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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SKYE ASTIANA, MILAN BABIC, TIMOTHY BOLICK, JOE CHATHAM, JAMES COLUCCI, TAMARA DIAZ, MARTHA ESPINOLA, TAMAR LARSEN, MARY LITTLEHALE, and KIMBERLY S. SETHAVANISH, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

KASHI COMPANY, a California corporation,

Defendant.

Case Number: 11-cv-1967-H (BGS)

CLASS ACTION

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS AND APPROVAL OF PROCEDURE FOR AND FORM OF NOTICE; MEMORANDUM OF LAW IN SUPPORT; DECLARATION OF ANTONIO VOZZOLO FILED HEREWITH

Judge: Hon. Marilyn L. Huff
Date: May 27, 2014
Time: 4:00 p.m.
Ctrm: 15A

TO DEFENDANT AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on May 27, 2014 at 4:00 p.m., or as soon thereafter as counsel may be heard in Courtroom 15A of the above-referenced court, located at 333 West Broadway, San Diego, California, 92101, Plaintiffs Skye Astiana, Milan Babic, Tamara Diaz, Tamar Larsen, and Kimberly S. Sethavanish ("Plaintiffs") will, and hereby do, move pursuant to Fed. R. Civ. P. 23(e) for entry of the [Proposed] Order Preliminarily Approving Class Action Settlement, Conditionally Certifying the Settlement Class; Providing for Notice and Scheduling Order ("Preliminary Approval Order").

This Motion is made and based on this Notice, Plaintiffs' memorandum and points of authorities in support thereof, the Declaration of Antonio Vozzolo in Support of Motion for Preliminary Approval of Class Action Settlement and Provisional Certification of Settlement Class, the Stipulation of Settlement between Plaintiffs and Defendant, and all papers, pleadings, documents, argument of counsel, other materials presented before or during the hearing on this Motion, and any other evidence and argument the Court may consider.

Dated: May 2, 2014

Respectfully submitted,

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10866 Wilshire Blvd., Suite 1470, Los Angeles, CA 90024.

On May 2, 2014, I served the document(s) described as:

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

[X] BY ELECTRONIC TRANSMISSION USING THE COURT'S ECF SYSTEM: I caused the above document(s) to be transmitted by electronic mail to those ECF registered parties listed on the Notice of Electronic Filing (NEF) pursuant to Fed.R.Civ.P. 5(d)(1) and by first class mail to those non-ECF registered parties listed on the Notice of Electronic Filing (NEF). *"A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed.R.Civ.P. 5(d)(1). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing pro se."*

Executed on May 2, 2014, at Los Angeles, California.

s/David E. Bower
David E. Bower

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SKYE ASTIANA, MILAN BABIC, TIMOTHY BOLICK, JOE CHATHAM, JAMES COLUCCI, TAMARA DIAZ, MARTHA ESPINOLA, TAMAR LARSEN, MARY LITTLEHALE, and KIMBERLY S. SETHAVANISH, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

KASHI COMPANY, a California corporation,

Defendant.

Case Number: 11-cv-1967-H (BGS)

CLASS ACTION

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS AND APPROVAL OF PROCEDURE FOR AND FORM OF NOTICE

Judge: Hon. Marilyn L. Huff
Date: May 27, 2014
Time: 4:00 p.m.
Ctrm: 15A

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I. INTRODUCTION

Plaintiffs Skye Astiana, Milan Babic, Tamara Diaz, Tamar Larsen, and Kimberly S. Sethavanish (collectively, "Plaintiffs"), and co-lead class counsel for the Class, Feinstein Doyle Payne & Kravec, LLC and Faruqi & Faruqi, LLP (collectively, "Class Counsel"), respectfully submit this memorandum in support of Plaintiffs' Motion for Preliminary Approval of Class Settlement (the "Motion"). As detailed below, the proposed settlement is unquestionably fair, achieves meaningful relief for the Class, and should be preliminarily approved by the Court.

This class action is brought by Plaintiffs on behalf of themselves and all others similarly situated against Defendant Kashi Company ("Kashi" or "Defendant") for allegedly misleading consumers by labeling certain of its food products (the "Products") "All Natural" or "Nothing Artificial," when in fact those Products contained certain synthetic and artificial ingredients. This Court has already certified two California classes of purchasers of certain Kashi food products. *See Astiana v. Kashi Co.*, 291 F.R.D. 493 (S.D. Cal. 2013) (certifying an "All Natural" class for Products containing pyridoxine hydrochloride, calcium pantothenate and/or hexane-processed soy ingredients and a "Nothing Artificial" class for Products containing pyridoxine hydrochloride, alpha-tocopherol acetate and/or hexane-processed soy ingredients). Now, after two separate full-day sessions before a mediator, the Parties have reached a comprehensive settlement that more broadly achieves relief for California purchasers of Kashi Products containing one of more of the following ingredients: pyridoxine hydrochloride, calcium pantothenate, hexane-processed soy ingredients, ascorbic acid, calcium phosphate, glycerin, monocalcium phosphate, sodium phosphate, potassium bicarbonate, potassium carbonate, sodium acid pyrophosphate, sodium citrate,

alpha tocopherol acetate, mixed tocopherols, tocopherol acetate, and/or xanthan gum (the "Challenged Ingredients"). This expansion of the Class definition reflects new evidence of the materiality of Defendant's "All Natural" claim as to ***all*** of the Challenged Ingredients. Thus, the Settlement Class is expanded to give relief to consumers who have been similarly harmed by Defendant's uniform misrepresentations.

The Stipulation of Settlement ("Settlement" or "Settlement Agreement") and its exhibits were filed by Defendant on May 2, 2014. (ECF No. 219.)[1] The terms of the Settlement are well-informed by over two years of litigation, during which time, Plaintiffs completed merits and experts discovery, including multiple expert depositions. *See* Declaration of Antonio Vozzolo ("Vozzolo Decl.") ¶¶ 16-18, filed herewith. As more specifically set forth in the Parties' Settlement Agreement, and as described in more detail below, the Parties to this action have reached a settlement that provides a real and substantial benefit to California consumers. First and foremost, under the terms of the Settlement, Kashi has agreed to modify, pursuant to the timetable set forth in the Settlement Agreement, its current labeling and advertising to remove "All Natural" and "Nothing Artificial" from those Products that contain the following Challenged Ingredients: (i) pyridoxine hydrochloride, calcium pantothenate and/or hexane-processed soy ingredients in products labeled "All Natural," and (ii) pyridoxine hydrochloride, alpha-tocopheral acetate and/or hexane-processed soy ingredients in products labeled "Nothing Artificial," unless the ingredients are approved or determined as acceptable for products identified as "natural" by a federal agency or controlling

[1] All capitalized terms used and not otherwise defined herein have the definitions set forth in the Settlement Agreement.

regulatory body. *See* Settlement Agreement § IV.B. Additionally, without any admission of liability, Kashi has agreed to provide meaningful monetary relief to Settlement Class Members by disbursing $5.0 million, less any costs associated with the Class Action Settlement Administrator paid by Kashi prior to that time, to a settlement fund to satisfy the costs of notice, claims administration, and awarded attorneys' fees and expenses, and to fund cash payments to Settlement Class Members who submit valid claims for Products purchased between August 24, 2007 and May 2, 2014, in the State of California. *See id.* § IV.A.2. From this fund, Settlement Class Members are able to recover $0.50 per package for every Product purchased during the Settlement Class Period (with no limitation), for which they can present written proof of purchase in the form of a receipt or a retail rewards submission. Settlement Class Members without such proof of purchase are entitled to $0.50 per package, with a maximum recovery of $25 per household, for every package of Product purchased during the Settlement Class Period. *See id.* § IV.A.1.[2]

As in any class action, the Settlement is subject initially to preliminary approval and then to final approval by the Court after notice to the Class and a hearing. The proposed Class for settlement purposes should be conditionally certified. In its Order certifying two California classes of purchasers of certain of the Products, this Court found the requirements for certification under Federal Rule of Civil Procedure 23 satisfied for products containing certain Challenged Ingredients. *See Astiana*, 291 F.R.D. 493 (certifying an "All Natural" class for

[2] The amount of each cash payment will depend on the number and amount of authorized claims submitted per the Settlement Agreement. *See* Settlement Agreement § IV.A.3.

Products containing pyridoxine hydrochloride, calcium pantothenate and/or hexane-processed soy ingredients and a "Nothing Artificial" class for Products containing pyridoxine hydrochloride, alpha-tocopherol acetate and/or hexane-processed soy ingredients). Although the proposed settlement Class is more broadly defined to include Products containing ***all*** the Challenged Ingredients, certification of the settlement Class is warranted for reasons consistent with this Court's previous class certification order, as detailed below. Accordingly, Plaintiffs now request this Court to enter an order in the form of the [Proposed] Order Preliminarily Approving Class Action Settlement, Conditionally Certifying the Settlement Class, Providing for Notice and Scheduling Order (the "Order"), which is attached to the Settlement Agreement as Exhibit F. That Order will:

(1) grant preliminary approval of the Settlement;

(2) conditionally certify the Class, appointing Plaintiffs Astiana, Babic, Diaz, Larsen and Sethavanish as class representatives ("Class Representatives") for the Settlement Class, and appointing Feinstein, Doyle, Payne & Kravec, LLC and Faruqi & Faruqi, LLP, as counsel for the Settlement Class pursuant to Fed. R. Civ. P. 23(g);

(3) establish procedures for giving notice to Members of the Settlement Class;

(4) approve forms of notice to Settlement Class Members;

(5) mandate procedures and deadlines for exclusion requests and objections; and

(6) set a date, time and place for a final approval hearing.

Class certification for purposes of settlement is appropriate under Federal Rules of Civil Procedure 23(a) and (b)(3), as fully discussed below.

The Settlement is fair, reasonable, and undoubtedly falls within the range of possible approval. Indeed, Class Counsel achieved a substantial benefit for the Class and the likelihood that a greater result could be achieved at trial is remote. Plaintiffs have vigorously litigated this action for over two years, engaging in extensive motion practice and discovery, and have ample knowledge of the legal claims and defenses, the risks presented by the case, and the value achieved by the proposed settlement. *See* Vozzolo Decl., ¶¶ 16-18. The Settlement achieves injunctive relief in the form of a modification of Kashi's current labeling and advertising to remove "All Natural" and "Nothing Artificial" from certain Products. And the settlement fund provides a tangible and significant monetary benefit to the Class in lieu of the continued risk of litigation.

The Settlement is the product of extended arm's-length negotiations between experienced attorneys familiar with the legal and factual issues of this case and all Class members are treated fairly under the terms of the Settlement. The Settlement Agreement was entered into only after two full day mediation sessions before the Honorable Howard B. Weiner (retired), where a tentative agreement was reached. *See id.* ¶ 16. Plaintiffs, by and through their respective counsel, have conducted an extensive investigation into the facts and law relating to this matter. The investigation has included consulting industry personnel, extensive consultation with experts, numerous interviews of witnesses and putative members of the Class, as well as legal research as to the sufficiency of the claims. *See id.* Plaintiffs and their counsel hereby acknowledge that in the course of their investigation they received, examined, and analyzed information, documents, and materials that they deem necessary and appropriate to enable them to enter into the Settlement Agreement on a fully informed basis. *See id.* ¶¶ 16-18. It is an outstanding result

for the Parties and Settlement Class Members. The Court should enter the proposed order granting preliminary approval.

II. PROCEDURAL BACKGROUND

In 2011, the following putative class action complaints were filed against Kashi and other related defendants in the United States District Court for the Southern District of California: *Bates v. Kashi Company, et al.*, 3:11-cv-1967; *Babic v. Kashi Company*, 3:11-cv-02816; *Espinola v. Kashi Company*, 3:11-cv-02629 (initially filed in the United States District Court for the Central District of California (11-cv-8534)); *Diaz v. Kashi Company, et al.*, 11:cv-2256; *Chatham v. Kashi Company, et al.*, 11-cv-2285; *Sethavanish, et al. v. Kashi Company*, 11-cv-02356 (initially filed in the United States District Court for the Northern District of California (11-cv-4453)); and *Baisinger v. Kashi Company*, 11-cv-2367 (initially filed in the United States District Court for the Northern District of California (11-cv-4581)) (collectively "the Original Complaints"). Vozzolo Decl., ¶ 5.

On November 28, 2011, the Court ordered the consolidation of the related actions. *See* ECF No. 16 (naming *Bates* the lead case; ordering consolidation of *Diaz*, *Chatham*, *Sethavanish* and *Baisinger* cases); *see also* ECF No. 22 (ordering consolidation of *Espinola* case); ECF No. 8 in 3:11-cv-2816 (ordering consolidation of *Babic* case). On January 18, 2012, the Court appointed the law firms of Stember Feinstein Doyle & Payne, LLC and Faruqi & Faruqi, LLP as interim co-lead counsel. (ECF No. 41.)

On February 21, 2012, Plaintiffs filed a Consolidated Amended Complaint for Damages, Equitable, Declaratory and Injunctive Relief against Kashi Company, Kashi Sales LLC and Kellogg Company (Case No. 3:11-cv-01967) (the "Consolidated Amended Complaint"), which amended and superseded the Original

Complaints. (ECF No. 49.)

In the Consolidated Amended Complaint, which was filed as a putative class action, Plaintiffs allege they bought certain Kashi food products based, at least in part, on misleading statements printed on the products' labels that the products were "All Natural" or "Nothing Artificial." Plaintiffs allege that, based on the labels, they believed the products contained no synthetic or artificial ingredients and therefore paid a premium price for the products. Plaintiffs further allege that the products that bore the "All Natural" or "Nothing Artificial" labels contained certain unnatural, synthetic or artificial ingredients. Plaintiffs further allege that they either would not have purchased the products or would have paid less for the products had they known at the time of purchase that they contained ingredients that were unnatural, synthetic or artificial.

On April 6, 2012, Defendants filed a motion to dismiss the Consolidated Amended Complaint. (ECF No. 61.) Plaintiffs opposed Defendants' motion to dismiss. On July 16, 2012, the Court entered an Order granting in part and denying in part Defendants' motion to dismiss. (ECF No. 79.) The Court rejected Defendants' arguments that Plaintiffs' claims were preempted by federal law and found that application of the primary jurisdiction doctrine was not appropriate. The Court dismissed all of Plaintiffs' claims against Kashi Sales, LLC and Kellogg Company. The Court also dismissed Plaintiffs' Magnuson-Moss Warranty Act causes of action, common law fraud cause of action, and claim for unjust enrichment. The Court denied the remaining portions of Defendants' motion to dismiss the Consolidated Amended Complaint, namely, Plaintiffs' allegations that Kashi's conduct violates the unlawful, unfair and fraudulent prongs of California's Business and Professions Code § 17200, *et seq.* (the "UCL"), the California

Business & Professions Code § 17500, *et seq.* (the "FAL"), the Consumer Legal Remedies Act ("CLRA"), and Cal. Com. Code § 2313 (breach of express warranty) or, in the alternative, claims for restitution on the basis of quasi contract.

Kashi answered the Consolidated Complaint on August 15, 2012, denying liability. (ECF No. 81.) Over the following year, the Parties engaged in extensive discovery. Plaintiffs noticed and took a number of depositions, including of Defendant's marketing expert, served multiple sets of requests for production of documents and interrogatories, and served several subpoenas to third parties, which resulted in the production of thousands of pages of documents. Defendant also served, and Plaintiff responded to, requests for production of documents and interrogatories. Further, Defendant deposed the named Plaintiffs as well as Plaintiffs' marketing expert.

On April 15, 2013, Plaintiffs filed a motion for class certification (ECF No. 108), which Kashi opposed. On July 30, 2013, the Court entered an Order granting in part and denying in part Plaintiffs' motion for class certification. (ECF No. 148.) The Court certified the following class, representing California purchasers of Kashi products marketed and labeled as containing "Nothing Artificial" during the class period:

> All California residents who purchased Kashi Company's food products on or after August 24, 2007 in the State of California that were labeled "Nothing Artificial" but which contained one or more of the following ingredients: Pyridoxine Hydrochloride, Alpha-Tocopherol Acetate and/or Hexane-Processed Soy ingredients. The Court excludes from the class anyone with a conflict of interest in this matter.

In addition, the Court certified the following class, representing California purchasers of Kashi products marketed and labeled as "All Natural" during the

class period:

> All California residents who purchased Kashi Company's food products on or after August 24, 2007 in the State of California that were labeled "All Natural" but which contained one or more of the following ingredients: Pyridoxine Hydrochloride, Calcium Panthothenate and/or Hexane-Processed Soy ingredients. The Court excludes from the class anyone with a conflict of interest in this matter.

The Court also appointed Faruqi & Faruqi, LLP and Feinstein Doyle Payne & Kravec, LLC as co-lead counsel for both classes.

The Court denied Plaintiffs' motion for class certification as to ten of the Challenged Ingredients—ascorbic acid, calcium phosphates, glycerin, potassium bicarbonate, potassium carbonate, sodium acid pyrophosphate, sodium citrate, sodium phosphates, tocopherols, and xantham gum—on the basis that those ingredients were allowed in certified "organic" goods and consumers often equate "natural" with "organic." *Astiana*, 291 F.R.D. at 508. Specifically, the Court reasoned that "***at [that] time***, Plaintiffs fail[ed] to sufficiently show that … Defendant's representation of 'All Natural' in light of the presence of the challenged ingredients would be considered to be a material falsehood by class members." *Id.* (emphasis added).

On August 12, 2013, Kashi filed a Petition For Permission To Appeal Under Federal Rule of Civil Procedure 23(f) in the United States Court of Appeals for the Ninth Circuit, seeking the Ninth Circuit's permission to appeal the class certification order. Defendants' petition argued that under the Supreme Court's decision in *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013), Plaintiffs' class certification motions did not translate the legal theory of their false advertising claims into a damages analysis that satisfies the predominance requirement of Rule

23(b)(3). Plaintiffs filed an opposition to Kashi's Rule 23(f) petition on August 22, 2013, asserting that the Ninth Circuit had already addressed the scope and applicability of the *Comcast* decision in *Leyva v. Medline Industries Inc.*, 716 F.3d 510 (9th Cir. 2013), and that this Court rendered a thoroughly reasoned class certification decision which correctly applied both *Comcast* and *Leyva*. On October 22, 2013, the Ninth Circuit denied Kashi's petition for permission to appeal the District Court's class certification ruling.

On August 27, 2013, Plaintiffs moved for partial reconsideration of the class certification order on the grounds that the Court erred by excluding the ingredient potassium bicarbonate from the "All Natural" class. (ECF No. 157.) Conversely, on August 28, 2013, Kashi moved for modification of the "All Natural" class definition, arguing that the Court erred by including the ingredients calcium pantothenate and pyridoxine hydrochloride. (ECF No. 160.) On September 18, 2013, the Court denied each of Plaintiffs' and Defendant's requests that the Court modify the definition of the "All Natural" class. (ECF No. 173.) On October 24, 2013, Kashi filed an additional motion to modify the Court's July 30, 2013 class certification order (ECF No. 182), which Plaintiffs opposed. On November 22, 2013, the Court denied Kashi's motion to modify the Court's class certification order. (ECF No. 203.)

On October 23, 2013 and December 5, 2013, Class Counsel, Defendant and Defendant's Counsel participated in mediations conducted by the Honorable Howard B. Weiner (retired) at which they reached a tentative settlement. Vozzolo Decl., ¶ 16. Subsequent to those sessions, the Parties engaged in protracted, extensive, and hard-fought settlement negotiations. *See id.* As a result of those negotiations, the Parties agreed to settle the Litigation pursuant to the terms set

forth in the Settlement Agreement. *See id.* ¶¶ 17-18.

