguing appeals at the highest levels of the legal system – including prevailing before the United States Supreme Court. This broad-based litigation and trial expertise, coupled with no overstaffing and overbilling that can typify complex litigation, sets us apart as a law firm. But expertise is only part of the equation.

"Legal success comes only from recognizing a client's goals and being able to design and effectively execute strategies that accomplish those goals. We understand that every client is different, which is why we spend so much time learning what makes them tick."

As the business world becomes increasingly complex, you need to be able to trust your law firm to help you make the right decisions. Whether you seek counsel in resolving a current conflict, avoiding a future conflict, or navigating the sometimes choppy state and local government regulatory waters, the lawyers at Markovits, Stock & DeMarco have both the experience and track record to meet your legal needs.

BILL MARKOVITS

Bill Markovits practices in the area of complex civil litigation, with an emphasis on securities, antitrust, RICO, and False Claims Act cases. Bill began his career as a trial lawyer at the U.S. Department of Justice Antitrust Division in Washington, D.C. He continued a focus on antitrust after moving to Cincinnati, where he became an adjunct professor of antitrust law at the University of Cincinnati Law School. Bill has been involved in the past in a number of notable cases, including: the Choice Care securities, antitrust and RICO class action in which the jury awarded over $100 million to a class of physicians; a fraud/RICO case on behalf of The Procter & Gamble Company, which resulted in a settlement of $165 million; an eleven year antitrust and RICO class action against Humana, including appeals that reached the United States Supreme Court, which culminated in a multi-million dollar settlement; and a national class action against Microsoft, in which he was chosen from among dozens of plaintiffs' attorneys to depose Bill Gates. More recently, Bill was: a lead counsel for plaintiffs in the Fannie Mae Securities Litigation that settled for $153 million; a lead counsel for plaintiffs in a class action against Duke Energy that settled for $80.75 million; and lead counsel for plaintiff in *Collins v. Eastman Kodak*, where he successfully obtained a preliminary injunction against Kodak on an antitrust tying claim. Based upon the result in *Collins*, Bill was a 2015 finalist in the American Antitrust Institute's Antitrust Enforcement Awards under the category "Outstanding Antitrust Litigation Achievement in Private Law Practice."

Bill has received a number of awards and designations, including current and past designations as a "Best Lawyer in America" in the fields of antitrust and commercial litigation.

Education:

Harvard Law School, J.D. (1981), cum laude

Washington University, A.B. (1978), Phi Beta Kappa

Significant and Representative Cases:

- *Collins v. Eastman Kodak*, United States District Court, Southern District of Ohio. Lead counsel representing Collins in antitrust tying claim, resulting in preliminary injunction against Kodak.
- *In Re Federal National Mortgage Association Securities, Derivative, and "ERISA" Litigation*, United States District Court, District of Columbia. Co-lead counsel representing Ohio pension funds in securities class action that settled for $153 million.
- *Ohio Employees Retirement System v. Federal Home Loan Mortgage, aka Freddie Mac, et al.*, United States District Court, Northern District of Ohio, Eastern Division. Special counsel representing Ohio pension fund in securities class action.
- *Williams v. Duke Energy et al.*, United States District Court, Southern District of Ohio. Representing class of energy consumers against energy provider in complex antitrust and RICO class action that settled for $80.75 million.
- *In Re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, United States District Court, Central District of California. Former member of economic loss lead counsel committee, representing class of consumers in litigation relating to sudden acceleration.
- *In Re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, United States District Court, Eastern District of Louisiana. RICO workgroup coordinator in class action resulting from oil spill.
- *In Re Microsoft Corp. Litigation*, United States District Court, District of Maryland. Member of co-lead counsel firm in antitrust class action.
- *Procter & Gamble v. Amway Litigation*, United States District Court, Southern District of Texas, at

Houston; United States District Court, District of Utah, at Salt Lake City. Member of trial team representing Procter & Gamble in obtaining jury verdict against Amway distributors relating to spreading of false business rumors.

- *United States ex rel. Brooks v. Pineville Hospital*, United States District Court, Eastern District of Kentucky. One of the lead counsel in successful False Claims Act litigation.
- *Procter & Gamble v. Bankers' Trust Litigation*, United States District Court, Southern District of Ohio. Co-counsel in successful $165 million settlement; developed the RICO case.
- *United States ex rel. Watt v. Fluor Daniel*, United States District Court, Southern District of Ohio. Co- lead counsel of successful False Claims Act case.
- *Forsyth v. Humana*, United States District Court, District of Nevada. Represented class of consumers in antitrust and RICO class action; successfully argued antitrust appeal; co-chaired successful Supreme Court appeal on RICO.
- *In Re Choice Care Litigation*, United States District Court, Southern District of Ohio, Western Division. Trial attorney on largest antitrust/RICO/securities verdict.

