

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JAMES COTTLE and FREDERICK
SCHOENEMAN, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

PLAID INC., a Delaware corporation,

Defendant.

Case No.: 4:20-cv-03056-DMR

**DECLARATION OF RACHEL
GEMAN IN SUPPORT OF
STIPULATION TO CONSOLIDATE
ACTIONS AND APPOINT INTERIM
CO-LEAD CLASS COUNSEL**

LOGAN MITCHELL, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

PLAID INC., a Delaware corporation,

Defendant.

Case No. 3:20-cv-04230-SK

RACHEL CURTIS, ALEXA GROSSMAN,
MALLORY GROSSMAN, STEVEN
HANNIGAN, ALEXIS MULLEN, JORDAN
SACKS, and NICHOLAS YEOMELAKIS, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

PLAID INC., a Delaware corporation,

Defendant.

Case No. 4:20-cv-04344-DMR

1 CARRIE ANDERSON, BRIAN MCCRUDDEN,
2 and JEFFREY SCHWEDOCK, on behalf of
themselves and all others similarly situated,

3 Plaintiffs,

4 v.

5 PLAID INC., a Delaware corporation,

6 Defendant.
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Case No: 3:20-cv-04480-JSC

1 I, RACHEL GEMAN, hereby declare as follows:

2 1. I am a partner of the law firm of Lief, Cabraser, Heimann & Bernstein, LLP
3 (“LCHB”), co-counsel in *Cottle v. Plaid*, No. 4:20-cv-03056-DMR (N.D. Cal.) (“*Cottle Action*”),
4 and Proposed Interim Co-Lead Counsel in the above-captioned actions. I am a member in good
5 standing of the State Bar of New York, and am admitted *pro hac vice* before this Court. I have
6 personal knowledge of the statements contained in this Declaration and, if called to testify, I
7 could and would testify competently to them.

8 2. I submit this declaration in support of the Parties’ Stipulation to Consolidate
9 Actions and Appoint Interim Co-Lead Class Counsel. LCHB is well-suited to serve as Co-Lead
10 Counsel in this litigation, and has contributed significantly to the development and prosecution of
11 this case.

12 **Federal Rule of Civil Procedure 23(g)**

13 3. This litigation involves four separately-filed putative class actions, filed by
14 multiple law firms, against the same defendant alleging the same conduct. Each action raises
15 substantively similar claims. Judicial efficiency, as well as the interests of the proposed class,
16 counsel in favor of establishing leadership for the class before the litigation proceeds any further.
17 When multiple related cases are pending, as they are here, “the selection and activity of class
18 counsel are often critically important to the successful handling of the class action.” Fed. R. Civ.
19 P. 23(g) Advisory Committee Notes.

20 4. Appointing LCHB as Interim Co-Lead Counsel comports with the Rule 23(g)
21 factors that guide courts’ decision-making in appointing class counsel. These factors are:

- 22 i. the work counsel has done in identifying or investigating potential claims in the
23 action;
- 24 ii. counsel’s experience in handling class actions, other complex litigation, and the
25 types of claims asserted in the action;
- 26 iii. counsel’s knowledge of the applicable law; and
- 27 iv. the resources that counsel will commit to representing the class.
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1 Fed. R. Civ. P 23(g)(1)(A).

2 **LCHB's Contributions to the Development of This Litigation**

3 5. In addition to significant experience litigating consumer privacy class actions in
4 this District, and elsewhere, discussed below, LCHB brings a wealth of background experience
5 specific to this litigation that has guided the development of the factual allegations and claims in
6 this case. In collaboration with co-counsel in the *Cottle* Action (Burns Charest, LLP and Herrera
7 Purdy, LLP), LCHB has conducted a thorough pre-filing investigation, which afforded counsel in
8 the *Cottle* Action an understanding of Plaid's business practices and the issues before the Court.

