

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION**

AMERICAN PHILOSOPHICAL
ASSOCIATION, et al.,

Plaintiffs,

v.

DISTRICT OF COLUMBIA,

Defendant.

Civil Case No. 2019 CVT 000003
Judge Kimberly S. Knowles

Next Date: None

**DECLARATION OF JEFFREY KLAFTER IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES,
AND A SERVICE AWARD**

I, JEFFREY KLAFTER, declare under the penalty of perjury and state as follows:

1. I am a Partner of the law firm of Klafter Lesser LLP and Class Counsel for Plaintiff and Class Representative American Anthropological Association and the certified Class in the above-captioned matter.

2. I make this Declaration in support of Plaintiffs' Motion for an Award of Attorneys' Fees and Expenses and for a Service Award. All of the facts stated herein are true and correct and are based upon my personal knowledge and various documents relevant to this matter.

3. To achieve the significant financial tax refunds obtained in this case, it has been necessary for Class Counsel to engage in substantial motion practice and discovery over the last eight years as well as present the testimony of ten witnesses, present oral arguments, and submit many briefs during the damages phase of this case.

4. This case was originally filed in this Court's Civil Division and assigned Case No. 2017 CA 004057 B. Shortly after it was filed, on August 29, 2017, the District moved to dismiss the Complaint on the grounds that the Court lacked jurisdiction because Plaintiffs first had to exhaust their remedies before the District Office of Tax and Revenue ("OTR") and that Plaintiffs' claims were barred by the District's Anti-Injunction Act.

5. After extensive briefing, on December 1, 2017, Judge Hollman heard oral argument on the District's motion to dismiss. There was also briefing by the parties following the hearing. As Judge Hollman retired before ruling on this motion, the case was then assigned to Judge Epstein, who decided the District's motion to dismiss by order dated January 29, 2019, denying in all respects and referring this matter to the Tax Court, which assigned the present case number to it.¹

6. Upon the Tax Court's receipt of this case, Judge Pittman was assigned to the case. Shortly after the reassignment to Judge Pittman, on March 8, 2019, the District moved for reconsideration of Judge Epstein's ruling that Plaintiffs did not first have to assert their claims before the OTR. The District further maintained that, even assuming Plaintiffs were not required to first file their claims with the OTR, the Court could consider refund claims going back only six months from the date when the Complaint was filed. The District also moved on March 11, 2019 to stay discovery and briefing on Plaintiffs' forthcoming class certification motion, or alternatively for an extension of time to respond to that motion, due to the pendency of its motion for reconsideration before Judge Pittman. Class Counsel prepared and filed oppositions to both motions. By order dated May 30, 2019, Judge Pittman denied the District's motion for

¹ A true and correct copy of Judge Epstein's decision is attached hereto as Exhibit A.

reconsideration but did limit the case to taxes paid no earlier than six months before the action was filed.²

7. Class Counsel prepared and filed Plaintiffs' motion for class certification on March 29, 2019. Before doing so, Plaintiffs subpoenaed the Marriott Wardman Park Hotel for documents identifying the organizations that held events at the hotel and paid taxes during six months of the Class Period to show, together with other sources of information, that the members of the Class were ascertainable—a requirement for class certification. The briefing on Plaintiffs' motion for class certification included a reply brief prepared by Class Counsel and a sur-reply brief by the District. By Order dated April 30, 2021, Judge Pittman granted Plaintiffs' motion for class certification and also appointed Plaintiff AAA as the Class Representative and Plaintiffs' counsel as Class Counsel.³

8. Class Counsel thereafter engaged in a substantial effort to subpoena and meet and confer with all the hotels that are a part of the certified Class concerning their identification of potential Class members and the form in which they would produce this information. One hotel—the Omni Shoreham—refused to comply with Plaintiffs' subpoena and moved to quash it. Class Counsel prepared an opposition to that motion to quash and, on July 23, 2021, Judge Pittman denied Omni's motion.⁴

9. Class Counsel also met and conferred with counsel for the District and ultimately reached agreement on the form and content of the Notice of Pendency to be mailed to the potential Class members identified from the subpoenaed records obtained by the hotels and from

² A true and correct copy of Judge Pittman's decision is attached hereto as Exhibit B.

³ A true and correct copy of Judge Pittman's decision is attached hereto as Exhibit C.

⁴ A true and correct copy of Judge Pittman's decision is attached hereto as Exhibit D.

a few other sources. On October 14, 2021, Judge Pittman approved this Notice and the manner of providing it to potential Class members and directed that any requests for exclusion be postmarked or received within 45 days of the mailing of the Notice.⁵

10. On December 13, 2021, the Class Notice approved by the Court was mailed by first-class mail to the 3,221 potential Class members identified from the records of the entities specified in that Order. The last date for Class members to request exclusion from the Class was January 27, 2022. Only three members of the Class did so.

11. After the opt-out period had expired, Class Counsel prepared and filed Plaintiffs' motion for summary judgment as to liability on behalf of the Class on April 8, 2022.

12. The District was afforded additional time in which to respond. Before it responded, in June 2022, Class Counsel sent a demand to settle the claims of the Class to District counsel. That demand led to agreement to stay the case, which was so ordered by Judge Pittman. Extensive settlement discussions among the parties then ensued but they were unsuccessful.

13. Ultimately, the parties agreed to further attempt to resolve the claims of the Class with the assistance of a private mediator and, in October 2022, the parties agreed on Hunter Hughes to conduct the mediation. The mediation occurred on December 22, 2022 without resolution, but the mediator continued his efforts to resolve this class case until February 7, 2023, when he declared an impasse and the mediation then ended. In connection with that mediation, Class Counsel prepared a mediation statement, analyzed the District's mediation statement, and had numerous exchanges of damages-related information with the mediator and District's counsel.

⁵ A true and correct copy of Judge Pittman's decision is attached hereto as Exhibit E.

14. Given the impasse, Plaintiffs moved forward with their effort to obtain summary judgment as to liability and on February 9, 2023 obtained an order from Judge McCabe, who was then assigned to the case, lifting the stay and setting dates for the District to respond to Plaintiffs' motion for summary judgment and for Plaintiffs' reply brief.

15. The District filed its opposition to Plaintiffs' motion for summary judgment on March 27, 2023, but also filed a cross-motion for summary judgment in which it sought a ruling from the Court that semipublic institutions are limited to § 501(c)(3) organizations and that the District should be liable for taxes paid only by Class members and not by individual attendees of meetings. On April 24, 2023, Class Counsel filed Plaintiffs' reply brief, which they prepared, in further support of their motion for summary judgment, as well as Plaintiffs' opposition to the District's cross-motion. On May 8, 2023, the District filed a reply brief. On February 12, 2024, Judge McCabe granted Plaintiffs' motion for summary judgment and denied in totality the District's cross-motion.⁶ Shortly thereafter, this action was reassigned to Your Honor.

16. At about the time of the reassignment of this action to Your Honor, on March 12, 2024, the Clerk entered a "Certified Order Granting Plaintiff's Motion for Summary Judgment," and a docket entry was made stating "Case Disposed - Summary Judgment Granted." The "case status" notation on the docket also indicated that the case is "Closed" as of that date.

17. Class Counsel on behalf of Plaintiffs and the District both filed motions seeking to have the case reopened, and Class Counsel also prepared a number of filings and opposed a number of other District filings in an effort to move this case into the damage phase by authorizing the sending of notice and claim forms to potential Class members.

⁶ A true and correct copy of Judge McCabe's decision is attached hereto as Exhibit F.

18. Specifically:

- (a) On April 4, 2024, the District moved for this Court to reopen this case and to hold a Status Conference to determine the next steps.
- (b) On April 5, 2024, Class Counsel filed its own motion to reopen the case but stated that the next step should be for Plaintiffs to file a motion to distribute a notice and claim form to potential Class members.
- (c) On April 16, 2024, Class Counsel filed Plaintiffs' Motion to Approve Claim Form and Notice and for the District to pay the cost of providing notice.
- (d) On April 29, 2024, the District moved to stay briefing on Plaintiffs' Motion.
- (e) On May 2, Class Counsel filed Plaintiffs' opposition to the District's stay motion.
- (f) On September 4, 2024, Class Counsel filed Plaintiffs' Motion for Prompt Rulings.

19. The Court ultimately entered an order on November 4, 2024 reopening this case and setting a Status Conference for November 25, 2024. Given the class notification issues identified by the Court in its November 4, 2024 Order and perceived benefit to the Court in putting Plaintiffs' positions in writing before the Status Conference, on November 15, 2024, Class Counsel prepared and filed a Motion for Leave To Submit Response to the Court's November 4, 2024 Order, and submitted that proposed Response.

20. At the November 25, 2024 Status Conference, Class Counsel proposed sending notice only to potential Class members that are § 501(c)(3) entities, and District counsel agreed to meet and confer with Class Counsel as to providing notice and a claim form only to such potential Class members and to report to the Court by December 20, 2024.

21. Class Counsel engaged in those meet-and-confer efforts but were unable to reach agreement on sending notice and claim forms to Class members who are § 501(c)(3) entities as the District advised that it intended to file dispositive motions.

22. Class Counsel worked with the District's counsel to prepare and file on December 20, 2024 the Court's requested Joint Status Report, which set forth the respective positions of the parties. Also, on December 20, 2024, Class Counsel filed Plaintiffs' renewed motion for this Court to enter its prior Order with regard to providing notice and claim forms to potential Class members.

23. And, on December 27, 2024, Class Counsel filed Plaintiffs' renewed motion to require the District to pay for the cost of providing notice and claim forms to potential Class members.

24. In addition to briefing these motions, the District, on January 16, 2025, again moved to dismiss the action and moved to decertify the class. Extensive efforts on the part of Class Counsel were necessary to respond to the District's two motions before the end of January 2025, which they did. Class Counsel then argued in opposition to the District's motions during the hearing on February 3, 2025. At that hearing, Class Counsel indicated that they would agree to limit the Class to only § 501(c)(3) entities. By Order dated February 19, 2025, the Court denied both of the District's dispositive motions.

25. As directed by the Court's February 19, 2025 Order, Class Counsel met and conferred with the District's counsel concerning the procedures to govern this case going forward and also prepared a Consent Motion to modify the class as represented at the February 3, 2025 hearing. Class Counsel and District counsel were able to reach agreement on the notice

procedure and form and content of the Notice and Claim form except for the District's insistence that both warn potential Claimants that they may have to appear in Court.

26. This dispute required Class Counsel to submit a brief setting forth Plaintiffs' grounds for opposing this language, which they filed on February 24, 2025. The District filed its opposition on March 11, 2025, and this Court issued an order on March 12, 2025 rejecting the District's proposed language, approved the Notice and Claim form submitted by Plaintiffs, and set forth the schedule for mailing, for submitting Claims, and for subsequent proceedings. As directed, the Notice and Claim forms were mailed to potential Class members by first-class mail on March 28, 2025 by the Court-approved Claims Administrator – RG/2 Claims Administration LLC ("RG/2").

27. Following the June 6, 2025 deadline for submitting Claims, Class Counsel met and conferred with the District's counsel concerning Claims to which it objected and spent countless hours communicating with Claimants to obtain additional information to address the District's objections.

28. Due to the District's request for additional time, the hearings originally scheduled for July 29 and 30, 2025 were rescheduled by this Court for September 3 and 4, 2025. Class Counsel prepared and filed on August 8, 2025 an extensive submission concerning the then-disputed claims. Class Counsel also prepared and filed Plaintiffs' Supplemental Submission on August 27, 2025.

29. During the September hearings, Class Counsel presented argument on the District's omnibus "Unexpired Tax Exemption" and "Other Meetings" objections and also made overarching points in response to the District's "DC Office" objection and specific points as to the District's imputed "DC Office" objection to the John Carroll Society Claim (DCT 1195).

Shortly after the September 3, 2025 hearing, this Court issued its Order Clarifying Class Definition by which this Court rejected the District’s contention that only taxes paid in connection with meetings held by a Claimant qualified.

30. During these September hearings, Class Counsel also presented the testimony of six Claimants to refute the District’s objections. Two witnesses addressed the District’s “DC Office” objection to their organization’s Claims, and four witnesses testified as to the District’s “Proof of Payment” objections to their organization’s claims.

31. Following the hearing, Class Counsel met and conferred with District counsel in an effort to reach agreement on additional Claims, and Class Counsel communicated with numerous Claimants with regard to their providing testimony at the hearings scheduled for October 1 and 2, 2025.

32. Further, as directed by the Court, Class Counsel prepared and submitted to District counsel on September 17, 2025 their Witness List for those upcoming hearings, which included references to or the actual exhibits that Class Counsel planned to use with each witness. The District responded to Class Counsel’s Witness List on September 25, 2025, which response obviated the need for many witnesses on the Witness List to testify as the District withdrew its objections to their Claims or the District agreed to accept them with certain modifications.

33. As a result, it was only necessary for Class Counsel to present the testimony of four witnesses at the October 1 and 2, 2025 hearings—three to address the District’s “Other Meetings” objections and one to address the District’s omnibus “Unexpired Tax Exemption” objections.

34. During the October hearings, Class Counsel also addressed the issue of the Association for Jewish Studies’ (DCT 1089) upcoming meeting in early December and the need

for this Court to retain jurisdiction due to the District's continued enforcement of the D.C. Code provision found unconstitutional by this Court.