Presentations & Publications:

- *"Implications of Sixth Circuit Collins Inkjet Corp. v. Eastman Kodak Co. Decision,"* American Bar Association panel discussion, December 10, 2015
- "*Defining the Relevant Market in Antitrust Litigation,*" Great Lakes Antitrust Seminar, October 29, 2010
- "*Beyond Compensatory Damages – Tread, RICO and The Criminal Law Implications,*" HarrisMartin's Toyota Recall Litigation Conference, Part II, May 12, 2010
- "*The Racketeer Influenced and Corrupt Organizations Act (RICO),*" HarrisMartin's Toyota Recall Litigation Conference, March 24, 2010
- "*The False Claims Act: Are Healthcare Providers at Risk?,*" presentation to Robert Morris College Second Annual Health Services Conferences, Integrating Health Services: Building a Bridge to the 21st Century, Moon Township, PA, October 9, 1997
- "*The Federal False Claims Act: Are Health Care Providers at Risk?,*" (Co-Speaker), Ohio Hospital Association, April, 1996
- "*A Focus on Reality in Antitrust,*" Federal Bar News & Journal, Nov/Dec 1992
- "*Using Civil Rico and Avoiding its Abuse*," Ohio Trial, William H. Blessing, co-author, Summer 1992
- "*Antitrust in the Health Care Field*," a chapter published in Legal Aspects of Anesthesia, 2nd ed., William H. L. Dornette, J.D., M.D., editor
- *Antitrust Law Update, National Health Lawyers Health Law Update and Annual Meeting (Featured Speaker)*, San Francisco, California, 1989

Affiliations:

- American Association for Justice
- American Bar Association
- American Trial Lawyers Association
- Cincinnati Bar Association
- District of Columbia Bar Association (non-active)
- Hamilton County Trial Lawyers Association
- National Health Lawyers Association
- Ohio State Bar Association
- Ohio Trial Lawyers Association

Courts Admitted:

- District of Columbia (1981)
- State of Ohio (1983)
- United States District Court, Southern District of Ohio (1983)
- U.S. Court of Appeals, 6th Circuit (1991)
- U.S. Court of Appeals, 9th Circuit (1995)
- U.S. Supreme Court, United States of America (1998)
- United States District Court, Northern District of Ohio (2008)

PAUL M. DEMARCO

Paul M. De Marco is a founding member of Markovits, Stock & DeMarco, LLC. He is an Appellate Law Specialist certified by the Ohio State Bar Association and has handled more than 100 appellate matters, including cases before the Supreme Court of the United States, six federal circuits, and five state supreme courts.

Paul's practice also focuses on class actions and other complex litigation. During his 25 years in Cincinnati, Paul has been actively involved in successful litigation related to the U.S. Department of Energy's Fernald nuclear weapons plant, the Lucasville (Ohio) prison riot, Lloyd's of London, defective Bjork-Shiley heart valves, Holocaust-related claims against Swiss and Austrian banks, the Bankers Trust derivative scheme, Cincinnati's Aronoff Center, the San Juan DuPont Plaza Hotel fire, the Procter & Gamble Satanism rumor, the Hamilton County (Ohio) Morgue photograph scandal, defective childhood vaccines, claims arising from tire delamination and vehicle roll-over, racial hostility claims against one of the nation's largest bottlers, fiduciary breach claims against the nation's largest pharmacy benefits manager, and claims arising from the heatstroke death of NFL lineman Korey Stringer.

Education:

College of Wooster (B.A., 1981)

University of the Pacific, McGeorge School of Law (J.D. with distinction, 1983)

University of Cambridge (1985)

Significant and Representative Appeals:

- *Arthur Anderson LLP v. Carlisle*, 556 U.S. 624, 129 S.Ct. 1896 (2009): In a case involving allegations of a fraudulent tax shelter and accounting and legal malpractice, the Supreme Court of the United States resolved the issue of the rights of non-parties to arbitration clauses to enforce them against parties, which had divided the circuits.
- *Williams v. Duke Energy International, Inc.*, 681 F.3d 788 (6th Cir. 2012): In a case brought as a class action by a utility's ratepayers for selective payment of illegal rebates to certain ratepayers, the United States Court of Appeals for the Sixth Circuit reversed a district court's dismissal of the excluded ratepayers' claims that the utility violated the RICO statute, the Robinson-Patman Act, and the state corrupt practices act.
- *State of Ohio ex rel. Bd. of State Teachers Retirement Sys. of Ohio v. Davis*, 113 Ohio St.3d 410, 865 N.E.2d 1289 (2007): The Supreme Court of Ohio upheld the appellate court's issuance of the extremely rare writ of procedendo commanding the trial judge to proceed with a trial on claims he mistakenly believed the previous jury had resolved.
- *Chesher v. Neyer*, 477 F.3d 784 (6th Cir. 2007): The Sixth Circuit affirmed the district court's rejection of qualified immunity defenses raised by the Hamilton County (Ohio) coroner, his chief deputy, the coroner's administrative aide, a staff pathologist, and a pathology fellow in connection with the Hamilton County Morgue photo scandal.
- *State of Ohio ex rel. CNG Fin'l Corp. v. Nadel*, 111 Ohio St.3d 149, 855 N.E.2d 473 (2006): The Supreme Court of Ohio affirmed the appellate court's refusal to issue a writ of procedendo commanding the trial judge to halt injunctive proceedings and decide an arbitration issue.
- *Smith v. North American Stainless, L.P.*, 158 F. App'x. 699 (6th Cir. 2006): Rejecting a steel manufacturer's "up-the-ladder" immunity defense, the United States Court of Appeals for the Sixth Circuit reversed the district court's dismissal of a wrongful claim brought by the widow and estate of a steel worker killed on the job.
- *Procter & Gamble Co. v. Haugen*, 427 F.3d 727 (10th Cir. 2005): The United States Court of Appeals for the Tenth Circuit reversed the district court's dismissal of Procter & Gamble's Lanham Act claims, paving the way for a $19.25 million jury verdict in its favor.