Throughout the Litigation, Plaintiffs by and through their respective counsel, conducted a thorough examination and investigation of the facts and law relating to the matters in this case, including, but not limited to, completing merits and expert discovery, review and analysis of Kashi's documents and data, and extensive research and assessment of the Challenged Ingredients and the Products. *See id.* ¶¶ 16-18. Class Counsel also evaluated the merits of all Parties' contentions and evaluated this Settlement, as it affects all Parties, including Settlement Class Members. *See id.* Plaintiffs and Class Counsel, after taking into account the foregoing, along with the risks and costs of further litigation, are satisfied that the terms and conditions of this Settlement are fair, reasonable and adequate, and that this Settlement is in the best interest of the Settlement Class Members. As a result of this extensive investigation and the extensive negotiations, the Parties reached the proposed Settlement, and the Settlement Agreement was fully executed on May 2, 2014. *See id.* ¶¶ 18-19.

Kashi, while denying all allegations of wrongdoing and disclaiming all liability with respect to all claims, considers it desirable to resolve the action on the terms stated herein in order to avoid further expense, inconvenience and burden and, therefore, has determined that this Settlement on the terms set forth herein is in Kashi's best interests.

III. THE STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

Approval of class action settlements involves a two-step process. First, the Court must make a preliminary determination whether the proposed settlement appears to be fair and is "'within the range of possible approval.'" *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007); *In re*

Syncor ERISA Litig., 516 F.3d 1095, 1100 (9th Cir. 2008); *Alaniz v. Cal. Processors, Inc.*, 73 F.R.D. 269, 273 (N.D. Cal. 1976), *cert. denied sub nom. Beaver v. Alaniz*, 439 U.S. 837 (1978). If so, notice can be sent to class members and the Court can schedule a final approval hearing where a more in-depth review of the settlement terms will take place. *See Manual for Complex Litigation* (Third) § 30.41 at 236-38 (1995) (hereinafter "*Manual*"). The purpose of a preliminary approval hearing is to ascertain whether there is any reason to notify the putative class members of the proposed settlement and to proceed with a fairness hearing. *See In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079. Notice of a settlement should be disseminated where "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *Id.* (quoting *Schwartz v. Dallas Cowboys Football Club, Ltd.*, 157 F. Supp. 2d 561 (E.D. Pa. 2001)). Preliminary approval does not require an answer to the ultimate question of whether the proposed settlement is fair and adequate, for that determination occurs only after notice of the settlement has been given to the members of the settlement class. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996).

Nevertheless, a review of the standards applied in determining whether a settlement should be given *final* approval is helpful to the determination of preliminary approval. One such standard is the strong judicial policy of encouraging compromises, particularly in class actions. *See In re Syncor*, 516 F.3d at 1101 (citing *Officers for Justice v. Civil Serv. Comm'n of the City and Cnty. Of*

S.F., 688 F.2d 615 (9th Cir. 1982), *cert. denied, Byrd v. Civil Service Com.*, 459 U.S. 1217 (1983)); *Manual* § 23.11 at 166:

> Beginning with the first [pretrial] conference, and from time to time throughout the litigation, the court should encourage the settlement process. The judge should raise the issue of settlement at the first opportunity, inquiring whether any discussions have taken place or might be scheduled. As the case progresses, and the judge and counsel become better informed, the judge should continue to urge the parties to consider and reconsider their positions on settlement in light of current and anticipated developments.

While the district court has discretion regarding the approval of a proposed settlement, it should give "proper deference to the private consensual decision of the parties." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). In fact, when a settlement is negotiated at arm's-length by experienced counsel, there is a presumption that it is fair and reasonable. *See In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Ultimately, however, the court's role is to ensure that the settlement is fundamentally fair, reasonable and adequate. *See In re Syncor*, 516 F.3d at 1100.

Beyond the public policy favoring settlements, the principal consideration in evaluating the fairness and adequacy of a proposed settlement is the likelihood of recovery balanced against the benefits of settlement. "Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968). That said, "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a

whole, is fair, reasonable and adequate to all concerned." *Officers for Justice*, 688 F.2d at 625.

Factors to be considered by the court in evaluating a proposed settlement may include, among others, some or all of the following: the experience and views of counsel; the risks, complexity, expense and likely duration of continued litigation; the strengths of plaintiff's case; the amount offered in settlement; and the stage of proceedings. *See id.* In evaluating preliminarily the adequacy of a proposed settlement, the proposed settlement enjoys a presumption of fairness because it is the product of extensive arm's length negotiations conducted by experienced and capable counsel with a firm understanding of the strengths and weaknesses of their respective clients' positions. *See Linney v. Cellular Alaska P'ship*, No. C-96-3008 DLJ, 1997 U.S. Dist. LEXIS 24300, at *16 (N.D. Cal. July 18, 1997) ("the fact that the settlement agreement was reached in arm's length negotiations, after relevant discovery [has] taken place create[s] a presumption that the agreement is fair"), *aff'd*, 151 F.3d 1234 (9th Cir. 1998); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) ("there was extensive discovery prior to settlement, allowing both counsel and the Court to fully evaluate the strengths, weaknesses, and equities of the parties' positions"), *aff'd*, 661 F.2d 939 (9th Cir. 1981); *see also Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622-23 (N.D. Cal. 1979).

In sum, a compromise must be viewed in the circumstances in which it was achieved. In the final analysis, that decision is committed to the sound discretion of the court.

IV. TERMS OF THE PROPOSED SETTLEMENT

The Parties reached agreement on the terms of the proposed settlement through a vigorous debate of legal and factual theories by counsel and extensive arm's-length negotiations. The proposed Settlement Class consists of all California residents who, at any time between August 24, 2007 and May 1, 2014 purchased any of the Products. Excluded from this definition are: (a) Kashi's employees, officers and directors; (b) persons or entities who purchased the Products for the purpose of re-sale; (c) retailers or re-sellers of the Products; (d) governmental entities; (e) persons who timely and properly exclude themselves from the Class as provided in the Settlement Agreement; and (f) the Court, the Court's immediate family, and Court staff. Settlement Class Members who exclude themselves from the Settlement, pursuant to the procedures set forth in Section VI.B of the Settlement Agreement, shall no longer thereafter be Settlement Class Members and shall not be bound by the Settlement Agreement and shall not be eligible to make a claim for any benefit under the terms of the Settlement Agreement.

A. Benefit To Settlement Class Members From The Settlement Fund

Kashi has agreed to injunctive relief in the form of a modification of its current labeling and advertising to remove "All Natural" and "Nothing Artificial" from certain Products as follows: "By the later of (i) 120 days following the Effective Date or (ii) December 31, 2014 (the 'Injunctive Relief Effective Date'), Kashi agrees to modify its current labeling and advertising to remove 'All Natural' and 'Nothing Artificial' from those Products that contain the following Challenged Ingredients: (i) pyridoxine hydrochloride, calcium pantothenate and/or hexane-processed soy ingredients in products labeled 'All Natural,' and

(ii) pyridoxine hydrochloride, alpha-tocopheral acetate and/or hexane-processed soy ingredients in products labeled 'Nothing Artificial,' unless the ingredients are approved or determined as acceptable for products identified as 'natural' by a federal agency or controlling regulatory body." *See* Settlement Agreement § IV.B.

Additionally, the Settlement Agreement provides for monetary relief to the proposed Settlement Class by, among other things, requiring Kashi to pay $5.0 million, less any costs associated with the Class Action Settlement Administrator paid by Kashi prior to that time, into a settlement fund. *See* Settlement Agreement § IV.A.2. Defendant shall fund the Settlement Fund within seven (7) days of the Effective Date. *Id.* § IV.A.7. The Settlement Fund shall be applied to pay in full and in order: (i) any necessary taxes and tax expenses; (ii) all costs associated with the Class Action Settlement Administrator, including costs of providing notice to the Class members and processing claims; (iii) any Fee and Expense Award made by the Court to Class Counsel under section VIII(a) of the Settlement Agreement; (iv) any class representative Incentive Awards made by the Court to Plaintiffs under section VIII(c) of the Settlement Agreement; and (v) payments to authorized Claimants and any others as allowed by the Settlement and to be approved by the Court. *Id.* § IV.A.2.

Class members may seek reimbursement of $0.50 per package for every Product purchased during the Settlement Class Period, for which they can present written proof of purchase in the form of a receipt or a retail rewards submission. Class members may make a claim for every package of such Products for which they submit a valid Claim Form. For Products for which Class members cannot present such proof of purchase, Class members may seek reimbursement of $0.50 per package, with a maximum recovery of $25. Class members may obtain relief

under both sections IV.A.1(a) and (b), with the appropriate paper work and subject to the maximum recovery amount permitted for claims made without written proof of purchase. The amount of each cash payment will depend on the number and amount of authorized claims submitted. If the total amount of eligible claims exceeds the Settlement Fund, then each claimant's award shall be proportionately reduced. If after all valid claims (plus other authorized costs and expenses) are paid, money remains in the Settlement Fund, the remaining amount shall be used to increase pro rata the recovery of each eligible claim.

To be eligible for a cash payment, the Settlement Class Member must timely submit a signed and completed Claim Form containing his or her name and mailing address. The Claim Form will also request an e-mail address for the Settlement Class Member, but an e-mail address will not be required to be eligible for a cash payment. The Settlement Administrator may pay claims that are otherwise valid but untimely filed if there is sufficient money to pay all valid and timely claims in full plus untimely but otherwise valid claims from the Settlement Fund, and payment of any such untimely but valid claims is administratively feasible and otherwise reasonable, taking into account the need to timely pay claims. The determination of the Class Action Settlement Administrator after consultation with Class Counsel and Defendant's Counsel concerning the eligibility and amount of payment shall be final. In the event a Settlement Class Member disagrees with such a determination, the Class Action Settlement Administrator agrees to reconsider such determination, which includes consultation with Class Counsel and Defendant's Counsel. To be eligible, Claim Forms must be postmarked or submitted online no later than eight (8) days before the Settlement Hearing.

All Claimants must include information in the claim form—completed online or in hard copy mailed to the Settlement Administrator—confirming, under penalty of perjury, that they did in fact purchase between August 24, 2007 and May 1, 2014 the packages of Product(s) for which they seek reimbursement. *See* Settlement Agreement § IV.A.1.d.

B. Release And Discharge Of Claims

The Settlement Agreement provides for the release of all claims or causes of action relating to Kashi's packaging, marketing, distribution or sale of food products labeled as "All Natural" or "Nothing Artificial," which have been asserted in the Consolidated Amended Complaint or in any of the Original Complaints. The release will finally resolve Plaintiffs' and Class Members' claims once the Settlement becomes effective as defined in the Settlement Agreement. *See* Settlement Agreement § VII.

C. Payment Of Attorneys' Fees And Expenses

Subject to Court approval, Kashi will pay Class Counsel Court-approved fees and expenses up to a maximum of $1,250,000. The attorneys' fees were negotiated separately and apart from the other terms of the Settlement Agreement. The payment by Kashi of Class Counsel's fees and expenses will be from the Settlement Fund to the extent approved and ordered by the Court. *See* Settlement Agreement § VIII.A.

D. Compensation For The Class Representatives

In addition to the individual relief discussed above, Kashi has also agreed to pay Incentive Awards to the Class Representatives, Skye Astiana, Milan Babic, Tamara Diaz, Tamar Larsen, and Kimberly S. Sethavanish, not to exceed $4,000 per representative plaintiff. The payment by Kashi of Class Representatives'

Incentive Awards will be from the Settlement Fund to the extent approved and ordered by the Court. *See* Settlement Agreement § VIII.C.

E. Payment Of Notice And Administrative Fees

Kashi shall pay to the administrator handling the administration of the Settlement the reasonable costs and expenses of providing notice to the Class in accordance with the Settlement Agreement.[3] Any reasonable costs associated with the Class Action Settlement Administrator incurred and paid prior to the funding of the Settlement Fund will be paid by Kashi, but upon the occurrence of the Effective Date and the triggering of the payments required by section IV.A of the Settlement Agreement, any such payments will reduce the amount Kashi is obligated to pay to establish the Settlement Fund. *See* Settlement Agreement § V.C.

V. THIS COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, PROVISIONALLY CERTIFY THE CLASS AND ENTER THE PRELIMINARY APPROVAL ORDER

A. The Settlement Should Be Preliminarily Approved Because It Satisfies Accepted Criteria

It is well established that the law favors the compromise and settlement of class action suits: "'[S]trong judicial policy favors settlements . . . .'" *Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 576 (9th Cir. 2004) (original ellipsis omitted). This is particularly true where "class action litigation is concerned." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

The approval of a proposed settlement of a class action is a matter of

[3] Notice costs also include notification of the Attorney General of the United States and the attorney general of the State of California in accordance with the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715(b).

discretion for the trial court. *In re Veritas Software Corp. Sec. Litig.*, 496 F.3d 962, 972 (9th Cir. 2007) ("[T]he district court has substantial discretion in approving the details of a class action settlement"). Courts, however, must give "proper deference to the private consensual decision of the parties," since '"the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon*, 150 F.3d at 1027; *accord.* Fed. R. Civ. P. 23(e)(2) (settlement must be "fair, reasonable, and adequate").

To grant preliminary approval of this class action Settlement, the Court need only find that the Settlement falls within the range of possible approval. *See, e.g.*, *Livingston v. Toyota Motor Sales USA, Inc.*, No. C-94-1377-MHP, 1995 U.S. Dist. LEXIS 21757, at *24 (N.D. Cal. June 1, 1995) ("The proposed settlement must fall within the range of possible approval."); *see also* 4 Alba Conte and Herbert Newberg, *Newberg on Class Actions* § 11.25 (4th ed. 2002). The *Manual for Complex Litigation* (Fourth) § 21.632 at 320 (2004) characterizes the preliminary approval stage as an "initial evaluation" of the fairness of the proposed settlement made by the court on the basis of written submissions and informal presentation from the settling parties.

Here, as discussed above, the Settlement should be preliminarily approved because it clearly falls "within the range of possible approval." *Alaniz*, 73 F.R.D. at 273. The settlement was reached on the cusp of trial, after two years of litigation, during which time, Plaintiffs completed extensive merits and experts

discovery, including multiple expert depositions. It is non-collusive, fair, and reasonable. The likelihood that a greater result could be achieved at trial is remote. The Settlement achieves injunctive relief in the form of a modification of Kashi's current labeling and advertising to remove "All Natural" and "Nothing Artificial" from certain Products, as described above. Additionally, the Settlement will provide a significant monetary benefit to Settlement Class Members by providing them with $.50 in cash for each Product purchased (without limitation) during the Settlement Class Period with written proof of purchase in the form of a receipt or a retail rewards submission or up to a maximum payment of $25.00 per household for claims made without written proof of purchase.

At the same time, the Settlement eliminates the substantial risk and delay of litigation. Although Plaintiffs believe their claims have merit, they recognize that they face significant legal, factual, and procedural obstacles to recovery. Kashi continues to vigorously deny any wrongdoing and denies any liability to the Plaintiffs or any members of the Class. Although Plaintiffs and Class Counsel have confidence in the claims and although this Court has already certified an "All Natural" and "Nothing Artificial" class, a favorable outcome is not assured. *See, e.g.*, *In re POM Wonderful LLC Mktg. and Sales Practices Litig.*, No. 10-02199, 2014 U.S. Dist. LEXIS 40415 (C.D. Cal. Mar. 25, 2014) (decertifying nationwide class); *see also Sethavanish v. ZonePerfect Nutrition Co.*, No. 12-2907, 2014 U.S. Dist. LEXIS 18600, at *13-18 (N.D. Cal. Feb. 13, 2014) (denying class certification, finding lack of ascertainability); *Astiana v. Ben & Jerry's Homemade, Inc.*, No. C 10-4387, 2014 U.S. Dist. LEXIS 1640, at *8-11, *28-41 (N.D. Cal. Jan. 7, 2014) (denying class certification for lack of ascertainability and predominance). Even if judgment were entered against Kashi, any appeal in the Ninth Circuit

would likely take years to resolve. By settling, Plaintiffs and the Settlement Class avoid these risks, as well as the delays and risks of a lengthy trial and appellate process. The Settlement will provide Settlement Class Members with monetary benefits that are immediate, certain and substantial, and avoid the obstacles that might have prevented them from obtaining relief.

In light of the relief obtained, the magnitude and risks of the litigation and the legal standards set forth above, the Court should allow notice of the settlement to be sent to the Settlement Class so that Class members can express their views on it. The Court should conclude that the Settlement's terms are "within the range of possible approval." *Toyota*, 1995 U.S. Dist. LEXIS 21757, at *24

B. The Proposed Settlement Class Should Be Certified

The Settlement Class consists of all California residents who, at any time between August 24, 2007 and May 1, 2014 purchased any of the referenced Products. On July 30, 2013, this Court granted in part Plaintiffs' motion for class certification, certifying two classes of California purchasers of Kashi products: (i) all California residents who purchased Kashi's food products on or after August 24, 2007 in the State of California that were labeled "Nothing Artificial" but which contained one or more of the ingredients pyridoxine hydrochloride, alpha-tocopherol acetate and/or hexane-processed soy ingredients; and (ii) all California residents who purchased Kashi's food products on or after August 24, 2007 in the State of California that were labeled "All Natural" but which contained one or more of the ingredients pyridoxine hydrochloride, calcium panthothenate and/or hexane-processed soy ingredients. The proposed Settlement Class is expanded to include Products containing all the Challenged Ingredients. In this Court's class certification order, the Court denied Plaintiffs' motion for class

certification as to ten of the Challenged Ingredients on the basis that those particular ingredients were allowed in certified "organic" goods and that "***at [that] time***, Plaintiffs fail[ed] to sufficiently show that … Defendant's representation of 'All Natural' in light of the presence of th[os]e challenged ingredients would be considered to be a material falsehood by class members." *Astiana*, 291 F.R.D. at 508 (emphasis added). Putting aside the fact that Plaintiffs now have evidence to show the materiality of Defendant's "All Natural" claims as to those ten ingredients, rather than proceed to trial the Parties have entered into an arm's-length agreement that permits all Class members who wish compensation for their claims to seek monetary relief by submitting a claim form. Accordingly, any concern that individual views of each class member could predominate over common issues is unwarranted. *See Sullivan v. DB Invs., Inc.*, 667 F.3d 273 (3d Cir. 2011) (affirming class certification and approval of settlement, finding Rule 23's predominance requirement does not preclude nationwide *settlement-only* class certification of claims brought under consumer protection and unjust enrichment laws of all 50 states). For settlement purposes only, the parties and their counsel request that the Court provisionally certify the Settlement Class.

The Ninth Circuit has recognized that certifying a settlement class to resolve consumer lawsuits is a common occurrence. *Hanlon*, 150 F.3d at 1019. When presented with a proposed settlement, a court must first determine whether the proposed settlement class satisfies the requirements for class certification under Rule 23. In assessing those class certification requirements, a court may properly consider that there will be no trial. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable

management problems . . . for the proposal is that there be no trial."). For the reasons below, this Class meets the requirements of Rule 23(a) and (b).

1. The Settlement Class Satisfies Rule 23(a)

a. Numerosity

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." *See* Fed. R. Civ. P. 23(a)(1). "As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members, but not satisfied when membership dips below 21." *See Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000). Here, the proposed Settlement Class is comprised of thousands of consumers who purchased the Products – a number that obviously satisfies the numerosity requirement. *See Astiana*, 291 F.R.D. at 501 ("Here the parties estimate that Kashi has sold millions of Kashi products in the last four years in the United States, representing thousands of products sold in each state with labels including the alleged misrepresentations."). Accordingly, the proposed Settlement Class is so numerous that joinder of their claims is impracticable.

b. Commonality

Rule 23(a)(2) requires the existence of "questions of law or fact common to the class." *See* Fed. R. Civ. P. 23(a)(2). Commonality is established if plaintiff and class members' claims "depend upon a common contention," "capable of class-wide resolution . . . mean[ing] that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). Because the commonality requirement may be satisfied by a single common issue, it is

easily met. 1 Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 3.10 at 3-50 (1992).