35. Class Counsel also met and conferred with District counsel as to the schedule for the post-hearing submissions by the parties and for briefing Plaintiffs' request for attorneys' fees and expenses and the District's request to vacate the part of the summary-judgment ruling by Judge McCabe for which the District cross-moved and lost. That schedule was adopted by this Court in its Order issued October 6, 2025.

36. To date, in addition to the present fees and expenses motion, Class Counsel prepared and is concurrently filing their post-hearing submission, additional work by Class Counsel will be required to prepare and respond to the District's post-hearing submission, the District's motion to vacate, and any other issues raised by this Court.

37. Even after this Court rules on the disputed Claims and the other issues, Class Counsel's work will not be done as they will have to compute the interest to which each approved Claimant will be entitled and, following the entry of the Judgment, oversee the mailing of checks to approved Claimants by the Court-approved Claims Administrator, RG/2.

38. Class Counsel have many decades of extensive experience prosecuting class actions involving complex and challenging issues and have applied that expertise to a successful resolution of this action.⁷

39. I have discussed the provision in the Notice regarding Plaintiffs' anticipated motion for attorneys' fees and expenses with many Claimants, and not a single Claimant has indicated to Class Counsel that they opposed such a request.

⁷ Attached as Exhibit G hereto is the Firm Resume of my Firm, which describes the extensive experience of my Firm and myself in prosecuting complex class actions such as this.

40. I have discussed the requested percentage award of 32% of the fund/benefit with the Class Representative, AAA, and it has given its approval for Class Counsel to seek this percentage award from this Court.

41. Class Counsel's fees and expenses motion and all supporting papers are being posted on the Claims Administrator's Case website, and Class Counsel is advising by email each Claimant whose Claim is now undisputed or disputed that they can review those papers there and to advise Class Counsel if they have any questions, issues, or objections with Class Counsel's request no later than November 7, 2025. Class Counsel will promptly advise the Court of any objections.

42. I have computed all the dollar amounts set forth in the following Chart and believe my calculations are accurate:

	\$ Amount of Agreed-to Claims	\$ Amount of Agreed-to and Disputed Claims
	\$5,723,119.21	\$6,585,036.34
Attorneys' Fees	\$1,831,398.15	\$2,107,211.63

43. If the Court adopts Plaintiffs' position regarding the period for which pre-judgment interest should be computed, the estimated pre-judgment interest on the Agreed-to Claims and Agreed-to and Disputed Claims would be assuming an average of 3.5 years of interest, approximately \$1.2 million on the undisputed claims and approximately \$1.38 million on the undisputed and disputed claims. The calculation of the actual amount of pre-judgment interest will have to await rulings by this Court as to the disputed Claims and as to the period as to when pre-judgment interest runs.

44. My firm, Klafter Lesser, has itself expended 1410.12 hours litigating this case. These professional services amount to an aggregate lodestar of \$1,209,300.50. The hours

reported are reasonable for a case of this complexity, magnitude, and length and were compiled from time records duly maintained by each attorney and paralegal of my Firm.

45. Specifically, the following attorneys and staff of my Firm worked on this case, for the hours set forth below, and at the current hourly rates set forth below, to obtain the lodestar figures:

NAME	TITLE	TOTAL HOURS	HOURLY RATE	LODESTAR
Jeffrey Klafter	Partner	625.8	\$1,200.00	\$750,960.00
Seth Lesser	Partner	136.67	\$1,175.00	\$160,587.25
Cyrus Kornfeld	Associate	212.1	\$400.00	\$84,840.00
Jessica Rado	Associate	31.78	\$450.00	\$14,301.00
Morgan Stacey	Associate	24.3	\$450.00	\$10,935.00
Alexis Castillo	Associate	94.8	\$475.00	\$45,030.00
Christopher Timmel	Associate	60.5	\$625.00	\$37,812.50
Sarah Sears	Associate	116.47	\$600.00	\$69,882.00
Nancy Velasquez	Paralegal	59.9	\$335.00	\$20,066.50
Myra Monteagudo	Paralegal	21.85	\$325.00	\$7,101.25
Nicole Barrera	Paralegal	25.95	\$300.00	\$7,785.00
TOTAL		1410.12 Hours		\$1,209,300.50

46. These hourly figures are the same rates that we charge paying clients for our services and reflect the knowledge, the experience of the attorneys and paralegals, the complexity of the cases we undertake, and the reputation of my firm. Hourly Rates reflect 2025 rates, except for former employees, whose Hourly Rate is the rate when they left the firm. Expense items are

billed separately, and such charges are not duplicated in KL's billing rates. The time entries reflecting this lodestar are available for the Court's *in camera* review upon request.

47. Class Counsel expect there will be significant additional work in this case including further post-hearing briefing, computation of the interest due each approved Claimant, and ensuring the smooth distribution of funds to all approved Claimants by the Claims Administrator.

48. This litigation has been complex, costly, and long, having been filed on June 12, 2017. Virtually every issue in dispute in this litigation has been vigorously contested and extensively briefed, and many of these issues were briefed more than once.

49. Class Counsel have faced material risks as to whether they would even receive appropriate compensation for their considerable time spent in prosecuting this case or any compensation at all, which risks still exist today. Class Counsel have had to fend off three challenges to this Court's jurisdiction over this case, and a loss on this issue would have required Plaintiffs and Class members to start from square one by submitting claims to the OTR first and possibly on an individual-by-individual basis, and this issue could be raised again on appeal. Moreover, the dollar amount of claims that would be received, which would drive the attorneys' fees Class Counsel could obtain for their hard work, has been hotly disputed by the parties throughout this litigation and not known until recently. Moreover, although Plaintiffs prevailed on liability, that ruling could also be appealed.

50. Class Counsel's requested fee of 32% of the fund/benefit obtained, if approved by this Court, would result in a lodestar multiplier of between .87 and 1.00 based on their combined reported lodestar and the values set forth in paragraph 42, above.

51. My Firm also seeks reimbursement for litigation expenses and costs incurred in prosecuting this case through October 16, 2025, of \$58,400.00. These costs were all incurred by my Firm with no guarantee of repayment and were all necessary for the prosecution of this

case. They are all reflected in the books and records of my Firm, which are available for the Court's inspection, should it so require. My Firm also seeks payment for RG/2's future costs and fees for distributing tax refunds to all approved Claimants, which specific amount will be known after this Court rules on the 16 disputed Claims. According to the Declaration of Jessie Montague dated October 16, 2025 at paragraph 19, these fees and costs will be at least \$11,505 and may be \$11,860. A summary of each of these expenses by category follows:

Telephone	\$77.05
Overnight Mail	\$23.63
Press Releases re: Court's Liability Determination	\$1,665.00
Lexis/Westlaw	\$9,727.89
Travel (Amtrak, Airline & Hotel)	\$4,543.79
Meals During Travel	\$336.98
Taxis/Uber's During Travel	\$612.87
Mediation (Hunter Hughes)	\$10,000.00
Electronic Hosting of Produced Documents	\$11,354.79
Distribution	\$20,058.00
Total Incurred Expenses	\$58,400.00
RG/2 Tax Refund Distribution Fees and Costs	\$11,505 to \$11,860
TOTAL	\$69,905.00 to \$70,260.00

52. As noted, the above Expense request includes compensation for RG/2, the Claims Administrator, for its fees and costs incurred in directing the original notice of pendency to the Class as ordered by the Court (\$7,414); for fees and costs incurred in connection with Claims Administration of this year's claims process (\$12,644); and for the ultimate distribution of funds to all approved Claimants (\$11,505 to \$11,860), for a total amount of \$31,563 to 31,918. *See* Declaration of Jessie Montague of RG/2, submitted herewith. It does not include RG/2's Notice fees and costs incurred in connection with the notice program earlier this year (\$72,907), for which Class Counsel maintains the District must pay, and for which the District has indicated it

may agree to pay. They should not be borne by Claimants. Based on Class Counsel's experience, each of these amounts is reasonable.

53. Class Counsel seek a Service Award of \$10,000 to Plaintiff and Class Representative, AAA. AAA has had significant involvement in this case since its commencement and has kept informed as to all material developments. AAA also was significantly informed in the failed mediation and all other efforts to resolve this case by settlement. \$10,000 for this commitment is reasonable and should be approved. If approved, Class Counsel will pay \$10,000 from this Court's attorneys' fees award.

As provided under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 17, 2025

Respectfully submitted,

/s/ Jeffrey A. Klafter
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Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I certify that, on October 17, 2025, the foregoing declaration was served on all counsel of record listed in eFileDC via electronic filing.

/s/ *Silvija A. Strikis*
Silvija A. Strikis

Exhibit A

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

AMERICAN PHILOPHICAL
ASSOCIATION, *et al.*

v.

DISTRICT OF COLUMBIA

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Case No. 2017 CA 004057 B

ORDER

The Court grants in part and denies in part defendant District of Columbia’s motion to dismiss. Plaintiffs American Philosophical Association and American Anthropological Association may pursue their claim for a refund in this action even though they did not apply to the Office of Tax and Revenue (“OTR”) for a refund of the sales taxes that they contend they unconstitutionally paid, but they may not obtain from the Court any non-monetary relief relating to these sales taxes. The Court will also transfer the case from the Civil Division to the Tax Division.¹

Each plaintiff is a “semipublic institution” within the meaning of D.C. Code § 47-2001(r), and neither plaintiff maintains offices in the District. D.C. Code § 47-2005(3)(C) exempts semipublic institutions that are “located within the District” from paying District sales taxes, and the parties apparently agree that neither plaintiff qualifies for the exemption because neither is “located within the District.” Each plaintiff has paid substantial sales and use taxes to hotels and other service providers related to its meetings in the District. Plaintiffs contend that the imposition of these taxes only on non-resident semipublic institutions violates the Commerce Clause of the U.S. Constitution and that they are entitled to recover the taxes they paid.

¹ The undersigned judge recently assumed responsibility for this motion following the retirement of the previously-assigned judge.

A. Exhaustion of administrative remedies

Contrary to the District's argument, plaintiffs were not required to apply for a refund from OTR before seeking refunds through the Court.

Exhaustion of administrative remedies may be categorically mandated by statute or prudentially required by courts. *See Washington Gas Light Co. v. Public Service Commission*, 982 A.2d 691, 700-01 (D.C. 2009); *District of Columbia v. Craig*, 930 A.2d 946, 955 (D.C. 2007). "If the statute does mandate exhaustion, a court cannot excuse it," even where exhaustion is futile or where "a seeming hardship results to the taxpayer." *See Craig*, 930 A.2d at 956 (quoting *Avocados Plus Inc. v. Veneman*, 370 F.3d 1243, 1247 (D.C. Cir. 2004), and other cases). "In order to mandate exhaustion, a statute must contain sweeping and direct statutory language indicating that there is no federal jurisdiction prior to exhaustion, or the exhaustion requirement is treated as an element of the underlying claim." *Avocados Plus*, 370 F.3d at 1248 (quotation and citation omitted). "But where Congress has not clearly required exhaustion, sound judicial discretion governs." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) (citation omitted). Because the common-law exhaustion doctrine "is a discretionary rule derived from equity, it allows for some flexibility." *Washington Gas Light Co.*, 982 A.2d at 701 (footnote omitted). "[W]hen the exhaustion requirement is itself a judicial creation," courts may "relieve plaintiffs of exhaustion requirements" if the "administrative process was virtually certain to prove futile." *Craig*, 930 A.2d at 956 (citations omitted).

No statute mandates that a taxpayer must apply for a refund from OTR before seeking a refund through judicial action. The two relevant statutory provisions are D.C. Code §§ 47-2021(a) and 47-3303. Section 47-2021(a) provides that "[a]ny person aggrieved" by OTR's "denial of a claim for refund ... may, within 6 months ... from the date of the denial of a claim

for refund appeal to the Superior Court of the District of Columbia.” This provision authorizes judicial review of an administrative denial of a refund claim, but it does not state that a taxpayer must apply for an administrative refund before seeking judicial relief. Like the statute at issue in *Avocados Plus*, § 47-2021(a) “neither mentions exhaustion nor explicitly limits the jurisdiction of the courts,” and it “merely creates an administrative procedure for challenging the [agency’s] orders.” See *Avocados Plus*, 370 F.3d at 1248. Cf. *Platte River Whooping Crane Critical Habitat Maintenance Trust v. FERC*, 876 F.2d 109, 112-13 (D.C. Cir. 1989) (the Federal Power Act created a jurisdictional exhaustion requirement by providing that “[n]o proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon” and “[n]o objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission”).

Section 47-3303 provides that “[a]ny person aggrieved by any assessment by the District of any ... sales ... tax or taxes ... may, within 6 months after the date of such assessment appeal from the assessment” to the Superior Court, provided that the complainant “shall first pay such tax together with penalties and interest due thereon.” The only prerequisite specified in the statute is that the person shall first pay the tax, and notably absent is any requirement that the person shall also first apply to OTR for a tax refund. The plain language of § 47-3303 does not require OTR review before the taxpayer files suit in Superior Court, and it permits appeal to this Court directly from the assessment of the tax, so long as the tax is first paid.