- *Roetenberger v. Christ Hospital*, 163 Ohio App.3d 555, 839 N.E.2d 441 (2005): In this medical malpractice action for wrongful death, the Ohio court of appeals reversed the jury verdict in the physician's favor due to improper arguments by his attorney and instructional error by the trial court.
- *City of Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 768 N.E.2d 1136 (2002): In this landmark decision on public nuisance law, the Supreme Court of Ohio held that a public nuisance action could be maintained for injuries caused by a product — in this case, guns — if the design, manufacture, marketing, or sale of the product unreasonably interferes with a right common to the general public.
- *Norgard v. Brush Wellman, Inc.*, 95 Ohio St.3d 165, 766 N.E.2d 977 (2002): In an employee's intentional tort action alleging that his employer subjected him to long-term beryllium exposure, the Supreme Court of Ohio ruled that a cause of action for an employer intentional tort accrues when the employee discovers, or by the exercise of reasonable diligence should have discovered, the workplace injury and — here's the ground-breaking part of the holding — the wrongful conduct of the employer.
- *Wallace v. Ohio Dep't of Commerce*, 96 Ohio St.3d 266, 773 N.E.2d 1018 (2002): In overturning the dismissal of a suit against the state fire marshal for negligently inspecting a fireworks store that caught fire killing nine people, the Supreme Court of Ohio held for the first time that the common-law public-duty rule cannot be applied in cases against the state in the Ohio Court of Claims.

Courts Admitted:

- Ohio
- California
- Supreme Court of the United States
- U.S. Court of Appeals, 1st Circuit
- U.S. Court of Appeals, 4th Circuit
- U.S. Court of Appeals, 5th Circuit
- U.S. Court of Appeals, 6th Circuit
- U.S. Court of Appeals, 7th Circuit
- U.S. Court of Appeals, 9th Circuit
- U.S. Court of Appeals, 10th Circuit
- U.S. District Court, Southern District of Ohio
- U.S. District Court, Northern District of Ohio
- U.S. District Court, Eastern District of California
- U.S. District Court, Central District of California
- U.S. District Court, Southern District of California
- U.S. Court of Federal Claims

Since 1994, Paul has worked to promote professional responsibility among lawyers, serving first as a member and eventually the chair of the Cincinnati Bar Association Certified Grievance Committee, and since 2008 as a member of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio.

He also is a member of many legal organizations, including the Federal Bar Association, Ohio State Bar Association, Cincinnati Bar Association, American Bar Association, ABA Council of Appellate Lawyers, and the Cincinnati Bar Association's Court of Appeals Committee.

Paul was one of the founders of the Collaborative Law Center in Cincinnati, a member of Cincinnati's Citizens Police Review Panel (1999-2002), and a member of Cincinnati CAN and its Police and Community Subcommittee following the 2001 riots.

He currently serves on the boards of the Ohio Justice and Policy Center and the Mercantile Library and on the advisory committees of the Fernald Community Cohort and the Fernald Workers' Medical Monitoring Program.

