

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS  
Third Division

PETER ROSENOW, *individually and  
on behalf of a class of similarly situated persons*

VS.

CASE NO. CV 2006-182-3

ALLTEL CORPORATION and  
ALLTEL COMMUNICATIONS, INC.

FILED  
SALINE COUNTY  
CIRCUIT CLERK  
24 DEC 16 PM 4:18  
PLAINTIFF  
DEFENDANTS

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CLASS COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND  
COSTS AND PETITION FOR INCENTIVE AWARD

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In accordance with the terms of the parties Stipulation and Settlement Agreement ("Settlement"), Plaintiff Peter Rosenow and the Class ("Plaintiffs") respectfully submit this Application for Attorneys' Fees and Costs and Petition for Incentive Award.

**I: INTRODUCTION**

Plaintiffs move for approval of the Settlement's attorneys' fee and expense provision and class representative award, which were negotiated through the assistance of a nationally recognized mediator after the substance of the benefits for the Class was mediated. Indeed, the negotiated attorneys' fee and expense is in addition to the Class benefits detailed in the Settlement and discussed in Plaintiffs' motions for preliminary and final approval of the Settlement, which are incorporated herein by reference.

In accordance with the Settlement, and upon the Court's approval of the fee/expense provision and incentive award, Defendants have agreed to pay Class Counsel \$1,969,946.00 in attorneys' fees and expenses and an incentive award to Plaintiff Rosenow of \$5,000 for his work and contributions to the case. Such amounts are reasonable and consistent with other fees and

representative incentive awards approved in other class action settlements as demonstrated below.

## **II: ARGUMENT**

Plaintiffs and Class Counsel have dedicated themselves to this case for almost nine years. It has resulted in two appeals to the Arkansas Supreme Court, numerous hearings before this Court, and voluminous discovery. The parties also retained multiple expert witnesses during the course of the litigation<sup>1</sup>, and as this Court knows well, all procedural and substantive issues have been fiercely contested with a multitude of motions involving every possible facet of this case. The parties did not reach their resolution until just a few months before trial, and only after every factual and legal issue was fully explored and critical rulings were made. The work of Class Counsel certainly fills reams of file folders in clerk's offices of this Court and the Supreme Court of Arkansas, but more importantly, their efforts created a substantial cash benefit to the Settlement Class.

The Settlement, including its mediated attorneys' fee/expense provision and incentive award, is the product of good-faith and arms-length negotiations between Class Counsel and counsel for the Defendants, and further, was reached with the assistance of an independent,

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<sup>1</sup> Throughout this case, Emerson Poynter LLP and Arnold, Batson, Turner & Turner, P.A. have represented Plaintiff Rosenow and the Class (hereinafter "Class Counsel"). Importantly, Class Counsel also represented a similar class of persons in the United States District Court for the Eastern District of Arkansas in *Heather Tyler v. Alltel Corporation and Alltel Communications, Inc.*, Case No. 4:07-cv-00019 (hereinafter "Tyler Action"), which similarly alleged Alltel's collection of ETFs from citizens outside the State of Arkansas violated other states' consumer laws and allowed it to be unjustly enriched. Thus, Class Counsel's investigation of the claims asserted in this action was conducted through the substantial discovery taken in this case, but it was also aided by discovery conducted in the Tyler Action. For example, leading up to and during the initial class certification hearing, the Defendants presented expert testimony from Dr. Jerry Hausman. In addition to the testimony offered to this Court, Hausman prepared exhaustive reviews of procedural and substantive matters, and provided consultation with respect to the myriad of issues raised in the instant litigation. Furthermore, Dr. Hausman and Dr. Lee Selwyn, an expert retained by class counsel in the Tyler Action, offered testimony relating to substantive issues that were similar and related to the instant claims.

skilled and nationally recognized mediator. Additionally, the Settlement was not reached until the parties met in two mediation sessions in Dallas, Texas.<sup>2</sup> Ultimately, in October of 2014, the mediator and the parties' negotiated the terms of Settlement Class relief before turning to the fee/expense and incentive award issues forming the basis of this motion.

Further, the Settlement was not entered into until after Class Counsel had: (1) conducted an extensive and comprehensive investigation relating to the facts giving rise to the claims asserted; (2) engaged in careful and thorough discovery; (3) reviewed and analyzed voluminous amounts of information obtained through discovery and other witnesses; (4) consulted with and presented opinions from experts about the novel and difficult legal and technical issues raised in this action; (5) thoroughly researched the law and facts pertinent to the Plaintiff's claims, defenses asserted by the Defendants, and assessed the Plaintiff's risks of prevailing on each of the respective claims in pre-trial motions, at trial, and on appeal; (6) filed and/or opposed multiple motions; (7) reviewed thousands of documents produced by the Defendants in the course of discovery; (8) vigorously litigated class certification and arbitration in this action; (9) conducted multiple depositions; and (10) participated in two, separate mediation sessions.

Clearly, the successful resolution of this action required considerable skill and experience by Class Counsel. The action required investigation of complex legal, factual and procedural issues, the ability to develop and prosecute creative legal theories, and the ability and skill to respond to a host of potentially outcome determinative legal defenses. Over the course of this action, these claims were prosecuted against multiple defense firms, including Munger, Tolles & Olson of Los Angeles, California and Quattlebaum, Grooms, Tull & Burrow of Little Rock.

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<sup>2</sup> The original mediation was held with Ms. Heshia Abrams in Dallas, Texas on May 9, 2014, but it was unsuccessful. After several decisions were rendered by both the Arkansas Supreme Court and this Court, the mediator convinced the parties to return to Dallas for a second mediation session. The second session was held on October 20, 2014, and it was successful and resulted in the Settlement.

The primary goal of Class Counsel and the named Plaintiff was to obtain the best overall benefit for the Class Members. The reality of complex litigation against well-represented Defendants, often influenced by a strategy of delay, was an anticipated obstacle that Class Counsel considered and sought to overcome from the beginning. The results obtained by Class Counsel through the Settlement are the results of the strategy employed and quality of the work and were the product of a great deal of time and labor invested in the litigation by Class Counsel.

Class Counsel initially undertook this action on a contingent fee basis (with the amount of any fee being subject to this Court's approval), assuming a substantial risk that the litigation would yield no recovery and leave Class Counsel uncompensated. Class Counsel also undertook payment of all costs associated with prosecution of these claims, including but not limited to the expense of discovery of a high profile expert witnesses. Moreover, Class Counsel successfully prosecuted appeals of both class certification (*Rosenow v. Alltel Corp.*, 2010 Ark. 26, 358 S.W.3d 879, *rehearing denied*, 2010 Ark. LEXIS 140) and arbitration (*Alltel Corp. v. Rosenow*, 2014 Ark. 375) en route to the ultimate conclusion of these claims on behalf of the class.