It is true that “to maintain a refund suit, a taxpayer must follow the specific, statutorily prescribed procedures governing such suits.” *District of Columbia v. Craig*, 930 A.2d 946, 954 (D.C. 2007). “The required procedure to challenge either a tax or an assessment ... is to pay the

tax and within six months of payment, bring a refund suit against the District, or its agency, in the Tax Division of Superior Court.” *D.C. Department of Consumer and Regulatory Affairs v. Stanford*, 978 A.2d 196, 199 (D.C. 2009). This is exactly the procedure that plaintiffs here have followed: they paid the tax and then brought a refund suit against the District in this Court. As the District admits, “here plaintiffs have paid the taxes at issue, and therefore their suit does not imperil the general principle of ‘pay first and litigate later.’” Motion at 9 (quoting *Stanford*, 978 A.2d at 199).

The common-law exhaustion doctrine applies in tax cases, so the Court must decide whether to exercise its discretion to require plaintiffs to apply to OTR for a refund before seeking refunds through the judicial process. The District has not persuaded the Court that exhaustion is warranted in the circumstances of this case. Courts may decline to require administrative exhaustion where the agency “lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute” that the agency is obligated to enforce. *See McCarthy*, 503 U.S. at 147-48. OTR does not have any special expertise concerning the Commerce Clause of the U.S. Constitution. *See generally D.C. Fire & Emergency Medical Services Dep’t v. D.C. Public Employee Relations Board*, 105 A.3d 992, 996 (D.C. 2014) (a “court does not ... defer to an agency’s interpretation of law that the agency has not been delegated the authority to administer”). Moreover, all indications are that any application to OTR for a refund would be futile. The District takes the position that limiting the sales tax exemption for resident semipublic institutions is fully consistent with the Commerce Clause, Motion at 13-18, Reply at 8-9, and the District does not suggest that its tax agency will disagree with the legal opinion of its Attorney General.

These factors distinguish this tax case from the far more common tax cases in which taxpayers challenge the assessment or imposition of a tax as inconsistent with D.C. tax laws or regulations. The common-law exhaustion doctrine “serves several important policy functions: it prevents litigants from evading the agency’s authority, thereby safeguarding the intent of the legislature in creating the agency; it protects agency authority by ensuring that the agency has the opportunity to apply its expertise and exercise its discretion; it aids judicial review by creating a record and promotes judicial economy by channeling claims to the decision maker of the legislature’s choice.” *See Washington Gas Light Co.*, 982 A.2d at 701 (footnotes omitted); *McCarthy*, 503 U.S. at 145 (the “twin purposes” of the exhaustion doctrine are “protecting administrative agency authority and promoting judicial efficiency”). By protecting agency authority, “the exhaustion doctrine recognizes the notion ... that agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer,” and “[e]xhaustion concerns apply with particular force when ... the agency proceedings in question allow the agency to apply its special expertise.” *Id.* (citations omitted).

All of these policies generally apply in typical tax disputes that turn on the construction and application of D.C. tax statutes or regulations. Although OTR does not have special expertise or institutional competence to resolve constitutional questions, it does have expertise in interpreting and applying D.C. tax laws and regulations. That is why courts “defer to reasonable administrative understandings of uncertain legislative commands in the taxation context.” *See Hospitality Temps Corp. v. District of Columbia*, 926 A.2d 131, 134 (D.C. 2007) (quotation and citation omitted); *see generally D.C. Fire & Emergency Medical Services Dep’t*, 105 A.3d at 996 (courts afford “a high degree of deference” to an agency’s interpretation of a statute it administers); *St. Mary’s Episcopal Church v. D.C. Zoning Commission*, 174 A.3d 260, 267 (D.C.

2017) (“An agency’s interpretation of the regulations that govern it must be accorded great weight, and must be upheld unless it is plainly erroneous or inconsistent with the regulations.”). Moreover, when OTR first addresses an issue of interpreting or applying a tax statute or regulation, “a judicial controversy may well be mooted.” *See McCarthy*, 503 U.S. at 145. “And even where a controversy survives administrative review, exhaustion of the administrative procedure may produce a useful record for subsequent judicial consideration, especially in a complex or technical factual context.” *Id.* (citations omitted). This principle applies in typical cases involving disputes between District taxpayers and tax collectors, but not in a facial challenge to the constitutionality of a D.C. tax law.

B. The Anti-Injunction Act

To the extent that plaintiffs seek relief other than refunds, they do not state a claim upon which such non-monetary relief can be granted.

“The purpose of the anti-injunction statute is to preserve this right [of the government to prompt collection of taxes] by prohibiting a court from interfering with the collection of taxes, requiring the determination of the legality of the tax to be determined in a refund suit.” *Tolu v. District of Columbia*, 906 A.2d 265, 267 (D.C. 2006). “This anti-injunction statute has been consistently interpreted as depriving the court of subject matter jurisdiction over causes of action for equitable relief regarding District of Columbia taxes.” *Agbaraji v. Aldridge*, 836 A.2d 567, 569 (D.C. 2003) (citing *Barry v. American Tel. & Tel. Co.*, 563 A.2d 1069, 1073 & n.10 (D.C. 1989)). “[T]he anti-injunction statute applies to declaratory relief as well as injunctive relief.” *Barry*, 563 A.2d at 1073.

Plaintiffs argue that the non-monetary relief they seek would not violate the Anti-Injunction Act because they only want OTR to issue an exemption to them. *See Opp.* at 8-9.

However, the practical effect of ordering the issuance of an exemption would be to interfere with the District's ability to collect sales taxes from non-resident semipublic institutions.

Furthermore, to avoid the Anti-Injunction Act bar, a taxpayer must show that it does not have an adequate legal remedy. *American Bus Association, Inc. v. District of Columbia*, 2 A.3d 203, 210 (D.C. 2010). An adequate legal remedy includes a "full opportunity to litigate [his or her] tax liability in a refund suit." *Craig*, 930 A.2d at 961. This case is a refund suit that gives plaintiffs a full opportunity to litigate their sales tax liability as non-resident semipublic institutions.

Plaintiffs' claim for refunds does not run afoul of the Anti-Injunction Act's bar on claims seeking equitable or declaratory relief. Indeed, the Act requires "the legality of the tax to be determined in a refund suit." *Tolu*, 906 A.2d at 267. Accordingly, plaintiffs' claim for refunds is a claim upon which the Court may grant relief consistent with the Act.

C. Transfer to the Tax Division

D.C. Code § 11-1201(1) gives the Tax Division jurisdiction of "all appeals from and petitions for review of assessments of tax," and § 11-1202 makes clear that this jurisdiction is exclusive: "Notwithstanding any other provision of law, the jurisdiction of the Tax Division of the Superior Court to review the validity and amount of all assessments of tax made by the District of Columbia is exclusive." Section 11-1202 applies "where federal or constitutional issues are raised." *Fernebok v. District of Columbia*, 534 F. Supp. 2d 25, 27 (D.D.C. 2008) (citing *Jenkins v. Washington Convention Center*, 236 F.3d 6, 11 (D.C. Cir. 2001)). This case involves the validity of assessing a sales tax on non-resident semipublic institutions. *See* Motion at 5 ("As an initial matter, plaintiffs here challenge the assessment of a tax"), 8 ("Plaintiffs' Suit Challenges the Assessment of a Tax."); *Fernebok*, 534 F. Supp. 2d at 28 ("Any distinction ...

between assessment and imposition of a tax is illusory” with respect to Tax Division jurisdiction). The case therefore belongs in the Tax Division.

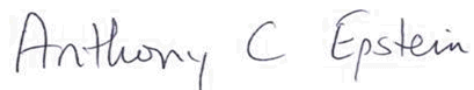
Even if § 11-1202 did not require this result, the Court would transfer the case in order to manage tax cases more efficiently and to help achieve consistency in judicial tax rulings.²

Accordingly, the Court will transfer this case to the Tax Division. The Tax Division in turn will schedule a hearing. At the hearing, the parties should be prepared to discuss (1) whether the Court needs any additional evidence or briefing in order to decide plaintiffs’ constitutional challenge and (2) whether and how the Court should determine the amount of any refund due to plaintiffs if they prevail on their constitutional challenge. The parties should confer about these matters before the hearing.

D. Conclusion

For these reasons, the Court orders that:

1. The District’s motion to dismiss is denied in part and granted in part.
2. The Court has jurisdiction to review plaintiffs’ requests for refunds of the sales taxes they paid.
3. Plaintiffs’ claims for relief other than refunds are dismissed.



Anthony C. Epstein
Judge

Date: January 29, 2019

² Notwithstanding the statute’s reference to jurisdiction, there is no jurisdictional restriction that prohibits one division of the Court from considering matters more appropriately considered in another. *See Sanchez v. United States*, 919 A.2d 1148, 1154 (D.C. 2007).

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Exhibit B

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION**

AMERICAN PHILOSOPHICAL
ASSOCIATION, et al.,

Plaintiffs,

v.

DISTRICT OF COLUMBIA,

Defendant.

Case No. 2019 CVT 000003
Judge Jonathan H. Pittman

Next Date: TBD

ORDER

Defendant District of Columbia (“District”) seeks reconsideration of that portion of the order of January 29, 2019 (“January 29, 2019 Order”), which denied Defendant’s motion to dismiss the complaint on the ground that Plaintiffs failed to apply for a refund from the Office of Tax and Revenue before filing suit. The January 29, 2019 Order was issued by the Honorable Anthony C. Epstein in Case No. 2017 CA 004057 B, which was pending in the Civil Division. Judge Epstein granted the District’s motion to dismiss the complaint to the extent that it sought relief other than a refund of taxes paid, and then transferred the litigation to this Division, where it has been assigned a new case number (2019 CVT 0003). In addition, the District filed a separate motion on March 11, 2019, seeking a stay of briefing and discovery on class certification pending the outcome of the District’s

motion for reconsideration. In the alternative, the District seeks an extension of time to oppose Plaintiffs' pending motion for class certification.

For the reasons set forth below, the Court will deny the motion for reconsideration and will deny the motion for stay. The Court will grant the District's motion for an extension of time to oppose the pending motion for class certification.

STANDARD OF REVIEW

The District seeks reconsideration under Superior Court Civil Rule 54(b).¹ Rule 54(b) addresses modification of interlocutory orders like the January 29, 2019 Order. Rule 54(b) provides that "any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."

The standard for reconsideration of interlocutory orders under Rule 54(b) is whether reconsideration is consonant with justice *See Marshall v. United States*, 145 A.3d 1014, 1018-19 (D.C. 2016) (discussing the standard for reconsideration of interlocutory orders). Reconsideration is warranted if, for example, moving parties "present newly discovered evidence, show that there has been an

¹ Superior Court Tax Rule 3 provides that certain Civil Rules, including Rule 54(b), are applicable to proceedings in the Tax Division.

intervening change in the law, or demonstrate that the original decision was based on a manifest error of law or was clearly unjust.” *See Bernal v. United States*, 162 A.3d 128, 133 (D.C. 2017) (quotation, ellipsis, and brackets omitted). However, “it is well-established that motions for reconsideration, whatever their procedural basis, cannot be used as an opportunity to reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting theories or arguments that could have been advanced earlier.” *Ali v. Carnegie Inst. of Wash.*, 309 F.R.D. 77, 81 (D.D.C. 2015) (quotation omitted); *SmartGene, Inc. v. Advanced Biological Labs., SA*, 915 F. Supp. 2d 69, 72 (D.D.C. 2013). Raising “arguments that should have been, but were not, raised in” the original filing “is, frankly, a waste of the limited time and resources of the litigants and the judicial system.” *Estate of Gaither v. District of Columbia*, 771 F. Supp. 2d 5, 9-10 (D.D.C. 2011); *see Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1270 (7th Cir. 1996) (“Reconsideration is not an appropriate forum for... arguing matters that could have been heard during the pendency of the previous motion.”).

The “consonant with justice” standard is comparable to the “as justice requires” standard that federal courts apply for reconsideration of interlocutory orders. *See, e.g., Capitol Sprinkler Inspection, Inc. v. Guest Servs., Inc.*, 630 F.3d 217, 227 (D.C. Cir. 2011). In deciding whether justice requires reversal of an interlocutory order, courts assess circumstances such as “whether the court

‘patently’ misunderstood the parties, made a decision beyond the adversarial issues presented, made an error in failing to consider controlling decisions or data, or whether a controlling or significant change in the law has occurred.” *In Def. of Animals v. NIH*, 543 F. Supp. 2d 70, 75 (D.D.C. 2008) (quoting *Singh v. George Wash. Univ.*, 383 F. Supp. 2d 99, 101 (D.D.C. 2005)); *Loumiet v. United States*, 65 F. Supp. 3d 19, 24 (D.D.C. 2014) (same).

The purpose of this standard for reconsideration “is to ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps of a lost motion with additional matters.” *In re Okean B.V.*, 2013 U.S. Dist. LEXIS 126361, at *2 (S.D.N.Y. Sept. 4, 2013) (citations omitted). Courts have greater discretion to reconsider interlocutory orders than final judgments because the interest in finality is less, *Williams v. Vel Rey Properties*, 699 A.2d 416, 419 (D.C. 1997), but there is still a substantial interest against relitigation. The standard for reconsideration “attempts to balance the interests in obtaining a final decision on matters presented to the Court and the recognition that the Court, like all others, is capable of mistake and oversight.” *Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990). But where the trial court has considered a party’s argument and ruled, a motion for reconsideration will typically not succeed. *See NYSA-PPGU Pension Fund v. Am. Stevedoring, Inc.*, 2013 U.S. Dist. LEXIS 124417 at *9 (D.N.J. Aug. 30, 2013) (“A motion for

reconsideration is improper when it is used to ask the Court to rethink what [it] had already thought through – rightly or wrongly.”) (quotation and citation omitted).

