

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 SHAWN M.
KENNEDY 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
3 themselves and all others similarly situated,

4 Plaintiffs,

5 v.

6 PLAID INC., a Delaware corporation,

7 Defendant.

Case No: 3:20-cv-04480-JSC

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1 I, SHAWN M. KENNEDY, hereby declare as follows:

2 1. I am a partner of the law firm of Herrera Purdy LLP (“HP”), co-counsel in *Cottle*
3 *v. Plaid*, No. 4:20-cv-03056 (N.D. Cal.) (“*Cottle Action*”), and Proposed Interim Co-Lead
4 Counsel in the above-captioned actions. I am a member in good standing of the Bar of the State of
5 California and am admitted to practice before this Court. I have personal knowledge of the
6 statements contained in this declaration and, if called to testify, I could and would testify
7 competently to them. I submit this declaration in support of the Parties’ Stipulation to Consolidate
8 Actions and Appoint Interim Co-Lead Class Counsel.

9 2. HP first discovered and investigated the privacy breaches alleged in this action,
10 and the firm represents the two proposed class representatives that first filed suit. HP’s partners
11 have been entrusted with leadership roles in significant antitrust and consumer class actions and
12 have discovered, initiated, and pursued groundbreaking *qui tam* actions alleging anticompetitive
13 conduct by some of the largest and well-represented companies in the world. Over the last three
14 years, HP’s partners have recovered over \$200 million in damages on behalf of injured consumers
15 in exceedingly large and complicated class actions. HP is therefore well-suited to help lead this
16 action, and the firm has contributed significantly to the development and prosecution of this case.

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

18 3. This litigation involves four separately-filed putative class actions, filed by
19 multiple law firms, against the same defendant alleging the same conduct.

20 4. The factors for appointment of lead class counsel under Rule 23(g) favor
21 appointment of HP as interim co-lead class counsel. These factors include:

- 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.
- 28

1 Fed. R. Civ. P. 23(g)(1)(A).

2 **HP First Discovered, Investigated, and Developed this Litigation**

3 5. In addition to significant experience litigating various types of complex class
4 actions in this District and throughout the United States, HP brings a significant experience in the
5 claims and issues specific to this litigation. As discussed below, I have extensive substantive
6 knowledge regarding financial and other technology issues, having founded technology
7 companies in the legal and financial technology industries, and that background provided me with
8 the expertise and insight to uncover Plaid Inc.'s privacy breaches at issue in these consolidated
9 actions. My partners and I have guided the investigation and development of the factual
10 allegations and claims in this case. In collaboration with our co-counsel in the *Cottle* Action
11 (Lieff Cabraser Heimann & Bernstein, LLP and Burns Charest LLP), HP has conducted a
12 thorough pre-filing investigation, which afforded counsel in the *Cottle* Action an understanding of
13 Plaid's business practices and the issues before the Court.

14 6. Along with our co-counsel, HP spearheaded the investigation into the history and
15 evolution of Plaid's business, including its founding and growth within the fintech industry. HP
16 and co-counsel developed an understanding of Plaid's business model, the distinctions between
17 its consumer-facing and industry-facing messaging, and some of the methods Plaid uses and
18 previously used to collect data from consumers and deliver that data to its fintech customers.

19 7. I personally undertook the initial research and investigation of Plaid's privacy
20 policies, messaging and disclosure to consumers as they developed over time, and the relevant
21 involvement of consumer-facing third party apps—such as Venmo, Coinbase, Square's Cash
22 App, and Stripe—to understand the scope of Plaid's unlawful gathering and use of consumers'
23 private financial information, the company's deceptive messages to consumers, and the limited
24 information provided to consumers whose information is obtained and misused by Plaid through
25 third party apps that incorporate Plaid's software.

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

9. With the benefit of this factual backdrop, HP and co-counsel conducted legal research and analysis to determine and assert the appropriate claims on behalf of plaintiffs and the putative Class.

10. HP is committed to providing the best possible representation for consumers in this action, and continues to work collaboratively with co-counsel in researching and reviewing Plaid's evolving disclosures to users of the relevant apps—which, while still inadequate, have been amended by Plaid even since, and possibly due to, the commencement of the *Cottle* Action—and public-facing statements regarding Plaid's business practices and use of private consumer data.