Although Class Counsel is comprised of highly experienced law firms, these firms do not have the manpower and economic resources of Defendants and their national and local counsel. When Class Counsel undertakes major litigation, such as this litigation, it necessarily limits Class Counsel's ability to undertake other legal work. During the course of this litigation, Class Counsel devoted significant manpower and resources to the litigation. Class Counsel had to make this commitment at the outset without knowing how long the case would take or if it would ever be resolved in Plaintiff's favor. Therefore, Class Counsel's willingness to prosecute this action on a contingent fee basis necessitated advancing and diverting the costs, manpower and resources expended on this action from other cases.

This action involved complex, novel and difficult legal issues related to various underlying causes of action, as well as contested procedural matters such as arbitration and class certification. Throughout the case, Defendants maintained that Plaintiffs' substantive and class allegations were wholly without merit. In short, the facts of the case, the legal issues involved and Defendants' aggressive posture in asserting their defenses and contesting class certification presented a risk that Plaintiffs would fail to establish liability and/or legal damages, or fail to reach a point that negotiation of class-wide relief would be possible.

Under the circumstances in this case, the Defendants continuously attacked class certification. After the original appeal of class certification by the Defendants, the issues of certification were continuously attacked and contested by the Defendants in efforts to splinter or decertify the class. Indeed, even as the parties negotiated the settlement presented to this Court, the Defendants had filed pleadings seeking to decertify the class and seeking additional relief.<sup>3</sup> Thus, the Class could have failed to recover or could have been forced to spend many more years in litigation and appeals regarding these claims. Considering these risks and the significant recovery that Class Counsel was nonetheless able to obtain for the Class, the fee award requested by Class Counsel is just and appropriate.

Likewise, Plaintiff Rosenow, the Class Representative, has demonstrated interest and dedication to the class and the claims asserted against the Defendants throughout this litigation. Mr. Rosenow and his wife were deposed. Throughout the eight years of litigation, Mr. Rosenow communicated with and cooperated with Class Counsel, attended and assisted Class Counsel with the hearing on class certification and attended other hearings during the course of this litigation. He actively participated in meetings with Class Counsel, discussions of pretrial and

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<sup>3</sup> This included, among other things, counterclaims asserted by the Defendants against the Class, which although dismissed by the Court, may have been reasserted after a judgment in favor of the class or thereafter utilized in an effort to decertify the Class post-judgment.

procedural matters, and participated in discussions up to and through the filing of the Settlement Agreement. Class Counsel also consulted with Mr. Rosenow during settlement negotiations and mediations.

**1. Guidelines Applicable to Fee and Expense Provisions.**

Class Counsel applies for approval of the \$1,969,946.00 mediated fee and expense provision of the Settlement based upon their work and the substantial benefit they created for Plaintiff Rosenow and the Class. The requested fee is reasonable and just considering the circumstances of this case, the details of the Settlement, and thus, is deserving of the Court's approval.

The Arkansas Supreme Court has set out certain factors for the trial court's consideration of a reasonable award of attorneys' fees. *Chrisco v. Sun Indus., Inc.* 304 Ark. 227 (1990). There is no fixed standard or any absolute measure from which a determination of reasonable attorneys' fees can be derived in every case. *Butt v. Evans Law Firm*, 351 Ark. 566, 585, 98 S.W.3d 1, 12 (prior Supreme Court decisions do not establish a fixed method for awarding attorneys' fees.); *Lake View Sch. Dist. v. Huckabee*, 340 Ark. 481, 497, 10 S.W.3d 892, 902, (Ark. 2000) ("*Lake View IP*") ("[w]e further emphasize that we are wedded to no figure for attorneys' fees"); *Oppenlander v. Standard Oil Co. (Indiana)*, 64 F.R.D. 597 (D. Colo. 1974). An award of attorney fees is committed to the sound discretion of the trial court. In the final analysis, each case must be decided upon its own unique facts. *Butt*, 98 S.W.3d at 11-12 ("we usually recognize the superior perspective of the trial judge in assessing the applicable factors"); *Lake View II*, 10 S.W.3d at 902; *In re King Resources Co. Sec. Litig.*, 420 F. Supp. 610, 628 (D. Colo. 1976).

In *Yarrington v. Solvay Pharms., Inc.* 697 F. Supp.2d 1057, 1061 (D. Minn. 2010) (citing

*Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8<sup>th</sup> Cir. 1999), the Court did consider factors set forth in other Circuits and cases which are helpful in analyzing the reasonableness of fees. Many of the factors to be considered by the Court overlap. See *In re Xcel*, 364 F. Supp. 2d at 993 [\*\*11] (citing *Useton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849, 854 (10th Cir. 1993)). Further, not all of the individual factors will apply in every case, affording the Court wide discretion in the weight to assign each factor. *Id.* In *Xcel*, the court considered seven factors that are applicable here: (1) the benefit conferred on the class, (2) the risk to which plaintiffs' counsel was exposed, (3) the difficulty and novelty of the legal and factual issues of the case, (4) the skill of the lawyers, both plaintiffs' and defendants', (5) the time and labor involved, (6) the reaction of the class, and (7) the comparison between the requested attorney fee percentage and percentages awarded in similar cases. *Id.*

Arkansas looks at similar issues concerning attorney's fees. "[A]lthough there is no fixed formula in determining the computation of attorneys' fees, the courts should be guided by recognized factors in making their decision." *Chrisco v. Sun Indus., Inc.*, 304 Ark. 227, 229, 800 S.W. 2d 717, 719 (Ark. 1990). These factors include "the experience and ability of the attorney, the time and labor required to perform the legal service properly, the amount involved in the case and the results obtained, the novelty and difficulty of the issues involved, the fee customarily charged in the locality for similar legal services, whether the fee is fixed or contingent, the time limitations imposed upon the client or by the circumstances, and the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer." *Id.* Each of these factors is applicable to the instant case and support the fees proposed.

**A. Experience and Ability of Counsel.**

The firm of Arnold, Batson, Turner & Turner, P.A. has represented parties in various

courts in complex actions in cases involving various consumer claims and a host of other complex actions in various state courts throughout the state of Arkansas. Counsel with Arnold, Batson, Turner & Turner, P.A. collectively have more than 35 years experience handling complex litigation, including consumer and employment-related actions.<sup>4</sup>

Likewise, the firm of Emerson Poynter LLP has also represented consumers in class action cases for several decades. In fact, Emerson Poynter LLP had dedicated itself to working for people commonly harmed by corporate misconduct in consumer cases, as well as cases involving labor issues, securities fraud, product liability, crop production and marketing, and ERISA violations. Emerson Poynter's partners also have more than 35 years in combined experience in class action and complex litigation.<sup>5</sup>

***B. Time Necessary for Representation  
and Impositions on Other Representation.***

As discussed above, representation in this action prevented counsel from devoting time to