“The burden is on the moving party to show that reconsideration is appropriate and that harm or injustice would result if reconsideration were denied.” *United States ex rel. Westrick v. Second Chance Body Armor, Inc.*, 893 F. Supp. 2d 258, 268 (D.D.C. 2012) (citing *Husayn v. Gates*, 588 F. Supp. 2d 7, 10 (D.D.C. 2008)).

ANALYSIS

Judge Epstein concluded that nothing in the relevant provisions of the D.C. Code, sections 47-2021(a) and 47-3303, mandates that a plaintiff seeking refund of taxes paid must first request a refund from the District before bringing suit. January 29, 2019 Order at 2. Relying on *Avocados Plus Inc. v. Veneman*, 370 F.3d 1243 (D.C. Cir. 2004), Judge Epstein held that nothing in these provisions contains the “sweeping and direct statutory language indicating that there is no [] jurisdiction prior to exhaustion.” *Id.* at 2. Conceding that the statute “does not contain straightforward language requiring administrative exhaustion as that found in, for example, D.C. Code § 47-825.01a(g)(1),” the District nonetheless argues that the “context” of section 47-2021(a) mandates exhaustion. While the District’s argument has some appeal, the statute nonetheless does not contain the “sweeping

and direct language” mandating exhaustion.² In light of the language of the statute, the Court cannot conclude that Judge Epstein’s ruling was an error at all, let alone a “manifest error of law or . . . clearly unjust” result that would justify reconsideration. *See Bernal*, 162 A.3d at 133.

Judge Epstein also concluded that although the Court could mandate exhaustion as a judicially created prudential requirement, he would not do so in the unique circumstances of this case. January 29, 2019 Order at 4. The District takes issue with this conclusion, relying primarily on *Kleiboemer* and *Keyes* (cited in note 2, *supra*), to support its argument that administrative exhaustion would provide the District with notice of potential liabilities. But another provision of the D.C. Code, namely D.C. Code § 12-309, addresses the circumstances under which a claimant must provide pre-litigation notice of claims to the District. That statute contemplates circumstances in which the District will not receive pre-litigation notice of certain claims. As there is a separate statute addressing when pre-

² In support of its “context” argument, the District relies on *Kleiboemer v. District of Columbia*, 458 A.2d 731, 733 n2 (D.C. 1983) for the proposition that because the federal courts had held that filing an administrative claim was a prerequisite to obtaining a refund of federal taxes, Congress must have intended that D.C. law incorporates the same requirement. Mot. at 11. *Kleiboemer* addressed claims for refunds under D.C. Code § 47-1586j(a) (1973 ed.). That section was recodified as D.C. Code § 47-1812.11 (1981 ed.), and was thereafter repealed in 2001. Moreover, *Kleiboemer* relied on *Keyes v. District of Columbia*, 362 A.2d 729 (D.C. 1976). But *Keyes* addressed D.C. Code § 47-709 (1973 ed.), the previous version of D.C. Code § 47-825.01a(g)(1), which, like the current version of that provision, explicitly requires administrative exhaustion before filing suit.

litigation notice is required, there is no need to graft a judicially-created notice requirement onto D.C. Code §§ 47-2021 and 47-3303 through the imposition of an exhaustion requirement.

Judge Epstein was careful to note that as a general matter, “[t]he common law exhaustion doctrine applies in tax cases.” January 29, 2019 Order at 4. The Court reiterates this conclusion – as a general matter, a party seeking refund of taxes must first claim a refund from the Office of Tax and Revenue. But, in the unique circumstances of this case, Judge Epstein concluded that the Court need not exercise its discretion and require administrative exhaustion. The Court cannot conclude that Judge Epstein erred in reaching this conclusion, and will therefore not reconsider this ruling.

Finally, the District notes that the Court lacks jurisdiction over refund suits that are filed too late. The January 29, 2019 Order did not address this issue. The Court agrees that the statutory language mandates that refund suits must be filed within six months, and that the Court lacks jurisdiction over refund suits that are filed too late. The District of Columbia Court of Appeals and its predecessor courts have held that the time limitation contained in D.C. Code § 47-2403, the predecessor to D.C. Code § 47-3303, is jurisdictional.³ *See, e.g., Jewish War*

³ D.C. Code § 47-2403 was recodified as D.C. Code § 47-3303 (1981 ed.), and was thereafter amended in 1982 to clarify that the six-month time to appeal begins with the notice of assessment, rather than payment of the tax. *See People’s*

Veterans, U.S.A. Nat'l Mem'l Inc. v. District of Columbia, 243 F.2d 646, 647 (D.C. Cir. 1957) (discussing D.C. Code § 47-2403 (1951 ed.), which provided that an aggrieved taxpayer “may appeal ‘within ninety days after notice of . . . assessment,’” and holding that “[t]he ninety-day requirement is jurisdictional to the appeal.”); *Nat'l Graduate Univ. v. District of Columbia*, 346 A.2d 740, 743 (D.C. 1975) (holding that the six-month period in which a taxpayer “may appeal” under D.C. Code § 47-2403 (1973 ed.) “is jurisdictional in nature and not merely a statute of limitations”). Because both D.C. Code § 47-2021(a) and D.C. Code § 47-3303 provide that an aggrieved taxpayer “may appeal” the adverse action within six months, the Court concludes that the six-month limitation contained in these sections is jurisdictional. However, because at least some of the taxes alleged in the complaint were or may have been paid within six months of the filing of the lawsuit, the Court will not dismiss the plaintiffs’ refund claim on this basis at this stage of the litigation.

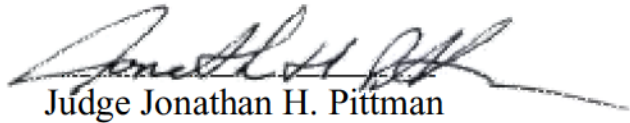
Based on the foregoing, it is, this 30th day of May, 2019, hereby

ORDERED, that the District of Columbia’s motion for reconsideration of the January 29, 2019 Order, filed on March 8, 2019, is **DENIED**; and it is

Drug Stores, Inc. v. District of Columbia, 470 A.2d 751, 752 n1 (D.C. 1983) (en banc). That amendment did not affect the jurisdictional nature of the six-month period in which to appeal.

FURTHER ORDERED, that the District's motion to stay discovery and briefing on class certification, filed March 11, 2019, is **DENIED IN PART** and **GRANTED in PART**; and it is

FURTHER ORDERED, that the District shall file its opposition to Plaintiffs' pending motion for class certification, appointment of Plaintiffs as class representatives and Plaintiffs' counsel as class counsel, filed on March 29, 2019 no later than sixty days from the date of this Order.



Judge Jonathan H. Pittman

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Exhibit C

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

**AMERICAN PHILOSOPHICAL
ASSOCIATION, et al.,**

Plaintiffs,

v.

DISTRICT OF COLUMBIA

Defendant.

Case No: 2019 CVT 000003

ORDER

The District of Columbia, like many other jurisdictions, imposes a tax on a vendor's gross receipts from the retail sale of goods and services, commonly referred to as a "sales tax." *See* D.C. Code § 47-2002(a) ("A tax is imposed upon all vendors for the privilege of selling at retail certain tangible personal property and for the privilege of selling certain selected services (defined as "retail sale" and "sale at retail" in this chapter)"). Although the tax is imposed on the vendor or seller of the goods or services, the vendor typically collects the tax from the purchaser at the time of sale. D.C. Code § 47-2003(a) ("Reimbursement for the tax imposed upon the vendor shall be collected by the vendor from the purchaser. . ."). The rate of taxation is a percentage of the money received for the goods or services sold, and sales of most goods and services in

the District of Columbia are currently taxed at six percent. D.C. Code § 47-2002(a) (“The rate of such tax shall be 6.00% of the gross receipts . . .”). Receipts from sales of certain goods and services, such as hotel room charges and food and beverages prepared for immediate consumption, are taxed at higher rates. *See, e.g.* D.C. Code §§ 47-2002(a)(2)(A) (imposing a 10.2% tax on hotel room charges) and (3)(A) (imposing a 9% tax on sales of food and beverages sold for immediate consumption).

The District also exempts certain sales from imposition of the sales tax, including sales to certain entities. Tax-exempt sales include sales to the United States or District of Columbia governments, D.C. Code § 47-2005(1), sales to state governments, D.C. Code § 47-2005(2), and, as is relevant for these proceedings, sales to non-profit and non-for-profit organizations referred to as “semipublic institutions,” provided that certain conditions are met. D.C. Code § 47-2005(3).¹

D.C. Code § 47-2005(3) sets forth the four conditions that semipublic institutions must satisfy to avoid paying sales tax in the District of Columbia:

- (A) [The semipublic] institution shall have first obtained a certificate from the Mayor stating that such institution is entitled to such exemption;
- (B) The vendor keeps a record of the sale, the name of the purchaser, the date of each separate sale, and the number of such certificate;

¹ “Semipublic institutions” are defined as “any corporation, and any community chest, fund, or foundation, organized exclusively for religious, scientific, charitable, or educational purposes, including hospitals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.” D.C. Code § 47-2001(r).

- (C) [The semipublic] institution *is located within the District*, and
- (D) The property or services purchased are for use or consumption, or both, in maintaining, operating, and conducting the institution for the purpose for which it was organized or for honoring the institution or its members.

D.C. Code § 47-2005(3)(A)-(D) (emphasis added). The language of D.C. Code § 47-2005(3) thus limits entitlement to exemption from sales tax to semipublic institutions that are “located within the District,” and denies entitlement to exemption from sales tax to semipublic institutions that are not “located within the District.”²

PLAINTIFFS’ CLAIMS

The Commerce Clause gives the United States Congress “the power . . . to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes.” United States Constitution, art. I, § 8, cl. 3 (the “Commerce Clause”). While the Commerce Clause explicitly grants the power to regulate interstate commerce to Congress, it implicitly prohibits the states from acting in a manner that affects

² Plaintiffs assert that the District’s Office of Tax and Revenue (“OTR”) interprets “location within the District” to mean that an organization must have a physical location or office in the District. OTR requires semipublic institutions seeking a sales tax exemption to obtain a certificate of exemption by filing a Form FR-164, a copy of which is attached to plaintiffs’ complaint. *See* Complaint, Ex. A. OTR’s current instructions for completing Form FR-164 require a semipublic institution seeking a sales tax exemption to include a “signed copy of lease, District of Columbia Certificate of Occupancy permit issued to the organization or other documentation to show proof of a physical location in D.C.” *See* User Guide: How to Request an Exemption to File (FR-164), accessible at: [https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/How to Request an Exemption to File FR-64 1220.pdf](https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/How%20to%20Request%20an%20Exemption%20to%20File%20FR-64%201220.pdf).

interstate commerce. The “Dormant Commerce Clause” is a legal doctrine that refers to the prohibition, implicit in the Commerce Clause, against states passing legislation that, *inter alia*, favors in-state citizens or businesses at the expense of out-of-state businesses or citizens.³

Plaintiffs claim that the District of Columbia’s provision of tax exemptions to semipublic institutions located in the District, while denying sales tax exemptions to “out-of-state” semipublic institutions, violates the Dormant Commerce Clause and entitles them, and all other similarly situated semipublic institutions, to equitable relief and damages. Complaint, ¶¶ 17.

Procedural Background

Plaintiffs filed their complaint in the Civil Division on behalf of themselves and a class of similarly situated semipublic institutions. Defendant District of Columbia (“District”) moved to dismiss on the ground that plaintiffs had not exhausted available administrative remedies by applying to the Office of Tax and Revenue (“OTR”) for a refund of the sales taxes paid before filing suit. The then-presiding judge, Hon. Anthony C. Epstein, denied the motion to dismiss in part, concluding that plaintiffs were not required to apply for refunds from OTR before bringing suit against the

³ Although the District of Columbia is not a “state,” the District of Columbia Court of Appeals has nonetheless considered the merits of claims asserting that a District of Columbia taxation scheme violated the Commerce Clause by favoring “in-state business over out-of-state businesses for no other reason than the location of the business.” *Am. Bus Association v. District of Columbia*, 2 A.3d 203, 214 (D.C. 2010).

District for a refund of taxes paid. *See* Order, January 29, 2019 in Case Number 2017 CA 4057. However, Judge Epstein also concluded that plaintiffs' claims for relief other than refunds of the sales taxes they paid were barred by the Anti-Injunction Act. *Id.* at 6-7. Concluding that plaintiffs had stated a claim for a refund of taxes paid, Judge Epstein transferred the case to the Tax Division. *Id.* at 7-8.

The District moved for reconsideration of Judge Epstein's order, which the undersigned denied. *See* Order, May 30, 2019. The District also argued that certain claims for refunds were barred because the taxes at issue had been paid more than six months before the suit was filed. The undersigned agreed, concluding that it lacked jurisdiction to consider claims for refunds of taxes paid more than six months before this lawsuit was filed on June 12, 2017, *i.e.*, before December 12, 2016. *Id.* at 7-9.

