



I, Frank J. Johnson, declare as follows:

1. I am a partner with the firm of Johnson & Weaver, LLP (the “firm”). I am submitting this declaration in support of my firm’s application for an award of attorneys’ fees and expenses/charges (“expenses”) in connection with services rendered in the above-entitled action.

2. My firm is additional counsel to Plaintiffs, has actively engaged in the prosecution of this action on behalf of Plaintiffs and the Class, and has performed, or in some manner has been involved with, some or all of the following tasks, consistent with the leadership structure, and management of workload to avoid duplication: (i) assistance with preparation of the initial and operative complaint; (ii) legal research regarding the motions to dismiss, including traceability and underwriter liability; (iii) assistance with preparation of discovery requests; (iv) review and legal research concerning the defendants’ privilege and redaction logs; (v) legal research concerning multiple aspects of summary judgment motions; (vi) extensive communications with Mr. DeWulf; (vii) preparation for and attendance at Mr. DeWulf’s deposition in Melville, New York; (viii) preparation for and attendance at multiple mediations; and (ix) participation in strategy conferences with co-counsel.

3. The information in this declaration regarding the firm’s time and expenses is taken from time and expense printouts and supporting documentation prepared and/or maintained by the firm in the ordinary course of business. I am the partner who oversaw and/or conducted the day-to-day activities in the litigation and I reviewed these printouts (and backup documentation where necessary or appropriate) in connection with the

preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. While the total lodestar was slightly higher in my law firm's billing software, I exercised my discretion to exclude any time worked on the matter by anyone who spent less than five hours. In addition, to assure the accuracy of the hours entered on all cases, the firm has a regular business practice and policy of maintaining contemporaneous time records which are checked for accuracy on a monthly basis. As a result of this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

4. After the reductions referred to above, the number of hours spent on this litigation by my firm is 278.3. A breakdown of the lodestar is provided in Exhibit A. The lodestar amount for attorney/paralegal time based on the firm's current rates is \$154,505.50. The hourly rates shown in Exhibit A are the usual and customary rates set by the firm for each individual.

5. My firm seeks an award of \$1,652.36 in expenses and charges in connection with the prosecution of the litigation. Those expenses and charges are summarized by category in Exhibit B.

6. The following is additional information regarding certain of these expenses:

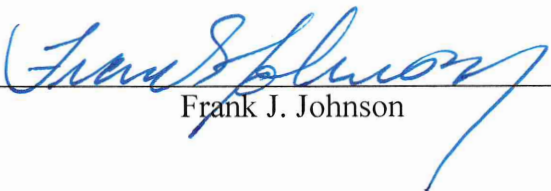
(a) Transportation, Hotels & Meals: \$1,473.50. In connection with the prosecution of this case, the firm has paid for travel expenses for Scott Holleman to attend, among other things, the January 20, 2016 Mediation and the February 25, 2016 Deposition of Mr. DeWulf. The date, destination, and purpose of each trip are set forth in Exhibit C.

(b) Online Legal Research: \$178.86. Lexis Nexis was used to obtain access to legal research. This amount represents the expense incurred by the firm for use of this service in connection with this litigation. The charges for this vendor vary depending upon the type of research conducted.

7. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from receipts, expense vouchers, check records, and other documents and are an accurate record of the expenses.

8. The identification and background of my firm and its attorneys is attached hereto as Exhibit D.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 10<sup>th</sup> day of March, 2017, at San Diego, California.

  
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Frank J. Johnson

**INDEX OF EXHIBITS TO THE DECLARATION OF  
FRANK J. JOHNSON FILED ON BEHALF OF JOHNSON & WEAVER, LLP IN  
SUPPORT OF APPLICATION FOR AWARD OF ATTORNEYS' FEES AND  
EXPENSES**

- Exhibit A: Lodestar Chart
- Exhibit B: Expense Chart
- Exhibit C: Travel Chart
- Exhibit D: Johnson & Weaver, LLP Firm Resume

# EXHIBIT A

EXHIBIT A  
LODESTAR

Johnson & Weaver, LLP  
Inception through February 28, 2017

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Frank Johnson	(P)	29.8	\$865	\$25,777.00
Michael Fistel	(P)	15.1	\$625	\$9,437.50
Scott Holleman	(A)	178.3	\$575	\$102,522.50
James Baker	(FA)	12.0	\$475	\$5,700.00
Emily Bigelow	(PL)	15.2	\$290	\$4,408.00
Shelby Ramsey	(PL)	8.8	\$275	\$2,420.00
Anna Lizano	(PL)	6.3	\$245	\$1,543.50
Mason Hattam	(PL)	5.5	\$205	\$1,127.50
Matthew Ostman	(PL)	7.3	\$215	\$1,569.50
<b><i>TOTAL</i></b>		<b><i>278.3</i></b>		<b><i>\$154,505.50</i></b>

(P) Partner

(A) Associate

(FA) Financial Analyst

(PL) Paralegal

(LA) Legal Assistant

# EXHIBIT B



EXHIBIT B  
EXPENSES/CHARGES

Johnson & Weaver, LLP  
Inception through February 28, 2017

<i>CATEGORY</i>	<i>TOTAL</i>
Transportation, Hotels & Meals	\$1,473.50
Online Legal and Financial Research	\$178.86
<b><i>TOTAL</i></b>	<b><i>\$1,652.36</i></b>

# EXHIBIT C

## EXHIBIT C

Transportation, Hotels & Meals: \$1,473.50.

<i>NAME</i>	<i>DATE</i>	<i>DESTINATION</i>	<i>PURPOSE</i>	<i>AMOUNT</i>
Scott Holleman	1/20/16	New Jersey	Mediation	\$10.50
Scott Holleman	2/25/16	New York	Deposition of Luc DeWulf	\$1,463.00
<b>Total</b>				<b>\$1,473.50</b>

# EXHIBIT D

EXHIBIT D – FIRM RESUME



ATTORNEYS AT LAW

**FIRM RESUME**

Johnson & Weaver, LLP is committed to delivering comprehensive, creative, and cost-effective solutions to complex legal problems. The trial lawyers at Johnson & Weaver have experience and training from some of the biggest firms in the country and have worked on numerous noteworthy cases. We pride ourselves on providing the same level of service large firms offer with the efficiency and personal touch that only a small firm can provide. Whether representing defrauded individuals or publicly-traded corporations, Johnson & Weaver has a track record of success.