There are ample issues of both law and fact here that are common to the members of the class. Indeed, all of the Settlement Class Members' claims arise from a common nucleus of facts and are based on the same legal theories. The Plaintiffs allege that Defendant misled consumers by labeling certain of its products "All Natural" or "Nothing Artificial," when those products contained certain synthetic and artificial ingredients, which ingredients Plaintiffs allege preclude those products from properly being labeled as "All Natural" or "Nothing Artificial." Here, all of the Settlement Class Members purchased one or more of the Products. "By definition, all class members were exposed to such representations and purchased Kashi products, creating a common core of salient facts." *Astiana*, 291 F.R.D. at 501 (internal quotation marks omitted). Commonality is satisfied here, for settlement purposes, by the existence of these common factual issues. *See Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 448 (N.D. Cal. 1994) (commonality requirement met by "the alleged existence of common discriminatory practices").

Second, Plaintiffs' claims are brought under legal theories common to the class as a whole, including whether the use of the terms "All Natural" and "Nothing Artificial" to advertise food products that allegedly contain the artificial and synthetic ingredients violates the UCL, FAL, CLRA, or Defendant's own warranties. *See Astiana*, 291 F.R.D. at 501. Alleging a common legal theory is alone enough to establish commonality. *See Morgan v. Laborers Pension Trust Fund*, 81 F.R.D. 669, 676 (N.D. Cal. 1979) (commonality met based on whether operation of the eligibility structure of Trust Fund's pension plan violated ERISA).

Here, all of the legal theories and causes of action asserted by Plaintiffs are common to all Settlement Class Members. Especially since there are virtually no issues of law which affect only individual members of the class, common issues of law clearly predominate over individual ones. Thus, considering the nature of the issues and facts that bind each class member together, commonality is satisfied.

c. *Typicality*

Rule 23(a)(3) requires that the claims of the representative plaintiff be "typical of the claims . . . of the class." *See* Fed. R. Civ. P. 23(a)(3). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *See Hanlon*, 150 F.3d at 1020. In short, to meet the typicality requirement, the representative plaintiff simply must demonstrate that the members of the settlement class have the same or similar grievances. *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 161 (1982).

In the instant action, Plaintiffs' claims are typical of those of the Settlement Class. Like those of the Settlement Class, their claims arise out of the allegations that Kashi misled consumers by labeling certain of its products "All Natural" or "Nothing Artificial," when those products contained certain synthetic and artificial ingredients, which Plaintiffs alleged precludes those products from properly being labeled as "All Natural" or "Nothing Artificial." Each Plaintiff purchased one or more of the Products. Plaintiffs have precisely the same claims as the Settlement Class, and must satisfy the same elements of each of their claims, as must other Settlement Class Members. Supported by the same legal theories, Plaintiffs and all Settlement Class Members share claims based on the same alleged course of conduct. Plaintiffs and all Settlement Class Members have been injured in the

same manner by this conduct. Therefore, Plaintiffs satisfy the typicality requirement.

d. Adequacy

The final requirement of Rule 23(a) is set forth in subsection (a)(4) which requires that the representative parties "fairly and adequately protect the interests of the class." *See* Fed. R. Civ. P. 23(a)(4). A plaintiff will adequately represent the class where: (1) plaintiffs and their counsel do not have conflicts of interests with other class members; and (2) where plaintiffs and their counsel prosecute the action vigorously on behalf of the class. *See Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). Moreover, adequacy is presumed where a fair settlement was negotiated at arm's-length. 2 *Newberg on Class Actions, supra*, §11.28, at 11-59.

Class Counsel have vigorously and competently pursued the Settlement Class Members' claims. The arm's-length settlement negotiations that took place demonstrate that Class Counsel adequately represent the Settlement Class. Moreover, Plaintiffs and Class Counsel have no conflicts of interests with the Settlement Class. Rather, Plaintiffs, like each absent Settlement Class Member, have a strong interest in proving Kashi's common course of conduct, establishing its unlawfulness and obtaining redress. In pursing this litigation, Class Counsel, as well as the Plaintiffs, have advanced and will continue to advance and fully protect the common interests of all members of the Class. Class Counsel have extensive experience and expertise in prosecuting complex class actions. Class Counsel are active practitioners who are highly experienced in class action, product liability, and consumer fraud litigation. *See* Vozzolo Decl. Exs. 1 and 2 (Class Counsel's firm resumes). Faruqi & Faruqi, LLP and Feinstein Doyle Payne & Kravec, LLC

were appointed Co-Lead Class Counsel for the Class on July 30, 2013. Accordingly, Rule 23(a)(4) is satisfied.

2. The Settlement Class Satisfies Rule 23(b)(3)

In addition to meeting the prerequisites of Rule 23(a), Plaintiffs must also meet one of the three requirements of Rule 23(b) to certify the proposed class. *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1187 (9th Cir. 2001). Under Rule 23(b)(3), a class action may be maintained if the court finds that the questions of law or fact common to the members of the class 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. *See* Fed. R. Civ. P. 23(b)(3). Certification under Rule 23(b)(3) is appropriate and encouraged "whenever the actual interests of the parties can be served best by settling their differences in a single action." *Hanlon*, 150 F.3d at 1022.

a. Common Questions Of Law And Fact Predominate

The proposed Settlement Class is well-suited for certification under Rule 23(b)(3) because questions common to the Settlement Class Members predominate over questions affecting only individual Settlement Class Members. Predominance exists "[w]hen common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication." *Hanlon*, 150 F.3d at 1022. As the United States Supreme Court has explained, when addressing the propriety of Settlement Class certification, courts take into account the fact that a trial will be unnecessary and that manageability, therefore, is not an issue. *Amchem*, 521 U.S. at 620.

In this case, common questions of law and fact exist and predominate over any individual questions, including, *inter alia*: (1) whether Kashi's marketing and

sale of the Products was illegal; (2) whether Kashi's Products contained artificial or synthetic ingredients and whether Kashi made material representations to the contrary; (3) whether Class Members suffered a loss of money or property as a result of Kashi's misrepresentations; and (4) whether Plaintiffs and Settlement Class Members are entitled to damages, restitution, injunctive and/or monetary relief, and if so, the amount and nature of such relief. These issues can be resolved for all members of the proposed Settlement Class in a single adjudication. Moreover, the Court's concern on class certification that there was insufficient evidence of materiality as to ingredients permitted in certified "organic" goods, thus requiring individual proof of reliance (*see Astiana*, 291 F.R.D. at 508-09), should not defeat a finding of predominance for purposes of certifying the settlement class. Such a "merits inquiry is…unwarranted in the settlement context since a district court need not 'envision the form that a trial' would take, nor consider 'the available evidence and the method or methods by which plaintiffs propose to use the evidence to prove' the disputed element at trial." *Sullivan*, 667 F.3d at 306 (citations omitted); *see also id.* at 302-03 (finding concerns regarding predominance inquiry "marginalized" and noting "the concern for manageability that is a central tenet in the certification of a litigation class is removed from the equation" given the settlement posture of the case). As such, the answers to the common questions that resulted from Kashi's alleged conduct are the primary focus and central issues of this class action and thus predominate over any individual issues that may exist.

b. A Class Action Is The Superior Mechanism For Adjudicating This Dispute

The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of the Settlement Class Members. Each

individual Settlement Class Member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Kashi's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents the potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Kashi's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

Moreover, since this action will now settle, the Court need not consider issues of manageability relating to trial. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. R. Civ. P. 23 (b)(3)(D), for the proposal is that there be no trial."). Accordingly, common questions predominate and a class action is the superior method of adjudicating this controversy.

C. The Proposed Notice Program Constitutes Adequate Notice And Should Be Approved

Once preliminary approval of a class action settlement is granted, notice must be directed to class members. For class actions certified under Rule 23(b)(3), including settlement classes like this one, "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). In addition, Rule 23(e)(1) applies to any class settlement and

requires the Court to "direct notice in a reasonable manner to all class members who would be bound by a proposal." Fed. R. Civ. P. 23(e)(1)

When a court is presented with a class, the class certification notice and notice of settlement may be combined in the same notice. *Manual* (Fourth) § 21.633 at 321-22 ("For economy, the notice under Rule 23(c)(2) and the Rule 23(e) notice are sometimes combined."). This notice allows the settlement class members to decide whether to opt out of or participate in the class and/or to object to the settlement and argue against final approval by the court. *Id*.

The proposed forms of notice here, attached as Exhibits C and D to the Settlement Agreement, satisfy the above criteria. The notices accurately inform Settlement Class Members of the salient terms of the Settlement Agreement, the Settlement Class to be certified, the final approval hearing and the rights of all parties, including the rights to file objections and to opt out of the class.

The Parties in this case have created and agreed to perform the following forms of notice, which will satisfy both the substantive and manner of distribution requirements of Rule 23 and Due Process. The language of the proposed notices and accompanying claim form is plain and easy to understand, providing neutral and objective information about the nature of the Settlement.

Individual Settlement Class Members cannot be identified through reasonable effort due to the nature of the consumer product at issue. Therefore, Class Notice shall be provided as set forth in the Media Plan, attached to the Settlement Agreement as Exhibit G. Kashi will cause the summary notice to be published once in *People Magazine*, once in *USA Weekend*, and once in *Parade*, and once weekly for four consecutive weeks in the *San Diego Union Tribune*, *Los Angeles Times*, *San Francisco Chronicle*, and the *Sacramento Bee*. Internet banner notices will

also be purchased using Xaxis Premium Network (formerly 24/7 Real Media Network), Yahoo.com and Advertising.com's network, which will include embedded links to the case website. Additionally, notice of the Settlement will be posted on the Settlement Website and, at their option, on the websites of Class Counsel. The Class Notice shall also be sent via electronic mail or regular mail to those Class Members who so request. This proposed method of giving notice (similar if not identical to the method used in countless other class actions) is appropriate because it provides a fair opportunity for members of the Settlement Class to obtain full disclosure of the conditions of the Settlement Agreement and to make an informed decision regarding the proposed Settlement. Thus, the notices and the procedures embodied in the notices amply satisfy the requirements of due process. The actual costs and expenses of the Settlement Administrator, which have been estimated by the Settlement Administrator to be $354,608.00, will be paid from the Settlement Fund in accordance with the Settlement Agreement.

VI. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement Agreement, provisionally certify the Settlement Class, approve the proposed notice plan and enter the Preliminary Approval Order in the form attached to the settlement Agreement as Exhibit F.

Dated: May 2, 2014

Respectfully submitted,

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10866 Wilshire Blvd., Suite 1470, Los Angeles, CA 90024.

On May 2, 2014, I served the document(s) described as:

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS AND APPROVAL OF PROCEDURE FOR AND FORM OF NOTICE

[X] BY ELECTRONIC TRANSMISSION USING THE COURT'S ECF SYSTEM: I caused the above document(s) to be transmitted by electronic mail to those ECF registered parties listed on the Notice of Electronic Filing (NEF) pursuant to Fed. R. Civ. P. 5(d)(1) and by first class mail to those non-ECF registered parties listed on the Notice of Electronic Filing (NEF). *"A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed. R. Civ. P. 5(d)(1). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing pro se."*

Executed on May 2, 2014, at Los Angeles, California.

/s/ David E. Bower

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SKYE ASTIANA, MILAN BABIC, TIMOTHY BOLICK, JOE CHATHAM, JAMES COLUCCI, TAMARA DIAZ, MARTHA ESPINOLA, TAMAR LARSEN, MARY LITTLEHALE, and KIMBERLY S. SETHAVANISH, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

KASHI COMPANY, a California corporation,

Defendant.

Case Number: 11-cv-1967-H (BGS)

CLASS ACTION

DECLARATION OF ANTONIO VOZZOLO IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS AND APPROVAL OF PROCEDURE FOR AND FORM OF NOTICE

I, Antonio Vozzolo, hereby declare as follows:

1. I am a partner at the law firm of Faruqi & Faruqi, LLP, Co-Lead Class Counsel, Co-Counsel for Class Representatives, and proposed counsel for the Settlement Class in this action. I make this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would competently testify thereto under oath.

2. The proposed Settlement of claims against Defendant Kashi Company ("Kashi") will establish a cash Settlement Fund of $5,000,000, less any costs associated with the Class Action Settlement Administrator paid by Kashi prior to that time, to satisfy cash payments to Settlement Class Members who submit valid claims for Products purchased on or after August 24, 2007, up to and including May 1, 2014, in the State of California. From this fund, Settlement Class Members are able to recover $0.50 per Product for every Product purchased (with no limitation) during the Settlement Class Period, for which they can present written proof of purchase in the form of a receipt or a retail rewards submission. Settlement Class Members without such proof of purchase are entitled to $0.50 per product, with a maximum recovery of $25, for every Product purchased during the Settlement Class Period.

3. Additionally, Kashi has agreed to modify its current labeling and advertising to remove "All Natural" and "Nothing Artificial" from those Products that contain the following Challenged Ingredients: (i) pyridoxine hydrochloride, calcium pantothenate and/or hexane-processed soy ingredients in products labeled "All Natural," and (ii) pyridoxine hydrochloride, alpha-tocopheral acetate and/or hexane-processed soy ingredients in products labeled "Nothing Artificial," unless

1 the ingredients are approved or determined as acceptable for products identified as
2 "natural" by a federal agency or controlling regulatory body.
3 4. The parties' Stipulation of Settlement and annexed exhibits were filed
4 by Defendant on May 2, 2014. (ECF No. 219.)
5 5. In 2011, the following putative class action complaints were filed
6 against Kashi and other related defendants in the United States District Court for
7 the Southern District of California: *Bates v. Kashi Company, et al.*, 3:11-cv-1967;
8 *Babic v. Kashi Company*, 3:11-cv-02816; *Espinola v. Kashi Company*, 3:11-cv-
9 02629 (initially filed in the United States District Court for the Central District of
10 California (11-cv-8534)); *Diaz v. Kashi Company, et al.*, 11:cv-2256; *Chatham v.*
11 *Kashi Company, et al.*, 11-cv-2285; *Sethavanish, et al. v. Kashi Company*, 11-cv-
12 02356 (initially filed in the United States District Court for the Northern District of
13 California (11-cv-4453)); and *Baisinger v. Kashi Company*, 11-cv-2367 (initially
14 filed in the United States District Court for the Northern District of California (11-
15 cv-4581)).
16 6. On November 28, 2011, the Court ordered the consolidation of the
17 *Bates*, *Diaz*, *Chatham*, *Sethavanish* and *Baisinger* actions, naming *Bates* the lead
18 case. The Court subsequently ordered consolidation of the *Espinola* and *Babic*
19 actions with the other related actions. On January 18, 2012, the Court appointed
20 Stember Feinstein Doyle & Payne, LLC and Faruqi & Faruqi, LLP as interim co-
21 lead counsel, finding the firms qualified to represent the putative class.
22 7. On February 21, 2012, a consolidated amended class action complaint
23 was filed ("CAC"). The CAC alleges Plaintiffs bought certain Kashi food products
24 based, at least in part, on misleading statements printed on the products' labels that
25 the products were "All Natural" or "Nothing Artificial." Plaintiffs allege that,
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based on the labels, they believed the products contained no synthetic or artificial ingredients and therefore paid a premium price for the products. Plaintiffs further allege that the products that bore the "All Natural" or "Nothing Artificial" labels contained certain unnatural, synthetic or artificial ingredients. Plaintiffs further allege that they either would not have purchased the products or would have paid less for the products had they known at the time of purchase that they contained ingredients that were unnatural, synthetic or artificial.

8. On April 6, 2012, Kashi filed a motion to dismiss the CAC, which Plaintiffs opposed. On July 16, 2012, the Court entered an Order granting in part and denying in part Defendants' motion to dismiss. The Court dismissed all of Plaintiffs' claims against Kashi Sales, LLC and Kellogg Company. The Court also dismissed Plaintiffs' Magnuson-Moss Warranty Act causes of action, common law fraud cause of action, and claim for unjust enrichment. The Court denied Defendants' motion to dismiss Plaintiffs' allegations that Kashi's conduct violates the unlawful, unfair and fraudulent prongs of California's Business and Professions Code § 17200, *et seq.*, the California Business & Professions Code § 17500, *et seq.*, the Consumer Legal Remedies Act, and Cal. Com. Code § 2313 (breach of express warranty) or, in the alternative, claims for restitution on the basis of quasi contract.

9. Kashi answered the CAC on August 15, 2012, denying liability.

10. On April 15, 2013, Plaintiffs filed a motion for class certification, which Kashi opposed.

11. On July 26, 2013, the Court held a hearing on Plaintiffs' motion for class certification, during which the parties presented two-and-a-half hours of oral argument.

12. On July 30, 2013, the Court entered an Order granting in part and denying in part Plaintiffs' motion for class certification. The Court certified the following class, representing California purchasers of Kashi products marketed and labeled as containing "Nothing Artificial" during the class period:

> All California residents who purchased Kashi Company's food products on or after August 24, 2007 in the State of California that were labeled "Nothing Artificial" but which contained one or more of the following ingredients: Pyridoxine Hydrochloride, Alpha-Tocopherol Acetate and/or Hexane-Processed Soy ingredients. The Court excludes from the class anyone with a conflict of interest in this matter.

In addition, the Court certified the following class, representing California purchasers of Kashi products marketed and labeled as "All Natural" during the class period:

> All California residents who purchased Kashi Company's food products on or after August 24, 2007 in the State of California that were labeled "All Natural" but which contained one or more of the following ingredients: Pyridoxine Hydrochloride, Calcium Panthothenate and/or Hexane-Processed Soy ingredients. The Court excludes from the class anyone with a conflict of interest in this matter.

The Court also appointed Faruqi & Faruqi, LLP and Feinstein Doyle Payne & Kravec, LLC as co-lead counsel for both classes.

13. On August 12, 2013, Kashi filed a Petition For Permission To Appeal Under Federal Rule of Civil Procedure 23(f) in the United States Court of Appeals for the Ninth Circuit, arguing that under the Supreme Court's decision in *Comcast v. Behrend*, 133 S. Ct. 1426 (2013), Plaintiffs' class certification motions did not translate the legal theory of their false advertising claims into a damages analysis that satisfies the predominance requirement of Rule 23(b)(3). On August 22, 2013, Plaintiffs filed an opposition to Kashi's Rule 23(f) petition, asserting that the Ninth Circuit had already addressed the scope and applicability of the *Comcast* decision

in *Leyva v. Medline Indust. Inc.*, 716 F.3d 510 (9th Cir. 2013), and that this Court rendered a thoroughly reasoned class certification decision which correctly applied both *Comcast* and *Leyva*. On October 22, 2013, the Ninth Circuit denied Kashi's petition for permission to appeal the District Court's class certification ruling.

14. On August 27, 2013, Plaintiffs moved for partial reconsideration of the class certification order on the grounds that the Court erred by excluding the ingredient potassium bicarbonate from the "All Natural" class. On August 28, 2013, Kashi moved for modification of the "All Natural" class definition, arguing that the Court erred by including the ingredients calcium pantothenate and pyridoxine hydrochloride. On September 18, 2013, the Court denied each of Plaintiffs' and Defendant's requests that the Court modify the definition of the "All Natural" class.

15. On October 24, 2013, Kashi filed an additional motion to modify the Court's July 30, 2013 class certification order, which Plaintiffs opposed. On November 22, 2013, the Court denied Kashi's motion to modify the Court's class certification order.