Plaintiffs' Motion for Class Certification

Plaintiffs American Philosophical Association ("APA") and American Anthropological Association ("AAA") allege that they are non-profit organizations with principal places of business located, respectively, in Newark Delaware and Arlington, Virginia. Complaint, ¶¶ 5-6. They allege that they held annual meetings at the Washington Marriott Wardman Park and Omni Shoreham hotels located in the District of Columbia and allege that these hotels collected thousands of dollars in sales taxes on charges for rooms, catering services, and audio-visual services purchased in connection with these meetings. *Id.*

Plaintiffs seek certification of a class of semipublic institutions located outside of the District that have paid sales and other taxes to certain hotels in the District of Columbia. Both plaintiffs seek to be named class representatives, and their counsel seeks to be named class counsel.

The Court has considered the following papers: *Plaintiff's Motion for Class Certification, Appointment of Plaintiffs and Class Representatives and Plaintiff's Counsel as Class Counsel*, filed on March 29th, 2019, *Defendant's Opposition to Plaintiff's Motion for Class Certification*, filed on July 29th, 2019; *Plaintiffs' Reply in Further Support of Plaintiffs' Motion for Class Certification, Appointment of Plaintiffs as Class Representatives and Plaintiffs' Counsel as Class Counsel*, filed on August 12th, 2019 and entered onto the docket October 3rd, 2019; and Defendant's *Sur-Reply in Support of Opposition to Plaintiff's Motion for Class Certification* on October 17th, 2019.

The definition of the class changed during the parties' briefing. The result is that plaintiffs now seek certification of a class action and to be named the Class Representatives of the following class:

All semipublic institutions that do not have offices within the District that paid a sales or hotel tax to any of the hotels listed below in connection with any meetings held at any such hotels for the purpose for which the institution was organized or for honoring the institution or its members from December 12, 2016, and continuing until there is a final determination that the requirement under D.C. Code § 47-2005(3)(C) that a semipublic institution must reside in the District in order to obtain an exemption from sales and hotel taxes violates the Commerce Clause of the United States Constitution (the "Class Period"):

The Washington Hilton, the Marriott Marquis, the Renaissance Washington, the Omni Shoreham Hotel, the Grand Hyatt Hotel, the Mayflower Hotel, the Hyatt

Regency, the JW Marriot, the Capital Hilton, the Willard Intercontinental, the Marriott Wardman Park Hotel, the Fairmont, the Mandarin Oriental, the Watergate Hotel, the Hilton D.C. National Mall Hotel, the Marriott Georgetown, the Washington Marriott at Metrocenter, and the Westin Washington City Center.

See Plaintiffs' Reply at 12.

DISCUSSION

I. APA Is Not A Member Of The Proposed Class

The District argues that plaintiff APA is not a member of the proposed class. As noted above, the Court ruled on May 30, 2019 that it lacks jurisdiction to consider claims that are based on taxes paid more than six months before the filing of this lawsuit on June 12, 2017. *See* May 30 Order at 7-9. Noting that APA only seeks a refund of the sales taxes it paid from January 6-9, 2016, the District argues that the Court lacks jurisdiction to consider any of APA's claims. Opposition at 9. APA responded to the District's argument by noting that it planned to hold another meeting in November 2019 where it be charged sales taxes, and that following that meeting there would be no doubt that it fell within the class definition. However, APA has not filed anything since that time indicating that it actually had paid sales taxes to any vendor in the District of Columbia during the proposed class period, and the record currently before the Court does not establish that APA paid sales taxes during the class period. As a result, APA is not a member of the proposed class at this time, and the Court finds that only AAA has standing at this time to seek class certification.

II. Class Certification

Plaintiff APA seeks class certification under Superior Court Civil Rule 23, which is made applicable to the Tax Division by Tax Division Rule 3.⁴ Plaintiff argues that the proposed class action meets the requirements of Rule 23(a) and asks the Court to certify the class under Rule 23(b)(3).

Rule 23(a) provides that a class may be certified only if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defense of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

If the Court finds that the class satisfies all the requirements of Rule 23(a), it may certify the class under Rule 23(b)(3) only if it also “finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for

⁴ Tax Division Rule 3 provides that the Rules of the Civil Division are applicable to actions brought in the Tax Division of the Court “except where inappropriate or inconsistent with the Rules of this Division.” Civil Rule 23 is not inconsistent with the Rules of the Tax Division.

fairly and efficiently adjudicating the controversy.” Rule 23(b)(3). In making this determination, the Court is to consider

- (A) the class members’ interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

Rule 23(b)(3)(A)-(D).

The party seeking class certification bears the burden of establishing that the requirements of Rule 23(a) and at least one subdivision of Rule 23(b) are satisfied. *See, e.g., Ford v. Chartone, Inc.*, 908 A.2d 72, 84 (D.C. 2006).

ANALYSIS

A. The Proposed Class Meets The Requirements Of Rule 23(a)

1. 23(a)(1)- Numerosity

Courts in the District have held that “the numerosity requirement is satisfied and joinder is impractical where a proposed class has at least forty members,” and that the Court need only to “find an approximation of the size of the class.” *Ait Hamadi v*

Ristorante La Perla of Washington, No 2016 CA 2467 B, 2017 D.C. Super. LEXIS 1, at *9 (D.C. Super. Ct. Mar. 7, 2017).

Plaintiff does not provide the Court with an exact number of possible members of the class. However, Plaintiff does provide information that allows the Court to approximate the possible size of the class. The class definition would include all “semipublic institutions that do not have offices within the District that paid a sales or hotel tax to any of the [eighteen] hotels listed... from December 12, 2016 and continuing until there is a final determination” in this case. *See* Plaintiff’s Reply at 12. Through a subpoena served on the Wardman Park Hotel, one of the eighteen hotels listed in the class definition, plaintiff contends that it has identified over fifty semipublic organizations that paid sales taxes during a portion of the class period and would qualify as members of the proposed class. *See* Class Certification Motion at 5. As this subpoena was served on only one of the eighteen hotels contained in the class definition, it appears clear that the number of class members will only grow from fifty once all qualifying organizations are identified. In any event, the District does not dispute that plaintiff’s proposed class meets the numerosity requirement of Rule 23(a)(1). *See* District’s Opp. at 8 n. 3. Accordingly, the Court finds that plaintiff has shown that the proposed class meets the numerosity requirement set forth in Rule 23(a)(1).

2. 23(a)(2) –Questions Of Law Or Fact Common To The Class

Rules 23(a)(2) requires that the moving party demonstrate questions of law or fact common to every member of the proposed class. The District does not dispute

that a common legal issue – the constitutionality of D.C. Code § 47-2005(3)(C) – forms the foundation of plaintiff’s claim. *See* Opposition at 7. Because every single class member’s claim will depend on the resolution of this legal issue, the Court readily concludes that there is a legal issue common to every member of the class. It further appears that this issue can be resolved on a class-wide basis and would not require any claimant-specific proof or legal argument. *See Ford v. Chartone*, 908 A.2d at 85-86 (“the members of a proposed class of plaintiffs raise a common question of law or fact where ‘the same evidence will suffice for each member to make a *prima facie* showing’ of the defendant’s liability”).

The District nonetheless argues that the variation in factual issues underlying whether each class member would in fact be entitled to refunds, were D.C. Code § 47-2005(3)(C) found unconstitutional, makes the class unmanageable. *Id.* at 8 (citing *Snowder v. District of Columbia*, 949 A.2d 590, 598 (D.C. 2008)). The District is correct that the members of the class would eventually need to produce individual evidence that shows they are each entitled to a refund. The District is also correct that each class member would need to show that it met the other requirements for obtaining the sales tax exemption set forth in D.C. Code § 47-2005(3) and any applicable regulations. And each class member would also need to show that it actually paid sales taxes.

The Court agrees with plaintiff that each class member’s eligibility for a refund can be readily addressed in administration of the class in the event that D.C. Code §§ 47-2005(3)(C) is found to be unconstitutional. In addition, the Court finds that the

issue of whether individual questions of fact predominate is more properly addressed in deciding whether the proposed class meets the requirement of Rule 23(b)(3) that the common issue of law predominates. *See Ford*, 908 A.2d at 85-86 (“factual variations among the class members will not defeat the commonality requirement, so long as a single aspect or feature of the claim is common to all proposed class members”). Accordingly, the Court finds that there is a common issue of law and that the commonality requirement of Rule 23(a)(2) is met.

3. Rule 23(a)(3) – Typicality

The purpose of the typicality requirement is to ensure that the “claims of the representative and absent class members are sufficiently similar so that the representative’s acts are also acts on behalf of, and safeguard the interests of, the class.” *Ford*, 908 A.2d at 86. The District does not dispute that AAA’s claim is typical of the other proposed class members’ claims. Each proposed class member will have the same claim: they were improperly charged sales tax as a result of the allegedly unconstitutional statute that does not permit them to claim an exemption available to semipublic institutions located in the District. The Court readily concludes that plaintiff’s claims are typical of those of the class and that the typicality requirement of Rule 23(a)(3) is met.

4. Rule 23(a)(3) – Adequacy

The District does not dispute that AAA and its counsel meet the requirements of 23(a)(4). The purpose of the adequacy of representation requirement is to ensure

that the interests of the class members are protected by and vigorously advocated for by the representative members and their counsel. The Court is confident that the plaintiff and its counsel will fully prosecute the case and protect the interests of the class. Additionally, the Court finds that plaintiff's counsel is highly experienced in class actions and is qualified to pursue this class action. Accordingly, the Court finds that 23(a)(4) is satisfied.

B. The Proposed Class Action Meets the Requirements of Rule 23(b)(3)

Plaintiff seeks certification under Rule 23(b)(3). A class that meets the requirements of Rule 23(a) may be certified only if the court finds that “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Rule 23(b)(3).

1. Common Issues Predominate.

“Predominance tends to be established ‘when there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member’s individual position.’” *Ford*, 908 A.2d at 88. On the other hand, “if the main issues in a case require the separate adjudication of each class member’s individual claim or defense, a Rule 23 (b)(3) action would be inappropriate.” *Id.*, citing *WRIGHT, MILLER & KANE*, § 1778 at p. 134. The District argues that the “individualized nature of each putative class member’s tax

refund claim makes this action inappropriate for class certification.” Opposition at 10. The District argues that resolution of each class member’s claim would require a determination that each class member met the other requirements set forth in D.C. Code § 47-2005(3) and the related Municipal Regulations, with the result that individual claims would predominate.

Every single class members’ claim will depend on a determination that the provision of a sales tax exemption to semipublic organizations “located in the District,” but not to semipublic entities not “located in the District” violates the Commerce Clause. The District does not argue that determination of *this* issue requires individual proof specific to each class member. Instead, the District argues that each individual class member’s entitlement to a refund will require “a factual determination that would be overly cumbersome to administer, at least without prior administrative rulings from OTR applying the agency’s expertise as to a putative class member’s satisfaction of the other statutory requirements.” Opposition at 11. As noted above, it is true that each class member will need to prove its entitlement to a refund. But that is true in every class action, and a claims-handling process can be established in the event the Court finds that the District’s statute is unconstitutional.

The predominant issue in this case is the constitutionality of D.C. Code § 47-2005(3)(C). If the statute is found constitutional, no class member will be entitled to a refund. Put another way, it is impossible for any class members to obtain a refund without first litigating the common legal issue: the constitutionality of D.C. Code § 47-

2005(3)(C). Accordingly, the Court finds that common issues predominate over any individual questions.

2. A Class Action Is Superior To Any Other Method Of Resolution.

The District argues that a class action is not a superior method of resolving these claims because every class member has the available administrative remedy of filing a claim for a refund with OTR. Citing *District of Columbia v. Craig*, 930 A.2d 946, 961-63 (D.C. 2007), *cert. denied*, 554 U.S. 905 (2008), the District argues that administrative appeal to OTR is an adequate remedy for a putative class action alleging a constitutional violation. In light of this available remedy, the District argues that the Court should decide the constitutionality of D.C. Code § 47-2005(3)(C) only as it relates to plaintiff's individual claim for a refund and that OTR can apply the Court's ruling to future requests for refunds or requests for exemptions. The District suggests that a ruling that the statute is unconstitutional in this individual case would "constrain" the District from denying other "out-of-state" semipublic organizations' requests for refunds. Opposition at 13. The Court understands the District to be suggesting that a ruling in this case adverse to the District might act as collateral estoppel against the District in future requests for refunds. For this reason, the District also argues that the Court should defer ruling on class certification until after it addresses the merits of plaintiff's individual claim.

The District's argument persuades the Court that a class action is superior to any other method of resolution. If the Court decides that D.C. Code § 47-2005(3)(C) is

unconstitutional without certifying a class, the ruling might bind the District in further cases. But future refund claimants would still need to litigate whether the ruling is binding on the District. Conversely, if the Court rules that D.C. Code § 47-2005(3)(C) is not unconstitutional without certifying a class, that ruling is would not be binding on any future refund claimants, who would be free to relitigate the issue. Either way, a ruling on the constitutionality of D.C. Code § 47-2005(3)(C) without class certification would permit relitigation of this issue.