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<sup>4</sup> Some of these complex cases include, but are not limited to: *Hendricks v. Inergy*, E.D. Ark. Case No. 4:12-cv-0069 (2013); *Woolsworth Pblsh. Co. v. Martinelli, et al.*, W.D. Ark. Case No. 6:92CV06109 HFW (1993); *Williamson, et al. v. Pike County Ark.*, W.D. Ark. Case No. 6:94CV06010 JLH (1994); *Showmethemoney v. Williams*, 342 Ark. 112, 27 S.W.3d 361 (2000); *E-Z Cash Advance, Inc. v. Harris*, 347 Ark. 132 (2001); *F&G Financial Services, Inc. v. Barnes*, 349 Ark. 505 (2002); *Cash in a Flash Advance v. Spencer*, 348 Ark. 459 (2002); *Tay-Tay, Inc. v. Young*, 349 Ark. 369 (2002); *The/FRE, Inc. v. Martin*, 349 Ark. 507 (2002); *The Money Place v. Barnes*, 349 Ark. 411 (2002); *USA Check Cashers of Little Rock v. Island*, 349 Ark. 71 (2002); *Advance America v. Garrett*, 344 Ark. 75 (2001); *Ballard v. Garrett*, 349 Ark. 545 (2002) *cert denied* 538 U.S. 906 (2003); *Lender's Title Company v. Chandler*, 353 Ark. 339 (2003); *Anderson v. Stewart*, 366 Ark. 203 (2006); *McGhee v. Ark. State Bd. of Collection Agencies*, 360 Ark. 363 (2006); *Advance America Servicing of Ark., Inc. v. McGinnis*, 526 F.3d 1170 (2008); *McGhee v. Ark. State Bd. of Collection Agencies*, 368 Ark. 60 (2008); *Staton v. Am. Mfrs. Mut. Ins. Co.*, 362 Ark. 96 (2008); *Old Republic Surety Co. v. McGhee*, 360 Ark. 562 (2008); *Magee v. Advance America Servicing of Ark., Inc.* 2009 U.S. Dist. LEXIS 27903 (W.D. Ark. 2009); *Easter v. Compucredit Corp.*, 2009 U.S. Dist. LEXIS 16354 (W.D. Ark. 2009); *Skallerup v. City of Hot Springs* 2009 Ark. 276 (2009); *Rosenow v. Alltel Corp.*, 2010 Ark. 26 (2010); *DirectTV, Inc. v. Murray*, 2012 Ark. 366 (2012); and *JPMorgan Chase Bank, N.A. v. Johnson*, 2013 U.S. App. LEXIS 13788 (2013).

<sup>5</sup> Attached as Exhibit 1 is the firm resume' for Emerson Poynter LLP.



other clients and, in some instances, limited counsels' ability to accept other representation. Moreover, this representation affected the staff and employees of Class Counsel. Moreover, this litigation spanned more than eight years, numerous hearings, and two appeals. The time and effort involved in representation of the Plaintiff and certified class was significant when considering the size and resources of Class Counsel and the complexity and duration of this litigation.

***C. The Favorable Results to Client and Class.***

The Settlement's benefits to the Representative Plaintiff and the Class are unmistakable. Despite the duration of this case, each class member will be entitled to significant cash relief and compensation even though the original parties, Alltel Corporation and Alltel Communications, Inc., were acquired by Verizon Wireless almost six years ago. Class Counsel estimates that the number of subscriber lines at issue under the proposed settlement is approximately 108,000.<sup>6</sup> Consequently, under the terms of the Settlement Agreement, the direct cash relief available to the class exceeds \$7.25 million (class relief of \$70 multiplied by total estimated number of accounts of 108,000). Additionally, it should be noted that given the passage of time and the various issues involved, class members faced uncertainty as to their ability to recover any relief for these claims outside of this Settlement Agreement. Furthermore, Alltel filed counterclaims against class members and claimed that in most instances the class members would owe it money.

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<sup>6</sup> The parties' identified about 45,000 accounts which had paid ETFs from August 2004 through the merger with Verizon in 2009 (or an average of 9000 accounts per year). The class claims also included the years 2001 through 2003 for which there was no retrievable data related to ETF payments. Given the averages provided in discovery, the number of accounts affected from 2001 to 2003 is an estimated 27,000 additional accounts. In sum, there are approximately 72,000 affected accounts. Additionally, based upon the Court-ordered sampling of 500 account statements, there was an average of 1.5 lines per account. The average number of accounts multiplied by the estimated number of lines affected yields approximately 108,000 affected subscriber lines.

Although these counterclaims were dismissed, Alltel would likely have reasserted these claims after any judgment in favor of the class and during the claims process. Consequently, the results to the representative Plaintiff and his Class are extremely favorable in light of the risks of continued litigation.

***D. Novelty and Complexity of the Representation.***

The claims in this case were novel and involved numerous, complex and innovative defenses raised by the Defendants. Indeed, the procedural issues alone generated two appeals and interpretation of recent state and federal authorities, including recent decisions of the United States Supreme Court. The claims involved intricate factual bases with multiple parties and theories of recovery. As discussed above, the consumer issues and alleged set-offs and counterclaims were not only complex, the litigation also involved complex procedural issues which led to two separate appeals to the Arkansas Supreme Court. The Court is well acquainted with the nature of the claims, defenses and myriad of legal challenges and theories, which were raised during the almost decade-long litigation.

***E. Percentage of Benefit or Value of Settlement to Class.***

The Court can also award an attorneys' fee in a class action where, like here, the efforts of counsel have created a substantial benefit for the Class. The common-benefit exception is analogous to the common fund exception to the American Rule. It applies in situations like this action, where the efforts of the Plaintiffs produced a substantial benefit other than a fund of money from which fees can be awarded. *See Mills v. Elec. Auto Lite Co.*, 396 U.S. 375, 392 (1970).

Arkansas has recognized common-benefit exception to the American rule. *See Fox v. AAA U-Rent It*, 17 S.W.3d 481, 485 (Ark. 2000) (citing, *Lake View Sch. Dist. No. 25 v.*

*Huckabee*, 351 Ark. 31, 93-95, 91 S.W.3d 472, 509-510 (2002)); *Millsap v. Lane*, 288 Ark. 439, 706 S.W.2d 378 (1986); *Powell v. Henry*, 267 Ark. 484, 592 S.W.2d 107 (1980). Accordingly, because class counsel has conferred a substantial benefit, as well as direct value, to the entire Class, the common-benefit exception is an additional basis upon which to award the fee and reimbursement of expenses. In consideration of awards pursuant to the common-benefit rule, the Arkansas Supreme Court has held that “other factors were just as important as the time devoted to a case . . . the amount of the recovery . . . the ability of counsel, the nature and extent of the services rendered and the results obtained. *Powell*, 267 Ark. at 487 (which also rejected the notion of a requirement of submission of detailed time records).