**OUR ATTORNEYS**

**PARTNERS**

**FRANK J. JOHNSON**

Mr. Johnson is one of the founding partners of Johnson & Weaver. Prior to starting his own law firm, Mr. Johnson was a partner in the law firm Sheppard, Mullin, Richter & Hampton, LLP, a full-service Am Law 100 law firm with 750 attorneys in 15 offices located around the world. Mr. Johnson has represented some of the largest companies in the country in complex business disputes.

Areas of Practice: Mr. Johnson's practice focuses on complex litigation. Mr. Johnson has extensive experience in all aspects of trial practice, mediation, trial preparation, and non-jury and jury trials in state and federal court. In addition to his general trial practice, Mr. Johnson has both prosecuted and defended a number of cases involving securities fraud in class actions and derivative cases.

Professional Qualifications and Activities: Mr. Johnson was admitted to the State Bar of California in 1994. He has an AV rating with Martindale-Hubble which indicates very high to preeminent legal ability and very high ethical standards as established by confidential opinions from members of the Bar. He is currently admitted in good standing with the following courts:

- All courts in the State of California
- The United States Court of Appeals for the Ninth Circuit
- The United States Court of Appeals for the Third Circuit
- The United States District Courts for the Southern, Central, Eastern and Northern Districts of California
- The United States Court of Federal Claims
- The United States District Court for the Northern District of Illinois
- The United States District Court for the District of Colorado

Mr. Johnson is also a member of the following professional organizations:

- The San Diego County Bar Association
- The Federal Bar Association
- The Litigation Section of the State Bar of California
- SD Regional Chamber of Commerce, Vice Chair Tech Comm. (2002-03, 2003-04, 2004-05)

Mr. Johnson completed the following trial advocacy programs:

- San Diego County District Attorney one-month misdemeanor jury trial program
- Louis M. Welsh American Inn of Court, one year program
- San Diego Inn of Court College of Advocacy, multi-week trial course
- San Diego Inn of Court College of Advocacy, multi-week evidence course

Following graduation from law school in 1994, Mr. Johnson served as a judicial law clerk for one year for the Honorable John S. Rhoades, a federal trial judge in the United States District Court for the Southern District of California.

Education and Awards: Mr. Johnson received his Juris Doctor degree from Washington University School of Law in 1994, where he was in the top 10% of his class while in attendance. In his first year of law school, Mr. Johnson received the American Jurisprudence Award in Contracts. At both Washington University

School of Law and the University of San Diego School of Law (where Mr. Johnson was a visiting student in his third year), Mr. Johnson won first place awards in each school's Moot Court Competition. He received his Bachelor of Science degree in Business Administration with an emphasis in Finance from San Diego State University in 1990, where he graduated second in his class major, with honors and *summa cum laude*.

Community and Volunteer Activities: For the past few years, Mr. Johnson has been a volunteer at Voices for Children, where he serves as a CASA (Court Appointed Special Advocate) meeting several times each month with a foster child and attending court hearings to advocate for the child's best interests.

### **BRETT M. WEAVER**

Mr. Weaver is one of the founding partners of Johnson & Weaver. Before forming Johnson & Weaver, Mr. Weaver was an associate at the mid-sized San Diego firms of Johnson Bottini, LLP, Butz Dunn DeSantis & Bingham and Mazzarella Dunwoody & Caldarelli.

Mr. Weaver was named a "Super Lawyer" for Business Litigation in 2013, 2014, 2015 and again in 2016 by *Super Lawyer Magazine*.

Areas of Practice: In addition to complex business litigation, Mr. Weaver's practice areas include consumer class actions, securities litigation, professional-malpractice defense, employment law and real-estate disputes. Mr. Weaver has also handled a number of "anti-SLAPP" cases arising from the exercise of free speech and petitioning activities. Mr. Weaver has litigated cases in both state and federal court and has handled all aspects of litigation including mediations, arbitrations, and trial. In addition, Mr. Weaver has argued before the California, Arizona, Washington State, and Ninth Circuit Court of Appeals.

Professional Qualifications and Activities: Mr. Weaver is admitted in good standing with the following courts:

- All courts in the State of California
- The United States District Court for the Southern, Central, and Northern Districts of California
- The United States Court of Appeals for the Ninth Circuit

Mr. Weaver is a member of the following professional organizations:

- Louis M. Welch American Inn of Court
- Association of Business Trial Lawyers
- Board of Governors/Executive Committee Member

Mr. Weaver also volunteers with the following organizations:

- San Diego Volunteer Lawyer Program, Inc.
- Old Town Academy – Mock Trial Program Director

Education and Awards: Mr. Weaver received his Juris Doctor degree from the University of Arizona College of Law in 1999. Mr. Weaver actively participated in Moot Court and was named a member of the Moot Court Board, National Moot Court Team and was named the school's Most Outstanding Oral Advocate. Mr. Weaver graduated with honors from the University of Arizona in 1996, receiving a Bachelor of Arts degree in Political Science.

During law school, Mr. Weaver served as a judicial extern for Justice Judith L. Haller at the California Court of Appeal (4th District, Division 1) and Judge J. Richard Haden (Ret.) at the San Diego Superior Court.

### **MICHAEL I. FISTEL, JR.**

Mr. Fistel joined Johnson & Weaver in January 2014. Prior to joining the firm, Mr. Fistel was a partner at an Atlanta-based boutique litigation firm that represented individuals and businesses in shareholder and other complex litigation in federal and state courts throughout the country. In that role, Mr. Fistel served as partner-in-charge of the firm's active case inventory and obtained millions of dollars on behalf of injured shareholders, consumers, and businesses. Mr. Fistel was also instrumental in securing sweeping corporate governance reforms at numerous publicly-traded companies.