16. Prior to filing the actions, and during the course of active litigation of the actions, Co-Lead Counsel conducted a substantial amount of investigation, research, and discovery concerning the facts and law relating to the matters alleged in their respective complaints. This included: (a) significant pre-complaint research; (b) satisfaction of pre-suit notice requirements; (c) numerous interviews of witnesses and putative members of the Class; (d) propounding written interrogatories, document requests, and subpeonas; (e) the exchange of a significant amount of documents in a contentious discovery process including detailed technical and scientific documents, marketing and business plans, product

1 packaging and labels, product specifications, advertisements, and email
2 communications; (f) depositions of Kashi's executives, expert witnesses, and third
3 parties; (g) defending the depositions of several class representatives and
4 Plaintiffs' expert witness; (h) consultation with industry personnel and several
5 potential experts; (i) and the retention of several expert witnesses who prepared
6 and submitted expert reports and/or conducted multiple marketing surveys. As a
7 result of Plaintiffs' pre- and post-filing investigations, Plaintiffs' counsel gained a
8 comprehensive understanding of the strengths and weaknesses of Plaintiffs' claims
9 and possible recoverable damages. Concurrent with their investigations, Plaintiffs'
10 counsel engaged in months of extensive arm's-length negotiations with Kashi's
11 counsel regarding the terms of a possible settlement of these actions. Negotiations
12 regarding potential settlement were thorough, protracted and exhaustive and
13 involved two full days of in-person mediation sessions with Honorable Howard B.
14 Weiner (retired) on October 23, 2013 and December 5, 2013 in San Diego,
15 California. With the guidance of this well qualified mediator, the parties were able
16 to make a thorough assessment of the strengths and weaknesses of their claims and
17 defenses. Negotiations were protracted, well-informed, and at times contentious.
18 In fact, on several occasions, it appeared that the parties might not achieve a
19 settlement of the Plaintiffs claims.

20 17. As a result of this extensive investigation and the extensive
21 negotiations, the parties reached an agreement on the substantive terms of the
22 settlement for the Class members' relief. Subsequent to reaching an agreement of
23 the substantive terms of the settlement, the parties negotiated the attorneys' fee and
24 expense provisions, as well as the provisions for class representative incentive
25 awards.
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18. Plaintiffs and their counsel in the course of their investigation received, examined, and analyzed information, documents, and materials that they deem necessary and appropriate to enable them to enter into the Stipulation of Settlement on a fully informed basis.

19. The Stipulation of Settlement was fully executed by the parties on May 2, 2014.

20. The parties propose that notice be effectuated as set forth in the Media Plan, which includes one publication in *People Magazine*, one in *USA Weekend*, one in *Parade*, and one notice weekly for four consecutive weeks in the *San Diego Union Tribune*, *Los Angeles Times*, *San Francisco Chronicle*, and the *Sacramento Bee*. A link to the settlement website will appear on Kashi's company website. Additionally, notice will appear on a settlement website to be maintained by the settlement administrator. Internet banner notices will also be purchased using Xaxis Premium Network (formerly 24/7 Real Media Network); Yahoo.com and Advertising.com's network, which will include an embedded link to the case website. Kashi will pay all costs for the publication and dissemination of notice to Settlement Class Members.

21. Faruqi & Faruqi, LLP and Feinstein Doyle Payne & Kravec, LLC regularly engage in major complex litigation, and have extensive experience in consumer class action lawsuits that are similar in size, scope, and complexity to the present case. Prior to and throughout the duration of this litigation, Faruqi & Faruqi, LLP and Feinstein Doyle Payne & Kravec, LLC have diligently investigated and prosecuted this matter, dedicating substantial resources to the investigation of the claims at issue in this action, and have successfully negotiated the settlement of this matter to the benefit of the proposed class. Although

Plaintiffs are confident in the strength of their claims and believe that they would ultimately prevail at trial, they also recognize that litigation is inherently risky.

22. Attached hereto as **Exhibit 1** is a true and correct copy of the firm resume of Faruqi & Faruqi, LLP.

23. Attached hereto as **Exhibit 2** is a true and correct copy of the firm resume of Feinstein Doyle Payne & Kravec, LLC.

24. Based on my experience, and taking into consideration the risks of continued litigation, including appeals, versus the certain and substantial relief afforded by the Settlement, it is my opinion that the Settlement is fair, adequate, and reasonable, in the best interest of the Class, and merits preliminary approval by this Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 2, 2014 at New York, New York.

Antonio Vozzolo

EXHIBIT 1

Faruqi & Faruqi, LLP focuses on complex civil litigation, including securities, antitrust, wage and hour, and consumer class actions as well as shareholder derivative and merger and transactional litigation. The firm is headquartered in New York, and maintains offices in California, Delaware and Pennsylvania.

Since its founding in 1995, Faruqi & Faruqi, LLP has served as lead or co-lead counsel in numerous high-profile cases which ultimately provided significant recoveries to investors, consumers and employees.

PRACTICE AREAS

SECURITIES FRAUD LITIGATION

Since its inception over eighteen years ago, Faruqi & Faruqi, LLP has devoted a substantial portion of its practice to class action securities fraud litigation. In *In re PurchasePro.com, Inc. Securities Litigation*, No. CV-S-01-0483-JLQ (D. Nev.), as co-lead counsel for the class, Faruqi & Faruqi, LLP secured a $24.2 million settlement in a securities fraud litigation even though the corporate defendant was in bankruptcy. As noted by Senior Judge Justin L. Quackenbush in approving the settlement, ***"I feel that counsel for plaintiffs evidenced that they were and are skilled in the field of securities litigation."***

Other past achievements include: *In re Olsten Corp. Sec. Litig.*, No. 97-CV-5056 (E.D.N.Y.) (recovered $24.1 million dollars for class members) (Judge Hurley stated: "The quality of representation here I think has been excellent."), *In re Tellium, Inc. Sec. Litig.*, No. 02-CV-5878 (FLW) (D.N.J.) (recovered $5.5 million dollars for class members); *In re Mitcham Indus., Inc. Sec. Litig.*, No. H-98-1244 (S.D. Tex.) (recovered $3 million dollars for class members despite the fact that corporate defendant was on the verge of declaring bankruptcy), and *Ruskin v. TIG Holdings, Inc.*, No. 98 Civ. 1068 LLS (S.D.N.Y.) (recovered $3 million dollars for class members).

Recently, in *Shapiro v. Matrixx Initiatives, Inc.*, No. CV-09-1479-PHX-ROS (D. Ariz.), Faruqi & Faruqi, LLP, as co-lead counsel for the class, defeated defendants' motion to dismiss, succeeded in having the action certified as a class action, and secured final approval of a $4.5 million dollar settlement for the class. In *In re Ebix, Inc. Securities Litigation*, No. 1:11-cv-02400-RWS (N.D. Ga.), the court denied defendants' motion to dismiss and Faruqi & Faruqi, LLP, as sole lead counsel, obtained preliminary approval on February 4, 2014 of a $6.5 million settlement for the class.

In *In re Longwei Petroleum Inv. Holding Ltd. Sec. Litig.*, No. 13 Civ. 214 (HB) (S.D.N.Y.), Faruqi & Faruqi, LLP, as sole lead counsel, defeated defendants' motions to dismiss, including those filed by the company's auditors, on January 27, 2014, and is currently conducting discovery on behalf of class members.

Additionally, Faruqi & Faruqi, LLP is serving as court-appointed lead counsel in the following cases:

- *In re Dynavax Techs. Corp. Sec. Litig.*, No. 3:13-CV-02796-CRB (N.D. Cal) (sole lead counsel);
- *Buker v. L&L Energy, Inc.*, No. 1:13-cv-06704-RA (S.D.N.Y.) (sole lead counsel);
- *Tardio v. New Oriental Educ. & Tech. Grp., Inc.*, No. 12-cv-06619-JGK (S.D.N.Y.) (lead counsel on behalf of options investors);
- *McGee v. Am. Oriental Bioengineering, Inc.*, No. 2:12-cv-05476-FMO-SHx (C.D. Cal.) (sole lead counsel); and
- *McIntyre v. Chelsea Therapeutics Int'l, LTD*, No. 3:12-CV-213-MOC-DCK (sole lead counsel).

SHAREHOLDER MERGER AND TRANSACTIONAL LITIGATION

Faruqi & Faruqi, LLP is nationally recognized for its excellence in prosecuting shareholder class actions brought nationwide against officers, directors and other parties responsible for corporate wrongdoing. Most of these cases are based upon state statutory or common law principles involving fiduciary duties owed to investors by corporate insiders as well as Exchange Act violations.

Faruqi & Faruqi, LLP has obtained significant monetary and therapeutic recoveries, including millions of dollars in increased merger consideration for public shareholders; additional disclosure of significant material information so that shareholders can intelligently gauge the fairness of the terms of proposed transactions and other types of therapeutic relief designed to increase competitive bids and protect shareholder value. As noted by Judge Timothy S. Black of the United States District Court for the Southern District of Ohio in appointing lead counsel *Nichting v. DPL Inc.*, Case No. 3:11-cv-14 (S.D. Ohio), "[a]lthough all of the firms seeking appointment as Lead Counsel have impressive resumes, the Court is most impressed with Faruqi & Faruqi."

For example, in *In re Playboy Enterprises, Inc. Shareholders Litigation*, Consol. C.A. No. 5632-VCN (Del. Ch.), Faruqi & Faruqi, LLP recently achieved a substantial post close settlement of $5.25 million. In *In re Cogent, Inc. Shareholders Litigation*, Consol. C.A. No. 5780-VC (Del. Ch.) Faruqi & Faruqi, LLP, as co-lead counsel, obtained a post-close cash settlement of $1.9 million after two years of hotly contested litigation; In *Rice v. Lafarge* North *America, Inc., et al.*, No. 268974-V (Montgomery Cty., Md. Circuit Ct.), Faruqi & Faruqi, LLP, as co-lead counsel represented the public shareholders of Lafarge North America ("LNA") in challenging the buyout of LNA by its French parent, Lafarge S.A., at $75.00 per share. After discovery and intensive injunction motions practice, the price per share was increased from $75.00 to $85.50 per share, or a total benefit to the public shareholders of $388 million. The Lafarge court gave Class counsel, including Faruqi & Faruqi, LLP, shared credit with a special committee appointed by the company's board of directors for a significant portion of the price increase.

Similarly, in *In re: Hearst-Argyle Shareholder Litig.,* Lead Case No. 09-Civ-600926 (N.Y. Sup. Ct.) as co-lead counsel for plaintiffs, Faruqi & Faruqi, LLP litigated, in coordination with Hearst-Argyle's

special committee, an increase of over 12.5%, or $8,740,648, from the initial transaction value offered for Hearst-Argyle Television Inc.'s stock by its parent company, Hearst Corporation. Faruqi & Faruqi, LLP, in *In re Alfa Corp. Shareholder Litig.*, Case No. 03-CV-2007-900485.00 (Montgomery Cty, Ala. Cir. Ct.) was instrumental, along with the Company's special committee, in securing an increased share price for Alfa Corporation shareholders of $22.00 from the originally-proposed $17.60 per share offer, which represented over a $160 million benefit to class members, and obtained additional proxy disclosures to ensure that Alfa shareholders were fully-informed before making their decision to vote in favor of the merger, or seek appraisal.

Moreover, in *In re Fox Entertainment Group, Inc. S'holders Litig.*, Consolidated C.A. No. 1033-N (Del. Ch. 2005), Faruqi & Faruqi, LLP, a member of the three (3) firm executive committee, and in coordination with Fox Entertainment Group's special committee, created an increased offer price from the original proposal to shareholders, which represented an increased benefit to Fox Entertainment Group, Inc. shareholders of $450 million. Also, in *In re Howmet Int'l S'holder Litig.*, Consolidated C.A. No. 17575 (Del. Ch. 1999) Faruqi & Faruqi, LLP, in coordination with Howmet's special committee, successfully obtained an increased benefit to class members of $61.5 million dollars).

Faruqi also has noteworthy successes in achieving injunctive or declaratory relief pre and post close in cases where corporate wrongdoing deprives shareholders of material information or an opportunity to share in potential profits. In *In re Harleysville Group, Inc. S'holders Litigation*, C.A. Bo. 6907-VCP (Del. Ch. 2014), Faruqi as sole lead counsel obtained significant disclosures for stockholders pre-close and secured valuable relief post close in the form of an Anti-Flip Provision providing former stockholders with 25% of any profits in Qualifying Sale. In April 2012, Faruqi as sole lead obtained an unprecedented injunction in *Knee v. Brocade Communications Systems, Inc.*, No. 1-12-CV-220249, slip op. at 2 (Cal. Super. Ct. Apr. 10, 2012) (Kleinberg, J.). In *Brocade*, Faruqi, as sole lead counsel for plaintiffs, successfully obtained an injunction enjoining Brocade's 2012 shareholder vote because certain information relating to projected executive compensation was not properly disclosed in the proxy statement. (Order After Hearing [Plaintiff's Motion for Preliminary Injunction; Motions to Seal]). In *Kajaria v. Cohen*, No. 1:10-CV-03141 (N.D. Ga., Atlanta Div.), Faruqi & Faruqi, LLP, succeeded in having the district court order Bluelinx Holdings Inc., the target company in a tender offer, to issue additional material disclosures to its recommendation statement to shareholders before the expiration of the tender offer.

SHAREHOLDER DERIVATIVE LITIGATION

Faruqi & Faruqi, LLP has extensive experience litigating shareholder derivative actions on behalf of corporate entities. This litigation is often necessary when the corporation has been injured by the

wrongdoing of its officers and directors. This wrongdoing can be either active, such as the wrongdoing by certain corporate officers in connection with purposeful backdating of stock-options, or passive, such as the failure to put in place proper internal controls, which leads to the violation of laws and accounting procedures. A shareholder has the right to commence a derivative action when the company's directors are unwilling or unable, to pursue claims against the wrongdoers, which is often the case when the directors themselves are the wrongdoers.

The purpose of the derivative action is threefold: (1) to make the company whole by holding those responsible for the wrongdoing accountable; (2) the establishment of procedures at the company to ensure the damaging acts can never again occur at the company; and (3) make the company more responsive to its shareholders. Improved corporate governance and shareholder responsiveness are particularly valuable because they make the company a stronger one going forward, which benefits its shareholders. For example, studies have shown the companies with poor corporate governance scores have 5-year returns that are 3 .95% below the industry average, while companies with good corporate governance scores have 5-year returns that are 7.91 % above the industry-adjusted average. The difference in performance between these two groups is 11 .86%. *Corporate Governance Study: The Correlation between Corporate Governance and Company Performance*, Lawrence D. Brown, Ph.D., Distinguished Professor of Accountancy, Georgia State University and Marcus L. Caylor, Ph.D. Student, Georgia State University. Faruqi & Faruqi, LLP has achieved all three of the above stated goals of a derivative action. The firm regularly obtains significant corporate governance changes in connection with the successful resolution of derivative actions, in addition to monetary recoveries that inure directly to the benefit of the company. In each case, the company's shareholders indirectly benefit through an improved market price and market perception.

In *In re UnitedHealth Group Incorporated Derivative Litig.*, Case No. 27 CV 06-8065 (Minn. 4th Judicial Dist. 2009) Faruqi & Faruqi, LLP, as co-lead counsel for plaintiffs, obtained a recovery of more than $930 million for the benefit of the Company and corporate governance reforms designed to make UnitedHealth a model of corporate responsibility and transparency. ***At the time, the settlement reached was believed to be the largest settlement ever in a derivative case***. See "UnitedHealth's Former Chief to Repay $600 Million," Bloomberg.com, December 6, 2007 ("the settlement . . . would be the largest ever in a 'derivative' suit . . . according to data compiled by Bloomberg.").

As co-lead counsel in *Weissman v. John, et al.*, Cause No. 2007-31254 (Tex. Harris County 2008) Faruqi & Faruqi, LLP, diligently litigated a shareholder derivative action on behalf of Key Energy Services, Inc. for more than three years and caused the company to adopt a multitude of corporate governance reforms which far exceeded listing and regulatory requirements. Such reforms included, among other things, the appointment of a new senior management team, the realignment of personnel,

the institution of training sessions on internal control processes and activities, and the addition of 14 new accountants at the company with experience in public accounting, financial reporting, tax accounting, and SOX compliance.

More recently, Faruqi & Faruqi, LLP concluded shareholder derivative litigation in *The Booth Family Trust, et al. v. Jeffries, et al.*, Lead Case No. 05-cv-00860 (S.D. Ohio 2005) on behalf of Abercrombie & Fitch Co. Faruqi & Faruqi, LLP, as co-lead counsel for plaintiffs, litigated the case for six years through an appeal in the U.S. Court of Appeals for the Sixth Circuit where it successfully obtained reversal of the district court's ruling dismissing the shareholder derivative action in April 2011. Once remanded to the district court, Faruqi & Faruqi, LLP caused the company to adopt important corporate governance reforms narrowly targeted to remedy the alleged insider trading and discriminatory employment practices that gave rise to the shareholder derivative action.

The favorable outcome obtained by Faruqi & Faruqi, LLP in *In re Forest Laboratories, Inc. Derivative Litigation*, Lead Civil Action No. 05-cv-3489 (S.D.N.Y. 2005) is another notable achievement for the firm. After more than six years of litigation, Faruqi & Faruqi, LLP, as co-lead counsel, caused the company to adopt industry-leading corporate governance measures that included rigorous monitoring mechanisms and Board-level oversight procedures to ensure the timely and complete publication of clinical drug trial results to the investing public and to deter, among other things, the unlawful off-label promotion of drugs.

ANTITRUST LITIGATION

The attorneys at Faruqi & Faruqi, LLP represent direct purchasers, competitors, third-party payors, and consumers in a variety of individual and class action antitrust cases brought under Sections 1 and 2 of the Sherman Act. These actions, which typically seek treble damages under Section 4 of the Clayton Act, have been commenced by businesses and consumers injured by anticompetitive agreements to fix prices or allocate markets, conduct that excludes or delays competition, and other monopolistic or conspiratorial conduct that harms competition.

Actions for excluded competitors. Faruqi & Faruqi represents competitors harmed by anticompetitive practices that reduce their sales, profits, and/or market share. One representative action is *Babyage.com, Inc., et al. v. Toys "R" Us, Inc., et al.* where Faruqi & Faruqi was retained to represent three internet retailers of baby products, who challenged a dominant retailer's anticompetitive scheme, in concert with their upstream suppliers, to impose and enforce resale price maintenance in violation of §§ 1 and 2 of the Sherman Act and state law. The action sought damages measured as lost sales and profits. This case was followed extensively by the Wall Street Journal. After several years of litigation, this action settled for an undisclosed amount.

Actions for direct purchasers. Faruqi & Faruqi represents direct purchasers who have paid overcharges as a result of anticompetitive practices that raise prices. These actions are typically initiated as class actions. A representative action on behalf of direct purchasers is *Rochester Drug Co-Operative, Inc. v. Warner Chilcott Public Limited Company, et al.*, No. 12-3824 (E.D. Pa.), in which Faruqi & Faruqi was appointed co-lead counsel for the proposed plaintiff class under Federal Rule of Civil Procedure 23(g). Faruqi & Faruqi's attorneys are counsel to direct purchasers (typically wholesalers) in multiple such class actions.

Actions for third-party payors. Faruqi & Faruqi represents, both in class actions and in individual actions, insurance companies who have reimbursed their policyholders at too high a rate due to anticompetitive prices that raise prices. One representative action is *In re Tricor Antitrust Litigation*, No. 05-360 (D. Del.), where Faruqi & Faruqi represented PacifiCare and other large third-party payors challenging the conduct of Abbott Laboratories and Laboratories Fournier in suppressing generic drug competition, in violation of §§ 1 and 2 of the Sherman Act. The *Tricor* litigation settled for undisclosed amount in 2010.

Results. Faruqi & Faruqi's attorneys have consistently obtained favorable results in their antitrust engagements. Non-confidential results include the following: *In re Iowa Ready-Mixed Concrete Antitrust Litigation*, No. C 10-4038 (N.D. Iowa) ($18.5 million settlement); *In re Metoprolol Succinate Direct Purchaser Antitrust Litigation*, 06-52 (D. Del.) ($20 million settlement); *In re Ready-Mixed Concrete Antitrust Litigation*, No. 05-979 (S.D. Ind.) ($40 million settlement); *Rochester Drug Co-Operative, Inc., et al. v. Braintree Labs, Inc.*, No. 07-142-SLR (D. Del.) ($17.25 million settlement).