As set forth herein, the factors outlined in *Chrisco v. Sun Industries, Inc.* 304 Ark. 227 (1990) are certainly met in this case. Moreover, the parties negotiated the proposed fee award and the claims in this action were brought pursuant to the Arkansas Deceptive Trade Practices Act (Ark. Code Ann. § 4-88-101, *et seq.*), which specifically provides for an award of attorney’s fees (Ark. Code Ann. § 4-88-113(f)). The Defendants’ willingness to pay this amount is demonstrative of what a client might be willing to pay its counsel for similar services under similar circumstances. In fact, courts often give great weight to negotiated fee agreements between parties. Regarding such negotiated fees, the court in *Cohen v. Nelson*, 375 F.Supp.2d 844 (E.D. Mo. 2005) said:

Under such circumstances . . . courts have expressed reluctance to “second guess” the settling defendants’ agreement to pay the fee, with the result that, while the Court must be satisfied as to its fairness and reasonableness, the Court’s scrutiny can be less intensive.

Moreover, the potential value of the settlement in this action (when accounting for the direct value of the settlement to the class and also including the costs and expenses related to notice to class members and claims administration, and the negotiated attorneys’ fee and expense

provision pursuant to the ADTPA is approximately \$10,000,000.00. Consequently, the percentage of the requested fee award (\$1,969,946.00) is less than twenty percent of the total value of the Settlement.

**2. The Incentive Award to Plaintiff Rosenow Deserves Approval.**

The Class Representative has worked closely with Class Counsel and has provided valuable assistance, which has led to a successful recovery in favor of the Class and a recovery of a significant Class damages. As with the negotiated attorneys' fee award, the proposed incentive award for the Class representative was negotiated separately and will not be paid from any Class recovery.

Courts have routinely authorized and approved incentive payments for class representatives in consumer class action cases. *State v. Homeside Lending, Inc.*, 175 Vt 239, 826 A.2d 997 (2003) ("Incentive payments to class representatives are common in class actions."); *State ex. rel. Byrd v. Chadwick*, 956 S.W. 2d 369 (Mo. Ct. App. 1997). This is particularly true when the individual recoveries involve relatively small amounts of damages based on consumer transactions. Also, while these incentives are routine in class-wide settlements, they are even more appropriate in cases such as this where the class representative's actions have led to a judgment and subsequent recovery for the class. At least one court has described the factors for consideration of incentive awards to include: "the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294,

299 (N.D. Cal. 1995).<sup>7</sup>

Incentives for class representatives are important and promote public policy because they encourage consumers like Mr. Rosenow to pursue consumer claims on behalf of absent class members. It is clear from the record in this case that Rosenow has devoted a significant amount of time in assisting his attorneys and the Court in the pursuit of the class' legal claims and the ultimate recovery of damages for the benefit of absent class members.

The Settlement Agreement provides for an incentive award payment not to exceed \$5,000.00 to Rosenow upon approval by the Court. "The practice of granting incentive awards to Class Representatives is common and widespread in class litigation." *Ponca Tribe of Indians of Okla. v. Cont'l Carbon Co.*, 2009 U.S. Dist. LEXIS 82522, \*\*9-10 (W.D. Okla. July 31, 2009) (citing *In Re: Mego Fin. Corp., Sec. Litig.*, 213 F.3d 454 (9th Cir. 2000)); see also *Jones v. Casey's Gen. Stores, Inc.*, 266 F.R.D. 222, 231 (S.D. Iowa 2009) ("Courts routinely recognize and approve incentive awards for class representatives...") (citations omitted). Serving as premiums in addition to any claims-based recovery from the settlement, incentive awards "promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits." *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1068 (D. Minn. 2010) (citing *In re Mego Fin. Corp. Sec. Litig.*, *supra*, at 463; Manual for Complex Litig., § 21.62 n. 971 (4th Ed. 2004) (incentive awards may be "merited for time spent meeting with class members, monitoring cases, or responding to discovery.")).

The incentive award requested here is warranted. Unlike unnamed Settlement Class members, who will enjoy the benefits of the named Plaintiff's efforts without taking any

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<sup>7</sup> In *Van Vranken*, the Court approved payment from a common fund recovered by the class upon consideration of the class representative's participation in conferences and meetings with class counsel, his participation in depositions, attendance at pretrial hearings, and testimony at trial. The court also further considered unspecified out-of-pocket expenditures for gas, occasional meals, and other travel-related expenses.

significant role, Rosenow, in his representative capacity, actively participated in this litigation and made significant efforts on behalf of the Settlement Class that led to the benefits achieved through settlement – facts that are plainly supported by the record in this case.

Rosenow has dedicated himself to this case for approximately nine years. During that time, he has assisted Class Counsel diligently and dutifully on behalf of the Class. For example, he has assisted in responding to multiple discovery requests, sat for a full-length deposition, attended and provided testimony at the hearing regarding class certification, and other hearings during the course of the litigation, and closely monitored the case throughout. In addition, Plaintiff participated in decisions relating to the settlement of the case as part of the settlement process. The valuable efforts of Rosenow; his willingness to litigate and pursue his representative claims, and the strength of his claims have resulted in a settlement that has conferred a substantial benefit upon the Class. Under these circumstances, a service award of \$5,000.00 is entirely appropriate. *See, e.g., Yarrington*, 697 F. Supp. 2d at 1068 (finding incentive award of \$5,000.00 per named plaintiff “inherently reasonable” under similar circumstances); *Jones v. Casey's Gen. Stores, Inc.*, 266 F.R.D. 222, 231 (S.D. Iowa 2009) (approving \$10,000.00/per named plaintiff incentive award that was specifically negotiated as part of settlement package); *Zilhaver v. UnitedHealth Group, Inc.*, 646 F. Supp. 2d 1075, 1085 (D. Minn. 2009) (approving \$15,000 incentive award where named plaintiffs “bore the risks of counterclaim or collateral attack, and consulted with class counsel throughout the suit.”).

### **III: CONCLUSION**

For all of the foregoing reasons, Plaintiffs and Class Counsel request approval of attorneys' fees and expenses in the amount of \$1,969,946.00 and as provided in the Settlement, as well as the Class Representative's incentive award of \$5,000 as also provided in the Settlement.