Areas of Practice: Mr. Fistel devotes his practice to representing individuals, institutions, and businesses in shareholder and other complex litigation. Specifically, a substantial portion of Mr. Fistel's practice is focused on representing shareholders in securities fraud class action litigation and shareholder derivative litigation. In addition to shareholder litigation, Mr. Fistel also represents aggrieved consumers and businesses in other complex litigation arising out of financial and consumer fraud.



Professional Qualifications: Mr. Fistel is currently admitted in good standing with the following courts:

- All courts in the State of Georgia
- The Supreme Court of the United States of America
- The United States Court of Appeals for the Eleventh Circuit
- The United States Court of Appeals for the Second Circuit
- The United States Court of Appeals for the First Circuit
- The United States District Courts for the Northern and Middle Districts of Georgia
- The United States District Court for the District of Colorado

Education and Awards: Mr. Fistel attended New England Law in Boston, Massachusetts, earning his Juris Doctor degree in 2001. While at New England Law, Mr. Fistel was repeatedly named to the Dean's List and received the CALI Award for Excellence in Trial Practice and Sports Law. Prior to attending New England Law, Mr. Fistel attended Florida State University as a Florida Undergraduate Scholar and graduated with a Bachelor of Arts degree in English.

In 2011, 2013, 2014, 2015, and 2016, Mr. Fistel was recognized as a Georgia Super Lawyers – Rising Star by Atlanta Magazine, an honor bestowed on just 2.5% of the attorneys in the State of Georgia.

Mr. Fistel has also been invited to speak at the Georgia State University School of Law in the area of corporate governance and shareholder rights. Mr. Fistel has also served as an invited panelist for the Securities and Corporate Litigation Sub-Section of the Atlanta Bar Association.

Community and Volunteer Activities: Mr. Fistel is an active member of his local Hickory Flat, Georgia community. Specifically, for the past few years Mr. Fistel has served as a director and Secretary of the Board of Directors of East Cherokee Baseball, a total volunteer youth sports organization where approximately 500 boys and girls ages 3-17 are provided a safe, fun, and educational baseball experience. In addition to his service to the Board of Directors of East Cherokee Baseball, Mr. Fistel has volunteered as a youth baseball coach at the park. Mr. Fistel also enjoys volunteering at the local elementary school where his two young

children attend, and where his wife served on the Board of Directors of the PTA. Mr. Fistel and his family are members of St. Peter Chanel Catholic Church in Roswell, Georgia.

## **ASSOCIATES**

### **W. SCOTT HOLLEMAN**

Areas of Practice: Mr. Holleman focuses his practice on mergers and acquisitions (M&A) litigation, shareholder derivative matters, and securities fraud class actions. He has prosecuted numerous actions in state and federal courts nationwide and has extensive experience with all phases of litigation, including pre-suit investigations, motion practice, discovery, trials, appeals, and mediation.

Experience: In his M&A litigation experience, Mr. Holleman has helped to secure additional monetary consideration for shareholders in multiple cases and has also helped to bring about substantial modifications to merger agreements. In the shareholder derivative context, he has defended against excessive executive compensation practices at multiple large companies and has helped to instill better corporate governance in various instances. He also worked as an associate for co-lead counsel in the *E\*Trade Financial Corp. Securities Litigation*, No. 07-cv-08538 (S.D.N.Y.), which challenged misrepresentations by E\*Trade concerning its mortgage-backed securities and resulted in a \$79 million recovery for injured shareholders.

Mr. Holleman has also represented individuals and companies in antitrust, civil rights, consumer fraud, investment management, regulatory (SEC), and other complex matters. In one case, Mr. Holleman won a jury verdict of actual and punitive damages following a weeklong trial on behalf of a couple who had been sold a faulty insurance-based investment vehicle.

Professional Qualifications and Activities: Mr. Holleman is currently admitted in good standing with the following courts:

- All courts in the State of New York
- All courts in the State of California

- The United States District Court for the Southern, Eastern, and Northern Districts of New York
- The United States District Court for the Northern District of California
- The United States Court of Appeals for the Sixth Circuit

Mr. Holleman is also a member of the following New York State Bar Association committees:

- Committee on Securities Litigation and Arbitration;
- Committee on Federal Procedures; and
- Committee on Electronic Discovery

Education: Mr. Holleman received his Bachelor of Arts degree from the University of North Carolina (2003), having studied Political Science and Journalism & Mass Communication. He received his Juris Doctor degree from St. John's University in New York (2007).

### **KRISTEN L. O'CONNOR**

Ms. O'Connor joined Johnson & Weaver, in August 2016. Prior to joining the firm, Ms. O'Connor served as Managing Counsel at clinivation, Inc., where she negotiated clinical trial agreements and provided market clearance submission development and support to global medtech and pharmaceutical industry clients.

Professional Qualifications and Activities: Ms. O'Connor was admitted to the State Bar of California in 2015, and is admitted in good standing with the following courts:

- All courts in the State of California
- The United States District Court for the Southern and Central Districts of California

Ms. O'Connor is a member of several professional organizations, including:

- American Bar Association
- San Diego County Bar Association,
- American Inns of Court — J. Clifford Wallace Chapter
- Lawyers Club of San Diego

Education: Ms. O'Connor graduated summa cum laude and third in her class from the Thomas Jefferson School of Law, where she received the CALI Award for Excellence in Legal Writing I, Legal Writing II, Civil Practice, Contracts I, Property II, Entertainment Law Transactions, and Wills and Trusts. She received the Jefferson Medal for Mediation and Negotiation and was a teaching assistant for Property. She served as an editor for the Thomas Jefferson Law Review, where her work in intellectual property was published. Ms. O'Connor received a Bachelor of Arts degree in Theatre from California Lutheran University, where she received academic scholarships. During her senior year, she was a visiting student at Charles University in Prague, Czech Republic, where she studied Eastern European history and the Czech language.