A more complete list of Faruqi & Faruqi's active and resolved antitrust cases can be found on its web site at *www.faruqilaw.com*.

CONSUMER PROTECTION LITIGATION

Attorneys at Faruqi & Faruqi, LLP have advocated for consumers' rights, successfully challenging some of the nation's largest and most powerful corporations for a variety of improper, unfair and deceptive business practices. Through our efforts, we have recovered hundreds of millions of dollars and other significant remedial benefits for our consumer clients.

For example, in *Thomas v. Global Vision Products*, Case No. RG-03091195 (California Superior Ct., Alameda Cty.), Faruqi & Faruqi, LLP served as co-lead counsel in a consumer class action lawsuit against Global Vision Products, Inc., the manufacturer of the Avacor hair restoration product and its officers, directors and spokespersons, in connection with the false and misleading advertising claims regarding the Avacor product. Though the company had declared bankruptcy in 2007, Faruqi & Faruqi,

LLP, along with its co-counsel, successfully prosecuted two trials to obtain relief for the class of Avacor purchasers. In January 2008, a jury in the first trial returned a verdict of almost $37 million against two of the creators of the product. In November 2009, another jury awarded plaintiff and the class more than $50 million in a separate trial against two other company directors and officers. This jury award represented the largest consumer class action jury award in California in 2009 (according to VerdictSearch, a legal trade publication).

Below is a non-exhaustive list of settlements where Faruqi & Faruqi, LLP and its partners have served as lead or co-lead counsel:

- *In re: Haier Freezer Consumer Litig.*, Case No. 5:11-CV-02911-EJD (N.D. Cal. 2011). The firm represented a nationwide class of consumers who purchased certain model freezers, which were sold in violation of the federal standard for maximum energy consumption. A settlement was obtained, providing class members with cash payments of between $50 and $325.80.
- *Rossi v Procter & Gamble Company*, Case No. 11-7238 (D.N.J. 2011). The firm represented a nationwide class of consumers who purchased deceptively marketed "Crest Sensitivity" toothpaste. A settlement was obtained, providing class members with a full refund of the purchase price.
- *In re: Michaels Stores Pin Pad Litig.*, Case No. 1:11-CV-03350 CPK (N.D. Ill. 2011). The firm represented a nationwide class of persons against Michaels Stores, Inc. for failing to secure and safeguard customers' personal financial data. A settlement was obtained, which provided class members with monetary recovery for unreimbursed out-of-pocket losses incurred in connection with the data breach, as well as up to four years of credit monitoring services.
- *Kelly, v. Phiten*, Case No. 4:11-cv-00067 JEG (S.D. Iowa 2011). The firm represented a proposed nationwide class of consumers who purchased Defendant Phiten USA's jewelry and other products, which were falsely promoted to balance a user's energy flow. A settlement was obtained, providing class members with up to 300% of the cost of the product and substantial injunctive relief requiring Phiten to modify its advertising claims.
- *In re: HP Power-Plug Litigation*, Case No. 06-1221 (N.D. Cal. 2006). The firm represented a proposed nationwide class of consumers who purchased defective laptops manufactured by defendant. A settlement was obtained, which provided full relief to class members, including among other benefits a cash payments up to $650.00 per class member, or in the alternative, a repair free-of-charge and new limited warranties accompanying repaired laptops.
- *Delre v. Hewlett-Packard Co.*, C.A. No. 3232-02 (N.J. Super. Ct. 2002). The firm represented a proposed nationwide class of consumers (approximately 170,000 members) who purchased, HP dvd-100i dvd-writers ("HP 100i") based on misrepresentations regarding the write-once ("DVD+R") capabilities of the HP 100i and the compatibility of DVD+RW disks written by HP 100i with DVD players and other optical storage devices. A settlement was obtained, which provided full relief to class members, including among other benefits, the replacement of defective HP 100i with its more current, second generation DVD writer, the HP 200i, and/or refunds the $99 it had charged some consumers to upgrade from the HP 100i to the HP 200i prior to the settlement.

In addition, Faruqi & Faruqi, LLP and its partners are currently serving as lead or co-lead counsel in the following class action cases:

- *Dei Rossi et al. v. Whirlpool Corp.*, Case No. 2:12-cv-00125-TLN-JFM (E.D. Cal. 2012) (representing a proposed class of people who purchased mislabeled KitchenAid brand refrigerators from Whirlpool Corp.)

- *In re: Scotts EZ Seed Litigation*, Case No. 7:12-cv-04727-VB (S.D.N.Y. 2012) (representing a proposed class of purchasers of mulch grass seed products advertised as a superior grass seed product capable of growing grass in the toughest conditions and with half the water.)
- *In re Sinus Buster Products Consumer Litig.*, Case No. 1:12-cv-02429-ADS-AKT (E.D.N.Y. 2012) (representing a proposed nationwide class of purchasers of assorted cold, flu and sinus products.)
- *Forcellati et al., v Hyland's, Inc. et al.*, Case No. 2:12-cv-01983-GHK-MRW (C.D. Cal. 2012) (representing a proposed nationwide class of purchasers of children's cold and flu products.)
- *Avram v. Samsung Electronics America, Inc., et al.*, Case No. 2:11-cv-06973 KM-MCA (D.N.J. 2011) (representing a proposed nationwide class of persons who purchased mislabeled refrigerators from Samsung Electronics America, Inc. for misrepresenting the energy efficiency of certain refrigerators.)
- *Astiana et al., v. Kashi Co.*, Case No. 3:11-CV-1967-H (BGS) (S.D. Cal. 2011) (representing a certified class of California consumers who purchased Kashi products that were deceptively labeled as "nothing artificial" and "all natural.")
- *Dzielak v. Whirlpool Corp., et al.*, Case No. 12-CIV-0089 SRC-MAS (D.N.J. 2011) (representing a proposed nationwide class of purchasers of mislabeled Maytag brand washing machines for misrepresenting the energy efficiency of such washing machines.)
- *In re: Alexia Foods, Inc. Litigation*, Case No. 4:11-cv-06119-PJH (N.D. Cal. 2011) (representing a proposed class of all persons who purchased certain frozen potato products that were deceptively advertised as "natural" or "all natural.")
- *Loreto et al., v. Coast Cutlery Co.*, Case No. 2:11-cv-03977-MCA (D.N.J. 2011) (representing a proposed nationwide class of consumers who purchased stainless steel knives and multi-tools that were of a lesser quality than advertised.)
- *Rodriguez v. CitiMortgage, Inc.*, Case No. 1:11-cv-04718-PGG-DCF (S.D.N.Y. 2011) (representing a proposed nationwide class of military personnel against CitiMortgage for illegal foreclosures.)
- *In re: Shop-Vac Marketing and Sales Practices Litigation*, Case No. 4:12-md-02380-YK (M.D. Pa. 2012) (representing a proposed nationwide class of persons who purchased vacuums or shop vac's with overstated horsepower and tank capacity specifications.)
- *In re: Oreck Corporation Halo Vacuum And Air Purifiers Marketing And Sales Practices Litigation*, MDL No. 2317 (the firm was appointed to the executive committee, representing a proposed nationwide class of consumers who purchased vacuums and air purifiers that were deceptively advertised effective in eliminating common viruses, germs and allergens.)

EMPLOYMENT PRACTICES LITIGATION

Faruqi & Faruqi, LLP is a recognized leader in protecting the rights of employees. The firm's Employment Practices Group is committed to protecting the rights of current and former employees nationwide. The firm is dedicated to representing employees who may not have been compensated properly by their employer or who have suffered investment losses in their employer-sponsored retirement plan. The firm also represents individuals (often current or former employees) who assert that a company has allegedly defrauded the federal or state government.

Faruqi & Faruqi represents current and former employees nationwide whose employers have failed to comply with state and/or federal laws governing minimum wage, hours worked, overtime, meal and rest breaks, and unreimbursed business expenses. In particular, the firm focuses on claims against companies for (i) failing to properly classify their employees for purposes of paying them proper overtime

pay, or (ii) requiring employees to work "off-the-clock," and not paying them for all of their actual hours worked.

In prosecuting claims on behalf of aggrieved employees, Faruqi & Faruqi has successfully defeated summary judgment motions, won numerous collective certification motions, and obtained significant monetary recoveries for current and former employees. In the course of litigating these claims, the firm has been a pioneer in developing the growing area of wage and hour law. In *Creely, et al. v. HCR ManorCare, Inc.*, C.A. No. 3:09-cv-02879 (N.D. OH), Faruqi & Faruqi, along with its co-counsel, obtained one of the first decisions to reject the application of the Supreme Court's Fed. R. Civ. P. 23 certification analysis in *Wal-Mart Stores, Inc. v. Dukes et. al.,* 131 S. Ct. 2541 (2011) to the certification process of collective actions brought pursuant to the Fair Labor Standards Act of 1938 ("FLSA"). The firm, along with its co-counsel, also recently won a groundbreaking decision for employees seeking to prosecute wage and hour claims on a collective basis in *Symczyk v. Genesis Healthcare Corp. et al.*, No. 10-3178 (3d Cir. 2011). In *Symczyk,* the Third Circuit reversed the district court's ruling that an offer of judgment mooted a named plaintiff's claim in an action asserting wage and hour violations of the FLSA. Notably, the Third Circuit also affirmed the two-step process used for granting certification in FLSA cases. The *Creely* decision, like the Third Circuit's *Genesis* decision, will invariably be relied upon by courts and plaintiffs in future wage and hour actions.

Some of the firm's notable recoveries include *Bazzini v. Club Fit Management, Inc.,* C.A. No. 08-cv-4530 (S.D.N.Y. 2008), wherein the firm settled a FLSA collective action lawsuit on behalf of tennis professionals, fitness instructors and other health club employees on very favorable terms. Similarly, in *Garcia, et al., v. Lowe's Home Center, Inc., et al.*, C.A. No. GIC 841120 (Cal. Sup. Ct. 2008), Faruqi & Faruqi served as co-lead counsel and recovered $1.6 million on behalf of delivery workers who were unlawfully treated as independent contractors and not paid appropriate overtime wages or benefits.

The firm's Employment Practices Group also represents participants and beneficiaries of employee benefit plans covered by the Employee Retirement Income Security Act of 1874 ("ERISA"). In particular the firm protects the interests of employees in retirement savings plans against the wrongful conduct of plan fiduciaries. Often, these retirement savings plans constitute a significant portion of an employee's retirement savings. ERISA, which codifies one of the highest duties known to law, requires an employer to act in the best interests of the plan's participants, including the selection and maintenance of retirement investment vehicles. For example, an employer who administers a retirement savings plan (often a 401(k) plan) has a fiduciary obligation to ensure that the retirement plan's assets (including employee and any company matching contributions to the plan) are directed into appropriate and prudent investment vehicles.

Faruqi & Faruqi has brought actions on behalf of aggrieved plan participants where a company and/or certain of its officers breached their fiduciary duty by allowing its retirement plans to invest in shares of its own stock despite having access to materially negative information concerning the company which materially impacted the value of the stock. The resulting losses can be devastating to employees' retirement accounts. Under certain circumstances, current and former employees can seek to hold their employers accountable for plan losses caused by the employer's breach of their ERISA-mandated duties.

The firm's Employment Practices Group also represents whistleblowers in actions under both federal and state False Claims Acts. Often, current and former employees of business entities that contract with, or are otherwise bound by obligations to, the federal and state governments become aware of wrongdoing that causes the government to overpay for a good or service. When a corporation perpetrates such fraud, a whistleblower may sue the wrongdoer in the government's name to recover up to three times actual damages and additional civil penalties for each false statement made. Whistleblowers who initiate such suits are entitled to a portion of the recovery attained by the government, generally ranging from 15% to 30% of the total recovery.

False Claims Act cases often arise in context of Medicare and Medicaid fraud, pharmaceutical fraud, defense contractor fraud, federal government contractor fraud, and fraudulent loans and grants. For instance, in *United States of America, ex rel. Ronald J. Streck v. Allergan, Inc. et al.*, No. 2:08-cv-05135-ER (E.D. Pa.), Faruqi & Faruqi represents a whistleblower in an un-sealed case alleging fraud against thirteen pharmaceutical companies who underpaid rebates they were obliged to pay to state Medicaid programs on drugs sold through those programs.

Based on its experience and expertise, the firm has served as the principal attorneys representing current and former employees in numerous cases across the country alleging wage and hour violations, ERISA violations and violations of federal and state False Claims Acts.

ATTORNEYS

NADEEM FARUQI

Mr. Faruqi is Co-Founder and Managing Partner of the firm. Mr. Faruqi oversees all aspects of the firm's practice areas. Mr. Faruqi has acted as sole lead or co-lead counsel in many notable class or derivative action cases, such as: *In re Olsten Corp. Secs. Litig.*, C.A. No. 97-CV-5056 (E.D.N.Y.) (recovered $25 million dollars for class members); *In re PurchasePro, Inc., Secs. Litig.*, Master File No. CV-S-01-0483 (D. Nev. 2001) ($24.2 million dollars recovery on behalf of the class in securities fraud action); *In re Avatex Corp. S'holders Litig.*, C.A. No. 16334-NC (Del. Ch. 1999) (established certain new standards for preferred shareholders rights); *Dennis v. Pronet, Inc.*, C.A. No. 96-06509 (Tex. Dist. Ct.)

(recovered over $15 million dollars on behalf of shareholders); *In re Tellium, Inc. Secs. Litig.*, C.A. No. 02-CV-5878 (D.N.J.) (class action settlement of $5.5 million); *In re Tenet Healthcare Corp. Derivative Litig.*, Lead Case No. 01098905 (Cal. Sup. Ct. 2002) (achieved a $51.5 million benefit to the corporation in derivative litigation).

Upon graduation from law school, Mr. Faruqi was associated with a large corporate legal department in New York. In 1988, he became associated with Kaufman Malchman Kirby & Squire, specializing in shareholder litigation, and in 1992, became a member of that firm. While at Kaufman Malchman Kirby & Squire, Mr. Faruqi served as one of the trial counsel for plaintiff in *Gerber v. Computer Assocs. Int'l, Inc.*, 91-CV-3610 (E.D.N.Y. 1991). Mr. Faruqi actively participated in cases such as: *Colaprico v. Sun Microsystems*, No. C-90-20710 (N.D. Cal. 1993) (recovery in excess of $5 million on behalf of the shareholder class); *In re Jackpot Secs. Enters., Inc. Secs. Litig.*, CV-S-89-805 (D. Nev. 1993) (recovery in excess of $3 million on behalf of the shareholder class); *In re Int'l Tech. Corp. Secs. Litig.*, CV 88-440 (C.D. Cal. 1993) (recovery in excess of $13 million on behalf of the shareholder class); and *In re Triangle Inds., Inc. S'holders Litig.*, C.A. No. 10466 (Del. Ch. 1990) (recovery in excess of $70 million).

Mr. Faruqi earned his Bachelor of Science Degree from McGill University, Canada (B.Sc. 1981), his Master of Business Administration from the Schulich School of Business, York University, Canada (MBA 1984) and his law degree from New York Law School (J.D., *cum* laude, 1987). Mr. Faruqi was Executive Editor of New York Law School's Journal of International and Comparative Law. He is the author of "Letters of Credit: Doubts As To Their Continued Usefulness," Journal of International and Comparative Law, 1988. He was awarded the Professor Ernst C. Stiefel Award for Excellence in Comparative, Common and Civil Law by New York Law School in 1987.

LUBNA M. FARUQI

Ms. Faruqi is Co-Founder of Faruqi & Faruqi, LLP. Ms. Faruqi is involved in all aspects of the firm's practice. Ms. Faruqi has actively participated in numerous cases in federal and state courts which have resulted in significant recoveries for shareholders.

Ms. Faruqi was involved in litigating the successful recovery of $25 million to class members in *In re Olsten Corp. Secs. Litig.*, C.A. No. 97-CV-5056 (E.D.N.Y.). She helped to establish certain new standards for preferred shareholders in Delaware in *In re Avatex Corp. S'holders Litig.*, C.A. No. 16334-NC (Del. Ch. 1999). Ms. Faruqi was also lead attorney in *In re Mitcham Indus., Inc. Secs. Litig.*, Master File No. H-98-1244 (S.D. Tex. 1998), where she successfully recovered $3 million on behalf of class members despite the fact that the corporate defendant was on the verge of declaring bankruptcy.

Upon graduation from law school, Ms. Faruqi worked with the Department of Consumer and Corporate Affairs, Bureau of Anti-Trust, the Federal Government of Canada. In 1987, Ms. Faruqi became associated with Kaufman Malchman Kirby & Squire, specializing in shareholder litigation, where she actively participated in cases such as: *In re Triangle Inds., Inc. S'holders Litig.*, C.A. No. 10466 (Del. Ch. 1990) (recovery in excess of $70 million); *Kantor v. Zondervan Corp.*, C.A. No. 88 C5425 (W.D. Mich. 1989) (recovery of $3.75 million on behalf of shareholders); and *In re A.L. Williams Corp. S'holders Litig.*, C.A. No. 10881 (Del. Ch. 1990) (recovery in excess of $11 million on behalf of shareholders).

Ms. Faruqi graduated from McGill University Law School at the age of twenty-one with two law degrees: Bachelor of Civil Law (B.C.L.) (1980) and a Bachelor of Common Law (L.L.B.) (1981).

DAVID E. BOWER

David E. Bower is a Partner in Faruqi & Faruqi, LLP's California office. Mr. Bower has extensive experience in securities class actions, real estate and corporate litigation, and complex commercial litigation matters. Mr. Bower has been in the private practice of law since 1981. Prior to forming his own law firm, Law Offices of David E. Bower, in 1996, Mr. Bower practiced for two years with the law firm Hornberger & Criswell where he supervised and coordinated complex business litigation. From 1989 to 1994, he was a partner with the law firm Rivers & Bower where he handled business, construction, real estate, insurance, and personal injury litigation and business and real estate transactions. From 1984 to 1989, he practiced in the insurance bad faith defense and complex litigation department of the Los Angeles, California based law firm of Gilbert, Kelley, Crowley & Jennett. From 1981 to 1984, he practiced law in New York as a partner with the law firm Boysen, Scheffer & Bower.

Mr. Bower is a graduate of the Mediation Training Program at UCLA and has a certification in Advanced Mediation Techniques. He has presided in over 200 mediations since becoming certified and is currently on the Los Angeles Superior Court Pay Panel of mediators and arbitrators. He is the past Chairman of the Board of Directors of Mental Health Advocacy Services, a non-profit legal services firm in Los Angeles, where he is still an active member of the board. He was previously the President of the Board of A New Way of Life Reentry Project, a non-profit serving ex-convicts seeking reentry into society as productive citizens.

He graduated from State University of New York (at Buffalo) (B.A. 1977) and received his law degree from the Southwestern University School of Law (J.D. 1981). Mr. Bower is admitted to the bar in California and New York.

JAMES R. BANKO

James R. Banko is a partner in Faruqi & Faruqi's Delaware office. Mr. Banko has substantial practice in complex litigation, including securities and corporate fraud.

Prior to joining the Firm, Mr. Banko practiced law at Grant & Eisenhofer, P.A. where he focused on securities and corporate fraud litigation. Mr. Banko represented sophisticated institutional investors in a high-profile securities fraud class action, *In re Tyco International, Ltd. Securities Litig.*, which resulted in $3 billion class action settlement and in which Mr. Banko took and defended numerous depositions and wrote class certification, discovery, and summary judgment briefs. Mr. Banko was also involved in the recovery of a successful settlement against a former chief financial officer on behalf of a European fund which included discovery under the Hague Convention. Mr. Banko also took a leading role in several other securities fraud class actions against pharmaceutical companies including briefing of Daubert motions. Representative clients included various state attorney generals, pension funds, and securities funds.