TERENCE R. COATES

Terry Coates is Markovits, Stock & DeMarco's managing partner. His legal practice focuses on personal injury law, sports & entertainment law, business litigation and class action litigation. Mr. Coates is currently participating as a member of plaintiffs' counsel in the over 60 data breach cases pending around the country, including serving as co-lead counsel for plaintiff in *Migliaccio v. Parker Hannifin Corp.*, No. 1:22-CV-00835 (N.D. Ohio) (court-appointed co-lead counsel for preliminarily-approved $1.75 million class action settlement); *Lutz v. Electromed, Inc.*, No. 0:21-cv-02198 (D. Minn.) (court-appointed co-lead counsel for preliminarily-approved class action settlement); *Abrams v. Savannah College of Art & Design*, No. 1:22-CV-04297 (N.D. Ga.) (court-appointed co-lead counsel for preliminarily-approved class action settlement); *John v. Advocate Aurora Health, Inc.*, No. 22-CV-1253-JPS (E.D. Wis.) (court-appointed interim co-lead class counsel); *In re U.S. Vision Data Breach Litigation*, No. 22-cv-06558 (D. N.J.) (same); *Tucker v. Marietta Area Health Care, Inc.*, No. 2:22-cv-00185 (S.D. Ohio) (same); *Rodriguez v. Professional Finance Company, Inc.*, No. 1:22-cv-1679 (D. Colo.) (same); *Sherwood v. Horizon Actuarial Services, LLC*, No. 1:22-cv-1495 (N.D. Ga.; court-appointed interim class counsel); *Tracy v. Elekta, Inc.*, No. 1:21-cv-02851-SDG (N.D. Ga.; court-appointed interim class counsel).

Education:

Thomas M. Cooley Law School, J.D. (2009)

Wittenberg University, B.A. (2005)

Representative Cases:

- *Bechtel v. Fitness Equipment Services, LLC*, No. 1:19-cv-726-KLL (S.D. Ohio) ($3.65 million common fund settlement finally approved on September 20, 2022);
- *Bowling v. Pfizer, Inc.*, Case No. C-1-95-256 (S.D. Ohio) (Class Counsel for recipients of defective mechanical heart valves including continued international distribution of settlement funds to remaining class members);
- *Collins Inkjet Corp. v. Eastman Kodak Company*, Case No. 1:13-cv-0664 (S.D. Ohio) (trial counsel for Collins in an antitrust tying claim resulting in a preliminary injunction against Kodak – a decision that was affirmed by the Sixth Circuit Court of Appeals: *Collins Inkjet Corp. v. Eastman Kodak Co.*, 781 F.3d 264 (6th Cir. 2015));
- *Day v. NLO, Inc.*, Case No. C-1-90-67 (S.D. Ohio) (Class Counsel for certain former workers at the Fernald Nuclear weapons facility; the medical monitoring program continues);
- *In re Fannie Mae Securities Litigation*, Case No. 1:04-cv-1639 (D.D.C.) (represented Ohio public pension funds as Lead Plaintiffs in Section 10b securities class action litigation resulting in a $153 million court-approved settlement);
- *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, & Products Liability Litigation*, MDL No. 2151 (C.D. Cal.) (represented plaintiffs and prepared class representatives for deposition testimony resulting in a court-approved settlement valued in excess of $1.5 billion);
- *In re NCAA Student-Athlete Name & Likeness Licensing Litigation*, Case No. 09-1967 (N.D. Cal.) (represented NCAA, Olympic, and NBA legend, Oscar Robertson, in antitrust claims against the National Collegiate Athletic Association (NCAA), Collegiate Licensing Company (CLC), and Electronic Arts (EA) leading to a $40 million settlement with EA and CLC and the Court issuing a permanent injunction against the NCAA for unreasonably restraining trade in violation of antitrust law);
- *Linneman v. Vita-Mix Corp.*, Case No. 14-cv-748, (S.D. Ohio) (Class Counsel for a nationwide class of Vita-Mix blender consumers resulting in a nationwide settlement);
- *Ryder v. Wells Fargo Bank, N.A.*, No. 1:2019-cv-00638 (S.D. Ohio) (member of class counsel in a $12 million settlement on behalf of roughly 1,830 class members);

- *Shy v. Navistar International Corp.*, No. 92-cv-0333-WHR (S.D. Ohio) (class counsel for a class action settlement valued at over $742 million);
- *Walker v. Nautilus, Inc.*, No. 2:20-cv-3414-EAS (S.D. Ohio) ($4.25 million common fund settlement finally approved on June 28, 2022);
- *Williams v. Duke Energy*, Case No. 1:08-cv-00046 (S.D. Ohio) (representing class of energy consumers against energy provider in complex antitrust and RICO class action resulting in the court granting final approval of an $80.875 million settlement); and,
- *Ohio Public Employees Retirement System v. Federal Home Loan Mortgage ("Freddie Mac")*, Case No. 4:08-cv-0160 (N.D. Ohio) (Special counsel for Ohio public pension funds as Lead Plaintiffs in Section 10b-5 securities class action litigation).