### **CECILIA E. RUTHERFORD**

Before joining Johnson & Weaver, Ms. Rutherford practiced shareholder derivative litigation with the law firm of Kahn Swick & Foti, LLC in Louisiana. Prior to that, she was a juvenile public defender in New Orleans, Louisiana for two years. Ms. Rutherford also practiced transactional law as a capital markets and structured finance associate with the law firms of Cadwalader, Wickersham & Taft LLP and Alston & Bird LLP, in New York and in Charlotte, North Carolina.

Areas of Practice: Ms. Rutherford practices in complex civil litigation, including securities and consumer fraud class action litigation and shareholder derivative actions. Ms. Rutherford has litigated cases in both state and federal courts and has experience with all aspects of trial practice, including motion practice, discovery, trial preparation, and appeals.

Professional Qualifications: Ms. Rutherford was admitted to the State Bar of California in 2013, and is admitted in good standing with the following courts:

- All courts in the State of California
- All courts in the State of New York
- All courts in the State of North Carolina
- All courts in the State of Louisiana
- The United States District Court for the Southern District of New York
- The United States District Court for the Western District of North Carolina

Education: Ms. Rutherford received her Juris Doctor degree from Boston University School of Law in 2000 and served on the American Journal of Law & Medicine. During law school she studied for a term at St. Catherine's College, Oxford University and completed courses focusing on European Union law and international intellectual property. Prior to law school, she was a staff assistant for the U.S. Senate Foreign Relations Committee in Washington, D.C. She received her Bachelor of Arts degree from Carleton College in Northfield, Minnesota.

Community and Volunteer Activities: For the past few years, Ms. Rutherford has served as a CASA volunteer with Voices for Children, advocating for the best interests of three children in foster care. She is also a mentor with the Crawford High School Law Academy program, and meets monthly with high school students from underprivileged backgrounds to encourage them to pursue higher education. She also volunteers as a pro bono attorney with the San Diego Volunteer Lawyer Program and Casa Cornelia, handling cases involving guardianship, education rights, and special immigrant juvenile status. Ms. Rutherford also teaches a weekly English class to refugees seeking asylum through Catholic Charities.

### **PHONG L. TRAN**

Areas of Practice: Mr. Tran focuses his practice on complex securities, mergers and acquisitions (M&A), and consumer class action litigation. He has litigated numerous class actions in state and federal courts around the country and has helped recover hundreds of millions of dollars for injured investors and consumers.

Experience: Mr. Tran joined Johnson & Weaver, in July 2016. Before joining the firm, Mr. Tran worked at the preeminent plaintiff class action firm of Robbins Geller Rudman & Dowd LLP and the well-respected boutique litigation firm of Coughlan, Semmer & Lipman, LLP. In addition, he previously served as a prosecutor, first as a Special Assistant United States Attorney for the Southern District of California and then as a Deputy City Attorney with the San Diego City Attorney's Office.

Notable matters in which Mr. Tran served as counsel of record include, among others: *Dahl v. Bain Capital Partners* (D. Mass.) (largest class action antitrust settlement ever in which no civil or criminal government action was taken); *In re Midland National Life Ins. Annuity Sales Practices Litig.* (C.D. Cal.); *Negrete v. Fidelity and Guaranty Life Ins. Co.* (C.D. Cal.); *In re Conseco Ins. Co. Annuity*

*Marketing & Sales Practices Litig.* (N.D. Cal.); *IBEW Local 697 Pension Fund v. Int'l Game Tech.* (D. Nev.); *In re Groupon Marketing and Sales Practices Litig.* (S.D. Cal.); *In re LivingSocial Marketing and Sales Practices Litig.* (D.D.C); *In re Pacific Biosciences Sec. Litig.* (Cal. Sup, San Mateo); and *Matin v. Nestlé Purina PetCare Co.* (D. Ill.).

Professional Qualifications and Activities: Mr. Tran was admitted to the State Bar of California in 1999, and is admitted in good standing with the following courts:

- All courts in the State of California
- The United States District Courts for the Southern, Central, and Northern Districts of California
- The United States Court of Appeals for the Ninth Circuit
- The United States District Court for the Eastern District of Michigan

Mr. Tran is a member of several professional organizations, including:

- American Bar Association
- San Diego County Bar Association
- Association of Business Trial Lawyers
- American Inns of Court — Louis M. Welsh Chapter
- Consumer Attorneys of California
- Lawyers Club of San Diego
- Pan Asian Lawyers of San Diego

Education: Mr. Tran earned his Juris Doctor degree from the UCLA School of Law. During law school, Mr. Tran served as a judicial extern for United States District Court Judge Richard A. Paez, who now sits on the Ninth Circuit Court of Appeals. Mr. Tran graduated summa cum laude from the University of San Diego with a Bachelor of Business Administration degree in Business Economics.

## **OF COUNSEL**

### **RICHARD A. NERVIG**

Mr. Nervig is a tenacious litigator with practical securities industry experience obtained from working as both a Dean Witter stockbroker prior to attending law

school and as a compliance attorney after graduation. Mr. Nervig has successfully recovered in excess of \$20 million dollars on behalf of his clients.

Areas of Practice: For over twenty-three years, Mr. Nervig's practice has focused primarily upon the representation of investors in securities litigation matters in FINRA arbitration proceedings as well as matters in both state and federal court. Mr. Nervig is experienced handling all manner of securities sales practice claims ranging from suitability violations, churning, unauthorized trading, and fraud. Mr. Nervig is particularly adept at pursuing secondary liability claims arising from Ponzi schemes, unregistered securities sales, and anti-money laundering violations. Mr. Nervig also routinely represents creditors in bankruptcy adversary proceedings involving securities violation discharge avoidance matters pursuant to §523(a)(19) of the Bankruptcy Code.