Mr. Banko was previously an associate in the litigation department at Curtis, Mallet-Prevost, Colt & Mosle LLP, New York, NY where he practiced in all aspects of general civil litigation, including complex commercial, contract, corporate, product liability, and trade secret cases, including jury trials. Responsibilities included hearings, pleadings, pretrial discovery, motions for summary judgment, motions in limine, argument of substantive and procedural motions in federal and state courts, engaging in settlement negotiations and drafting of agreements.

Mr. Banko received his J.D. from the University of Pennsylvania Law School where he was a Senior Board Member of the Journal of International Business Law. Mr. Banko is admitted, and in good standing, in NY, NJ, PA, DC, DE, FL, and CA as well as numerous United States district courts as well as the 1st, 2d, 3d and 9th Circuits and the U.S. Supreme Court.

JUAN E. MONTEVERDE

Juan E. Monteverde is a partner at Faruqi & Faruqi, LLP.

Mr. Monteverde has concentrated his legal career advocating shareholder rights. Mr. Monteverde regularly handles high profile merger cases seeking to maximize shareholder value and has recovered damages and improved merger transactions in the process. *In Re Harleysville Group, Inc. S'holders Litigation*, C.A. Bo. 6907-VCP (Del. Ch. 2014)(obtaining significant disclosures for stockholders pre-close and securing valuable relief post close in the form of an Anti-Flip Provision providing former stockholders with 25% of any profits in a Qualifying Sale); *In re Cogent, Inc. Shareholders Litigation*, Consol. C.A. No. 5780-VCP (Del. Ch. 2013) (obtaining post-close cash settlement of $1.9 million after two

years of hotly contested litigation); *In re International Coal Group, Inc., Shareholders Litigation*, No. 6464-VCP (Del. Ch. 2011) (securing a reduction in the Termination Fee of $10 million and obtaining additional material disclosures regarding the Company's financial projections).

Mr. Monteverde has also broken new ground when it comes to challenging proxies related to compensation issues post Dodd-Frank Act for not providing accurate disclosure required for shareholders to cast informed votes. *Knee v. Brocade Comm'ns Sys., Inc.*, No. 1-12-CV-220249, slip op. at 2 (Cal. Super. Ct. Santa Clara Cnty. Apr. 10, 2012) (Kleinberg, J.) (enjoining the 2012 shareholder vote because certain information relating to projected executive compensation (as related to an equity plan share increase that had a potential dilutive effect on shareholders) was not properly disclosed in the proxy statement).

Mr. Monteverde has written articles regarding executive compensation and also speaks regularly at ABA, PLI and other conferences regarding merger litigation or executive compensation issues.

Mr. Monteverde has been selected by Super Lawyers as a 2013 New York Metro Rising Star.

Mr. Monteverde graduated from California State University of Northridge (B.S. Finance) and St. Thomas University School of Law (J.D. cum laude). While at St. Thomas University School of Law, Mr. Monteverde was a staff editor of law review and the president of the law school newspaper.

Mr. Monteverde is a member of the New York Bar and is admitted to practice in the United States District Court for the Southern District of New York, Eastern District of New York and Western District of New York, Eastern District of Wisconsin, District of Colorado and Seventh Circuit for the United States Court of Appeals.

ANTONIO VOZZOLO

Antonio Vozzolo is a partner in Faruqi & Faruqi, LLP's New York office.

Mr. Vozzolo was one of the primary counsel responsible for prosecuting *In re PurchasePro, Inc., Secs. Litig.*, Master File No. CV-S-01-0483 (D. Nev. 2001), a case against the officers and directors of PurchasePro.com as well as AOL Time Warner, Inc., America On-Line, Inc., and Time Warner, Inc., for federal securities laws violations, culminating in a $24.2 million settlement.

Mr. Vozzolo's other notable cases are *Thomas v. Global Vision Products*, Case No. RG-03091195 (Cal. Super. Ct., Alameda Cty.) (representing certified class of California consumers for false and misleading advertising claims regarding Avacor hair restoration product; $37 million jury verdict for the first trial, $50 million jury verdict for separate trial against two of the remaining directors and officers); *In re: HP Power-Plug Litigation*, Case No. 06-1221 (N.D. Cal.) (representing a proposed nationwide class of persons who purchased defective laptops; cash payment up to $650.00, or in the alternative, a repair free-of-charge); *Delre v. Hewlett-Packard Co.*, C.A. No. 3232-02 (N.J. Super. Ct. 2002) (representing a

proposed nationwide class of persons for false and misleading advertising claims regarding capabilities of model 100i DVD writers; recovery included replacement of the 100i writer with upgraded, second generation 200i DVD writer and a refund of the $99 defendant had previously charged consumers to upgrade from the 100i to the 200i).

Mr. Vozzolo graduated, *cum laude*, from Fairleigh Dickinson University in 1992 with a Bachelor of Science (B.Sc.), where he was on the Dean's List, and with a Masters in Business Administration (M.B.A.) in 1995. He is a graduate of Brooklyn Law School (J.D. 1998). Mr. Vozzolo served as an intern to the Honorable Ira Gammerman of the New York Supreme Court and the New York Stock Exchange while attending law school.

PETER KOHN

Mr. Kohn is a partner in Faruqi & Faruqi, LLP's Pennsylvania office. Prior to joining the firm, Mr. Kohn was a shareholder at Berger & Montague, P.C., where he prepared for trial several noteworthy lawsuits under the Sherman Act, including *In re Buspirone Patent & Antitrust Litigation*, MDL No. 1410 (S.D.N.Y.) ($220M settlement), *In re Cardizem CD Antitrust Litigation*, No. 99-MD-1278 (E.D. Mich.) ($110M settlement), *Meijer, Inc. v. Warner-Chilcott*, No. 05-2195 (D.D.C.) ($22M settlement), *In re Relafen Antitrust Litigation*, No. 01-12239 (D. Mass.) ($175M settlement), *In re Remeron Direct Purchaser Antitrust Litigation*, No. 03-cv-0085 (D.N.J.) ($75M settlement), *In re Terazosin Hydrochloride Antitrust Litigation*, No. 99-MDL-1317 (S.D. Fla.) ($72.5M settlement), and *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-340 (D. Del.) ($250M settlement). The court appointed him as co-lead counsel for the plaintiffs in *In re Pennsylvania Title Ins. Antitrust Litig.*, No. 08cv1202 (E.D. Pa.) (pending action on behalf of direct purchasers of title insurance alleging illegal cartel pricing under § 1 of the Sherman Act).

A sampling of Mr. Kohn's reported cases in the antitrust arena includes *Delaware Valley Surgical Supply Inc. v. Johnson & Johnson*, 523 F.3d 1116 (9th Cir. 2008) (issue of direct purchaser standing under *Illinois Brick*); *Babyage.com, Inc. v. Toys "R" Us, Inc.*, 558 F. Supp.2d 575 (E.D. Pa. 2008) (denying defendants' motion to dismiss following the Supreme Court's decisions in *Twombly* and *Leegin*, and for the first time in the Third Circuit adopting the Merger Guidelines method of relevant market definition); *J.B.D.L. Corp. v. Wyeth-Ayerst Laboratories, Inc.*, 485 F.3d 880 (6th Cir. 2007) (affirming summary judgment in exclusionary contracting case); and *Babyage.com, Inc. v. Toys "R" Us, Inc.*, 458 F. Supp.2d 263 (E.D. Pa. 2006) (discoverability of surreptitiously recorded statements prior to deposition of declarant).

Mr. Kohn is a 1989 graduate of the University of Pennsylvania (B.A., English) and a 1992 *cum laude* graduate of Temple University Law School, where he was senior staff for the *Temple Law Review* and received awards for trial advocacy. Mr. Kohn was recognized as a "recommended" antitrust attorney

in the Northeast in 2009 by the Legal 500 guide (www.legal500.com) and was chosen by his peers as a "SuperLawyer" in Pennsylvania in 2009, 2010, and 2011. In 2011, Mr. Kohn was selected as a Fellow in the Litigation Counsel of America, a trial lawyer honorary society composed of less than one-half of one percent of American lawyers. He is a member of the bars of the Supreme Court of Pennsylvania (1992-present), the United States District Court for the Eastern District of Pennsylvania (1995-present), the United States District Court for the Eastern District of Michigan (2010-present), the United States Court of Appeals for the Third Circuit (2000-present), the United States Court of Appeals for the Sixth Circuit (2005-present), and the United States Court of Appeals for the Federal Circuit (2011-present).

RICHARD W. GONNELLO

Richard W. Gonnello is a partner in the Firm's New York office.

Prior to joining the firm, Mr. Gonnello was a partner at Entwistle & Cappucci LLP and an associate at Latham & Watkins LLP. Mr. Gonnello has represented institutional and individual investors in obtaining substantial recoveries in numerous class actions, including *In re Royal Ahold Sec. Litig.*, No. 03-md-01539 (D. Md. 2003) ($1.1 billion) and *In re Tremont Securities Law, State Law and Insurance Litigation*, No. 08-cv-11117 (S.D.N.Y. 2011) ($100 million+). Mr. Gonnello has also obtained favorable recoveries for institutional investors pursuing direct securities fraud claims, including cases against *Qwest Communications International, Inc.* ($175 million+) and *Tyco Int'l Ltd* ($21 million).

Mr. Gonnello has co-authored the following articles: "*'Staehr' Hikes Burden of Proof to Place Investor on Inquiry Notice*, "New York Law Journal, December 15, 2008; and "*Potential Securities Fraud: 'Storm Warnings' Clarified*," New York Law Journal, October 23, 2008.

Mr. Gonnello graduated *summa cum laude* from Rutgers University in 1995, where he was named Phi Beta Kappa. He received his law degree from UCLA School of Law (J.D. 1998), and was a member of the UCLA Journal of Environmental Law & Policy.

T. TALYANA BROMBERG

Ms. Bromberg joined Faruqi & Faruqi, LLP's Pennsylvania office in March of 2013 as a partner.

Prior to joining the Firm, Ms. Bromberg practiced law at Grant & Eisenhofer, P.A. where she represented whistleblowers in pharmaceutical, financial, health care, and government contractor cases, with settlements totaling over $4.5 billion. Among these settlements was a $1.6 billion settlement against Abbott Laboratories related to off-label promotion and payment of kickbacks for anti-seizure drug Depakote, and a $3 billion settlement against GlaxoSmithKline related to unlawful marketing tactics and kickbacks for GSK drugs. During her tenure at Grant & Eisenhofer, Ms. Bromberg, among others, also

represented sophisticated institutional investors in complex international securities class actions, including *In re Parmalat Securities Litigation* and *In re Vivendi Universal S.A. Securities Litigation*.

Ms. Bromberg previously served as partner at a prominent law firm in Riga, Latvia, where she focused on commercial litigation. She also served as in-house counsel for a U.S.-Latvian joint venture in the exporting and manufacturing sector. Ms. Bromberg received her L.L.M. degree from the University of Pennsylvania Law School and her J.D. equivalent from the University of Latvia School of Law in Riga, Latvia in 1989. Ms. Bromberg is a member of the New York Bar and is admitted to practice in the United States District Courts for the Eastern and Southern Districts of New York.

ADAM R. GONNELLI

Mr. Gonnelli is a partner in Faruqi & Faruqi, LLP's New York office.

Since joining Faruqi & Faruqi, Mr. Gonnelli has concentrated his practice on wage and hour litigation, transaction litigation and consumer class actions. Representative cases include *Garcia v. Lowe's, Cos., Inc.*, No. 841120 (Cal. Super. Ct.) (case to recover overtime pay for delivery drivers); *In re NutraQuest, Inc.*, No. 06-202 (D.N.J.) (consumer fraud case against national diet supplement company); *Wanzo v. Nextel Commc'ns, Inc.*, No. GIC 791626 (Cal. Sup. Ct.) (consumer case challenging change in "nights and weekends" plan); *Rice v. Lafarge North America*, No. 268974 (Md. Cir. Ct.) (merger case resulted in a benefit of $388 million); and *In re Fox Entm't Group, Inc. S'holders Litig.*, No. 1033-N (Del. Ch. 2005) (benefit to shareholders of $450 million).

Mr. Gonnelli received a B.A. from Rutgers University (Newark) in 1989 and a J.D. from Cornell Law School in 1997. At Rutgers University, Mr. Gonnelli lettered in football and fencing and served as Student Government President. Prior to attending law school, Mr. Gonnelli was a Financial Writer at the Federal Reserve Bank of New York, where he wrote educational materials on international trade and monetary policy. While attending Cornell Law School, Mr. Gonnelli served as Editor-in-Chief of the Cornell Journal of Law and Public Policy and was a member of the Atlantic Regional Championship moot court team in the Jessup International Law Moot Court Competition (1997).

JOSEPH T. LUKENS

Mr. Lukens is a partner in Faruqi & Faruqi, LLP's Pennsylvania office.

Mr. Lukens was a shareholder at the Philadelphia firm of Hangley Aronchick Segal Pudlin & Schiller, where he represented large retail pharmacy chains as opt-out plaintiffs in numerous lawsuits under the Sherman Act. Among those lawsuits were *In re Brand Name Prescription Drugs Antitrust Litigation* (MDL 897, N.D. Ill.), *In re Terazosin Hydrochloride Antitrust Litigation* (MDL 1317, S.D. Fla.), *In re TriCor Direct Purchaser Antitrust Litigation* (05-605, D. Del.), *In re Nifedipine Antitrust Litigation*

(MDL1515, D.D.C.), *In re OxyContin Antitrust Litigation* (04-3719, S.D.N.Y), and *In re Chocolate Confectionary Antitrust Litigation* (MDL 1935, M.D. Pa.). While the results in the opt-out cases are confidential, the parallel class actions in those matters which are concluded have resulted in settlements exceeding $1.1 billion.

Earlier in his career, Mr. Lukens concentrated in commercial and civil rights litigation at the Philadelphia firm of Schnader, Harrison, Segal & Lewis. The types of matters that Mr. Lukens handled included antitrust, First Amendment, contracts, and licensing. Mr. Lukens also worked extensively on several notable *pro bono* cases including *Commonwealth v. Morales*, which resulted in a rare reversal on a second post-conviction petition in a capital case in the Pennsylvania Supreme Court.

Mr. Lukens graduated from LaSalle University (B.A. Political Science, *cum laude*, 1987) and received his law degree from Temple University School of Law (J.D., *magna cum laude*, 1992) where he was an editor on the *Temple Law Review* and received several academic awards. After law school, Mr. Lukens clerked for the Honorable Joseph J. Longobardi, Chief Judge for the United States District Court for the District of Delaware (1992-93). Mr. Lukens is a member of the bars of the Supreme Court of Pennsylvania (1992-present), the United States Supreme Court (1996-present); the United States District Court for the Eastern District of Pennsylvania (1993-present), the United States Court of Appeals for the Third Circuit (1993-present), and the United States Court of Appeals for the District of New Jersey (1994-present).

Mr. Lukens has several publications, including: *Bringing Market Discipline to Pharmaceutical Product Reformulations*, 42 Int'l Rev. Intel. Prop. & Comp. Law 698 (September 2011) (co-author with Steve Shadowen and Keith Leffler); *Anticompetitive Product Changes in the Pharmaceutical Industry*, 41 Rutgers L.J. 1 (2009) (co-author with Steve Shadowen and Keith Leffler); *The Prison Litigation Reform Act: Three Strikes and You're Out of Court — It May Be Effective, But Is It Constitutional?,* 70 Temp. L. Rev. 471 (1997); *Pennsylvania Strips The Inventory Search Exception From Its Rationale – Commonwealth v. Nace*, 64 Temp. L. Rev. 267 (1991).

NEILL CLARK

Mr. Clark is an associate in Faruqi and Faruqi, LLP's Pennsylvania office. Before joining the firm, Mr. Clark was an associate at Berger & Montague, P.C. where he was significantly involved in prosecuting antitrust class actions on behalf of direct purchasers of brand name drugs and charging pharmaceutical manufacturers with illegally blocking the market entry of less expensive competitors.

Eight of those cases have resulted in substantial settlements totaling over $950 million: *In re Cardizem CD Antitrust Litig.* settled in November 2002 for $110 million; *In re Buspirone Antitrust Litig.* settled in April 2003 for $220 million; *In re Relafen Antitrust Litig.* settled in February 2004 for $175

million; *In re Platinol Antitrust Litig*. settled in November 2004 for $50 million; *In re Terazosin Antitrust Litig*. settled in April 2005 for $75 million; *In re Remeron Antitrust Litig*. settled in November 2005 for $75 million; *In re Ovcon Antitrust Litig*. settled in 2009 for $22 million; and *In re Tricor Direct Purchaser Antitrust Litig*. settled in April 2009 for $250 million.

Mr. Clark was also principally involved in a case alleging a conspiracy among hospitals and the Arizona Hospital and Healthcare Association to depress the compensation of per diem and traveling nurses, *Johnson et al. v. Arizona Hospital and Healthcare Association et al*., No. CV07-1292 (D. Ariz.).

Mr. Clark was selected as a "Rising Star" by Pennsylvania Super Lawyers and listed as one of the Top Young Lawyers in Pennsylvania in the December 2005 edition of Philadelphia Magazine. Two cases in which he has been significantly involved have been featured as "Noteworthy Cases" in the NATIONAL LAW JOURNAL articles, "The Plaintiffs' Hot List" (*In re Tricor Antitrust Litig*. October 5, 2009 and *Johnson v. Arizona Hosp. and Healthcare Ass'n.*, October 3, 2011).

Mr. Clark graduated cum laude from Appalachian State University in 1994 and from Temple University Beasley School of Law in 1998, where he earned seven "distinguished class performance" awards, an oral advocacy award and a "best paper" award.

RICHARD SCHWARTZ

Richard Schwartz is an associate in Faruqi & Faruqi, LLP's Pennsylvania office.

Mr. Schwartz graduated from the University of Washington (B.A.) and the University of Chicago in 2004 (J.D.). While in law school, Mr. Schwartz served as a law clerk at the MacArthur Justice Center in Chicago and as a summer associate with the Chicago law firm Robinson Curley & Clayton P.C. Since law school, Mr. Schwartz has been a commercial litigator in New York and Pennsylvania.

Mr. Schwartz is a member of the bars of the State of New York (2005-present), Commonwealth of Pennsylvania (2010-present), the United States District Court for the Southern District of New York (2006-present), the United States District Court for the Eastern District of New York (2007-present), the United States District Court for the Northern District of New York (2008-present), the United States Court of Appeals for the Second Circuit (2010-present) and the United States District Court for the Eastern District of Pennsylvania (2011-present).

DAVID P. DEAN

David P. Dean is an associate in Faruqi & Faruqi, LLP's Pennsylvania office. Prior to joining Faruqi & Faruqi, LLP, Mr. Dean was a commercial litigator with Deeb Blum Murphy Frishberg & Markovich, PC. Mr. Dean began his career at the Miami-Dade County Public Defender's Office, where he conducted more than thirty jury and bench trials in felony and misdemeanor cases.

Mr. Dean earned his law degree from New York University School of Law (J.D., *magna cum laude*, 2006), and is a graduate of Wesleyan University (B.A., Government, High Honors, 1999). While in law school he served as a notes editor for the NYU Law Review, and gained clinical and internship experience with the Federal Defenders of New York, the New York Office of the Appellate Defender, the Louisiana Capital Assistance Center, and the Kentucky Department of Public Advocacy's Capital Post-Conviction Unit.

Mr. Dean is licensed to practice law in Pennsylvania and Florida, and has been admitted to practice in the United States District Court for the Eastern District of Pennsylvania.