9 6. Along with co-counsel, LCHB researched the history and evolution of Plaid's
10 business, including its founding and growth within the financial technology ("fintech") industry.
11 LCHB and co-counsel developed an understanding of Plaid's business model, the distinctions
12 between its consumer-facing and industry-facing messaging, and some of the methods Plaid uses
13 and previously used to collect data from consumers and deliver that data to its fintech customers.

14 7. That research also included an in-depth and detailed review of Plaid's messaging
15 to consumers as it developed over time, as well as any relevant disclosures by consumer-facing
16 third party apps—such as Venmo, Square, and CashApp—in order to understand the scope of
17 Plaid's deceptive messages conveyed to consumers, and to identify the limited information
18 provided to consumers who use the relevant third party apps.

19 8. Further, LCHB and co-counsel engaged in a technical review into Plaid's conduct
20 in the context of the features of the above-referenced relevant third-party apps and the impact of
21 such conduct on consumer consent issues, consumer privacy, and financial privacy issues.

22 9. With the benefit of this factual backdrop, LCHB and co-counsel conducted legal
23 research and analysis to determine and assert the appropriate claims on behalf of Plaintiffs and the
24 putative Class.

25 10. LCHB is committed to providing the best possible representation for consumers in
26 this action, and continues to work collaboratively with co-counsel in researching and reviewing
27 Plaid's evolving disclosures to users of the relevant apps—which, while still inadequate, have
28 been amended by Plaid even since, and possibly due to, the commencement of the *Cottle*

1 Action—and public-facing statements regarding Plaid’s business practices and use of private
2 consumer data.

3 **Lieff, Cabraser, Heimann, & Bernstein, LLP**

4 11. Lieff, Cabraser, Heimann, & Bernstein, LLP is an established, well-respected law
5 firm with offices in San Francisco, New York, Nashville, and Munich, Germany. It is one of the
6 oldest and most successful law firms in the United States devoted exclusively to representing
7 plaintiffs, with a particular focus on class actions and multi-district litigation. In September 2019,
8 *Law360* named Lieff Cabraser a “California Powerhouse” for litigation after naming LCHB its
9 “Class Action Firm of the Year” in January 2019. In July of 2019, Public Justice awarded Lieff
10 Cabraser its “Trial Lawyer of the Year” award. In March 2019, *Benchmark Litigation* selected
11 Lieff Cabraser as its “California Plaintiff Firm of the Year.”

12 12. LCHB has 21 lawyers named to the “Best Lawyers in America” 2020 listing, and
13 *The National Law Journal* awarded LCHB its 2019 “Elite Trial Lawyer” awards in the fields of
14 Consumer Protection and Cybersecurity/Data Breach. In 2017, LCHB’s Cybersecurity & Data
15 Privacy and Consumer Protection Practice groups were awarded Practice Group of the Year by
16 *Law360*. In this District alone, LCHB has served as co-lead counsel in the following privacy
17 cases that touch, often significantly, on similar issues of widespread consumer privacy violations
18 by firms in developing technology industries, as in the Plaid litigation:

- 19 a. *Rushing v. The Walt Disney Company, et al.*, No. 3:17-cv-4419 (N.D.
20 Cal.); *Rushing v. Viacom, Inc., et al.*, No. 3:17-cv-4492 (N.D. Cal.); and
21 *McDonald, et al. v. Kiloo Aps, et al.*, No. 3:17-cv-4344 (N.D. Cal.) (representing
22 parents, on behalf of their children, in federal class action litigation against
23 numerous online game and app producers that unlawfully collected, used, and
24 disseminated children’s personal information);
- 25 b. *Matera v. Google Inc.*, No. 5:15-cv-04062 (N.D. Cal.) (secured a \$2.2
26 million settlement in class action claiming that Google Inc. violated consumer
27 privacy by routinely scanning email messages sent by non-Gmail users to Gmail
28 subscribers, analyzing the content of those messages, and sharing data with third

1 parties to target ads to Gmail users, in violation of the California Invasion of
2 Privacy Act and the federal Electronic Communications Privacy Act);