Professional Qualifications and Activities: Mr. Nervig is admitted in good standing with the following courts:

- All courts in the State of Arizona (1997)
- All courts in the State of California (2003)
- All courts in the State of Colorado (1993)
- The United States District Court for the District of Arizona
- The United States District Court for the Southern and Central Districts of California
- The United States District Court for the District of Colorado
- The United States Court of Appeals for the Tenth Circuit

He is also a member of the following organizations:

- American Bar Association (Member Sections of Business Law and Litigation)
- Denver Bar Association
- San Diego County Bar Association
- San Diego North County Bar Association
- Southwest Riverside County Bar Association
- Public Investors Arbitration Bar Association
- Arbitrator, Financial Industry Regulatory Authority (FINRA) and San Diego County Bar Association Fee Arbitration Committee
- Former Member New York Stock Exchange and National Association of Securities Dealers

Education: Mr. Nervig received his Juris Doctor degree from the Claude W. Petit College of Law at Ohio Northern University in 1992. He received a Bachelor of Arts degree in 1988 from the Metropolitan State University of Denver.

**WILLIAM W. STONE**

Mr. Stone has been instrumental in securing significant recoveries and sweeping reforms from numerous publicly-traded companies and other large institutions. Mr. Stone has been with Johnson & Weaver since April 2016. Prior to that, he practiced complex civil litigation with two Atlanta-based litigation boutique firms, representing individuals and businesses in shareholder and consumer class action litigation and shareholder derivative litigation.

Areas of Practice: Mr. Stone practices complex civil litigation with a focus on securities and consumer fraud class action litigation and shareholder derivative litigation. He has litigated cases in both federal and state courts throughout the country, and has experience with all aspects of trial practice and discovery, including trial preparation and appeals.

Professional Qualifications: Mr. Stone is currently admitted to practice before the following courts:

- All courts in the State of Georgia
- The United States District Court for the Middle and Northern Districts of Georgia

Education: Mr. Stone received his Juris Doctor degree from the Georgia State University College of Law in 2007. During law school, he received CALI Awards for Excellence in Trial Practice in Research, Writing, Advocacy, and Criminal Law, interned with a judge, and studied for a term at Johannes Kepler University in Linz, Austria, completing courses focusing on arbitration. Prior to law school, he was a legal assistant for a large law firm in Atlanta during breaks from college. He received his Bachelor of Arts degree with Honors from the University of Georgia's Honors Program in Athens, Georgia, where he published an honors thesis on American and European antitrust law.



## **REPRESENTATIVE MATTERS**

Johnson & Weaver aggressively pursues complex litigation matters for both plaintiffs and defendants on an hourly or contingency fee basis depending upon the circumstances of the matter. Below are just a few of the cases the firm has undertaken. To respect the privacy of some of the firm's clients who prefer we do not mention their names involved in litigation, their matters are described below without identifying the parties' names.

### **Business and Commercial Litigation**

- *International Real Estate PLC v. Oaktree Capital Management, LLC*, Case No. BC 324973 (Los Angeles Superior Court). International Real Estate (a public company with shares listed on the London Stock Exchange) retained Johnson & Weaver's predecessor firm to pursue claims for breach of fiduciary duty against former directors of a joint venture company. That case involved alleged damages of approximately \$20 million, and after years of aggressive litigation and a mediation, ultimately settled on favorable terms to International Real Estate. *See* testimonial from the firm's client below.
- *Doe Shipping Company v. John Doe* (San Diego Superior Court). A national shipping company retained Johnson & Weaver after a former employee left the company with customer lists, other employees, and other confidential information. Johnson & Weaver filed a complaint alleging claims for fraud, breach of contract, and misappropriation of trade secrets, among others. After a series of depositions and the threat of putting the defendants out of business, Johnson & Weaver assisted the company in obtaining a resolution that restricted the former employee from doing business with certain of the company's clients, protected the company's trade secrets, and provided for a significant monetary payment to the company.
- *Liebsohn, et al. v. Augme Technologies, Inc., et al.*, Case No. 13-2-40007-3 SEA (King County Superior Court, Washington). Johnson & Weaver represented a group of 47 high net worth investors who were defrauded into trading their stock in a privately-held company for stock in a publicly-traded company. After defeating several motions to dismiss and a petition for discretionary review by the Washington Court of Appeals, Johnson & Weaver obtained a highly-favorable confidential settlement from the defendants' insurance carrier on February 2, 2016.

- *John Doe v. Doe Hedge Fund* (San Diego Superior Court). Johnson & Weaver defended one of the world's most successful hedge funds and its manager against meritless claims of fraud. After aggressively defending the matter, the plaintiff accepted a nuisance value settlement that was less than the cost of defense.

### **Trials & Arbitrations**

- *Healthy Life Marketing, LLC, et al. v. Jaime Brenkus' Sound Body, Inc.*, Case No. GIC822927 (Superior Court for the State of California, County of San Diego). On behalf of a marketing firm, Johnson & Weaver pursued claims for breach of contract and fraud against the manufacturer of a weight loss product. After a week-long jury trial, the jury returned a 7-figure verdict in favor of Johnson & Weaver's client, including actual and punitive damages. *See* testimonial from the firm's client below.
- *DCI Solutions v. Urban Outfitters*, (S.D. Cal). Johnson & Weaver represented a small local consulting firm in a litigation against one of the nation's largest clothing retailers in a matter that would have forced the company into bankruptcy if it lost. Following a week-long trial in federal court, the jury returned a verdict rejecting the retailer's \$1.5 million damage claim in its entirety. Johnson & Weaver also prevailed on all of Urban Outfitter's post-trial motions.
- *Timeshare Resale Alliance v. Fleming, et al.* (San Diego Arbitration). Johnson & Weaver successfully defended a real-estate broker accused of stealing her former employer's alleged trade secrets. Following a week-long arbitration, the arbitrator issued an order completely exonerating Johnson & Weaver's client.
- *Mary Joe v. Jane Doe* (San Diego Superior Court). Johnson & Weaver represented the minority shareholder of a small family corporation to pursue claims against the other shareholders who wasted millions of dollars of corporate assets by using those assets' to pay for their personal expenses. The client retained Johnson & Weaver to substitute into the case just two months before trial. On day four of a five day trial, defendants agreed to settle the case.