Community Involvement:

- Cincinnati Academy of Leadership for Lawyers (CALL), Class XXI, *Participant* (2017)
- Cincinnati Chamber of Commerce C-Change Class 9, *Participant* (2014)
- Cincinnati Chamber of Commerce, *Ambassador* (2014)
- Cincinnati Athletic Club, *President* (2015-2017)
- Cincinnati Athletic Club, *Vice President* (2014-2015)
- Cincinnati Bar Association, Board of Trustees, *Trustee* (2019-present)
- Cincinnati Bar Association, Board of Trustees, *Executive Committee* (2021-present)
- Cincinnati Bar Association, *Membership Services & Development Committee* (2014-present)
- Cincinnati Bar Association, *Run for Kids Committee* (2009-2014)
- Cincinnati Bar Association, *Social Committee* (2011-2014)
- Clermont County Humane Society, *Board Member* (2014-2017)
- Clermont County Humane Society, *Legal Adviser* (2017-present)
- Potter Stewart Inn of Court, *Executive Director* (2021-present)
- Summit Country Day High School, *Mock Trial Adviser* (2013-2016)
- St. Peter in Chains, Cathedral, Parish Council (2014-2017)

Recognitions:

- Super Lawyers, Rising Star (2014 – present)
- Best Lawyers in America, Commercial Litigation (2020-present)
- Wittenberg University Outstanding Young Alumnus Award (2014)
- Cincinnati Bar Association, Young Lawyers Section Professionalism Award (2015)
- JDRF Bourbon & Bow Tie Bash, *Young Professional (Volunteer) of the Year* for the Flying Pig Marathon (2016)
- Cincinnati Business Courier, Forty Under 40 (2019)
- Cincinnati Cystic Fibrosis Foundation, Cincinnati's Finest Honoree (2020)

Courts Admitted:

- State of Ohio (2009)
- United States District Court, Southern District of Ohio (2010)
- United States District Court, Northern District of Ohio (2010)
- United States District Court, Eastern District of Michigan (2021)
- United States District Court, District of Colorado (2022)
- United States District Court, Eastern District of Wisconsin (2022)
- United States District Court, Western District of Michigan (2023)
- United States Court of Appeals, Sixth Circuit (2018)

JUSTIN C. WALKER

Justin C. Walker is Of Counsel at Markovits, Stock & DeMarco. Justin's practice areas are focused on complex civil litigation and constitutional law, with an emphasis on consumer fraud and defective products. Before joining Markovits, Stock & DeMarco in April 2019, Justin practiced at the Finney Law Firm, a boutique law firm specializing in complex litigation and constitutional law. At the beginning of his legal career, Justin served as a judicial extern for Senior United States District Judge Sandra S. Beckwith before taking a full-time position as a law clerk and magistrate in the Hamilton County Ohio Court of Common Pleas for the Honorable Norbert A. Nadel. After completing his clerkship, Justin took a position as a prosecutor, serving as first chair for multiple jury trials. Justin then entered private practice, shifting his practice to focus on litigation matters.

Education:

University of Cincinnati, J.D. (2005)

Miami University, B.S. (2001)

Courts Admitted:

- State of Ohio (2005)
- U.S. Court of Appeals, 6th Circuit (2017)
- U.S. District Court, Southern District of Ohio (2008)
- U.S. Bankruptcy Court, Southern District of Ohio (2009)

Representative Cases:

- *Linneman v. Vita-Mix Corp.*, Case No. 15-cv-748, United States District Court, Southern District of Ohio (Co-Class Counsel for a nationwide class of Vita-Mix blender consumers resulting in a nationwide settlement).
- *Baker v. City of Portsmouth*, Case No. 1:14-cv-512, 2015 WL 5822659 (S.D. Ohio Oct. 1, 2015) (Co-Counsel for a class of property owners, the Court ruled that City violated the Fourth Amendment when it required property owners to consent to a warrantless inspection of their property or face a criminal penalty where not valid exception to the warrant requirement exists).
- *E.F. Investments, LLC v. City of Covington, Kentucky*, Case No. 17-cv-00117-DLB-JGW, United States District Court, Eastern District of Kentucky (Lead Counsel on case brought on behalf of local property owners, contending that City's rental registration requirements violated the Fourth Amendment resulting in a settlement).
- *State of Ohio ex rel. Patricia Meade v. Village of Bratenahl*, 2018-04409, Supreme Court State of Ohio (Co-Counsel on behalf of local taxpayer contending that Defendant's violated Ohio Open Meetings Law).
- *Dawson v. Village of Winchester*, United States District Court, Southern District of Ohio (Lead Counsel represented Plaintiff claiming Federal Civil Rights violations due to unconstitutional arrest and detainment).

Affiliations and Presentations:

- Cincinnati Bar Association
- Clermont County Bar Association
- American Association for Justice
- "Municipal Bankruptcy: Chapter 9 – Should Cincinnati Consider Filing for Bankruptcy"
- "Ohio CLE Introduction to Bankruptcy for Lawyers CLE"

CHRISTOPHER D. STOCK

Chris's legal practice focuses on securities class action and multi-district products liability litigation, as well as appellate advocacy. Serving as a judicial law clerk for Ohio Supreme Court Justice Terrence O'Donnell gave Chris invaluable insight into how courts synthesize and deconstruct legal arguments. Since then, Chris has briefed and argued numerous cases before the United States Court of Appeals for the Sixth Circuit, the Ohio Supreme Court, and Ohio appellate courts, including obtaining a rare summary reversal from the United States Supreme Court.