3 c. *Campbell v. Facebook*, No. 4:13-cv-5996 (N.D. Cal.) (co-lead class
4 counsel in nationwide class action alleging that Facebook unlawfully intercepted
5 data in users' personal and private messages on the social network and profited by
6 sharing the information with third parties; achieved settlement for injunctive
7 relief);

8 d. *Perkins v. LinkedIn Corporation*, No. 13-cv-04303 (N.D. Cal.) (co-lead
9 class counsel in a nationwide class action alleging that LinkedIn used its members'
10 names and likenesses without their consent to advertise and endorse the social
11 network; achieved \$13 million settlement and injunctive relief);

12 e. *Shurtleff v. Health Net of Cal., Inc.*, No. 34-2012-00121600-CU-CL
13 (Sacramento Cnty. Superior Court) (class action alleging that defendant lost
14 service drives containing its patients' and employees' highly sensitive personal
15 information, resulting in a class settlement providing significant monetary relief
16 and important data security improvements);

17 f. *In re Intuit Data Litigation*, No. 5:15-cv-1778 (N.D. Cal.) (Co-lead counsel
18 representing identity theft victims in a nationwide class action lawsuit against
19 Intuit for facilitating the filing of fraudulent tax returns through its TurboTax
20 software program. Case achieved credit monitoring benefits and business practice
21 changes by Intuit in 2019);

22 g. *Ebarle et al. v. LifeLock Inc.*, No. 3:15-cv-00258 (N.D. Cal.), (Achieved
23 \$68 million settlement as class Counsel in case alleging that, contrary to its
24 representations, LifeLock did not have comprehensive monitoring network, did not
25 provide up-to-the-minute alerts of suspicious activity, and failed to protect the
26 personal information of its subscribers from hackers and criminals).

27 h. *In re Google Inc. Street View Electronic Communications Litigation*, No.
28 3:10-md-021784 (N.D. Cal.) (\$13 million settlement as Liaison Counsel in class

1 action alleging that Google intentionally equipped its Google Maps “Street View”
 2 vehicles with Wi-Fi antennas and software that collected personal, private data
 3 being transmitted over private Wi-Fi networks located in homes within range of
 4 the vehicles’ receptors. LCHB took the lead on briefing and arguing Google’s
 5 appeal of the court’s denial of its motion to dismiss and, on September 10, 2013,
 6 the Ninth Circuit Court of Appeals agreed with plaintiffs that Google’s actions are
 7 not exempt from the Wiretap Act.)

8 i. *Henson v. Turn*, No. 3:15-CV-01497 (N.D. Cal.) (class action alleging that
 9 internet marketing company Turn, Inc. violates users’ digital privacy by, without
 10 users’ consent, installing software tracking beacons on mobile computing devices,
 11 deploying so-called “zombie cookies” that track smartphone activity across
 12 various browsers and applications, and using data harvested by these cookies to
 13 build and sell robust user profiles and sell targeted and profitable advertising).

14 13. In addition to the above-mentioned cases involving privacy rights, LCHB has
 15 extensive relevant experience successfully representing consumers in class actions that require
 16 expertise concerning financial institutions and banking regulations. Among LCHB’s recent
 17 settlements in this District is *In re Wells Fargo & Company Shareholder Derivative Litigation*,
 18 No. 3:16-cv-05541 (N.D. Cal.) (Co-Lead Counsel in \$240 million derivative settlement).

19 14. A small selection of other consumer protection cases involving financial services
 20 in this District or in other courts in California where LCHB served in leadership roles include:¹ *In*
 21 *re Chase Bank USA, N.A. “Check Loan” Contract Litigation*, MDL No. 2032 (N.D. Cal.) (served
 22 as Plaintiffs’ Liaison Counsel and on the Plaintiffs’ Executive Committee in Multi-District
 23 Litigation representing more than one million Chase Bank cardholders nationwide and obtaining
 24 \$100 million settlement in case charging that Chase Bank violated the implied covenant of good
 25 faith and fair dealing by unilaterally modifying the terms of fixed rate loans); *Gutierrez v. Wells*
 26 *Fargo*, No. C 07-05923-WHA (N.D. Cal.) (\$203 million judgment after bench trial for claims the
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28 ¹ A more comprehensive review of LCHB’s consumer protection practice is included in the firm’s
 resume.