Herrera Purdy LLP

11. HP and its partners have served in leadership roles in some of the largest and most complex class actions and *qui tams* over the last several years, including the following representative cases:

a. *United States ex rel. Silbersher v. Janssen Biotech, Inc.*, No. 2:19-cv-12107 (KM-HBC) (D.N.J.); *United States ex rel. Allergan plc*, No. 3:18-cv-3017-JRS (N.D. Cal.); and *United States ex rel. Silbersher v. Valeant Pharms. Int'l Inc.*, No. 3:18-cv-1496-JD (N.D. Cal.). HP is lead counsel in these ground-breaking *qui tam* actions seeking billions of dollars of overcharges to Medicare, Medicaid, and other government-funded healthcare programs. The suits allege that several of the largest pharmaceutical companies in the world fraudulently obtained drug patents and used them to exclude generic competitors to artificially inflate the price of medicine and charge the government monopoly prices for them. The State of California recently filed a statement of interest crediting these lawsuits as important cases that may “set an important precedent that would discourage drug companies from taking advantage of the *ex parte* nature of patent proceedings by withholding or misrepresenting material information relating to patentability—and thereby significantly reduce the amount governments and insurers pay for important medicines.” See *Allergan plc*, No. 3:18-cv-3017-JRS (N.D. Cal.), at Dkt.

133, p. 2.

2 b. *In re Capacitors Antitrust Litig*, No. 17-MD-2801-JD (N.D. Cal.). HP
3 partner Andrew M. Purdy investigated and filed the first antitrust action on behalf
4 of a direct purchaser class in a price-fixing suit involving an international cartel
5 including dozens of multinational companies while at a prior law firm; with HP
6 partner Nicomedes Sy Herrera, Mr. Purdy led a litigation team overseeing
7 prosecution of this action seeking \$1.5 billion in antitrust damages involving over
8 30 million pages of documentary evidence and over 100 depositions, many taken
9 in foreign countries, and in several languages. Messrs. Herrera and Purdy took
10 leading roles in negotiating over \$200 million in settlements over a three-year
11 period.

12 c. *In re HP Printer Firmware Update Litig.*, No. 5:16-cv-05820-EJD-SVK
13 (N.D. Cal.). HP partner Nicomedes Sy Herrera served on the leadership team (in
14 prior firm) for consumer class action alleging that printer manufacturer designed
15 and implemented a malicious firmware update to disable its printers from using
16 competitors' ink cartridges.

17 d. *In re Restasis Antitrust Litig.*, No. 18-MD-2819 (E.D.N.Y.). HP partner
18 Nicomedes Sy Herrera served on the leadership team in prior firm for class of end-
19 payors who were overcharged hundreds of millions of dollars for the dry-eye drug
20 Restasis®, manufactured by Allergan. The lawsuit alleges that Allergan and its co-
21 defendants unlawfully asserted fraudulently-obtained patents for Restasis® to
22 exclude generic competitors and thereby artificially inflate the price of the
23 medicine.

24 e. *In re Cedar Shakes and Shingles Antitrust Litig.*, No. 2:19-CV-00288-MJP
25 (W.D. Wash.). Counsel for class of purchasers of roofing and siding materials
26 alleging manufacturers and trade association conspired to artificially stabilize
27 pricing).

12. More information about HP's track record of success on behalf of plaintiffs in complex class and individual litigation can be found at the firm's website: www.HerreraPurdy.com.

The HP Team in the Instant Litigation

13. The cases above and the history of the firm's partners successfully protecting consumer rights through class and individual litigation demonstrate that HP is well-qualified to serve as Interim Co-Lead Class Counsel in this action.

14. I, Shawn M. Kennedy, along with my partners Nicomedes Sy Herrera and Andrew M. Purdy, will serve as the primary representatives for HP in meetings of Co-Lead Counsel and the Plaintiffs' Steering Committee. Our partners Laura E. Seidl and Bret D. Hembd will also contribute their expertise in prosecuting the claims on behalf of the Class.

15. I am a 2001 graduate of Duke University School of Law and have been a partner at HP since 2019. I have over 18 years of experience in handling complex business litigation matters on behalf of public and private companies, corporate executives, and law firms. I have litigated numerous high-stakes consumer class actions involving securities, antitrust and consumer fraud claims. In addition, as the founder of technology companies in the legal and financial industries, I have extensive experience and substantive knowledge regarding cloud-based technology; software development; security and privacy; and data storage and analytics; and many other salient issues. This experience and knowledge have proved invaluable in uncovering and investigating Plaid's wrongful conduct alleged in these consolidated actions. Prior to joining HP, I practiced with international law firms Morgan, Lewis & Bockius LLP, and Howrey LLP.