### **Shareholder Derivative Actions**

- *In re Motorola, Inc. Derivative Litigation*, Case No. 07CH23297 (Circuit Court of Cook County, Illinois). Johnson & Weaver's predecessor firm was appointed Co-Lead Counsel in a shareholder derivative action filed against current and former officers and directors of Motorola, Inc. The derivative claims charged certain officers with making misrepresentations about the company's financial statements and prospects of success in order to artificially inflate the company's stock price while they personally sold shares and while causing the company to simultaneously purchase shares on the open market. After six years of hard fought litigation the action settled on terms that required the implementation of significant corporate therapeutic changes throughout the company, changes that were valued by one expert at over \$1 billion.
- *In re Powerwave Technologies, Inc.*, Case No. 13-10134 (MFW) (Bankr. D. of Del.). On behalf of a shareholder client, Johnson & Weaver filed a shareholder derivative action in a California Superior Court alleging that certain of Powerwave's officers and directors had affirmatively engaged in improper accounting to conceal the company's true financial condition. Shortly after filing this action, Powerwave filed for bankruptcy and the United States Bankruptcy Court appointed a Chapter 7 Trustee. The Bankruptcy Court appointed Johnson & Weaver as special counsel to represent the Trustee to prosecute these claims as assets of the estate. After nearly two years of litigation, Johnson & Weaver secured a settlement that included payment of \$5.5 million for the benefit of the estate in bankruptcy.
- *Rubin v. Reinhard*, Case No. 37-2008-00091039-CU-NP-CTL (San Diego Superior Court). Johnson & Weaver's predecessor firm was sole lead counsel in this derivative lawsuit. After the company filed a petition for relief under Chapter 7 of the Bankruptcy Code, the Bankruptcy Trustee retained Johnson & Weaver's predecessor firm as special litigation counsel to prosecute claims for breach of fiduciary duty against certain officers and directors. After several years of hard fought litigation, the Estate in Bankruptcy settled recovering \$3 million. In approving the settlement, the Bankruptcy Court judge remarked: "The Court thanks Johnson & Weaver for its outstanding work on behalf of the Chapter 7 Trustee and the Estate."

### **Corporate Takeover Litigation**

- *Azar v. Blount International, Inc.*, No. 3:16-CV-00483-SI (D. Or.). Johnson & Weaver was appointed as Co-Lead counsel in a case arising out of the 2016 acquisition of Blount International Inc. by a group comprised of a private equity firm, Blount's largest stockholder, and two Blount insiders. The plaintiffs allege, among other things, that the proxy statement that Blount disseminated in connection with the deal failed to disclose a set of financial projections that best reflected Blount's long-term prospects and, instead, disclosed only later, artificially reduced projections. The plaintiffs allege that misleading proxy statement tainted the stockholder approval of the merger, and they are seeking an unspecified amount of monetary damages. This matter is pending.

### Securities Class Actions

- *Desrocher v. Covisint Corporation, et al.*, Case No. 1:14-CV-03878-AKH (S.D.N.Y.). In a case alleging violations of §§11 and 15 of the Securities Act of 1933, the Court appointed Johnson & Weaver Co-Lead Counsel and certified the firm as Co-Lead Class Counsel. The class action complaint alleged that there were misrepresentations or omissions in documents filed with the SEC in connection with the company's IPO. Under the settlement, defendants agreed to create an \$8 million common fund to compensate Covisint stockholders who were harmed by the alleged misrepresentations or omissions, which amount represented a substantial percentage of the maximum potential recovery. The Court approved the settlement in its entirety on December 13, 2016.
- *Gerneth v. Chiasma, Inc., et al.*, Case No. 1:16-cv-11082-DJC (D. Mass.). In a securities class action case alleging violations of §§11 and 15 of the Securities Act of 1933 and §§10(b) and 20(a) of the Securities Exchange Act of 1934, Johnson & Weaver's client was appointed lead plaintiff and the firm was appointed Co-Lead Counsel under the Private Securities Litigation Reform Act of 1995. The complaint filed in the action alleges that defendants made false and misleading statements in connection with the Company's IPO and following the IPO regarding the Company's business and the prospects for approval of a pharmaceutical drug. As a result of these false and misleading statements, Chiasma stock traded at artificially inflated prices during the Class Period. This matter is currently pending.

### **Consumer Class Actions**

- *Baker v. Visa International Corp.*, Case No. 06cv0376 (San Diego Superior Court). Johnson & Weaver's predecessor firm was appointed Co-Lead Counsel for this nationwide consumer class action that was filed in 2006 against Visa International Corp. for wrongfully assessing undisclosed fees on consumers by manipulating the currency conversion rates when consumers used their Visa Card for purchases in other countries. This matter was removed to federal court, and transferred by the Judicial Panel on Multidistrict Litigation to the United States District Court for the Southern District of New York to be coordinated with the *In re Currency Conversion Fee Antitrust Litigation*. The Court approved a settlement that provided for \$336 million for the class members. While the *Baker* case was not the driving force leading to the \$336 million for the class members, it was coordinated with that matter and the firm played a material role in the ultimate settlement.

### **NOTEWORTHY SUCCESS STORIES**

Johnson & Weaver aggressively pursues complex litigation matters for both hourly paying clients and for contingency fee clients. While not an exhaustive list, below are a few of the cases for which the firm has achieved noteworthy successful results for its clients.

#### **A Happy Client Following Trial**

On behalf of a marketing firm, Johnson & Weaver pursued claims for breach of contract and fraud against the manufacturer of a weight loss product. After a week-long jury trial, the jury returned a 7-figure verdict in favor of Johnson & Weaver's client including actual and punitive damages. See testimonial from the firm's client. *Healthy Life Marketing, LLC, et al. v. Jaime Brenkus' Sound Body, Inc.*, Case No. GIC822927 (San Diego Superior Court).

#### **Record Setting Class Action Settlement in Washington**

In what is believed to be the largest recovery ever obtained in a class action challenging the price of a merger or acquisition of a public company in a Washington court, on January 20, 2017, the court approved a \$12.75 million settlement for the benefit of former Flow shareholders. Specifically, the case challenged the fairness of the price shareholders received from the 2014 acquisition

of Flow by American Industrial Partners. Johnson & Weaver served as court-appointed Co-Lead Class Counsel.