1 bank manipulated overdraft fees; LCHB was lead counsel and trial counsel)²; *In re Bank of*
 2 *America Credit Protection Marketing & Sales Practices Litig.*, 11-MD-02269 (N.D. Cal.) (served
 3 as co-lead counsel and secured \$20 million in settlements in multidistrict litigation alleging that
 4 Bank of America used deceptive practices and misleading disclosures to enroll consumers in a
 5 “credit protection plan” that required them to pay monthly fees without any benefits); and
 6 *Citigroup Loan Cases*, JCCP No. 4197 (San Francisco Supr. Ct., Cal.) (served as Plaintiffs’ Co-
 7 Liaison Counsel and secured \$240 million in relief in case representing former customers of
 8 subprime lending company alleging that company added unwanted and unnecessary insurance
 9 products onto mortgage loans and engaged in improper loan refinancing practices).

10 15. More information about the wide array of cases and LCHB’s long history of
 11 successful litigation on behalf of consumers can be found in the Firm Resume, available at
 12 https://www.lieffcabraser.com/pdf/Lieff_Cabraser_Firm_Resume.pdf.

13 **The LCHB Team in the Instant Litigation**

14 16. The cases above and LCHB’s history successfully protecting consumer rights
 15 through class litigation all demonstrate that LCHB is well-qualified for the role of Interim Co-
 16 Lead Class Counsel in this action.

17 17. I, Rachel Geman, will serve as the primary representative for LCHB in meetings of
 18 Co-Lead Counsel and the Plaintiffs’ Steering Committee.

19 18. I am a 1997 graduate of Columbia Law School and, as a partner at LCHB, my
 20 practice focuses on consumer, employment, and false claims litigation. I am an AV Preeminent
 21 Peer Review Rated lawyer and have been recognized by “Super Lawyers” and “The Best
 22 Lawyers of America.”

23 19. I played an active managerial role in consumer litigation against General Motors
 24 involving defective ignition switches, where the court awarded preliminary approval to a \$120

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 26 ² Other similar overdraft litigation includes *In re Checking Account Overdraft Litigation*, MDL
 27 No. 2036 (S.D. Fl.), where LCHB served on the Plaintiffs’ Executive Committee in Multi-
 28 District Litigation against 35 banks, including Bank of America, Chase, Citizens, PNC, Union
 Bank, and U.S. Bank, alleging that the banks entered debit card deliberately drew down available
 balances more rapidly to maximize overdraft fees. Plaintiffs secured a \$410 million settlement
 against Bank of America, among others.

1 million settlement in May 2020. *In re General Motors LLC Ignition Switch Litig.*, 14-MD-2543
2 (S.D.N.Y) (LCHB is co-lead economic loss counsel). I represented the City of Philadelphia in
3 Fair Housing Act litigation against Wells Fargo that resolved in 2019 with the bank's paying \$10
4 million to fund city programs for communities affected by lending discrimination and agreeing to
5 other relief. I also served as co-lead class counsel or counsel for the class in consumer financial
6 litigation over "payment protection" products, resulting in more than \$50 million in settlements,
7 such as *In re Bank of America Credit Protection Marketing & Sales Practices Litigation*
8 referenced above. Starting early in my legal career, I have litigated matters against banks on
9 behalf of consumer homeowners, including the *Citigroup* case referenced above. I participated,
10 albeit in a minor and early role, in the firm's *Campbell v. Facebook* litigation.

11 20. Currently, and attesting to my role in a breadth of complex and novel litigation, I
12 serve as co-lead counsel in litigation alleging kickbacks in the sale of HUMIRA; am on the
13 consumer/class action side of the Plaintiffs' Steering Committee in *In re VALSARTAN*
14 *LOSARTAN AND IRBESARTAN PRODUCTS LIABILITY LITIGATION*, 19-md-02875 (D.N.J.);
15 and am part of a team representing a certified class of women in employment discrimination
16 litigation against Goldman Sachs.