In contrast, a ruling after a class is certified that D.C. Code § 47-2005(3)(C) is unconstitutional would (if upheld on appeal) end litigation over the matter for all time and for all similarly situated parties. As noted above, deciding the constitutionality of D.C. Code § 47-2005(3)(C) should not require any litigation of issues specific to any individual class member, which means that it should require no more resources or effort to decide the issue in the context of a class action than in the context of a single-plaintiff claim. In the same vein, a class action can be superior to individual actions where “the typical claims of class members are far too small for individual class members to maintain individual actions.” *Wells v. Allstate Ins. Co.*, 210 F.R.D. 1, 12 (D.D.C. 2002). In this case, individual refunds might be insufficient to induce claimants to seek refunds in individual actions, further persuading the Court that a class action is superior. Thus, individual class members are unlikely to have an interest in controlling the prosecution of individual actions. *See* Rule 23(b)(3)(A).

It does not appear that there is any other litigation concerning the District's sales tax exemption. This factor suggests that a class action is a superior means of resolving the parties' dispute. *See* Rule 23(b)(3)(B). In addition, the District of Columbia Superior Court is the only forum in which plaintiff and the class can bring tax refund claims. As a result, there is no occasion to consider the "desirability or undesirability of concentrating the litigation of the claims in the particular forum," *see* Rule 23(b)(C), because there is no other available forum.

Finally, the predominating issue in this case is a facial challenge to the constitutionality of D.C. Code § 47-2005(3)(C). Resolution of that issue will require no complex case management. If that issue is decided adversely to the District, procedures are already in place that would permit OTR or some other entity to process the class members' refund claims. Likewise, if that issue is decided in the District's favor, the case will be over and there will be no case management issues to address. These factors also indicate that a class action is a superior method of addressing the member's claims. *See* Rule 23(b)(D).

3. Ascertainable

Rule 23 does not contain an explicit requirement that the proposed class be ascertainable. However, "such a requirement has been 'routinely required' in order to 'help the trial court manage the class.'" *Meijer, Inc. v. Warner* 246 F.R.D. 293, at 300 (D.D.C. 2007). The District argues that the class is not ascertainable because the definition may include organizations who are not eligible for a refund under D.C. Code

§ 47-2005(3)(C). Opposition at 14. The Court finds that the proposed class definition is clearly defined in a way that will allow eligible organizations to obtain notice of this action and, if the action is successful, apply for refunds. The Court also finds that claims processes either already exist at OTR or can be developed that will readily exclude organizations that are ineligible for refunds.

CONCLUSION

Based on the foregoing, it is, this 30th day of April, 2021, hereby

ORDERED, that the Plaintiff's Motion for Class Certification under Rule 23(b)(3) is **GRANTED**; and it is

FURTHER ORDERED, that Plaintiff American Anthropological Association is appointed as Class Representative; and it is

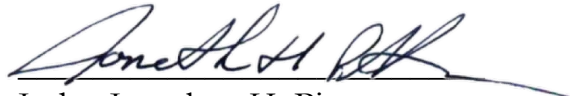
FURTHER ORDERED, that pursuant to Rule 23(g), Plaintiff's Counsel are appointed as Class Counsel; and it is

FURTHER ORDERED, that the following class is certified pursuant to Rule 23(b)(3): A class consisting of:

All semipublic institutions that do not have offices within the District that paid a sales or hotel tax to any of the hotels listed below in connection with any meetings held at any such hotels for the purpose for which the institution was organized or for honoring the institution or its members from December 12, 2016, and continuing until there is a final determination that the requirement under D.C. Code § 47-2005(3)(C) that a semipublic institution must reside in the District in order to obtain an exemption from sales and hotel taxes violates the Commerce Clause of the United States Constitution (the "Class Period"):

The Washington Hilton, the Marriott Marquis, the Renaissance Washington, the Omni Shoreham Hotel, the Grand Hyatt Hotel, the Mayflower Hotel, the Hyatt

Regency, the JW Marriot, the Capital Hilton, the Willard Intercontinental, the Marriott Wardman Park Hotel, the Fairmont, the Mandarin Oriental, the Watergate Hotel, the Hilton D.C. National Mall Hotel, the Marriott Georgetown, the Washington Marriott at Metrocenter, and the Westin Washington City Center.



Judge Jonathan H. Pittman

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OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA

Counsel for Defendant

Exhibit E

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

**AMERICAN PHILOSOPHICAL
ASSOCIATION, et al.,**

Plaintiffs,

v.

DISTRICT OF COLUMBIA

Defendant.

Case No: 2019 CVT 000003

ORDER

Pursuant to Rule 23(c)(2)(B) of the District of Columbia Superior Court Rules of Civil Procedure, Plaintiff American Anthropological Association has moved for Court approval of the parties' proposed Class Notice and proposed method of dissemination of that Notice to the members of the Class certified by the Court's April 30, 2021 Order, consisting of:

All semipublic institutions that do not have offices within the District that paid a sales or hotel tax to any of the hotels listed below in connection with any meetings held at any such hotels for the purpose for which the institution was organized or for honoring the institution or its members from December 12, 2016, and continuing until there is a final determination that the requirement under D.C. Code § 47-2005(3)(C) that a semipublic institution must reside in the District in order to obtain an exemption from sales and hotel taxes violates the Commerce Clause of the United States Constitution (the "Class Period"):

The Washington Hilton, the Marriott Marquis, the Renaissance Washington, the Omni Shoreham Hotel, the Grand Hyatt Hotel, the Mayflower Hotel, the Hyatt Regency, the JW Marriot, the Capital Hilton, the Willard Intercontinental, the Marriott Wardman Park Hotel, the Fairmont, the Mandarin Oriental, the Watergate Hotel, the Hilton D.C. National Mall Hotel, the Marriott Georgetown, the Washington Marriott at Metrocenter, and the Westin Washington City Center.

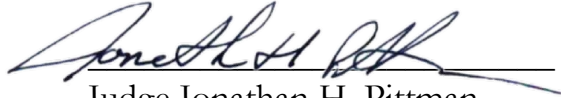
The Court makes the following findings:

1. The form of Notice attached to Plaintiff's motion as Exhibit A (the "Notice") meets all of the requirements of Rule 23(c)(2)(B),
2. Providing the Notice by United States mail to the semipublic institutions, such as associations, societies, foundations, institutes, and academies, that held meetings or events since December 12th 2016 at one or more of the eighteen hotels specified in the April 30 Order and that did not have an address in the District of Columbia at such time, as identified, in responses to subpoenas served by Plaintiff, by the hotels listed in the April 30 Order, Destination DC, and by an agent who books meetings and events for 501(c)(3) organizations, is "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Rule 23(c)(2)(B).

Based on the foregoing, it is, this 14th day of October, 2021, hereby

ORDERED, that the Notice shall be mailed by first-class mail by an administrator to be retained by Plaintiff's counsel (the "Notice Administrator") within sixty (60) days following the Court's entry of this Order, which retention is approved by the Court; and it is

FURTHER ORDERED, that any requests for exclusion from the Class shall be postmarked and mailed to or otherwise received by the Notice Administrator no later than forty-five (45) days after the mailing of the Notice in accordance with the foregoing paragraph.



Judge Jonathan H. Pittman

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Exhibit F

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION**

**AMERICAN PHILOSOPHICAL
ASSOCIATION, *et al.*,**

Plaintiffs,

v.

DISTRICT OF COLUMBIA,

Defendant.

Case No. 2019 CVT 000003

Judge John F. McCabe

**ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND
DENYING DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT**

On April 8, 2022, Class Plaintiff American Anthropological Association and Plaintiff American Philosophical Association, through counsel, filed Plaintiffs' Motion for Summary Judgment as to Defendant District of Columbia's Liability. American Anthropological Association and Plaintiff American Philosophical Association are hereinafter sometimes collectively referred to as "Plaintiff."

On March 29, 2023, the District of Columbia (sometimes referred to hereinafter as "Defendant") filed Defendant's Combined Opposition to Plaintiffs' Motion for Summary Judgment as to Defendant's Liability and Cross-Motion for Summary Judgment. On April 24, 2023, Plaintiff filed its Memorandum of Points and Authorities in Opposition to the District's Cross-Motion for Summary Judgment and its Reply Memorandum of Points and Authorities in Further Support of Their Motion for Summary Judgment as to Defendant District of Columbia's Liability. On May 8, 2023, Defendant filed its Reply in Support of Motion for Summary Judgment.

For the reasons set forth herein, the Court will grant the Plaintiff's Motion for Summary Judgment as to Defendant District of Columbia's Liability and will deny the Defendant's Cross-Motion for Summary Judgment.

Plaintiff's Motion for Summary Judgment as to Defendant District of Columbia's Liability

The Plaintiff's Motion for Summary Judgment as to Defendant District of Columbia's Liability (hereinafter referred to as the "Plaintiff's Motion") is premised on the claim of Plaintiff that D.C. Code Section 47-2005(3) violates the Dorman Commerce Clause of the U.S. Constitution. Section 47-2005(3) provides an exemption from sales taxes for sales to semipublic institutions provided that the institution was "located within the District."

The Court agrees with the contention of Plaintiff that Section 47-2005(3) facially discriminates against interstate commerce. Members of the Plaintiff class who are not "located in the District" are required to pay sales taxes while those which are located in the District are exempt. Out of state semipublic institutions such as those in the Plaintiff class are required to pay sales taxes when they stay at hotels in the District while in-state semipublic institutions are exempt. The same reasoning which the Supreme Court followed in Camps Newfound/Owatonna, Inc. v. Town of Harrison, 520 U.S. 564 (1997) applies here.

Strict scrutiny applies to facially discriminatory statutes such as D.C. Code Section 47-2005(3). Such a statute is "per se invalid" unless the District "has no other means to advance a legitimate local interest." C & A Carbone, Inc. v. Clarkstown, 511 U.S. 383, 392 (1994).

The Court also agrees with Plaintiff that neither of the two reasons proffered by Defendant justifies the facially discriminatory statute. The Defendant asserts that the statute is simply a subsidy to local semipublic institutions. However, as the Supreme Court stated in Camps Newfound, even if a direct subsidy to local institutions could survive scrutiny, a

discriminatory tax provision would not. 564 U.S. at 589. The second justification provided by the Defendant is that the statute was enacted in order to avoid a loss of tax revenue. However, as Plaintiff asserts, such a rationale has been rejected in West Lynn Creamery, Inc. v. Healy, 512 U.S. 186, 205 (1994) and Bacchus Imports, Ltd. V. Dias, 468 U.S. 263, 273 (1984).

Finally, the Court agrees with Plaintiff (as asserted at pages 13-14 of the Motion for Summary Judgment) that several non-discriminatory avenues of assisting local semi-public institutions are available to the Defendant.

For all of the above reasons, the Court concludes that summary judgment on the issue of liability shall be granted in favor of Plaintiff.

Defendant's Cross-Motion for Summary Judgment

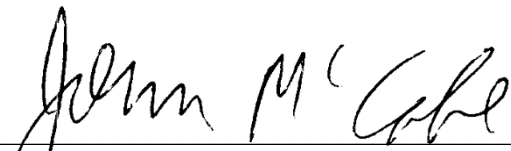
In its Cross-Motion for Summary Judgment, Defendant argues that only semi-public institutions that are tax exempt under Section 501(c)(3) of the Internal Revenue Code are entitled to an exemption under D.C. Code Section 47-2005(3). However, as Plaintiff asserts, the definition of “semipublic institution” is set forth in D.C. Code Section 47-2001(r) and contains no reference to the Internal Revenue Code. The Court thus denies the request of the Defendant to limit the scope of the Plaintiff class to institutions which are exempt under Section 501(c)(3) of the Internal Revenue Code.

The Court also rejects the arguments of Defendant at pages 22-25 of its Cross-Motion for Summary Judgment. As Plaintiff asserts at pages 6-9 of its Opposition to the District's Cross-Motion for Summary Judgment, there is no need for this Court to clarify the scope of the class or the damages each member of the Plaintiff class may receive. These matters have already been addressed in the Class Certification Order signed by the Honorable Judge Jonathan Pittman in his April 30, 2021 Order.

WHEREFORE, it is this 12th day of February, 2024, hereby

ORDERED that Plaintiffs' Motion for Summary Judgment as to Defendant District of Columbia's Liability is hereby **GRANTED**; and it is further

ORDERED that the Cross-Motion for Summary Judgment filed by Defendant the District of Columbia is hereby **DENIED**.