Dated: December 16, 2014

Respectfully submitted,

**EMERSON POYNTER LLP**



Scott E. Poynter (#90077)  
Corey D. McGaha (#2003047)  
The Rozelle-Murphy House  
1301 Scott Street  
Little Rock, AR 72202  
Phone: (501) 907-2555  
Fax: (501) 907-2556

Todd Turner (#92266)  
Dan Turner (#97179)  
ARNOLD, BATSON, TURNER &  
TURNER, P.A.  
501 Crittenden Street  
P.O. Box 480  
Arkadelphia, AR 71923  
Phone: (870) 246-9844  
Fax: (870) 246-9845

*Class Counsel*

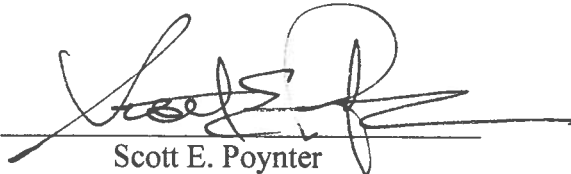
### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the forgoing was served this 16<sup>th</sup> day of December, 2014, via U.S. mail to the following counsel:

Steven W. Quattlebaum  
E.B. Chiles IV  
Chad W. Pekron  
QUATTLEBAUM, GROOMS, TULL & BURROW PLLC  
111 Center Street

Suite 1900  
Little Rock, AR 72201

Todd Turner  
Dan Turner  
ARNOLD, BATSON, TURNER & TURNER, P.A.  
501 Crittenden Street  
P.O. Box 480  
Arkadelphia, AR 71923



Scott E. Poynter



**EXHIBIT 1**



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Class Action Litigation  
Securities Litigation  
Antitrust Litigation  
ERISA Litigation  
Consumer Litigation  
Trials and Appeals  
Product Liability and Tort Law Litigation  
Securities Arbitration  
Martindale-Hubbe AV Rated

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### Our Firm

Emerson Poynter LLP has a national class action legal practice with offices in Houston, Texas, and Little Rock, Arkansas.

Emerson Poynter, and its team of experienced Attorneys and Paralegals, handles complex commercial litigation with a concentration in those cases that involve violations of federal and state securities or antitrust laws, consumer protection laws, and violations of the Employee Retirement Income Security Act of 1974 (“ERISA”). Our law firm has handled numerous securities and shareholder derivative cases representing investors. Emerson Poynter and its predecessor firms have also been active in many mass tort, class action, and individual cases of note. In the class action litigation area, Emerson Poynter has represented and currently represents plaintiffs in well over 100 class action cases, some of which are being prosecuted with other leading national firms.

Emerson Poynter has served as Co-Lead Counsel in several recent Multidistrict Litigation (“MDL”) cases involving product liability and consumer protection issues. In 2004, Emerson Poynter was appointed by the Honorable Stephen P. Friot as Plaintiffs’ Co-Lead Counsel in *In re Farmers Insurance Co., Inc. FCRA Litigation*, which was recently settled in the Western District of Oklahoma. This case was litigated on behalf of a certified class of Farmers’ current and past customers who were charged more than the lowest premium for insurance based upon information in a consumer report, and received certain “adverse action” notices that willfully failed to conform to the Fair Credit

Reporting Act. The case resolved in late 2011 and provided class members with about \$100 million in cash and other relief. Emerson Poynter LLP also represent numerous long-grain rice farmers in Arkansas and other states, and continues to serve as Co-Chairman of Plaintiffs' Executive Committee in the MDL action *In re Genetically Modified Rice Litigation* (the "Rice MDL Action") having been appointed to such position by the Honorable Catherine D. Perry of the Eastern District of Missouri in April 2007. The *Rice MDL Action* sought damages for long-grain rice producers in Arkansas, Missouri, Mississippi, Louisiana, and Texas for defendants' contamination of the United States' rice supply with genetically modified rice as revealed by Bayer and the USDA in August 2006. This MDL action was settled for over \$750 million in cash relief for American rice farmers. Emerson Poynter additionally served as Co-Lead Plaintiffs' Counsel in an MDL case transferred to the Honorable Richard D. Bennett of the District of Maryland captioned *In Re; Tyson Foods, Inc. Chicken Raised Without Antibiotics Consumer Litigation*. The case involved false advertising claims associated with the sale of Tyson Foods' chicken as being raised without antibiotics, when in fact the chicken was raised with antibiotics. The action was settled for \$5 million in cash and other relief for class members who purchased the chicken products at issue.

Emerson Poynter is also active in cases seeking to improve corporate governance in public companies through its involvement in shareholder derivative litigation. Most notably, Emerson Poynter served as Co-Lead Counsel in cases resulting in significant and far-reaching corporate governance and compliance improvements within companies such as AOL/Time Warner, Computer Associates, Nicor, Cryolife, Inc., and Crompton (Chemtura). The Firm has also represented shareholders in claims involving corporate buyouts and other change-of-control transactions. In 2007, Emerson Poynter represented shareholders of Alltel Corporation in an acquisition of the company by an affiliate of Goldman Sachs. The action was settled favorably for the shareholders, and the Honorable Judge Chris Piazza of the Pulaski County Circuit Court, Arkansas, approved the settlement in August of 2008.

In the consumer protection litigation area, Emerson Poynter is a leader in fighting for the rights of consumers. Besides the aforementioned *Tyson RWA Chicken MDL Action*, Emerson Poynter is also a leader in the MDL action captioned *In Re; Bisphenol-A (BPA) Polycarbonate Plastic Products Liability Litigation* pending in the United States District Court for the Western District of Missouri. Emerson Poynter is Co-Lead Counsel in the *Webb et al. v. Carters Inc. et al.* litigation currently pending in the United States District Court for the Central District of California concerning Carter's line of tagless baby clothing; in the *Montanez et al. v. Gerber Childrenswear, Inc., et al.* litigation currently pending in the United States District Court for the Central District of California concerning Gerber's line of tagless baby clothing; in the *Horne et al. v. The Dannon Company Inc.* litigation currently pending in the United States District Court for the Eastern District of Arkansas concerning Dannon's line of yogurt products; and, in the *Herrington, et al. v. Johnson and Johnson Consumer*

*Companies, Inc. et al.* litigation currently pending in the United States District Court for the Northern District of California concerning numerous baby products.

In the retirement plan/pension area, Emerson Poynter served as Co-Lead Counsel in the Winn-Dixie Stores, Inc. ERISA Litigation that settled in the Middle District of Florida in 2008, and served as Co-Lead Counsel in the ADC Telecommunications ERISA litigation that settled in the District of Minnesota in 2006. Emerson Poynter served on the Enron ERISA Litigation Plaintiffs' Counsel Steering Committee. This case settled in the United States District Court, Southern District of Texas, Houston Division in 2005.

#### Our Attorneys



John G. Emerson

Partner



**Mr. Emerson** is a founding partner of the Firm. He was born in Little Rock, Arkansas, and was raised there and in Houston, Texas. He is a member of the state bars of Texas, Washington and Arkansas. Mr. Emerson obtained his Bachelor of Arts from the University of Texas at Austin and then earned his Juris Doctorate from South Texas College of Law. Mr. Emerson has been rated "AV Preeminent" for the last 17 years by Martindale-Hubbell which is the highest possible peer review rating in legal ability and ethical standards. Mr. Emerson was honored by being named one of the Top 100 Trial Lawyers in America by the National Trial Lawyers in 2013 and 2014.