17 21. I am committed to working collaboratively and creatively. I have served as the
18 Employee-Side Chair of the ABA Labor and Employment Law Sections' EEO committee, with
19 employer and in-house chairs as well. In 2001, I received a Distinguished Honor Award by the
20 Department of State for my efforts on a special project resulting in a matrix to determine member
21 nations' contributions to fund the United Nations.

22 22. I am a frequent writer and speaker on class action topics, and have spoken at
23 conferences hosted by the National Consumer Law Center and the ABA, among others. Relevant
24 topics have included consumer damage modeling, preemption, statistics for lawyers, and class
25 structure/use of issues classes. I chair the Amicus Committee of the New York Chapter of the
26 National Employment Lawyers Association. In addition to my personal experience and expertise,
27 I will work with my partners Michael W. Sobol and Melissa Gardner, and Madeline M. Gomez,
28 an LCHB associate, each of whom brings their own wealth of experience.

23. Michael W. Sobol is a 1989 graduate of Boston University School of Law. As the head of LCHB's Consumer Protection Practice Group and its Cybersecurity & Data Privacy Group, he will provide strategic guidance in this matter. Throughout the course of his career, Mr. Sobol has litigated novel and challenging consumer class actions, and has significant experience leading complex litigation in the fields of online privacy, data security, and consumer protection. A selection of his experience in this District includes the CPC, Facebook, and LinkedIn matters noted above, where he served as co-lead counsel, as well as *In re Anthem Data Breach Litig.*, No. 15-2617, (N.D. Cal.), where he served as a member of the plaintiffs' steering committee and achieved a \$115 million settlement and injunctive relief in a multidistrict litigation alleging that deficient cyber-security measures compromised the sensitive personal identifying information of more than 80 million persons. Mr. Sobol was also lead or co-lead counsel in many of the cases referenced in paragraph 14.

24. Ms. Gardner is a 2011 graduate of Harvard Law School. She is a partner at LCHB, and is a member of the firm's Cybersecurity and Data Privacy and Consumer Protection practice groups. Ms. Gardner has extensive experience defending consumers' privacy rights against incursions by the technology industry, including in *In re Google Inc. Street View Electronic Communications Litigation*, No. 3:10-md-21784-CRB (N.D. Cal.); *Matera v. Google Inc.*, No. 5:15-cv-4062 (N.D. Cal.); *Campbell v. Facebook, Inc.*, No. 5:13-cv-5996 (N.D. Cal.); and *Perkins v. LinkedIn Corp.*, No. 5:13-cv-4303 (N.D. Cal.), and with data security class actions in this District, including *In re Anthem Inc. Data Breach Litigation*, MDL No. 2617 (N.D. Cal.) and *In re Intuit Data Litigation*, No. 5:15-cv-01778 (N.D. Cal.). Ms. Gardner was named a "Rising Star for Northern California" each year in 2017-2020.

25. Ms. Gomez joined LCHB in 2019 as an associate and is a 2015 graduate of Columbia Law School. Prior to joining LCHB, she spent two years representing plaintiffs in complex civil litigation under 42 U.S.C. § 1983.

Plaintiffs' Steering Committee

26. As Plaintiffs' Complaint demonstrates, this litigation will be a large undertaking and has thus far required ample investigation and attorney efforts. Plaid's unlawful collection and

1 sale of consumer data dates back to 2013 and continues today, and involves potentially millions
2 of users and a trove of data. *See, e.g., Cottle Complaint* at ¶¶ 41-45. As a result, this case will
3 likely involve voluminous discovery, which—in order to ensure the security and privacy of the
4 plaintiffs and the putative Class members—will require careful review and analysis.
5 Furthermore, the complex technological aspects of this case will potentially involve multiple
6 experts, including on topics such as mobile app coding, development, and design; cyber- and
7 data-security; consumer understanding and associations with bank logos and their facsimiles;
8 banking practices; and damage modeling. Proposed Co-Lead Counsel recognizes that tasks
9 associated with these case needs may have to be performed simultaneously, and will require
10 substantial input from attorneys with in-depth understanding of the facts and legal issues in this
11 case. Additionally, Proposed Co-Lead Counsel believes that cooperation and collaboration
12 between Plaintiffs’ attorneys can afford Plaintiffs and the Class with the best opportunity to
13 achieve a meaningful result in this litigation.