After three years of hard-fought litigation which included 26 depositions taken throughout the country, defeating defendants' motions to dismiss, defeating defendants' motion for summary judgment, and obtaining an order certifying the class, the parties reached an agreement to settle the case just before trial. "I am proud to be part of a settlement that achieved what is now a rarity, more money for the shareholders in a merger case," said Frank Johnson, one of the founding partners of Johnson & Weaver. Cornerstone Research recently published a report regarding M&A shareholder suits in 2015 and the first half of 2016 reporting that amongst the hundreds of merger-related lawsuits identified, only six of those cases resulted in any monetary recovery for shareholders. The report concluded that in merger-related litigation, "monetary consideration paid to shareholders has remained relatively rare."

Mr. Johnson and W. Scott Holleman were the attorneys at the firm responsible for helping obtain this settlement for shareholders. *Englehart v. Brown*, Case No. 13-2-33726-6-KNT (King County Superior Court, Washington).

### **One of the Largest Recoveries in a Derivative Case in Tennessee**

Johnson & Weaver was appointed sole Lead Counsel in this shareholder derivative action against certain current and former officers and directors of HCA Holdings, Inc., the largest private hospital chain in the country. The derivative claims related to similar facts that resulted in the company paying \$215 million to settle a class action lawsuit filed by shareholders who alleged the company used false and misleading information to sell stock during its 2011 initial public offering.

The parties litigated the action for more than four years and attended multiple mediations, after which Johnson & Weaver secured an extremely favorable settlement for HCA and its shareholders, including a payment of \$19 million to HCA (believed to be among the largest recoveries in a derivative case in the State of Tennessee), the appointment of a new independent director, and implementation of significant corporate therapeutics. *Bagot and Steinberg v. Bracken, et al.*, Case No. 11C5133 (Sixth Circuit Court for Davidson County, Tennessee).

### **Helped Secure \$24 million for the Company**

Johnson & Weaver's predecessor firm was initially appointed Co-Lead Counsel in state court in one of the highest-profile cases in the country challenging the award of backdated stock options by executive officers of Brocade. For years, Brocade's

insiders engaged in a secret stock option backdating scheme designed to reward executives and recruit engineers with stock options priced below their fair market value as of the date of the grants. The U.S. Government pursued and ultimately won criminal convictions against the responsible executives.

On behalf of its client, Johnson & Weaver's predecessor firm helped prevent an inadequate settlement of a related federal action from being approved, which would have released the officers, directors, and agents of the company responsible for the criminal backdating scheme resulting in no money to the company and only a payment of attorney's fees for the lawyers. Brocade then formed a Special Litigation Committee and retained Johnson & Weaver's predecessor firm as co-counsel to Brocade to help litigate claims against ten former officers and directors of the company. After years of litigation, over \$24 million was recovered for Brocade. *In re Brocade Communications, Systems, Inc. Derivative Litigation*, Case No. 1:05cv41683 (Santa Clara Superior Court).

**Helped Secure \$29 Million for Shareholders**

Johnson & Weaver's predecessor firm was appointed Co-Lead Counsel in a derivative lawsuit that involved claims against the officers and directors of Titan Corporation for breach of fiduciary duty. During the pendency of the litigation, Titan announced that it would be acquired, threatening to cause the shareholders in the derivative action to lose standing. Johnson & Weaver's predecessor firm then coordinated with counsel in a related derivative action pending in Delaware to negotiate a settlement that resulted in \$29 million in increased consideration to Titan's shareholders in the all-cash merger acquisition. *In re the Titan Corp. Derivative Litigation*, Case No. GIC 832018 (San Diego Superior Court).

## TESTIMONIALS

“There’s no question in my mind that this settlement is in the best interest of this Estate. So I’m prepared to approve it. . . . But I want to compliment Mr. Johnson, and I want to compliment on the successful recovery for the Estate. The creditors thank you, and I thank you.” *In re Artes Medical, Inc.*, (Bankr. S.D. Cal., Case No. 08-12317-LT7) (approving a \$3 million settlement recovered for the estate of a bankrupt public company after the Chapter 7 Trustee retained Johnson & Weaver to pursue claims for breach of fiduciary against the directors). In approving the final award of attorneys’ fees, Judge Taylor further stated: “The Court thanks Johnson & Weaver for its outstanding work on behalf of the Chapter 7 Trustee and the Estate.”

The Honorable Laura S. Taylor  
United States Bankruptcy Court Judge  
Southern District of California

Johnson & Weaver (“J&W”) has “demonstrated that they are qualified and experienced and are capable of acting as lead counsel.” “The Court is favorably impressed by J&W’s presentation and knowledge” and “J&W’s experience litigating shareholder derivative actions gives it a certain amount of pre-existing expertise.” *In re Oclaro, Inc. Derivative Litigation*, (N.D. Cal., Case No. C-11-3176 EMC) (appointing Johnson & Weaver, lead counsel in a complex shareholder derivative litigation in which three separate lawsuits were filed).

The Honorable Edward M. Chen  
United States District Court Judge  
Northern District of California

Johnson & Weaver’s predecessor firm, Johnson Law Firm, is “exceptionally qualified and experienced.” *Greenmeadows Partners LLP v. Tomkinson, et al.*, C.D. Cal. Case No. SACV 06-91 CJC (appointing Johnson Law Firm lead counsel in a complex shareholder derivative litigation in which six separate lawsuits were filed).

The Honorable Cormac J. Carney  
United States District Court Judge  
Central District of California

“As chairman of the board of a public company, my company was represented by Mr. Johnson and Mr. Weaver to pursue claims for breach of fiduciary duty for millions of dollars against former directors of a company formed in England. I have



retained law firms throughout the world and found Johnson & Weaver's services to be superb. They were very responsive and grasped complex corporate matters involving international real estate transactions. They aggressively litigated my company's claims against several defendants who were represented by one of the largest law firms in the world. This case was very complex and complicated and involved three jurisdictions (U.S., Europe, and Sweden). They played an instrumental role in bringing the whole case to a successful settlement out of court. We ultimately reached a resolution short of trial with which I was very pleased."