JOHN F. MCCABE
Judge, Superior Court of the District of Columbia

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Counsel for Defendant

Exhibit G

Firm Resume



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		6	Jeffrey A. Klafter
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		8	Christopher M. Timmel
4	Consumer and Commercial Law Litigation	8	Sarah Sears
4	Civil Rights Litigation		

Klafter Lesser LLP

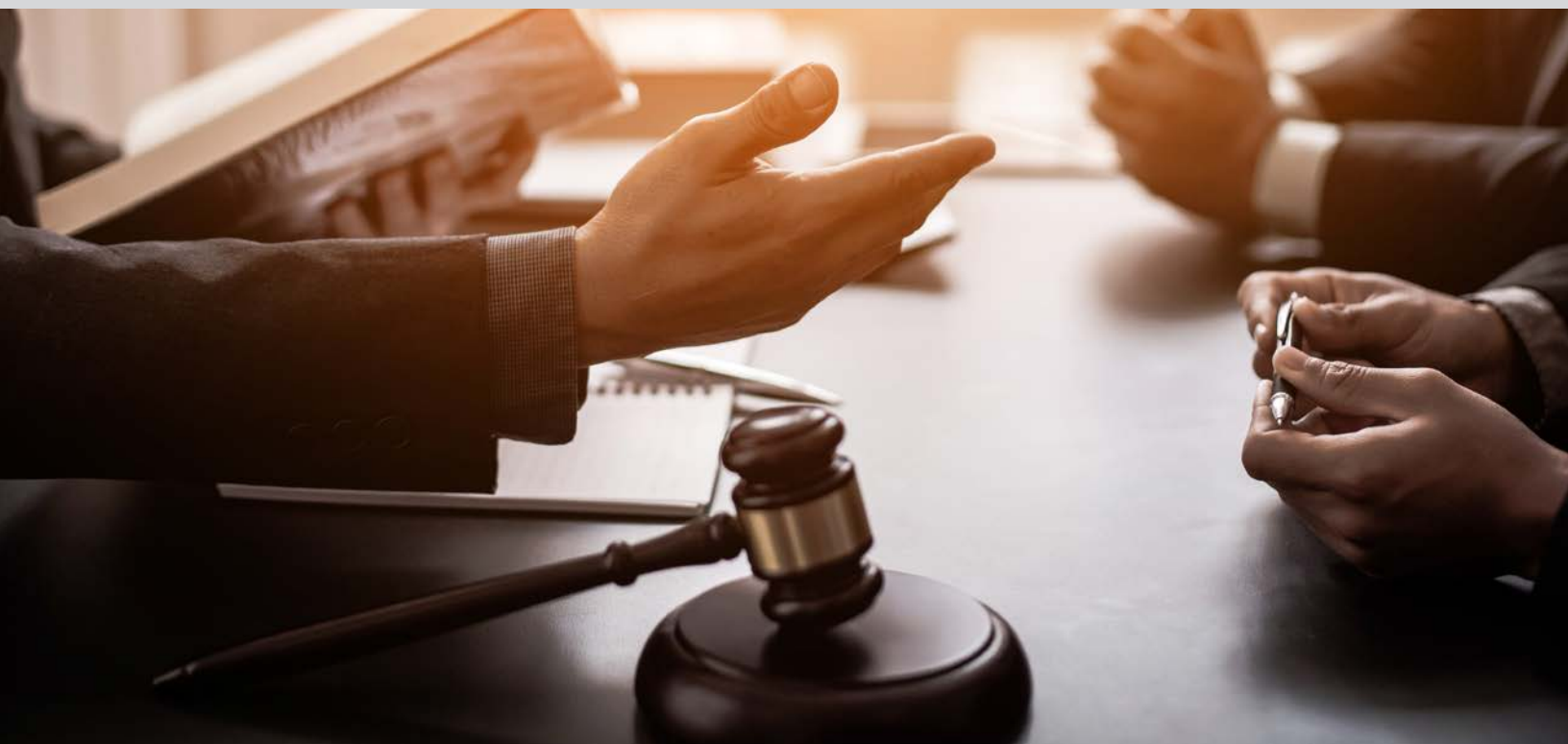
Klafter Lesser LLP is a nationally recognized law firm that primarily focuses on vindicating the rights of investors, businesses, employees, and consumers under Federal securities and State securities, corporate, labor, and consumer protection laws. Its attorneys have led the prosecution of cases in all of these areas and have received recognition for their efforts from courts, professional organizations, and peers for their professionalism and excellent results. The Firm has successfully litigated cases from one end of the country to the other and its attorneys are admitted in multiple state courts and dozens of federal courts.

The Firm's predecessor was founded in June 2003, and on March 1, 2021, the Firm became Klafter Lesser LLP. The Firm's office is in New York. The Firm's principals bring to the practice over seventy years of combined experience representing plaintiffs and, occasionally, defendants.

The Firm's philosophy is to zealously prosecute selective actions as opposed to a "volume"-type operation. The Firm provides its clients with the full spectrum of litigation services including: (i) factual investigation, forensic accounting, and legal analysis; (ii) communications advising the client of the merits of the case, developments in the litigation, and settlement issues; and (iii) advisory services on an "as needed" basis on both case specific and general litigation matters.

The Firm will take its cases as far they need to go to obtain the best recovery for their clients. In fact, perhaps uniquely, in 2009, the Firm was co-lead counsel in what is one of the first FLSA misclassification collective actions ever tried to a jury. After the six-week trial, the firm obtained a verdict finding that the defendant there, Staples, Inc., had willfully violated the FLSA. The jury awarded the 342 assistant store manager collective action members a verdict of \$2.4 million, which the Court doubled to \$4.8 million because of the finding of willfulness. Subsequently, after the Firm filed additional similar claims cases, it was lead counsel in the resulting MDL proceeding, which settled for \$42 million. *In re Staples Inc. Wage & Hour Employment Practices Litig.*, No. 08-5746 (D.N.J.) (KSH) (MDL-2025).

The attorneys in the Firm have obtained well over a billion dollars in settlements in the cases in which they have served as lead lawyers. These results have been obtained in a wide variety of individual and class action contexts. One federal judge stated on the record in open court to one of the Firm's attorneys that "the court already held that class counsel was adequate in the context of class certification. But more than just adequate, class counsel's performance in this case has been exemplary." Another called a settlement by the Firm a "magnificent result."



Securities Litigation

The Firm has served and presently serves as a lead counsel in multiple securities class, group and individual actions.

- *Antipodean Domestic Partners, L.P. v. Clovis Oncology, Inc. et al.*, No. 655908/2016 (Supreme Court, County of New York) (pending)
- *Orgone Capital III, LLC et al v. Daubenspeck et al*, 1:16-cv-10849 (N.D. Ill.) (pending)
- *In re Fisker Automotive Holdings, Inc. Shareholder Litigation*, No. 13-cv-02100-SLR (D. Del.) (pending)
- *In re SmarTalk Teleservices Inc. Securities Litigation*, MDL Docket No. 00-1315 (S.D. Ohio) (\$27.1 million)
- *In re Ashworth, Inc. Securities Litigation*, Master File No. 99cv0121-L (JFS) (S.D. Cal.) (\$15.25 million settlement)
- *In re Eaton Vance Corporation Securities Litigation*, Civil Action No. 01-10911-EFH (D. Mass.) (\$10.5 million settlement)
- *In re InfoSonics Corp. Sec. Litigation*, No. 06cv1231 BTM(WMc) (S.D. Cal.) (\$3.8 million settlement)
- *In re Viisage Technologies, Inc. Securities Litigation*, No. 05-cv-10438 – MLW (D. Mass.) (\$2.3 million settlement)

The Firm also has had significant roles in the prosecution of *In re IBM Corp. Securities Litigation*, No. 05 Civ. 6279 (AKH) (S.D.N.Y.) (\$20 million settlement), *In Re American Business Financial Services, Inc. Noteholders Litigation*, No. 05-232 (ED Pa.) (\$16.75 million settlement); and *In re Countrywide Financial Corporation Securities Litigation*, No. 2:07-cv-05295 (MRP-MAN) (C.D. Cal.) (\$624 million settlement).

In addition to leading securities class actions, the Firm was selected by CompuDyne Corporation to represent it in pursuing its claims against individuals and entities who illegally sold the Company's stock short in advance of a \$30 million private placement, and achieved a \$4.8 million settlement with certain of the short-sellers.

Breach of Fiduciary Duty and Related Litigation

The Firm is also active in pursuing claims for breach of fiduciary duty against corporate officers or directors on behalf of shareholders including the following:

- The Firm was retained by the Post-Confirmation Equity Subcommittee in the bankruptcy of a public company, Superior Offshore International, Inc., to prosecute fiduciary duty claims against Superior's former officers and directors and has brought suit in the United States Bankruptcy Court for the Southern District of Texas against four senior officers of the company for waste of corporate assets, insider trading and causing the company's bankruptcy. That litigation was settled to the satisfaction of the parties shortly before it was scheduled to be tried.
- The Firm was retained by the Liquidating Trust of Debtor PTMS Liquidating Corp. (f/k/a ProxyMed and MedAvant) and has brought suit in the United States Bankruptcy Court for the District of Delaware for breach of fiduciary duty and fraud against General Atlantic, LLC and Braden Kelly for causing the demise of the Company. That litigation was also settled to the satisfaction of the parties shortly before it was scheduled to be tried.
- The Firm was sole counsel to the former common shareholders of Living Independently Group, Inc. in a class action in the Court of Chancery of the State of Delaware seeking damages for breaches of fiduciary duty by its former directors and Chief Operating Officer that resulted in the company being acquired by General Electric Company at a bargain basement price which afforded no consideration to the holders of its common share.
- The firm was co-lead counsel in a class action also in the Court of Chancery of the State of Delaware asserting that the conversion of the IMH Secured Loan Fund into IMH Financial Corp. was done in breach of fiduciary duties and contractual rights owed to the Unitholders in the Fund. This action and the Living Independently Group action were successfully resolved for the benefit of their respective classes.

Wage & Hour Litigation

Klafter Lesser LLP has a strong national reputation for helping employees obtain the overtime pay and other benefits to which they are entitled under the Federal Fair Labor Standards Act (FLSA) and comparable state laws. Its lawyers have successfully handled over [40] federal Fair Labor Standards Act cases and have obtained settlements worth more than a quarter of a billion dollars in class, collective and individual cases against defendants that have included Fortune 100 and other companies that have ranged from major retailers to nationwide financial institutions. In one case in which KL was co-lead counsel the \$34 million settlement was described by the United States District Judge who approved the settlement as a “magnificent result.” *Nash v. CVS Caremark Corp.*, No. 09-cv-079-M (Order granting final approval, April 9, 2012). Another settlement (for \$20.9 million) in which KL was sole lead counsel was described by the Judge as “an excellent and optimal settlement award for the Class Members.” *Craig v. Rite Aid Corp.*, No. 4:08-cv-2317, 2013 U.S. Dist. LEXIS 2658, at *41 (M.D. Pa. Jan. 7, 2013). Ten years ago, another judge recognized KL as “experience[d] in handling wage and hour class actions and [having] knowledge of the applicable law,” experience and knowledge that has only increased in the last decade. *Damassia v. Duane Reade, Inc.*, 250 F.R.D. 152, 165 (S.D.N.Y. 2008) (case settled for \$3.5 million).

In these cases, KL represents workers across the country when they are denied overtime and subjected to other wage violations. These include misclassifying employees as exempt from being paid overtime under the FLSA and state wage claim, failing to credit employees for all hours they have worked and failing to pay wages for time spent required by an employer to prepare for or wind up a workday.

Other notable wage and hour settlements the Firm has achieved include:

- *Snodgrass v. Bob Evans Farms, LLC*, 2:12-cv-768 (S.D. Ohio) (\$16.5 million settlement);
- *Lapan v. Dick's Sporting Goods, Inc.*, 13-cv-11390-RGS (D. Mass.) (\$10 million settlement);
- *Ravenell v. Avis Budget Car Rental, LLC et al.*, 08-cv-02113 (E.D.N.Y.) (7.8 million settlement);
- *Stevens v. Electronic Data Systems Corp.*, 08-cv-10409 (S.D.N.Y.) (\$11.8 million);
- *Herring v. Hewitt Inc.*, 3:06-cv-267 (D.N.J.) (TJB) (\$4.9 million class settlement of FLSA and state claims);
- *Caissie v. BJ's Wholesale Club*, 08-CV-30220 (D. Mass.) (MAP) (\$9.15 million settlement);
- *Nash, et al. v. CVS Caremark Corp.*, 09-cv-078 (D.R.I.) (JM) (\$34 million settlement);
- *Craig v. Rite Aid Corp.*, 08-cv-2317 (M.D. Pa.) (\$20.9 million settlement);
- *Rancharan v. Family Dollar Corp.*, 10-cv-07580 (S.D.N.Y.) (\$14 million settlement); and
- *Wilkie v. Gentiva Health Services, Inc.*, 10-cv-01451 (N.D. Cal.) (\$5 million settlement).

KL will take its cases as far they need to go to obtain relief for their wage and hour clients. In fact, perhaps uniquely, the Firm has twice taken collective actions to trial (and won both). In 2009, Klafter Lesser LLP was co-lead counsel in what is one of the first FLSA misclassification collective actions ever tried to a jury. After the six week trial, plaintiffs prevailed on all points, obtaining a verdict finding that the defendant there, Staples, Inc., had willfully violated the FLSA in failing to pay assistant store managers for hours worked overtime. The jury awarded the 342 collective action members a verdict of \$2.4 million, which the Court doubled to \$4.2 million because of the finding of willfulness. KL acted as the lead counsel in obtaining a \$42 million settlement against Staples, Inc. that resolved the jury award that KL obtained, as well as a number of other cases that constituted MDL-2025, in which was asserted that Staples misclassified assistant store managers as exempt from receiving overtime for hours worked in excess of 40 hours per week. *In re Staples Inc. Wage & Hour Employment Practices Litigation*, No. 08-5746 (D.N.J.) (KSH) (MDL-2025).

KL has also pursued wage and hour claims by arbitration.

Consumer and Commercial Law Litigation

Klafter Lesser LLP has extensive experience in the areas of complex commercial and consumer law. Whether representing individuals or business and whether through class or individual actions, the Firm's attorneys have recouped hundreds of millions of dollars for its clients in these areas.