14 27. Thus, in addition to Interim Co-Lead Counsel of Burns Charest, LLP, Herrerra
15 Purdy, LLP, and LCHB, Plaintiffs and the class in this litigation will benefit from the assistance,
16 experience, and expertise of counsel serving on the Plaintiffs’ Steering Committee (“PSC”),
17 which consists of Nussbaum Law Group, P.C.; Reinhardt, Wendorf, & Blanchfield; Robins
18 Kaplan, LLP; and Spector Roseman & Kodroff, PC.

19 28. **Nussbaum Law Group, P.C.** (“NLG”) is a boutique litigation firm specializing in
20 the prosecution of complex class litigation. Linda Nussbaum, the firm’s founder, has been at the
21 forefront of landmark fair competition cases for over 35 years. The firm maintains a particular
22 focus on cases, like this one, involving retail banking and data privacy issues. NLG is co-lead
23 counsel for a proposed class of millions of merchants pressing antitrust claims against major
24 payment card networks and banks in *In re Payment Card Interchange Fee and Merchant*
25 *Discount Antitrust Litigation*, MDL 1720 (E.D.N.Y.). NLG is also serving as co-lead counsel for
26 consumer plaintiffs in *In re Wawa Inc. Data Security Litigation*, No. 19-cv-6019 (E.D. Pa.), and
27 as co-lead counsel for one of three plaintiff tracks in *In re American Medical Collection Agency*,
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1 *Inc., Customer Data Security Breach Litigation*, MDL 2904 (D.N.J.). NLG attorneys have
2 previously maintained leadership positions in several additional cases involving retail banking.

3 29. **Reinhardt Wendorf & Blanchfield** is a nationally-known class action firm with
4 an emphasis on representing plaintiffs in complex litigation. The philosophy of the firm
5 encompasses the values of hard work, ingenuity, integrity and a successful result. RWB's
6 excellence has been recognized by courts as well as peers, and their efforts have helped pave the
7 way to significant and ground-breaking recoveries for their clients and classes.

8 30. **Robins Kaplan LLP** is among the nation's premier trial law firms, with more than
9 220 attorneys in eight major cities, and a track record of obtaining history-making successes for
10 plaintiffs in consumer protection cases and other complex matters. Robins Kaplan has obtained
11 over \$9 billion in settlements on behalf of plaintiffs in large-scale litigation and has repeatedly
12 received recognition for its accomplishments from leading legal-ranking organizations. The
13 Robins Kaplan attorneys who will be litigating this action have been selected to serve in court-
14 appointed lead counsel positions in numerous vigorously contested class actions and currently
15 spearhead some of the most expansive class cases in U.S. history. Robins Kaplan is familiar with
16 the demands of large, complex class actions and has already begun investing the resources
17 necessary to properly prosecute this action.

18 31. **Spector Roseman & Kodroff, P.C.** is a highly regarded and successful law firm
19 with a nationwide practice that focuses on class actions and complex litigation, including
20 antitrust, consumer protection, securities, and commercial claims. The firm is active in major
21 litigation in state and federal courts throughout the country. The firm's reputation for excellence
22 has been recognized by numerous courts, which have appointed the firm as sole lead counsel and
23 co-lead counsel in many prominent class actions. As a result of the firm's efforts, defrauded
24 consumers and shareholders have recovered billions of dollars in damages and implemented
25 important corporate governance reforms. The firm is rated "AV" by Martindale-Hubbell, its
26 highest rating for competence and integrity. Please review our website for more information at
27 www.srkattorneys.com.

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