BARBARA A. ROHR

Barbara A. Rohr is an associate in Faruqi & Faruqi, LLP's California office.

Prior to joining Faruqi & Faruqi, Ms. Rohr practiced civil and employment litigation at Walsh & Associates, APC, and for the City of Los Angeles. Ms. Rohr also gained valuable work experience as a human resources professional in the entertainment industry for six years before attending law school.

Ms. Rohr graduated from Southwestern Law School (J.D., 2010) and Arizona State University (B.A., Psychology and Broadcast Journalism, 1996). In 2010, Ms. Rohr was recognized for earning the highest grade in Sales at Southwestern Law School and received the Los Angeles County Bar Association's Jeffrey S. Turner Outstanding Commercial Law Student award.

Ms. Rohr is licensed to practice law in California and is admitted to practice before the United States District Courts for the Central, Northern, Southern, and Eastern Districts of California.

STEVEN BENTSIANOV

Steven Bentsianov is an associate in the New York office of Faruqi & Faruqi LLP.

Mr. Bentsianov graduated from the State University of New York at Binghamton (B.A. in English, 2005) and from Brooklyn Law School (J.D., *magna cum laude*, 2011). While at Brooklyn Law School, Mr. Bentsianov was the Managing Editor of the Brooklyn Journal of Corporate, Financial and Commercial Law and was a Dean Merit Scholar. He also received the CALI Excellence Award in Legal Writing I and II, Banking Law and Corporate Finance.

Mr. Bentsianov gained further experience in law school through internships for U.S District Judge Brian Cogan in the U.S. District Court for the Eastern District of New York, the Federal Trade Commission, the Financial Industry Regulatory Authority, and as a summer associate for a securities class action firm.

Mr. Bentsianov is licensed to practice law in New York and New Jersey.

ANDREA CLISURA

Andrea Clisura is an associate in the New York office of Faruqi & Faruqi, LLP.

Ms. Clisura graduated from New York University (B.A., *magna cum laude*, 2005) and Brooklyn Law School (J.D., *magna cum laude*, 2011). While at Brooklyn Law School, Ms. Clisura was an Associate Managing Editor of the Brooklyn Law School Journal of Law and Policy, and was a member of the Moot Court Honor Society. Her note, "None of Their Business: The Need for Another Alternative to New York's Bail Bond Business," was published in Volume 19, Issue 1 of the Journal of Law and Policy. She also co-authored the hypothetical problem and bench brief for the 2011 Jerome Prince Memorial Evidence Moot Court Competition.

Ms. Clisura also gained experience in law school as an intern: to the Honorable David G. Trager of the Eastern District of New York, for the U.S. Department of Justice (Antitrust Division), and for a New York City-based legal services organization dealing with anti-predatory lending and foreclosure prevention.

Ms. Clisura is licensed to practice law in New York and New Jersey and is admitted to practice before the United States District Courts for the Southern District of New York, the Eastern District of New York and the District of New Jersey.

COURTNEY E. MACCARONE

Courtney E. Maccarone is an associate in the New York office of Faruqi & Faruqi, LLP.

Ms. Maccarone graduated from New York University (B.A., *magna cum laude*, 2008) and Brooklyn Law School (J.D., *magna cum laude*, 2011). While at Brooklyn Law School, Ms. Maccarone was the Executive Symposium Editor of the Brooklyn Journal of International Law, and was a member of the Moot Court Honor Society. Her note, "Crossing Borders: A TRIPS-Like Treaty on Quarantines and Human Rights" was published in the Spring 2011 edition of the Brooklyn Journal of International Law. Ms. Maccarone also gained experience in law school as an intern to the Honorable Martin Glenn of the Southern District of New York Bankruptcy Court, a research assistant for Brooklyn Law School Professor of Law Emeritus Norman Poser, a widely respected expert in international and domestic securities regulation, and as a law clerk for a New York City-based class action firm.

Ms. Maccarone is licensed to practice law in New York and New Jersey and is admitted to practice before the United States District Courts for the Eastern and Southern Districts of New York and the District of New Jersey.

SARAH A. WESTBY

Sarah A. Westby is an associate in the New York office of Faruqi & Faruqi, LLP. Ms. Westby graduated Phi Beta Kappa from the University of Delaware (B.A. in Psychology, *magna cum laude*, 2008)) and Brooklyn Law School (J.D., *cum laude*, 2011).

While at Brooklyn Law School, Ms. Westby was an Executive Editor of the Brooklyn Journal of International Law. Her note on comparative consumer class action law was selected as the winning submission in the 2010 Trandafir International Business Writing Competition and was published in the University of Iowa Journal of Transnational Law & Contemporary Problems. She also received awards in Trial Advocacy and International Economic Law. Ms. Westby gained experience during law school through internships for U.S. Magistrate Judge Ramon E. Reyes, Jr. in the U.S. District Court for the Eastern District of New York, the U.S. Department of Justice, Civil Rights Division, the New York City Law Department and as a law clerk for an antitrust and consumer class action firm.

Ms. Westby is licensed to practice law in New York and is admitted to practice before the United States District Courts for the Eastern and Southern District of New York.

MEGAN SULLIVAN

Megan Sullivan is an associate in the New York office of Faruqi & Faruqi, LLP.

Prior to joining the firm, Ms. Sullivan was a litigation associate at Crosby & Higgins LLP where she represented institutional and individual investors in securities arbitrations before FINRA and counseled corporate clients in commercial disputes in federal court. Additionally, Ms. Sullivan gained further litigation experience in law school through internships at the Kings County District Attorney's Office and the Adjudication Division of the New York City Department of Consumer Affairs.

Ms. Sullivan graduated from the University of California, Los Angeles (B.A., History, 2008) and from Brooklyn Law School (J.D., *cum laude*, 2011). While at Brooklyn Law School, Ms. Sullivan served as Associate Managing Editor of the Brooklyn Journal of Corporate, Financial and Commercial Law.

Ms. Sullivan is licensed to practice law in the State of New York.

JAVIER O. HIDALGO

Javier O. Hidalgo is an associate in the New York office of Faruqi & Faruqi, LLP.

Mr. Hidalgo graduated from Swarthmore College (B.A., Sociology & Anthropology, 2004) and New York Law School (J.D., 2012). Mr. Hidalgo gained experience in law school working as a paralegal at Faruqi & Faruqi, LLP starting in spring of 2009.

Mr. Hidalgo is licensed to practice law in New York and is admitted to practice before the United States District Courts for the Eastern and Southern Districts of New York

TODD HENDERSON

Todd H. Henderson is an associate in the New York office of Faruqi & Faruqi, LLP.

Mr. Henderson graduated from Cornell University (B.A. in American Studies, College of Arts and Sciences, 2007) and from Brooklyn Law School (J.D., Certificate in Business Law, 2012). While at Brooklyn Law School, Mr. Henderson was an Associate Managing Editor of the Brooklyn Journal of International Law. His note, "The English Premier League's Home Grown Player Rule Under the Law of the European Union" was published in the Fall 2011 edition of the Brooklyn Journal of International Law.

Prior to joining the firm, Mr. Henderson gained experience as a paralegal for the Internal Revenue Service, Office of Chief Counsel, and through internships for a securities and consumer class action firm, the New York State Division of Human Rights, United States Postal Service Law Department, the Brooklyn Consumer Counseling and Bankruptcy Clinic, and the New York City Human Resources Administration, Office of Legal Affairs.

Mr. Henderson is licensed to practice law in New York and is admitted to practice before the United States District Courts for the Eastern and Southern Districts of New York.

MILES D. SCHREINER

Miles Schreiner is an associate in the New York office of Faruqi & Faruqi, LLP.

Mr. Schreiner graduated from Tulane University (B.A. in Political Science, *cum laude*, 2007) and Brooklyn Law School (J.D., *cum laude*, 2012). While at Brooklyn Law School, Mr. Schreiner was a Dean's Merit Scholar and served as the Production Editor of the Brooklyn Law Review. His note, "A Deadly Combination: The Legal Response to America's Prescription Drug Epidemic," was selected as the winning submission in the 2012 American College of Legal Medicine Student Writing Competition and was published in Volume 33, Issue 4 of the Journal of Legal Medicine.

Prior to joining the firm, Mr. Schreiner gained experience in complex litigation as an associate at a New York City firm that represents plaintiffs in civil RICO actions. While in law school, Mr. Schreiner developed practical skills through internships with the Kings County Supreme Court Law Department, the Office of General Counsel at a major New York hospital, and a boutique law firm that specializes in international fraud cases.

Mr. Schreiner is licensed to practice law in New York and New Jersey.

ELIZABETH A. SILVA

Elizabeth A. Silva is an associate in the New York office of Faruqi & Faruqi, LLP.

Prior to joining the firm, Ms. Silva was a litigation associate at Crosby & Higgins LLP where she represented institutional and individual investors in securities arbitrations before FINRA and counseled corporate clients in a variety of intellectual property and complex commercial disputes in federal court. Additionally, Ms. Silva gained further litigation experience in law school through internships at the Kings County District Attorney's Office and as a law clerk at a criminal defense firm.

Ms. Silva graduated in *corsu honorum* from Fordham University (B.A. in Comparative Literature and Italian Studies, *cum laude*, 2009) and New York Law School (J.D., *magna cum laude*, 2012). While at New York Law School, Ms. Silva served as a Notes and Comments Editor of the New York Law School Law Review and was an associate in the Institute for Information Law and Policy. Ms. Silva is licensed to practice law in the State of New York.

EXHIBIT 2

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FEINSTEIN DOYLE PAYNE & KRAVEC, LLC
Class Action Practice

SUMMARY

Feinstein Doyle Payne & Kravec, LLC ("FDPK") is a dynamic plaintiff-side law firm focusing in consumer, insurance and ERISA class actions. The firm is based in Pittsburgh, Pennsylvania.

HISTORY OF FIRM

Experienced ERISA class action litigators Edward Feinstein, Ellen Doyle and William Payne founded the firm in 2007. Partner Joseph N. Kravec, Jr. joined the firm in 2010, bringing with him a wealth of experience litigating consumer and insurance class actions. The firm currently consists of 16 attorneys.

Our attorneys have been leaders in protecting the rights of consumers and insureds. For example, the firm is currently litigating a number of consumer protection class actions against food manufacturers that have mislabeled their products with false "all natural," health or other claims. Another class action for homeowners whose mortgage lender secretly overvalued their homes with inflated appraisals strikes at the heart of one of the sub-prime mortgage schemes that prompted the recent recession. Similarly, the firm is litigating a class action for student loan borrowers who are being charged exorbitant late fees in violation of applicable law. In 2011, the firm helped homeowners in a forced-placed insurance class action the firm settled on behalf of 550,000 California homeowners providing relief valued at approximately $86 million.

Our attorneys also have been and continue to be at the forefront of litigation to recover losses to participants in 401(k) plans and Employee Stock Ownership Plans ("ESOPs") from imprudent investments in employer stock. We are also well-known throughout the country for bringing class actions challenging the termination or reduction of retiree health benefits to former union members, including representing UAW retirees in the litigation that established the health care trust funds for retired GM, Ford and Chrysler workers. The firm also has been involved in representing public sector workers in cases to preserve pension and retiree health care benefits.

In addition to its class action practice, the firm represents individuals in employment litigation, unions in collective bargaining and litigation, and parents and students in educational law matters.

INSURANCE AND CONSUMER CLASS ACTIONS

Our attorneys have repeatedly and successfully litigated insurance and consumer class actions. Ellen Doyle and Joseph N. Kravec, Jr. are past chairs of the Insurance Law Section of the Association of Trial Lawyers of America. A sample of the class actions our attorneys have brought include:

American Security Insurance Company – Attorney Joseph N. Kravec, Jr. was co-lead counsel representing approximately 550,000 California homeowners against American Security Insurance Company for placing duplicative hazard insurance coverage and charging homeowners for this unnecessary coverage. In 2011, the case settled for relief valued at $86 million, including prospective relief in the form of reduced premiums. Wahl v. American Security Insurance Company, 2010 WL 1881126 (N.D. Cal.).

Kashi – In 2011, the firm brought a case on behalf of a nationwide class of consumers against Kashi, a division of Kellogg's, whose products that bore statements made on the products' labels alleged to be in violation of FDA regulations and unlawful under California law. Several other law firms brought similar cases, which were consolidated in the U.S. District Court for the Southern District of California. On January 18, 2012, District Court Judge Marilyn L. Huff appointed FDPK, along with one other firm, as interim co-lead counsel. Bates v. Kashi, 3:11-cv-1967 (S.D.Cal.).

Ken's Foods, Inc. -- The firm brought a case on behalf of a nationwide class of consumers who purchased Ken's dressing that bore statements made on the products' labels alleged to be in violation of FDA regulations and unlawful under California law. A 2011 settlement permitted class members to receive relief approximating a full refund of their entire purchase price recouped over one hundred percent of the profits Ken's made on the sale of the products in question, enjoined Ken's from similar mislabeling in the future and both lead counsel and the settlement were found to be more than adequate for the class. Eisenstat v. Ken's Foods, 2:10-cv-2510 (N.D.Cal.).

Diamond Foods, Inc. -- The firm represents a class of consumers who purchased walnuts mislabeled with health claims in violation of FDA regulations and California law, at the time one of only a few nationwide class certification orders presented and granted in this context. A 2011 settlement provided all class members full relief (*i.e.*, a refund approximating their average purchase price for the dressing for every class member who claimed-in), plus additional relief. Zeisel v. Diamond Foods, Inc., 2011 WL 2221113 (N.D. Cal.).

Kenty v. Bank One Corporation - Automobile purchasers who financed their purchase through Bank One were required by their contracts to provide proof that they maintained insurance on their vehicles. When a borrower failed to provide proof of insurance, Bank One would obtain "force-placed" insurance for the borrower and charge the borrower's account for the premiums as well as an additional interest charge. Our attorneys brought this case in Ohio (Franklin County) and alleged that Bank One obtained more and different types of insurance (and charged greater premiums) than its contracts authorized. We settled the case for $2.4 million and an agreement from Bank One to stop or change many of its practices.

Bates v. National City Bank – We brought this case in Ohio (Cuyahoga County) on behalf of borrowers who financed their motor vehicle purchases through National City Bank. Our suit alleged that National City imposed concealed insurance charges on the borrowers that were not authorized by their loan agreements. We obtained a settlement of $1.5 million.

Schultz v. University of Pittsburgh – The firm brought this suit against the University of Pittsburgh in Pennsylvania (Allegheny County) on behalf of season-ticket holders for men's basketball games. In 2005, the University instituted a new system for season-tickets that reassigned seats based on the amount that season-ticket holders donate to the school. The suit alleged that in instituting the new system, Pitt had reneged on a prior guarantee made to season-ticket holders that they could continue to purchase season tickets for the same seats each year provided that they maintained their current annual level of donation. Under the settlement we achieved, affected season-ticket holders are to retain their seats for the next five years by maintaining a specified minimum donation level.

Spears, et al. v. Washington Mutual Inc. and E-appraiseIT - This is a consumer class action for false appraisals on home loans brought by the firm against appraisers. The false appraisals were part of a scheme between the lender and appraisal service company to provide inflated appraisals, as needed, so the lender could make the mortgage. Homeowners were required to pay for these secretly inflated appraisals, causing them to believe their homes were worth more than they actually were in deciding to enter these high-valued mortgages. This was one of the schemes underlying the sub-prime mortgage crisis.

Besides many of the foregoing class actions, the class actions listed below are representative of those in which Joseph N. Kravec, Jr. had a leadership role prior to joining FDPK:

> *Varacallo v. Massachusetts Mutual Life Insurance Company*, 226 F.R.D. 207 (D. N.J. 2005) (various life insurance deceptive sales practices settled for relief valued at $700 million for about 3 million class members); *In Re Metropolitan Life Insurance Company Sales Practices Litigation*, 1999 WL 33957897 (W.D.Pa.) (various life and annuity deceptive sales practices settled for relief valued at $1.7 billion for about 3 million class members); *In re Flat Glass Antitrust Litigation (II),* 2009 WL 331361 (W.D. Pa., Feb. 11, 2009) (antitrust price fixing claims against manufacturers of flat glass used in windows and other products); *In re: WellPoint, Inc. Out-Of-Network "UCR" Rates Litigation*, 2009 WL 2902564 (JPML, Aug. 19, 2009) (insurer's under-reimbursement of out-of-network health care provider charges by using artificially low UCR rates); *Bethea v. Metropolitan Life Insurance Company*, 2009 WL 690852 (N.J., App. Div.) (charging non-smoking juveniles smoker-based life insurance rates) (reinstated by Appellate Division); *Zeno v. Ford Motor Company*, 238 F.R.D. 173 (W.D. Pa. 2006) and 480 F.Supp.2d 825 (W.D. Pa. 2007) (charging for upgraded radiators and not providing them).

401(K) AND ESOP LITIGATION

Our attorneys have extensive experience representing participants of 401(k) Plans and Employee Stock Ownership Plans (ESOPs). Ellen Doyle is one of the pioneers in this growing fielding, having brought her first case several years before the Enron and Worldcom litigation.

The following is a sample of our recent cases:

First Horizon National Corporation (pending) – FDPK is the sole counsel representing the participants in this action. The suit alleges that fiduciaries of the Plan violated ERISA by imprudently investing in First Horizon stock while the company was concealing its large exposure to highly risky Collateralized Debt Obligations, subprime mortgages, and other low-quality securities. The suit also alleges that the Plan did not properly consider mutual investment options besides mutual funds owned by First Horizon. Sims, et al. v. First Horizon National Corp., et al, 2:08-cv-2293 (W.D. Tenn.).

Regions Financial Corporation (pending) – FDPK has been appointed interim co-lead counsel in this case. The suit alleges that fiduciaries of the Regions Financial 401(k) Plan and AmSouth Bancorporation 401(k) Plan violated ERISA by imprudently investing in Regions stock while the company was concealing Regions Financial's large exposure to highly risky Collateralized Debt Obligations, subprime mortgages, and other poor-quality securities. The suit also alleges that the Regions 401(k) Plan did not properly consider mutual investment options besides mutual funds owned by Regions. In re Regions Morgan Keegan ERISA Litigation, 2:08cv02192 (W.D. Tenn.).

PFF Bancorp (settled for more than $3 million) – FDPK was appointed interim co-lead counsel in this case. The suit alleged that fiduciaries of the PFF Bancorp 401(k) Plan and ESOP violated ERISA by imprudently investing in PFF stock while the company was concealing its loan losses. Perez et al., v. PFF Bancorp et al., 5:08-cv-01093 (C.D. Cal).

KV Pharmaceutical (pending) – FDPK is counsel to the class in this case. The suit alleges that fiduciaries of the company's 401(k) plan violated ERISA by imprudently investing in company stock while the company was concealing its manufacturing problems. Crocker v. KV Pharmaceutical Co., 4:09cv00198 (E.D. Mo.).

Sovereign Bancorporation (pending) – FDPK is co-counsel in this action (no interim lead counsel has been appointed). The suit alleges that fiduciaries of the Sovereign Bancorporation 401(k) Plan violated ERISA by imprudently investing in Sovereign stock while the company was concealing Sovereign's large exposure to highly risky Collateralized Debt Obligations, subprime mortgages, and other poor-quality securities. Schmaltz v. Sovereign Bancorp, Inc., 08-857 (E.D. Pa).

The cases listed below are representative of those in which Ellen Doyle served as lead counsel for plaintiffs prior to the formation of FDPK:

CMS Energy Corp. (2002–2006) – This class action was brought in the United States District Court for the Eastern District of Michigan on behalf of the 13,000 participants and beneficiaries of an ESOP and 401(k) plan sponsored by Consumers Energy Company, a subsidiary of CMS Energy Corporation. In May of 2002, it was revealed that CMS had inflated sales and revenue by engaging in sham energy trades where the company "sold" electricity but bought back the same amount from the same party at the same price. Plaintiffs asserted that plan fiduciaries violated federal pension law (ERISA) because they knew that CMS stock was inflated in value prior to May 2002 as a result of these trades, and therefore they also knew that the plan and its participants had paid too much for the stock. A $28 million settlement was reached in 2006. In re CMS Energy ERISA Litig., 02-72834 (E.D. Mich.)