Chris also served as both Deputy First Assistant Attorney General and Deputy State Solicitor for Ohio Attorney General Jim Petro. In these positions, Chris was principal counsel to the Attorney General on a wide variety of legal and policy-oriented issues, including numerous constitutional and regulatory matters arising from state agencies, boards, and commissions. Prior to his service in state government, Chris was an attorney at a 500-lawyer nationally-recognized law firm.

He received multiple designations as an Ohio Super Lawyers "Rising Star." This distinction is awarded to less than 2.5 percent of Ohio attorneys under the age of 40.

Education:

The Ohio State University, Moritz College of Law, J.D. (2002)

The Ohio State University, BA (1997)

Significant Cases:

- *In re Fannie Mae Securities Litigation,* Case No. 1:04-cv-1639 (D.D.C.). Representing Ohio public pension funds as Lead Plaintiffs in Section 10b-5 securities class action litigation.
- *Ohio Public Employees Retirement System v. Freddie Mac, et al.,* Case No. 4:08-cv-160 (N.D. Ohio). Representing Ohio public pension funds as Lead Plaintiffs in Section 10b-5 securities class action litigation.
- *Williams v. Duke Energy,* Case No.: 1:08-CV-00046 (S.D. Ohio). Representing class of energy consumers against energy provider in complex antitrust and RICO class action.
- *Slaby v. Wilson,* Hamilton County Court of Common Pleas. Lead trial counsel representing two private individuals who were falsely accused by a County Commissioner of murdering their child and covering up the child's death (as well as sexual abuse of child).
- *Kelci Stringer, et al. v. National Football League, et al.,* United States District Court, Southern District of Ohio, Western Division. Represented professional football player against NFL and helmet manufacturer in wrongful death/products liability litigation related to professional football player's death.
- *Susan B. Anthony List v. Driehaus,* United States District Court, Southern District of Ohio, Western Division. Represented former Congressman in defamation action against organization who published false statements about former Congressman's voting record and alleged influence over organization's commercial activities.
- *Mitchell v. Esparza,* Case No. 02-1369 (United States Supreme Court). Obtained summary reversal of Sixth Circuit decision on Eighth Amendment capital sentencing issue.
- *Cleveland Bar Association v. CompManagement, Inc.,* Case No. 04-0817 (Ohio Supreme Court). Represented the State of Ohio as amicus in landmark workers' compensation lawsuit.

Presentations:

- Class Action Boot Camp: The Basics and Beyond (2012).
- Harris Martin Toyota Sudden Unintended Acceleration Litigation Conference: TREAD Act Liability and Toyota (2010).
- Harris Martin BP Oil Spill Litigation Conference: The RICO Act's Application to the BP Oil Spill (2010).

Affiliations:

- Ohio State Bar Association
- Cincinnati Bar Association

Courts Admitted:

- State of Ohio (2002)
- United States District Court, Southern District of Ohio (2003)
- Sixth Circuit Court of Appeals, Ohio (2003)
- United States District Court, Northern District of Ohio (2007)

DYLAN J. GOULD

Dylan is an associate attorney at Markovits, Stock & DeMarco. Dylan's practice primarily focuses on class action and complex civil litigation with an emphasis on cases involving consumer fraud and data privacy. He also has experience with matters related to sports & entertainment, personal injury, commercial law, civil conspiracy, and civil litigation under the RICO Act. At the University of Cincinnati College of Law, where he spent multiple semesters on the Dean's Honors List, Dylan was selected to the Trial Practice and Moot Court teams, participating in mock trial and appellate court competitions with law students across the country. Upon graduation, Dylan joined Markovits, Stock & DeMarco, where he quickly gained valuable experience in nearly every facet of the litigation process while skillfully guiding several cases to final judgment, including as a court appointed member of class counsel in multiple actions gaining final approval of class action settlement. In recognition of his achievements, Dylan was named an Ohio Super Lawyers Rising Star in 2021 and 2023. Aside from his litigation practice, Dylan is also a Certified Contract Advisor with the National Football League Players Association.

Education:

University of Cincinnati, J.D. (2018)

University of Colorado at Boulder, B.A. (2015)

Courts Admitted:

- State of Ohio (2018)
- United States District Court, Southern District of Ohio (2019)
- United States District Court, Northern District of Ohio (2022)
- United States District Court, Eastern District of Wisconsin (2022)
- United States Court of Appeals, Sixth Circuit (2023)

Representative Cases:

- *Compound Property Management LLC v. Build Realty, Inc.*, No. 1:19-CV-133, 2023 WL 2140981 (S.D. Ohio Feb. 21, 2023) (granting contested class certification of claims related to complex real estate lending scheme in civil RICO action and appointing Mr. Gould as a member of class counsel);
- *Voss v. Quicken Loans*, No. A 2002899, 2023 WL 1883124 (Feb. 8, 2023 Ohio Com.Pl.) (granting contested class certification of action under Ohio Revised Code § 5301.36 and appointing Mr. Gould as member of class counsel);
- *Benedetto v. The Huntington National Bank*, No. A1903532 (Hamilton County, Ohio Court of Common Pleas) (served as member of class counsel in class action related to untimely mortgage releases that recently received final approval of class action settlement);
- *Engle v. Talbert House*, No. A2103650 (Hamilton County Court of Common Pleas, Ohio) (court appointed member of class counsel in data breach action that recently received final approval of class action settlement)
- *Lutz v. Electromed, Inc.*, No. 21-cv-2198 (D. Minn.) (court appointed member of class counsel in data breach action that recently gained preliminary approval of $825,000 settlement)
- *Reynolds v. Concordia University*, St. Paul, No. 0:21-CV-2560 (D. Minn.) (serving as a member of proposed class counsel for the plaintiff in case based on the unavailability of clinical experience for nursing students);

Affiliations:

Cincinnati Bar Association

Ohio State Bar Association

JONATHAN T. DETERS

Jon is a Cincinnati native whose legal practice is focused on complex civil litigation, class action litigation, personal injury law, and sports & entertainment law. Jon has been a litigator since the start of his career, and his clients have included individuals, businesses, local governments, and government officials. Jon's experience serving as both plaintiff and defense counsel make him uniquely qualified and well-suited to represent individual and corporate clients in litigation. Jon has been designated as an Ohio Super Lawyers "Rising Star" from 2019-present, which is a distinction awarded to less than 2.5% of Ohio attorneys under the age of 40.

Before joining Markovits, Stock & DeMarco in January 2022, Jon practiced at Schroeder, Maundrell, Barbiere & Powers, an Ohio law firm specializing in civil litigation, personal injury, and constitutional law. While in law school, Jon served as a constable in the Hamilton County Ohio Court of Common Pleas for the Honorable Steven E. Martin and worked as law clerk at the Law Office of Steven R. Adams.

Education:

Salmon P. Chase School of Law at Northern Kentucky University, J.D. (2015)

Xavier University, Cincinnati, Ohio, Honors Bachelor of Arts (2012)

Representative Cases:

- *Baker v. Carnine*, No. 1:19-CV-60 (2022), United States District Court, Southern District of Ohio
- *Jones v. Vill. of Golf Manor*, No. 1:18-CV-403 (2020), United States District Court, Southern District of Ohio
- *Vaduva v. City of Xenia*, 780 F. App'x 331 (2019), United States Court of Appeals, Sixth Circuit
- *Gillispie v. Miami Twp.*, No. 3:13-CV-416 (2017), United States District Court, Southern District of Ohio
- *City of Mt. Healthy v. Fraternal Ord. of Police, Ohio Lab. Council, Inc*., 101 N.E.3d 1163 (2017), Ohio First District Court of Appeals

Community Involvement:

- Cincinnati Bar Association, *Member*
- Ohio Bar Association, *Member*
- Boy Hope Girls Hope of Cincinnati, *Young Professionals Board Member*
- Board of Trustees of the New St. Joseph Cemetery, Cincinnati, Ohio, *Member*

Courts Admitted:

- State of Ohio
- United States District Court, Southern District of Ohio
- United States Court of Appeals, Sixth Circuit

EXHIBIT 3

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

BONNIE GILBERT, WENDY BRYAN, PATRICIA WHITE, DAVID GATZ, CRYSTAL HULLET, LORI GRADER, DARYL WANSON, STEPHEN GABBARD, and ALICIA DUNN, on behalf of themselves and all other similarly situated,

Plaintiffs,

vs.

BIOPLUS SPECIALTY PHARMACY SERVICES, LLC,

Defendant.

Case No. 6:21-cv-02158-RBD-DCI

DECLARATION OF SCOTT M. FENWICK OF KROLL SETTLEMENT ADMINISTRATION LLC IN CONNECTION WITH PRELIMINARY APPROVAL OF SETTLEMENT

I, Scott M. Fenwick, hereby declare:

1. I am a Senior Director of Kroll Settlement Administration LLC ("Kroll"),[1] the Settlement Administrator to be appointed in the above-captioned case, whose principal office is located at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am authorized to make this declaration on behalf of Kroll and myself. The

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement (as defined below).

following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed in connection with preliminary approval of the settlement.

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities, labor and employment, consumer and government enforcement matters. Kroll has provided class action services in over 3,000 settlements varying in size and complexity over the past 50 years.

3. Kroll is prepared to provide a full complement of notification and claims administration services in connection with that certain Settlement Agreement and Release (the "Settlement Agreement") entered into in connection with the above-captioned matter, including notice of the settlement disseminated by mail, email and through the use of a Settlement Website to be created in connection with this matter.