16. My partner, Nicomedes Sy Herrera, is a strategic litigator with over 22 years of experience litigating a broad range of complex, high-impact privacy, antitrust, and consumer class actions, derivative suits, and *qui tams*. Mr. Herrera investigated and commenced a series of billion dollar *qui tam* lawsuits against some of the largest pharmaceutical manufacturers based on the drug companies' assertion of fraudulently-procured patents to exclude generic competition. The groundbreaking suits allege that in procuring and asserting fraudulent patents, the drug companies unlawfully inflated the price of drugs sold to, or reimbursed by, federal and state

1 agencies. Mr. Herrera has also held senior executive and general counsel positions for several
 2 New York and Chicago-based financial services firms. Mr. Herrera graduated with honors from
 3 Columbia Law School in 1997, where he was a Harlan Fiske Stone Scholar. He earned his
 4 Bachelor's Degree *cum laude* from Columbia College in 1994.

5 17. My partner Andrew M. Purdy is a seasoned litigator with over 17 years of
 6 experience both prosecuting complex claims and defending his clients against them in high-stakes
 7 matters. Mr. Purdy has successfully litigated and tried a wide array of cases in federal and state
 8 courts throughout the country. His current practice centers on prosecuting privacy, antitrust,
 9 intellectual property, and *qui tam* actions. Mr. Purdy graduated *cum laude* from American
 10 University, Washington College of Law in 2002 where he was an editor of the American
 11 University Law Review. He earned his bachelor's degree *cum laude* from Vanderbilt University
 12 in 1999.

13 18. My partner Laura E. Seidl is a skilled litigator with a history of outstanding
 14 success representing people from all walks of life. Her clients have ranged from private equity
 15 investors litigating complex derivative lawsuits with hundreds of millions of dollars at stake to
 16 individuals suffering homelessness during the Bay Area housing crisis. Ms. Seidl was graduated
 17 from New York Law School in 2008, where she was honored as a successful member of their
 18 competitive Moot Court association. She earned her Bachelor's Degree *cum laude* from the
 19 Honor's College at Michigan State University in 2004.

20 19. My partner Bret D. Hembd is an accomplished litigator who represents individuals
 21 and companies in a broad array of business litigation in state and federal court. Mr. Hembd
 22 earned his J.D. from Yale Law School in 2010, where he served as an Editor of The Yale Law
 23 Journal. He earned his bachelor's degree *summa cum laude* from UCLA in 2004. Mr. Hembd
 24 began his legal career as an associate at Irell & Manella.

25 **Plaintiffs' Steering Committee**

26 20. As Plaintiffs' Complaint demonstrates, this litigation will be a large undertaking
 27 and has thus far required ample investigation and attorney efforts. Plaid's unlawful collection and
 28 sale of consumer data dates back to 2013 and continues today, and involves potentially tens of

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

13 21. Thus, in addition to Interim Co-Lead Counsel of Lieff Cabraser Heimann &
14 Bernstein, LLP and Burns Charest LLP, Plaintiffs and the class in this litigation will benefit from
15 the assistance, experience, and expertise of counsel serving on the Plaintiffs’ Steering Committee
16 (“PSC”), which consists of Nussbaum Law Group, P.C.; Reinhardt, Wendorf, & Blanchfield;
17 Robins Kaplan, LLP; and Spector Roseman & Kodroff, PC. Descriptions of these firms are found
18 in the Declaration of Rachel Geman in Support of Stipulation to Consolidate Actions and Appoint
19 Interim Co-Lead Class Counsel, and will not be repeated here in the interest of efficiency and
20 brevity.

21 22. Based on their vast experience and as evidenced by their past successes, it is my
22 opinion that Proposed Co-Lead Counsel and the proposed PSC members understand the
23 magnitude of personnel and financial resources this case will require and will continue to commit
24 their resources to this case.

25 23. Finally, Proposed Co-Lead Counsel will draw upon more junior attorneys and
26 support staff for appropriate tasks so as to prosecute the case as efficiently as possible for the
27 benefit of the Class. Similarly, when Proposed PSC members are called upon to assist in the
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1 litigation, Proposed Co-Lead Counsel will make sure that tasks are assigned to individuals based
2 on their appropriate expertise and skill level, so as to minimize cost to the Class.

3 * * *

4 I declare under penalty of perjury under the laws of the United States that the foregoing is
5 true and correct. Executed this 17 day of July, 2020, in Newport Beach, California.

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9 /s/ Shawn M. Kennedy
10 Shawn M. Kennedy
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