In his antitrust practice, Mr. Emerson is currently a member of the Plaintiffs' Counsel Steering Committee in the Aluminum Warehousing Antitrust Direct Purchaser action. Mr. Emerson has represented plaintiffs in the Compact Disc Antitrust Litigation filed against the music industry in the United States, and plaintiffs in the High Pressure Laminates Antitrust Litigation in the direct purchaser case. Notably, Mr. Emerson also has been or is currently involved in the following antitrust cases: CRT (Cathode Ray Tube) Antitrust Litigation; Flash Memory Antitrust Litigation; GPU (Graphics Processing Units) Antitrust Litigation; Ocean Shipping Antitrust Litigation; TFT-LCD (Flat Panel) Antitrust Litigation; Trans-Pacific Airline Surcharge Litigation, among others.

In his corporate practice, Mr. Emerson has represented numerous stockholders in shareholder derivative lawsuits brought against corporate boards. These suits sought to impose corporate governance reforms aimed at protecting shareholders and eliminating corporate waste and abuse. Mr.

Emerson is currently Co-Lead Counsel in cases involving Wal-Mart, Citigroup, JP Morgan Chase, and Ariad Pharmaceuticals. He is Lead Counsel in a case involving Goldman Sachs Group, Inc. In the past, Mr. Emerson served as one of the lead counsel in the Computer Associates derivative action in the Federal District Court for the Eastern District of New York. This action was brought against the Computer Associates' board of directors and led to the resignation of the Company's CFO, the resignation of two other senior financial officers, and the adoption of certain corporate governance measures that Computer Associates has since represented as the "gold standard" of governance reform. Mr. Emerson was Co-Lead Counsel in the case styled *In Re Nicor, Inc. Shareholder Derivative Litigation* in the Circuit Court of Cook County, Illinois County Department, Chancery Division. This action was brought against Nicor's board of directors and its settlement resulted in major corporate governance improvements at Nicor. Mr. Emerson was Co-Lead Counsel in the case styled *In Re Cryolife Derivative Litigation* pending in the Superior Court of Fulton County, Georgia. The settlement of this action resulted in wide-sweeping corporate governance improvements at Cryolife. Mr. Emerson was also Co-Lead Counsel in the case styled *AOL Time Warner Shareholder Derivative Litigation* which was settled in the Federal District Court for the Southern District of New York. This settlement resulted in wide ranging corporate governance and compliance changes and was a substantial factor in Time Warner's ability to obtain \$200 million from its Directors' and Officers' (D&O) insurance carriers. Mr. Emerson was Lead Counsel in the action styled *Crompton* (now known as Chemtura) *Shareholder Derivative Litigation* which settled in the Bankruptcy Court for the Southern District of New York. This settlement resulted in major corporate governance improvements.

In his consumer class action practice, Mr. Emerson served as Chairman of the Expert Witness Committee in the consolidated Multi-District Litigation action styled *In Re Bisphenol-A (BPA) Polycarbonate Plastic Products Liability Litigation* filed in the United States District Court for the Western District of Missouri. Mr. Emerson represented one of the lead named plaintiffs in the AOL Version 5.0 software litigation. He was Co-Lead Counsel in an action filed against the Farmers Insurance Group of Companies involving alleged violations of the Fair Credit Reporting Act which resolved for plaintiffs. He was Co-Lead Counsel for a number of parents in the Gerber's baby clothing litigation and the Carter's baby clothing litigation. Both case resolved for plaintiffs in 2013. Mr. Emerson was a consultant to Canadian plaintiffs' counsel in the Canadian Medtronic Pacemaker Pacing Lead Product Liability Litigation that was certified and settled in British Columbia as a Canadian national class action. He has been a consultant to Canadian counsel in the Canadian Compact Disc Antitrust Litigation, the Canadian Publishers Clearing House Litigation, and the Canadian AOL 5.0 Software Litigation.

In his retirement plan practice, Mr. Emerson was appointed to the Plaintiffs' Counsel Steering Committee by Judge Melinda Harmon, United States District Judge, Southern District of Texas –

Houston Division, in the consolidated Enron ERISA Litigation, styled *Pamela M. Tittle v. Enron Corp., et al.*

Mr. Emerson was admitted to the Texas Bar in 1980. He is admitted to practice before the U.S. Supreme Court; U.S. Court of Appeals for the 2<sup>nd</sup>, 5<sup>th</sup>, and 8<sup>th</sup> Circuits; U.S. District Courts for the Southern, Northern, Western and Eastern Districts of Texas; Western and Eastern Districts of Arkansas; Western District of Washington; District of Colorado; and all Texas, Washington and Arkansas state courts.

Mr. Emerson has extensive jury trial experience over the past 34 years. He is a member of the legal fraternity Delta Theta Phi. He is also a member of The National Trial Lawyers; American Association for Justice ("AAJ"); AAJ Class Action Litigation Group; Fellow of The Pound Civil Justice Institute; Texas Trial Lawyers Association; American Bar Association (Tort and Insurance Practice and Legal Economics Sections); State Bar of Texas (Grievance Committee 4-D, Houston, 1991-94); Membership Services Committee, 1991-92); Sustaining Life Fellow Texas Bar Foundation; Bar Association for the United States District Court for the Eastern District of Texas; Houston Bar Association; Fellow of the Houston Bar Foundation; Washington State Bar; King County Bar Association; Pulaski County Bar Association; and, the Arkansas Bar Association. Mr. Emerson was honored by the Governor of Arkansas when he was named an Arkansas Traveler, an Ambassador of Good Will on behalf of the people of the state of Arkansas to people everywhere.

Mr. Emerson is married with two children, one grandson, and six rescued dachshunds. He enjoys the outdoors and has hunted and fished in the US, Canada, Mexico, Honduras, Uruguay, Argentina, Botswana, and South Africa. He is a life member of Safari Club International.

Mr. Emerson's email address is [jemerson@emersonpoynter.com](mailto:jemerson@emersonpoynter.com).



Scott E. Poynter

Partner



**Mr. Scott Poynter** is a founding partner of the Firm. He was in Fayetteville, Arkansas and was raised in Mountain Home. Mr. Poynter earned his Bachelor of Science Degree in Accounting from Arkansas Tech University. He then earned his Juris Doctorate from the University of Arkansas in 1989. While in law school, Mr. Poynter was active in Phi Alpha Delta legal fraternity and was awarded a leadership scholarship from the school. After completing law school, Mr. Poynter joined the Judge Advocate Department of the United States Air Force and served six years of active duty as a Judge Advocate and litigated more than fifty jury trials. In 1995, then Captain Poynter was selected by the Air Force for its Advanced Trial Advocacy Course, a course reserved for the military's finest litigators. After leaving active duty, Mr. Poynter was a partner at a national class action law firm, which focused its work on the representation of investors. He also continued his military career in the Arkansas Air National Guard and attained the rank of Major.