Rolf L. Nordström  
Chairman of the Board  
International Real Estate PLC

"While I was the Executive Vice President and Chief Financial Officer for a publicly traded company, I consulted Frank Johnson on various legal issues. As CFO I was responsible for SEC reporting requirements and compliance with GAAP. In addition, I successfully completed the public offering of the company's stock which was a consistent top performer on the NASDAQ from 1998 to 1999. During the ten years I've known him, I've been very impressed with Mr. Johnson's integrity, business acumen, and understanding of complex securities issues. Based upon these factors, I retained Mr. Johnson and Mr. Weaver to represent me in matters where it appeared that a public company's officers or directors engaged in fraudulent conduct to the detriment of the company's shareholders (of which I was one). As a former CFO for a public company and as a shareholder, I can say with confidence that this firm has proven to be aggressive and astute in identifying claims for fraudulent conduct in connection with the sale of publicly traded securities."

James Baker  
Chief Cost Reduction Officer  
DCI Solutions

"While I was assistant general counsel for GNC Corporation, a publicly traded company at the time, I had the good fortune of working with Frank Johnson as GNC's lawyer. While he was at Sheppard Mullin, he successfully defended GNC in several matters, including a consumer class action and various business litigation matters. I have since left GNC Corporation and am now a partner at one of the largest law firms in the country. I have worked with both Mr. Johnson and Mr. Weaver on various matters, including a jury trial in San Diego, California. Mr. Johnson proved to be an exceptional trial lawyer who assisted my firm in obtaining an outstanding verdict in our client's favor. I have recommended their

services without reservation to both clients and lawyers who need highly skilled and effective representation.”

Gerald J. Stubenhofer, Esq.  
Partner  
McGuire Woods LLP

“In 2004, Axeus, Inc. was using Sheppard Mullin, a large law firm, for nearly all of its legal matters. When Frank Johnson, who was then a partner at Sheppard Mullin, announced that he was departing to start his own law firm, I did not hesitate in my decision to send all of Axeus’s litigation work to Mr. Johnson. At the time, Axeus was embroiled in a huge legal battle involving more than 20,000 pages of evidence and millions of dollars. Mr. Johnson and Mr. Weaver helped Axeus successfully resolve that matter and have since handled several litigation matters for Axeus, all with outstanding results. I have worked with many different law firms over the years and I can say with confidence that Mr. Johnson is one of the best lawyers I’ve worked with. He understands what is important to his clients: excellent legal work and value. While other firms may be less expensive, Johnson & Weaver provides value for its fees.”

Sean H. Mallean  
President & CEO  
Axeus, Inc.

“Johnson Law Firm, one of the founding partners of Johnson & Weaver, was Awesome! They were professional, organized and as evidenced by juror testimonials following a one-week jury trial.... extremely effective. On claims for breach of contract and fraud, Johnson Law Firm won a 7 figure verdict for me and my company and I will forever be grateful. You never realize how important it is to have a good attorney until you need one!”

Ronald T. Fricke  
President  
Healthy Life Marketing, LLC

“I am the owner of Natural Energy, which was established in 1977 and is the largest solar energy company in the western United States. Although we have an exceptional reputation, as with any large company, legal disputes are sometimes inevitable. After using a number of law firms, for the past several years Natural Energy has used Johnson & Weaver, for all of its business litigation matters, from general business disputes to successfully getting a baseless class action

dismissed. Both Mr. Johnson and Mr. Weaver are aggressive, have a strong work ethic and, of utmost importance to me, have unquestionable integrity. I have the utmost faith and confidence in Johnson & Weaver.”

Ted Mount  
Owner  
Natural Energy

“I contacted Brett Weaver after my elderly stepfather was sued. From the outset, it was clear that Mr. Weaver was looking for a practical way to resolve the dispute quickly rather than ways to rack up his fees. Thanks to some creative and aggressive lawyering, not only did Mr. Weaver get the case dismissed; he got the other side’s attorney to pay him his fees. My stepfather and I are forever grateful to Mr. Weaver . I would strongly recommend Johnson & Weaver, LLP to anyone needing a good attorney.”

Michael Lo  
GCL Solar Energy, Inc.

“I first retained Johnson & Weaver when my husband and I became concerned with what I thought looked like wrongful conduct by executive management at one of the publicly traded companies in which we had invested. Mr. Johnson always clearly communicated his strategy and the underlying legal reasons why it needed to be done that particular way. Most importantly, he always responded to any questions or concerns in a timely manner and consistently updated us without overwhelming us with complicated details. We were very happy with the outcome of the securities case. When I needed a lawyer again to help me with employment matters, I retained the firm again. Mr. Weaver demonstrated that he was well informed and helped me get a settlement with which I was very pleased. I would highly recommend Johnson & Weaver their team and I would not hesitate to use them again.”

Jean Marie Cinotto  
Private Investor

## Responses and Replies

[0:14-cv-00786-ADM-TNL Beaver County Employees' Retirement Fund et al v. Tile Shop Holdings, Inc. et al](#)

CV,PROTO

**U.S. District Court**

**U.S. District of Minnesota**

### Notice of Electronic Filing

The following transaction was entered by Russello, Joseph on 3/20/2017 at 5:20 PM CDT and filed on 3/20/2017

**Case Name:** Beaver County Employees' Retirement Fund et al v. Tile Shop Holdings, Inc. et al

**Case Number:** [0:14-cv-00786-ADM-TNL](#)

**Filer:** Beaver County Employees' Retirement Fund  
Erie County Employees Retirement System  
Luc De Wulf

**Document Number:** [400](#)

#### Docket Text:

**Declaration of Frank J. Johnson Filed on Behalf of Johnson & Weaver, LLP in Support of [389] MOTION for Attorney Fees - Class Counsel's Motion for Attorneys' Fees and Expenses and Reimbursement of Class Representatives' Costs and Expenses filed by Beaver County Employees' Retirement Fund, Erie County Employees Retirement System, Luc De Wulf. (Attachments: # (1) Exhibit(s) A-D)(Russello, Joseph)**

#### **0:14-cv-00786-ADM-TNL Notice has been electronically mailed to:**

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**Document description:**Main Document

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