The Firm's attorneys have been lead and co-lead counsel in major class action and federal Multi-District Litigation proceedings that successfully obtained recompense from banks, insurance companies, mortgage lenders, appraisers and title insurers, as well as rental companies, gasoline companies, automobile manufacturers, computer companies, and many others. Seth Lesser has been awarded the "Consumer Advocate of the Year" award by the National Association of Consumer Lawyers. One of his instance, he obtained over \$100 million – 100% of the individuals' out-of-pocket damages – for New Jersey consumers who paid hidden usurious interest in *Perez v. Rent-a-Center, Inc.*, Docket No. CAM-L-21-03 (Sup. Ct. N.J.), for victims of mortgage fraud, and for compelling a bank to refund interest charges improperly calculated for commercial borrowers.

Civil Rights Litigation

Klafter Lesser LLP has actively prosecuted a number of lawsuits on behalf of individuals who have had their civil or Constitution rights violated.

The Firm's attorneys have obtained awards in many individual and class actions in which racial or gender discrimination was alleged, including the recent \$24.4 million settlement reached in a case involving historical racial discrimination in the sale of life insurance. In that case, as co-lead counsel, we obtained class certification, defeated the defendant's attempt to obtain interlocutory appellate review of the certification decision and prevailed against a motion for summary judgment, *Norfleet v. John Hancock Life Ins. Co.*, No. Civil No. 3:04cv1099 (D. Conn.).

The Firm has also obtained significant recoveries on behalf of individuals who were illegally strip searched when they were arrested for non-serious crimes including a \$7.5 million class action settlement against one New Jersey county (*Hicks v. County of Camden*, Civ. No. 05-1857 (D.N.J.)), a \$4.5 million settlement against another (*Suggs v. County of Cumberland*, Civ. No. 06-0087 (D.N.J.)) and a \$4.0 million against a third (*Wilson v. Gloucester County*, Civ. No. 06-1368 (D.N.J.)). The Firm is now involved in prosecuting such cases across the country. At the final approval hearing of the *Wilson v. Gloucester County* settlement, on March 18, 2010, Judge Irenas of the United States District Court for the District of New Jersey stated on the record that "The court already held that class counsel was adequate in the context of class certification. But more than just adequate, class counsel's performance in this case has been exemplary."

Defective Medical Device and Hazardous Drug Litigation

The Firm's attorneys have extensive experience in representing victims of hazardous pharmaceutical drugs (such as Rezulin or Fen/Phen), defective medical devices (such as certain of Guidant's implantable defibrillators), and mass food poisonings (such as peanut butter contamination). We have represented not only individuals but also government agencies for reimbursement claims.

Our attorneys have been lead counsel in a number of such cases. One involved multiple LYMERix vaccine class actions which resulted, as a part of the settlement, in the withdrawal of the from the market - perhaps a unique and unprecedented resolution of a pharmaceutical class action - and which also set forth the terms pursuant to which the company could apply to the Food and Drug Administration to seek any reintroduction of the product. *Cassidy v. SmithKline Beecham*, No. 99-10423 (Ct. Common Pleas, PA state court).

In another national mass tort, one of our attorneys, Seth Lesser, has been serving as one of the co-lead counsel *In re Guidant Corp. Implantable Defibrillators Products Liability Litigation*, MDL No. 05-1708 (DWF/AJB) (D. Minn.), where a \$240 million settlement has been obtained for individuals who faced economic and personal injury from defectively designed implantable defibrillators.

Our lawyers have also acted as the lead New York class counsel in the Fen/Phen diet drug litigation which obtained the first certification under New York law for a medical monitoring class, and acted as the designated New York class counsel in the nationwide multi-billion dollar settlement with American Home Products. We have experience serving on state and federal executive and plaintiffs' steering committees for other mass tort claims and Mr. Lesser has been a co-chair of the American Association for Justice's Food Borne Illness litigation group.

AntiTrust Litigation

The Firm is currently prosecuting, with co-counsel, antitrust claims against Barclays Bank PLC arising from the Federal Energy Regulatory Commission's sanction of it for manipulating four Western electricity trading hubs.

The Firm currently has a role in the *In re Dental Supplies Antitrust Litigation*.

The Firm has had roles in a number of antitrust class actions including *In re Air Cargo Antitrust Litigation*, *In re Hydrogen Peroxide AntiTrust Litigation*, and *In re High Pressure Laminates Antitrust Litigation*.

The Firm's Attorneys

Jeffrey A. Klafter

Jeffrey A. Klafter has over 40 years of experience in prosecuting securities, breach of fiduciary duty, and commercial litigation. Mr. Klafter began his legal career with the Antitrust Division of the United States Department of Justice. After spending two years with the DOJ, Mr. Klafter entered private practice. From 1988 until mid-2003, Mr. Klafter was a partner of Bernstein Litowitz Berger & Grossmann LLP. Early in his career, Mr. Klafter was one of the principal lawyers responsible for the prosecution of over 100 defendants to recoup the losses suffered by the purchasers of municipal bonds issued by the Washington Public Power Supply System when it defaulted on those bonds. That litigation resulted in the recovery of approximately \$800 million, one of the largest securities fraud settlements in history. Mr. Klafter has also served as sole or co lead counsel in prosecuting numerous securities class actions on behalf of investors in common stock, municipal bonds, convertible debentures and preferred stock in which hundreds of millions of dollars have been recovered on behalf of investors.

Among the many notable achievements for which he had sole or shared responsibility before forming the Firm are the recovery of \$48 million in *In re Independent Energy PLC Securities Litigation*; the recovery of \$300 million in *In re: DaimlerChrysler AG Securities Litigation*, the decision of the Second Circuit Court of Appeals reversing the district court's dismissal of plaintiffs' complaint in *In re Scholastic Corp. Securities Litigation* and ultimate settlement of that litigation; the recovery of \$27.1 million in *In re SmarTalk Teleservices Inc. Securities Litigation*, and a significant recovery on behalf of holders of Sun Oil Company preferred stock in litigation over the indenture governing the stock.

Since forming the Firm, Mr. Klafter served as special counsel to lead counsel in the *In re Ahold N.V. Securities & ERISA Litigation*, Civil No.: 1:03-MD-01539-CCB (D. Md.) in which \$1.1 billion was recovered on behalf of the class, had a significant role in the prosecution of the *Countrywide Financial Corporation Securities Litigation*, which settled for \$624 million; successfully prosecuted the claims of the Liquidating Trust created by the Bankruptcy Court that approved the bankruptcy plan for ProxyMed, the claims of common shareholders in Living Independent Group, Inc.

who did not receive any share of the General Electric Co.'s purchase price of the company, the claims of investors in IMH Senior Loan Fund whose managers reorganized the Fund for their own benefit to the detriment to the investors, and the claims of Antipodean Domestic Partners, LP against Clovis Oncology, Inc. for misrepresenting the effectiveness of a drug it was developing to treat a certain type of lung cancer. The plaintiff opted out of a securities class action. The case was settled after considerable discovery to the satisfaction of the parties.

Additionally, Mr. Klafter has been responsible for the prosecution of innovative and diverse litigation successfully pursuing innovative antitrust claims against Barclays Bank PLC for its alleged manipulation of four electricity hubs in California that led to a \$29 million settlement, challenging Delaware regulations governing the disposal of solid waste on behalf of waste haulers; the laying of fiber optic cable along railroad rights of way on behalf of adjoining landowners; and efforts to impose the cost of Y2K compliance on businesses and medical practices by suppliers of various computer software.

Mr. Klafter is a member of the Bar of the State of New York, the United States District Court for the Southern District of New York, other federal district courts, the Second Circuit Court of Appeals, and the United States Supreme Court. Mr. Klafter has been a member of the Securities Law Committee of the Commercial and Federal Litigation Section of the New York State Bar Association and is a noted author and lecturer on securities litigation issues and has served as a judge of the American Bar Association Student Appellate Advocacy annual competition.

He has been repeatedly recognized by his peers as a SuperLawyer, and in two areas: class action practice and as one of the top 25 lawyers in Westchester County.

Seth R. Lesser

Seth R. Lesser practices in the areas of consumer advocacy, mass torts and wage and hour litigation, primarily on behalf of defrauded consumers, businesses and employees. In addition to handling cases at the trial court level, he also has an active appellate practice. He began his career at a large defense firm and subsequently was a partner at two plaintiff-oriented firms, Bernstein Litowitz Berger & Grossmann LLP and the Locks Law Firm. He joined the Firm in August 2008.

Mr. Lesser is a graduate of Princeton University, A.B., *summa cum laude* (1983); Oxford University, D.Phil. in Modern History, recipient of a Marshall Scholarship (1985); and Harvard Law School, J.D., *magna cum laude*, where he was an editor of the *Harvard Journal of International Law* and of the *Harvard Environmental Law Review* (1985). In addition, he was the coxswain of the Oxford Blue Boat in the Oxford-Cambridge Boat Race (1984 & 1985).

Since 1995, Mr. Lesser has primarily represented plaintiffs in class and collective actions and mass tort cases. He has been the lead plaintiff counsel in dozens of successful class and/or collective actions in the areas of consumer, privacy, mass tort, employment and securities litigation. The cases where he has personally served as plaintiffs' lead counsel have returned in excess of half a billion dollars to clients. Federal Multidistrict Litigation proceedings where he was lead or co-lead counsel have including, among others, MDL-1346 (*In re Amazon-Alexa*) (sole lead); MDL-1352 (*In re Doubleclick*) (co-lead); MDL-1708 (*In re Guidant Implantable Heart Devices*) (co-lead); MDL-1739 (*In re Grand Theft Auto Video Game Consumer Litigation*) (sole lead); MDL-1903 (*In re Pepsico, Inc. Bottled Water Sales Practices*) (sole lead); MDL-2025 (*In re Staples, Inc. Wage & Hour Employment Practices Litig.*) (lead). He has been on numerous MDL Executive/Steering Committees, including, the Executive Committee in MDL-1845 (*ConAgra Peanut Butter Products Liability Litigation*), and serving as Law & Briefing Co-Chair of the Government Actions Committee in MDL-1657 (*Vioxx Products Liability Litigation*). Among other things, he was the lead New York class counsel in the Fen/Phen diet drug litigation and in that case obtained the first certification under New York law for a medical monitoring class, and was the New York class counsel in the settlement with American Home Products. In recent years, he has particularly handled numerous wage and hour litigations on behalf of employees denied payment of overtime wages. He was also class counsel in *Perez v. Rent-A-Center* (New Jersey State Court) where a \$109 million settlement returned over 100% of their out-of-pocket damages to 100,000 New Jersey consumers.

Mr. Lesser was the National Association of Consumer Advocates' Attorney of the Year in 2005 and was Chair of the Board of Directors of that organization for a number of years. He is presently a member of the Board of Directors and on the Executive Committee of Public Justice. He has been repeatedly recognized by his peers as a SuperLawyer, and in two areas: class action practice and as one of the top 25 lawyers in Westchester County.

From 1998 through 2001, he served as the representative of the American Council on Consumer Interests to the United Nations. He has also served on the *Amicus* Committee of the American Association for Justice; the Second Circuit Courts Committee of the Federal Bar Council; and has been active in the Members Consultative Group of the American Law Institute's Restatement of the Law Third, Restitution and Unjust Enrichment project. He is a member of, *inter alia*, the American Law Institute; the American Bar Association; the Second Circuit Federal Bar Council; the Bar Association of the City of New York; the National Association of Consumer Advocates; the American Association for Justice; and the National Employment Lawyers Association.

Other professional organization appointments have included being the Chair of American Bar Association's Business Law Section's Environmental Litigation Subcommittee (1995-2002); the Co-Chair of the ABA's Business Law Section's Annual Review of Litigation (1995-1998); a member of the New York City Bar Association's Committees on Consumer Affairs (1995-1998) and Federal Courts (1998-2001); a member of the Federal Bar Council's Second Circuit Courts Committee (2006 to date); and Co-Chair of the American Association for Justice's Food-borne Illness Litigation Group (2007 to date). He also was the Chair of the National Association of Securities and Consumer Attorneys Consumer Committee from 2003 to 2005. He was asked to draft revisions to New York State's class action law (2002-2003; Report, 2003), as well as having been involved in the drafting of numerous recommendations, testimony, reports, and other materials for various professional organizations. His election to the American Law Institute was in 2008. In addition, Mr. Lesser is on the Editorial Advisory Board of the *Class Action Law Monitor*.

Mr. Lesser is a member of the bars of New York, New Jersey and the District of Columbia as well as nine United States District Courts, nine federal Courts of Appeal and the United States Supreme Court.

Christopher M. Timmel

Christopher M. Timmel is an associate and a member of the bar of New York. His practice focuses on securities fraud and wage and hour class action litigation. Prior to joining the firm, Mr. Timmel worked at two nationally recognized law firms in New York, where his practice focused on private Section 10(b) and Rule 10b-5 litigation.

Mr. Timmel is a graduate of Dartmouth College and the University of Virginia School of Law, where he was sat on the Editorial Board of the Virginia Environmental Law Journal. He is also a graduate of Regis High School in New York City.

Sarah Sears

Sarah Sears is an Associate of Klafter Lesser LLP and a member of the bar of New York. Prior to joining the firm, Sarah was a litigation associate at a boutique firm in New York City with a concentration on commercial litigation and intellectual property. She also previously worked as a legal fellow in the Office of the General Counsel at NPR, where she concentrated on content licensing, copyright law, corporate governance and privacy law.

Ms. Sears graduated *cum laude* from Skidmore College with a double major in political science and international affairs and received her J.D. from Georgetown University Law Center.