Mr. Poynter is serving Arkansas homeowners in class action cases alleging certain banks outside the state of Arkansas violate the provisions of the Arkansas Statutory Foreclosure Act, which provides that foreclosing entities must strictly comply with its provisions. But often, the banks do not comply with the statute's requirements. He is also working for Arkansas homeowners that have been forced to purchase insurance at excessively high prices and in order for many of these same banks to receive illegal kickbacks from the insurers. Mr. Poynter is also pleased to help those that encounter other abusive lending and debt collection practices throughout Arkansas and the United States.

Over one hundred Alaska Airlines' flight attendants have retained Mr. Poynter in demonstrating that uniforms manufactured and supplied to them by Twin Hill contained harmful chemicals. The flight attendants allege the Twin Hill uniforms they were required to wear caused them to break out in skin rashes, suffer from contact dermatitis, have problems breathing, lose hair, and further, caused thyroid problems. The case is being pursued by almost 170 flight attendants, and is on file in Orange County, California before Judge Kim G. Dunning.

Mr. Poynter has also been engaged to represent homeowners after man-made earthquakes damaged their homes. In 2010 and 2011, central Arkansas was hit with thousands of earthquakes, which were caused by oil and gas operations in the Fayetteville Shale. This created seismicity was due to fracking operations, and specifically, when the fracking fluids and wastewater was injected

under pressure back down and deep into the earth through the industry's injection wells. About 35 homeowners in the Guy and Greenbrier areas of Arkansas filed suit alleging both physical and market value losses to their homes. Due to this experience, Mr. Poynter has been also been retained by residents of Prague, Oklahoma who have similarly suffered due to more substantial earthquakes rattling central Oklahoma.

Mr. Poynter has also helped clients faced with abusive insurance practices. As Plaintiffs' Co-Lead Counsel in *In re: Farmers Insurance Co., Inc., FCRA Litigation* (the "*Farmers MDL Action*"), Mr. Poynter was devoted to recovering statutory damages in a certified class action brought on behalf of Farmers' customers who paid higher insurance premiums based upon credit information without their knowledge due to faulty FCRA notices prepared by Farmers. As a result of his and his co-counsel's effort, they secured a \$100 million settlement on behalf of class members.. In another MDL action, *In Re Genetically Modified Rice Litigation*, Mr. Poynter served as Co-Chair of Plaintiffs' Executive Committee on behalf of rice farmers who experienced a deflated rice market after America's rice supply was contaminated by Bayer's genetically modified rice in 2006 and markets in Europe and Asia were lost. A \$750 million cash settlement was achieved in 2012.

Mr. Poynter leads the firm in prosecuting privacy violations and other similar breaches of federal law. In today's electronic environment, big business collects an enormous amount of financial and other information from consumers. Often times this data collection is done secretly and in order to directly market those who have had private information unknowingly taken from them. Moreover, and all too often now, businesses have utterly failed to protect the financial and personal information of their customers through data breaches, which expose consumers to risks of identify theft. In short, our rights to privacy have been substantially diminished. Mr. Poynter is engaged in prosecuting claims under the federal Driver's Privacy Protection Act of 1994 (or "DPPA"), which was designed to protect privacy and the disclosure of information gathered by state Departments of Motor Vehicles, and the Telephone Consumer Protection Act (or "TCPA") passed into law to restrict the telemarketing.

Mr. Poynter is also dedicated to serving consumers cheated by deceitful marketing. For example, he served as Co-Lead Plaintiffs' Counsel in the *Tyson RWA Chicken MDL Action* before Judge Bennett in the District of Maryland, which involved the false marketing of chicken as being raised without the use of antibiotics. Mr. Poynter and his co-counsel provided class members over \$5 million in relief. Additionally, he served as class counsel in multiple consumer actions against Alltel, and thus far, has secured over \$60 million of relief former Alltel subscribers who were members of certain consumer classes. Mr. Poynter has been extensively involved in many



telecommunications class action cases brought under consumer protection statutes, and appeared on the nationally syndicated television show *The Morning Show with Mike and Juliet* as an expert on the cell phone industry's early termination fees. Mr. Poynter provided viewers of this show with legal information regarding the response of consumers to such fees, and the Federal Communications Commission's hearings on the subject.

Mr. Poynter also represents shareholders in various kinds of securities actions. He currently leads a shareholder derivative action brought on behalf of Wal-Mart after its directors and executives caused the Company to pay bribes to Mexican officials and then acted to cover-up their illegal bribery scheme – all in violation of the Federal Corrupt Practices Act. The case is on file in the Western District of Arkansas, the Honorable Susan Hickey presiding. As an active participant in the representation of investors whose shares are acquired through leveraged buyouts, mergers, tender offers, and other “change of control” transactions, Mr. Poynter has challenged the fairness of such transactions, the adequacy of disclosures made in connection with the transactions, and the price offered to shareholders for their equity. These types of cases have resulted in the restructuring of scores of corporate transactions. Most recently, Mr. Poynter was a lead counsel in such litigation and represented Alltel shareholders in a case in Pulaski County Circuit Court, and Baldor shareholders in another like action filed in Sebastian County Circuit Court.

Mr. Poynter is admitted to practice before: U.S. Court of Appeals for the Armed Forces; U.S. District Courts for the Western and Eastern Districts of Arkansas; 8<sup>th</sup> Circuit Court of Appeals; and all Arkansas State Courts.

Mr. Poynter's e-mail address is [scott@emersonpoynter.com](mailto:scott@emersonpoynter.com).



Will T. Crowder

Partner



**Mr. Crowder** is a partner with the firm. He was born and raised in Camden, Arkansas. In 2000, Mr. Crowder earned a Bachelor of Arts Degree in Political Science from the University of Arkansas. In 2003, Mr. Crowder earned his Juris Doctorate from the William H. Bowen School of Law at the University of Arkansas at Little Rock. Mr. Crowder is a member of the Arkansas Bar and admitted to the United States District Court for the Eastern and Western Districts of Arkansas, the District of Colorado, and the U.S. Court of Appeals for the Eighth Circuit.

Following his clerkship he has been employed by the Little Rock law firms of Jack, Lyon & Jones, P.A. (where he focused on defense work) and McMath Woods, P.A. (where he began his representation of the injured).

During his time at Emerson Poynter, Mr. Crowder has been extensively involved in all manner and types of class cases, including the firms' consumer litigation cases:

- *Carrera v. Bayer Corporation*, (D.N.J.), deceptive trade practices action for marketing of Bayer's WeightSmart diet pill.
- *Montantez v. Gerber Childrenswear, LLC* (C.D. Cal) and *Webb v. Carter's, Inc.* (C.D. Cal), cases involving tagless labels on children's garments.
- *In re: Cheerios Marketing and Sales Practices Litigation* (D.N.J.), multidistrict litigation pending against General Mills for health and cancer-prevention claims made by their products.

Mr. Crowder has also lead the firm's efforts in litigation of cases on behalf of Arkansas's citizens

- Claims against major retailers who manufacture products with dangerous levels of heavy metals and other chemicals;
- Claims against manufacturers of "toning shoes" on behalf of Arkansas's citizens;
- Claims against banks relating to overdraft practices.