4. It is Kroll's understanding that it will be provided with Class Member Information for each of the Settlement Class Members covered under the proposed Settlement Agreement, which will include names, email addresses where available, physical addresses and an identifier denoting if

the record is for a Non-SSN Class Member or a SSN Class Member, and other elements pertinent to the administration of the Settlement.

Notice by Email

5. In preparation for disseminating notices by email, Kroll will work with Class Counsel and BioPlus's counsel (collectively, "Counsel") to finalize the language for the email form of the Short Form Notices that will be sent to Non-SSN Class Members and SSN Class Members (collectively "Notices"). Once the email forms of the Notices are approved, Kroll will create an email notice template in preparation for the email campaign. Kroll will prepare a file with available Settlement Class Member email addresses and upload the file to an email campaign platform. Kroll will prepare email proofs for Counsel's review and approval. The proofs/test emails for approval will include the body of the email and subject line. Once the proofs/test emails are approved, the email campaign will begin as directed in the Settlement.

6. Kroll will track and monitor emails that are rejected or "bounced back" as undeliverable. At the conclusion of the email campaign, Kroll will provide a report with the email delivery status of each record. The report will include the number of records that had a successful Notice delivery, and a count of the records where delivery failed. Kroll will also update its

administration database with the appropriate status of the email campaign for each of the Settlement Class Member records.

Notices by Mail

7. Kroll will work with Counsel to format the Notices for mailing. Upon approval, Kroll will coordinate the preparation of the Notice proofs for Counsel to review and approve.

8. As required under Section 10(d) of the Settlement Agreement, Kroll will send the Notices by first-class mail to the physical addresses of Settlement Class Members, who have a mailing address in the Class Member Information to be provided.

9. In preparation for mailing the Notices, Kroll will send the Class Member Information through the United States Postal Service's ("USPS") National Change of Address ("NCOA") database. The NCOA process will provide updated addresses for Settlement Class Members who have submitted a change of address with the USPS in the last 48 months, and the process will also standardize the addresses for mailing. Kroll will then prepare a mail file of Settlement Class Members that are to receive the Notices via first-class mail.

10. As required under Section 10(e) of the Settlement Agreement, mailed Notices returned by the USPS with a forwarding address will be automatically re-mailed to the updated address provided by the USPS.

11. As required under Section 10(f) of the Settlement Agreement, mailed Notices returned by the USPS undeliverable as addressed without a forwarding address will be sent through an advanced address search process in an effort to find a more current address for the record. If an updated address is obtained through the advanced search process, Kroll will re-mail the Notices to the updated address.

Settlement Website

12. Kroll will work with Counsel to create a dedicated Settlement Website. The Settlement Website URL will be determined and approved by Counsel. The Settlement Website will contain a summary of the Settlement, will allow Settlement Class Members to contact the Settlement Administrator with any questions or changes of address, provide notice of important dates such as the Final Fairness Hearing, Claims Deadline, Objection Date, and Opt-Out Date, and provide Settlement Class Members who file Claim Forms online the opportunity to select an electronic payment method, including Venmo, Zelle, Paypal, ACH, or payment by check. The Settlement Website will also contain relevant case documents including the

Settlement Agreement, Claim Form, the Short Form Notices, the Long Form Notice, the Preliminary Approval Order, and any other materials agreed upon by Counsel and/or required by the Court.

Toll-Free Number

13. Kroll will also establish a toll-free number for the Settlement. The toll-free number will allow Settlement Class Members to call and obtain information about the Settlement through an Interactive Voice Response System, as well as a voice mail box, allowing Kroll to return messages.

Post Office Box

14. Kroll will designate a post office box with the mailing address captioned *Gilbert et al. v. BioPlus Specialty Pharmacy Services* c/o Kroll Settlement Administration, PO Box <<####>>, New York, NY <<Zip-Zip4>> in order to receive requests for exclusion, Claim Forms, and correspondence from Settlement Class Members.

Reminder Notices

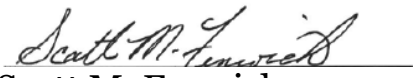
15. As required under Section 10(j) of the Settlement Agreement, 60 days after the Notice Date, Kroll will send Reminder Notices via email to Settlement Class Members who have not yet submitted a Claim Form and have not opted out of the Settlement, and for whom Kroll also has a valid email address included in the Class Member Information or otherwise

provided directly to Kroll by a Settlement Class Member. The Reminder Notices will be sent using the same form of the Notices as the original email campaign.

Notice and Settlement Administration Cost

16. Based on Kroll's current understanding of the class size and requested administration services, estimated fees and expenses for Notice and Settlement Administration Cost are approximately $350,000 for fees and costs for direct notice and claims administration under the Settlement. The current estimate is subject to change depending on factors such as the actual Settlement class size and/or any Settlement Administration scope change not currently under consideration.

I declare under penalty of perjury under the laws of the United Sates that the above is true and correct to the best of my knowledge and that this declaration was executed on June 30, 2023, in Woodbury, Minnesota.



Scott M. Fenwick