Mr. Crowder is a member of the American Bar Association, American Association for Justice, the Arkansas Trial Lawyers Association and the Pulaski County Bar Association.

In 2009, 2010, and 2011, Mr. Crowder was selected as a *Mid-South Super Lawyer* Rising Star.

Mr. Crowder's email is [wcrowder@emersonpoynter.com](mailto:wcrowder@emersonpoynter.com).



Corey D. McGaha

Senior Associate



**Mr. Corey D. McGaha**, an associate with Emerson Poynter LLP since July 2011, is admitted to practice in the state courts of Arkansas and Texas, the United States Court of Appeals for the Eighth Circuit, the United States District Courts for the Eastern and Western Districts of Arkansas, and the United States District Court for the Eastern District of Texas. Mr. McGaha graduated cum laude from Ouachita Baptist University and received his law degree from the University of Arkansas in 2002

After graduating law school, Mr. McGaha served as a law clerk to the Hon. Harry F. Barnes, United States District Court for the Western District of Arkansas from 2002-2006. He is a member of the American Bar Association, the Arkansas Bar Association, the Texas Bar Association, and the Pulaski County Bar Association.

Since joining Emerson Poynter LLP, Mr. McGaha has assisted the firm in prosecuting several class actions and real estate litigation cases, including:

- Over 30 property damage cases litigated in state and federal court for clients in Faulkner County, Arkansas alleging that wastewater injection wells caused the Guy-Greenbrier Earthquake Swarm in 2010-2011, which damaged his clients' homes.
- Reported decision in *Asset Acceptance v. Newby*, 2014 Ark. 280 (2014) – Mr. McGaha successfully argued his clients' claims were not subject to arbitration because Asset Acceptance, LLC, a debt-collector, had no specific evidence Ms. Newby agreed to arbitration, that the arbitration clause at issue was ever communicated to her, nor that she assented to the arbitration clause at issue.

Mr. McGaha worked as an attorney at Patton Roberts PLLC in Texarkana, Texas from 2006 through 2011. Mr. McGaha assisted the firm in successfully litigating and settling a number of security fraud cases including:

- *In Re: Brocade Securities Litigation, Northern District of California* - A national securities fraud class action which resulted in a court-approved cash settlement of \$160 million for shareholders.
- *In Re: Salomon Analyst Metromedia Litigation, Southern District of New York* – A securities fraud class action which resulted in a court-approved cash settlement of \$35 million for shareholders of Metromedia Fiber Network.
- *Walker v. Rent-A-Center, Inc., Eastern District of Texas* – A securities fraud class action which resulted in a court approved cash settlement of \$3.6 million for the shareholders of Rent-A-Center, Inc.
- *McClure, et al. v. AOL Time Warner, Inc., Texas state court* – An individual securities fraud action in which our clients received 100% more than they would have received in the global settlement of the national securities fraud class action.

Mr. McGaha also assisted the Firm in representing the Industrial Technology Research Institute (ITRI), the prominent Taiwanese national research institute, in its first prosecution of its patent portfolio in the United States against Samsung Electronics, and its second ongoing prosecution of its patent portfolio against LG Electronics.

Mr. McGaha enjoyed a strong local civil litigation practice at Patton Roberts, focused on commercial, real estate, and personal injury litigation that included:

- *Arkansas State Highway Commission v. Wilson, et al, Arkansas state court* - In his first jury trial, Mr. McGaha secured an \$188,000 jury verdict on his client's counterclaim against the Arkansas State Highway Commission after the State condemned a third of his clients' farm. The jury verdict substantially higher than the amount of money the State \$116,000 originally interpled into the court's registry.
- Reported decision in *Buck v. City of Hope*, 2009 Ark. App. 105, 303 S.W.3d 85 (Ark.App. 2009) – Mr. McGaha successfully argued for his client that the trial court erred in finding it lacked subject matter jurisdiction over claims for nuisance, inverse condemnation, trespass and negligence against the City of Hope, Arkansas.
- *Watz, et al. v. Red Robin International, Inc., et al, Arkansas state court* – Mr. McGaha successfully gained a dismissal of a wrongful death lawsuit against his clients, the Red Robin restaurant chain, for lack of subject matter jurisdiction.
- *Lancaster v. Red Robin International, Inc., Arkansas state court* – Mr. McGaha achieved another success for the Red Robin restaurant chain by defeating a former employee's defamation claim by a motion for summary judgment.

While living in Texarkana, Mr. McGaha was active in the bar as a member of the Texarkana Bar Association, and treasurer for the Texarkana Young Lawyers Association. Mr. McGaha was also a member of the Texarkana Chapter of Kiwanis International. Mr. McGaha's email address is [cmcgaha@emersonpoynter.com](mailto:cmcgaha@emersonpoynter.com)



Robert Jigarjian

Of Counsel

**Mr. Jigarjian** received his Bachelor of Arts degree from Hamilton College in 1981, his Masters of Business Administration from Tulane University in 1985 and his Juris Doctorate from Golden Gate University in 1993. Prior to law school, Mr. Jigarjian worked as an institutional sales trader with Keefe Bruyette & Woods, Inc., where he specialized in sales and trading of equity securities in the bank and savings and loan sectors.

Mr. Jigarjian was a founding member of Green & Jigarjian LLP. He joined Emerson Poynter in 2007. Prior to founding Green & Jigarjian, Mr. Jigarjian was employed at Girard & Green LLP.

Mr. Jigarjian has substantial experience in the representation of individual and institutional investors in class action and derivative litigation. He represented one of the lead plaintiffs in the class action captioned *In re Prison Realty Securities Litigation*, Case No. 3:99-0452 (M.D. Tenn.) which resulted in a settlement that created a fund for the class valued at approximately \$105 million. He also represented one of the lead plaintiffs in the consolidated class and derivative action captioned *In re Digex, Inc. Shareholders Litigation*, C.A. No. 18336 NC (Del. Ch.), which resulted in a settlement that created a fund for the class valued at approximately \$180 million and provided for other non-cash benefits valued at approximately \$450 million. Mr. Jigarjian currently represents the derivative plaintiffs in *Saito, et al. v. McCall, et al.*, C.A. No. 17132-NC (Del. Ch.). The Delaware Chancery Court recently approved a settlement in the Saito litigation that provided for payment by directors and officers liability insurers to McKesson Corporation of \$30 million and certain corporate governance improvements. Mr. Jigarjian also represents the lead class plaintiffs in *In Re: Salomon Analyst XO Litigation*, 02-CV-8114 (GEL) (S.D.N.Y.).

Mr. Jigarjian is a member of the State Bar of California and is admitted to the United States District Courts for the Northern, Southern, Eastern and Central Districts of California and to the Ninth Circuit Court of Appeals.

Mr. Jigarjian's email address is [jigarjianlaw@gmail.com](mailto:jigarjianlaw@gmail.com).