Federal Mogul (2004–2007) – This class action was brought in the United States District Court for the Eastern District of Michigan on behalf of plan participants alleging fiduciary breach as a result of Federal Mogul's failure to disclose the increased riskiness of company stock due to the acquisition of asbestos-related businesses and the company's failure to discontinue offering company stock to plan participants in the absence of appropriate disclosures. The case settled for $15.45 million. Sherrill v. Federal Mogul Corp. Retirement Programs Committee, 04-72949 (E.D. Mich.)

Solutia, Inc.– FDPK represented participants and beneficiaries in the Solutia, Inc. Savings and Investment Plan between September 1, 1997 and August 31, 2005, for whose benefit the Plan invested or maintained investments in Solutia stock. In September 2008, the United States District Court for the Southern District of New York granted final approval of a settlement which provides relief to the class in the form of a cash payment of $4.75 million and the agreed allowance of a $6.65 million unsecured claim against Solutia's bankruptcy estate. Dickerson v. Feldman, et al., 04-CV-07935 (S.D.N.Y.).

Carter Hawley Hale Profit Sharing Plan – This class action was brought on behalf of the Carter Hawley Hale Stores employees who sustained losses as a result of their 401(k) accounts being invested in CHH's stock which became worthless as the company's financial condition deteriorated into bankruptcy. More than half of the plans assets were invested in CHH stock at the time. A $36 million settlement was reached on behalf of the employees.

Duquesne Light Co. – This case in the Western District of Pennsylvania challenged the conduct of Duquesne Light, a large energy company. Duquesne Light offered employees stock options and stock appreciation rights through a long-term incentive plan. When employees exercised these options, the amounts they received were treated as W-2 compensation for tax purposes, but Duquesne Light did not include these amounts in the compensation used to calculate employees' pension benefits. The court ruled in favor of the employees and ordered Duquesne Light to recalculate the employees' pension benefits with interest.

Other 401(k)/ESOP cases in which Ms. Doyle has been appointed class counsel include:

> *Koch v. Dwyer*, No. 98-Civ.-5519 (S.D.N.Y.); *Blyler v. Agee*, No. CV97-0332 (D. Idaho); *In re Computer Associates ERISA Litigation*, No. CV-02-6281 (S.D.N.Y.); *Kling v. Fidelity Management Trust Co.*, No. 01-11939 (D. Mass.); *In re McKesson HBOC, Inc. ERISA Litig.*, No. C00-20030 (N.D. Cal.).

RETIREE HEALTH CLASS ACTIONS

Our attorneys have vast experience representing retired union workers whose health benefits have been cut or eliminated by their former employers. In his career, William Payne has litigated more than sixty such actions brought under ERISA and/or the Labor Management Relations Act ("LMRA").

The following is a sample of the retiree health class actions which our attorneys have handled over the last five years:

General Motors and Ford (2006–2007) – William Payne and FDPK were appointed class counsel to represent retired GM and Ford workers who were members of the United Auto Workers ("UAW") after their collectively-bargained retiree health benefits were threatened. The lawsuit resulted in a court-approved settlement that guaranteed an excellent health benefit program for about 600,000 retirees and dependents that was to remain in place through 2011. On appeal, the Sixth Circuit commented on the work of lead counsel William Payne: "In view of Payne's background, both classes would have been hard pressed to find someone with greater 'experience in handling class actions ... and claims of the type asserted in the action' or an attorney with more 'knowledge of the applicable law.'" UAW v. GM, 497 F.3d 615, 626 (6th Cir. 2007), earlier proceedings, UAW v. GM, 2006 WL 334283 (E.D. Mich. Feb. 13, 2006), 2006 WL 891151 (E.D. Mich. March 31, 2006) and 235 F.R.D. 383 (E.D. Mich. 2006); UAW v. Ford Motor Co., 2006 U.S. Dist. LEXIS 70471 (E.D. Mich. July 13, 2006). The attorneys also represented former GM workers who were members of the IUE-CWA in another retiree health benefit class action. IUE-CWA v. GM, 238 F.R.D. 583 (E.D. Mich. 2006).

General Motors II , Ford II and Chrysler (2007–2008) – FDPK was appointed class counsel to represent over 800,000 retired UAW members (and their dependents) whose retiree health benefits were threatened by U.S. automakers. The case settled by establishing a Voluntary Employees' Beneficiary Association (VEBA) to provide lifetime benefits, to be funded by the companies with $60 billion in assets (estimated present value in 2010). UAW v. GM, 2008 WL 2968408 (E.D. Mich. July 31, 2008); UAW v. Chrysler, 2008 WL 2980046 (E.D. Mich. July 31, 2008); UAW v. Ford, 2008 WL 4104329 (E.D. Mich. Aug. 29, 2008).

Crown Cork & Seal (2003–2008) – FDPK represented retired beverage can workers whose health benefits were unilaterally cut. The parties agreed that the case would be heard by a retired federal judge acting as an arbitrator. Ultimately, the arbitrator found that the 5000 retirees who retired prior to 1993 had a vested right to retiree health benefits (worth an estimated $170 million) and reinstated coverage to the levels agreed to in collective bargaining. Crown Cork & Seal v. United Steelworkers of America, 32 E.B.C. 1950, 2004 U.S. Dist. LEXIS 760

(W.D. Pa. 2004); United Steelworkers of America and Lawhorn v. Crown Cork & Seal, No. 1:03cv461 (S.D. Ohio)

Continental Tire (2006–2008) – FDPK represented approximately 2200 retired tire manufacturing workers whose health benefits were unilaterally cut. The firm obtained a preliminary injunction against the company, which ultimately led to a negotiated settlement of the matter which restored benefits to the retirees, provided restitution for lost benefits, and established a fund having a value of $155 million to provide future benefits. Pringle v. Continental Tire North America, U.S. Dist. LEXIS 55337, 2007 WL 2236880 (N.D. Ohio. July 31, 2007).

Rexam and Pechiney (2002 – 2008) – FDPK represented retirees of American Can Company whose benefits had been cut by successor companies. In Pechiney, we obtained an excellent settlement in which the company recognized that the retirees' benefits were vested and agreed to provide lifetime benefits with no payment of premiums. In Rexam, for one group of retirees, after the retirees defeated the company's motion for summary judgment, the parties entered into a settlement in which the company agreed to continue to provide health care benefits to pre-Medicare retirees and spouses and provide a lifetime monthly cash payment to Medicare-eligible retirees to purchase retiree health insurance. Santos v. Pechiney Plastics Packaging Inc., Case No. C 05-00149 (N.D. Calif.); Rexam, Inc. v. United Steelworkers of America, 2003 WL 22477858 (D. Minn. Oct. 30, 2003), later proceedings, 2005 WL 1260914 (D. Minn. May 25, 2005), 2005 WL 2318957 (D. Minn. Sept. 22, 2005), 2006 WL 435985 (Feb. 21, 2006), and 2006 WL 2530384 (D. Minn. Aug. 31, 2006).

ASARCO (2002–2005) – FDPK represented retired miners whose health benefits were unilaterally eliminated. After the retirees defeated the company's motion for summary judgment, the company filed for bankruptcy on the eve of trial. In the bankruptcy action, the retirees negotiated a very favorable settlement which reinstated their benefits. See Asarco v. United Steelworkers of America, 2005 U.S. Dist. Lexis 20873 (D. Ariz. 2005).

Rohm & Haas (2003–2009) –FDPK represented retired salt miners whose health benefits were unilaterally eliminated. Initially, the court dismissed the retirees' complaint but on appeal, the Sixth Circuit Court of Appeals reversed the ruling. Upon remand, we successfully opposed the company's motion to transfer and obtained class certification, despite the fact that there were different collective bargaining agreements governing at each of the seven plants where class members had worked. In October 2008, the court granted the retirees' motion for summary judgment finding that the retirees had a right to lifetime vested benefits The parties later settled the damages portion of the action. Moore v. Rohm & Haas, 446 F.3d 643 (6th Cir. 2006), later proceedings, 497 F.Supp.2d 855 (N.D. Ohio 2007), 2008 WL 4449407 (N.D. Ohio Sept. 30, 2008) (granting plaintiffs' motion for summary judgment.

Other retiree health actions in which courts have issued opinions published through the various reporting services and in which William Payne – prior to joining FDPK – served as counsel for parties include the following:[1]

[1] Mr. Payne has served as counsel for parties in many other retiree health cases (not listed here) that were settled or otherwise resolved without reported opinions. Examples of settlements include Alford v.

ACF Industries v. Chapman, 2004 U.S. Dist. LEXIS 27245 (E.D. Mo. 2004) and Chapman v. ACF Indus., 430 F. Supp. 2d 570 (D. W.Va. 2006) (with FDPK); Bower v. Bunker Hill Co., 725 F.2d 1221 (9th Cir. 1984), on remand, 114 F.R.D. 587, 675 F. Supp. 1254 (E.D. Wash. 1986); Keffer v. H. K. Porter Co., 872 F.2d 60 (4th Cir. 1989), affirming, 110 CCH Lab. Cases ¶10,878 (S.D.W.Va., April 19, 1988) (with FDPK); Magliulo v. Metropolitan Life Ins. Co., 208 F.R.D. 55, 27 E.B.C. 1804 (S.D.N.Y. 2002); Mamula v. Satralloy, 578 F. Supp. 563 (S.D. Ohio 1983); Mioni v. Bessemer Cement Co., 4 E.B.C. 2390 (W.D. Pa. 1983), later decision, 120 LRRM 2818 (W.D. Pa. 1984), and 6 E.B.C. 2677, 123 LRRM 2492 (W.D. Pa. 1985); Policy v. Powell Pressed Steel Co., 770 F.2d 609 (6th Cir. 1985), cert. denied, 475 U.S. 1017 (1986); Senn v. United Dominion, 951 F.2d 806 (7th Cir. 1992), petition for rehearing denied, 962 F.2d 655 (1992), cert. denied, 509 U.S. 903 (1993); Shultz v. Teledyne, 657 F. Supp. 289 (W.D. Pa. 1987) (retiree health class action); Smith v. ABS Industries, 890 F.2d 841 (6th Cir. 1989); Steelworkers v. Connors Steel Co., 855 F.2d 1499 (11th Cir. 1988); Steelworkers v. Textron, Inc., 836 F.2d 6 (1st Cir. 1987).

OTHER PENSION CASES

In addition to the experience handling 401(k)/ESOP litigation described earlier, our attorneys have decades of experience representing pension plan participants to recover other types of pension benefits wrongly denied them.

The following is a list of our recent cases:

Freightcar America (2007–2009) – We represented a group of employees at the company's Johnstown, Pennsylvania plant who allege that the company terminated their employment in order to deny them the opportunity to vest for pensions. The District Court granted the employees' motion for preliminary injunction and ordered the company to reinstate the workers immediately. A settlement was subsequently reached and approved by the court. Hayden v. Freightcar America, 2008 WL 375762 (W.D. Pa. Jan. 11, 2008), later decision, 2008 WL 4949039 (W.D. Pa. Nov. 19, 2008).

Northrop Grumman (pending) – The suit alleges that the company improperly calculated the pension benefits of former employees of Litton Industries, which was purchased by Northrop Grumman in 2001. The court entered summary judgment against the plaintiffs, but this order was overturned by the Ninth Circuit. On remand, the court entered summary judgment again against the plaintiffs. The case is now on appeal. Skinner v. Northrop Grumman Retirement Plan B, 07cv-3923 (C.D. Cal.).

Strichman, No. 84-20 (W.D. Pa.) (retiree health class settlement for Crucible Steel retirees worth approximately $60 million); Bench v. Disney, No. CV-97-8203 TJH (AIJx) (C.D. Calif.) (retiree health class settlement in two stages, with the first stage worth approximately $68 million, and the second stage worth approximately $33 million); Ruiz v. BP, No. 91-1453-PHX-RGS (retiree health class settlement involving thousands of retirees).

The following are representative pension actions (other than the 401k/ESOP cases listed above) brought by our attorneys prior to the formation of FDPK:

- Adams v. Bowater Inc., 313 F.3d 611 (1st Cir. 2002), on remand, 292 F. Supp. 2d 191 (D. Maine 2003) (action under ERISA § 204(g), alleging improper elimination of accrued benefits) (Payne).
- Bellas v. CBS, 73 F.Supp.2d 500 (W.D.Pa. 1999), related decision, 73 F.Supp.2d 493 (W.D.Pa. 1999), aff'd, 221 F.3d 517 (3d Cir. 2000), cert. denied, 531 U.S. 1104, 121 S.Ct. 843 (2001), on remand, 201 F.R.D. 411 (W.D. Pa. 2000) (class action under ERISA § 204(g), alleging improper elimination of accrued benefits) (Payne).
- Brytus v. Spang & Co., 79 F.3d 1137 (not for publication) (3d Cir. 1996), cert. denied, 519 U.S. 818 (1996), later proceedings, 151 F.3d 112 (3d Cir. 1998), later proceedings, 203 F.3d 238 (3d Cir. 2000) (recovery of $12.5 million in surplus pension assets for pensioners) (Payne).
- Delgrosso v. Spang & Co., 769 F.2d 928 (3d Cir. 1985), cert. denied, 476 U.S. 1140 (1986), later proceedings, 903 F.2d 234 (3d Cir.), cert. denied, 498 U.S. 967 (1990), and 776 F. Supp. 1065 (W.D. Pa. 1991) (recovery of surplus pension assets for pensioners) (Payne).
- Dennis v. Sawbrook Steel Castings Co., 792 F. Supp. 552 (S.D. Ohio 1991) (suit for surplus pension assets) (Payne).
- Gavalik v. Continental Can Co., 812 F.2d 834 (3d Cir.), cert. denied, 484 U.S. 979 (1987) (ERISA § 510 class action, ultimately resolved as part of $415 million settlement)
- Gillott v. Westinghouse Elec. Corp., 23 E.B.C. 1500, 1999 U.S. Dist. LEXIS 14111 (W.D. Pa. 1999), aff'd without op., 229 F.3d 1138, 2000 U.S. App. LEXIS 20601, 25 E.B.C. 1572 (3d Cir. Pa. 2000) (suit for special pension triggered by layoff) (Payne).
- Gritzer v. CBS, Inc., 275 F.3d 291 (3d Cir. 2002) (suit for special pension triggered by layoff) (Payne).
- Haytcher v. ABS Industries, Inc., 889 F.2d 64 (6th Cir. 1989) (recovery of shutdown pensions) (Payne).
- In re Gulf Pension Litigation, No. H-86-4365 (S.D. Tex.) (suit challenging merger of plans, and for surplus assets) (Doyle).
- Libby, McNeil & Libby, California Canners & Growers v. United Steelworkers of America, AFL-CIO, 809 F.2d 1432 (9th Cir. 1987) (recovery of shutdown pensions) (Payne).
- Orlowski v. St. Francis Health System, No. GD 02-17811 (Pa. Common Pleas, Allegheny County) ($13 million pension settlement to compensate for employer underfunding) (Payne).
- Pieseski v. Northrop Grumman, 2002 U.S. Dist. LEXIS 11891 (W.D.Pa. 2002) (ERISA § 204(g) action for special pension triggered by layoff) (Payne).

- Rinard v. Eastern Co., 978 F.2d 265 (6th Cir. 1992), cert. denied, 507 U.S. 1029 (1993) (lawsuit for surplus pension assets) (Payne).
- Shaver v. Siemens Corp., 2007 U.S. Dist. LEXIS 23578 (W.D. Pa. 2007) (ERISA § 204(g) action for special pension triggered by layoff) (Payne).
- Shawley v. Bethlehem Steel Corp., 989 F.2d 652 (3d Cir. 1993) (ERISA § 510 class action) (Payne).
- Walther v. Pension Plan for Salaried Employees of the Dayton-Walther Corp., 880 F. Supp. 1170 (S.D. Ohio 1994) (suit alleging improper merger of pension plans) (Payne).

PUBLIC SECTOR EMPLOYEE CLASS ACTIONS

Colorado – The firm represents public sector retirees who are members of the Public Employees' Retirement Associate of Colorado in a class action case challenging the replacement of a 3.5% annual increase with a 2% capped COLA. The case is pending on appeal after summary judgment was granted against retirees in state District Court in Denver.

Lawrence Livermore Laboratory/University of California – The firm represents employees of the Lawrence Livermore Laboratory whose retiree health benefits have been reduced as a result of the transfer of the laboratory from the University of California to a private entity. The case is pending on appeal after summary judgment was granted against retirees in the lower court.

New Hampshire – The firm represents retired state workers whose retirement benefits were recently reduced due to changes in the definition of "earnable compensation" and the reduction of cost-of-living adjustments. The case is currently pending in Merrimack County Superior Court in Concord.

South Dakota – The firm represents retired members of the South Dakota Retirement System retirees in a class action challenging the reduction of their cost of living adjustment.

Veterans Administration – The firm represents retired VA nurses whose pension benefits were wrongly calculated. The case is currently pending in the United States District Court for the Western District of Pennsylvania.

ATTORNEY BIOGRAPHIES

ELLEN M. DOYLE

Ellen M. Doyle is a partner in Feinstein Doyle Payne & Kravec, LLC. For more than 25 years she has litigated complex class actions against a broad range of large financial and corporate defendants in federal and state courts. Ms. Doyle is a 1975 graduate of Northeastern University School of Law, has been a member of the Pennsylvania Bar since 1975, and since 1982 has represented ERISA plan participants, insureds, borrowers, consumers and others adversely affected by corporate abuses and financial overreaching.

Over the course of her career, Ms. Doyle has recovered more than $100 million in recoveries for pension plans and their participants. She has been appointed as class counsel to represent numerous classes of ERISA plan participants, in cases challenging, *inter alia*, the plan's continued investment in company stock. See *Sims, et al. v. First Horizon National Corp., et al.,* No. 2:08-CV-2293 (W.D. Tenn.); *Crocker v. KV Pharmaceutical Co.,* No. 4:09-cv-00198 (E.D. Mo.); *In re PFF Bancorp, Inc. ERISA Litig.,* No. 08-01093 (C.D. Ca.); *In re CMS Energy ERISA Litig.*, No. 02-72834 (E.D. Mich.); *Sherrill v. Federal Mogul Corp. Retirement Programs Committee*, No. 04-72949 (E.D. Mich.); *Presley v. Carter Hawley Hale Profit Sharing Plan*, No. C-97-04316 SC (N.D. Cal.); *Koch v. Dwyer*, No. 98-Civ.-5519 (S.D.N.Y.); *Blyler v. Agee*, No. CV97-0332 (D. Idaho); *In re Computer Associates ERISA Litigation*, No. CV-02-6281 (S.D.N.Y.); *Kling v. Fidelity Management Trust Co.*, No. 01-11939 (D. Mass.); *In re McKesson HBOC, Inc. ERISA Litig*., No. C00-20030 (N.D. Cal.); *Koch v. Dwyer*, No. 98-Civ.-5519 (S.D.N.Y.); and *Presley v. Carter Hawley Hale Profit Sharing Plan*, No. 97-CV-04316 (N.D. Cal.).

Ms. Doyle has also represented plan participants in numerous other cases including plan terminations: *Glauberman v. Joy Technologies, Inc.*, No. 87-2696 (W.D.Pa.) (challenges to plan accrual arrangements), *Barnes v. Bell Helicopter Textron, Inc.*, No. CA3- 92-CV-0694-D (N.D.Tex.), and *DiCioccio v. Duquesne Light Company*, No. 93-0442 (W.D.Pa.); and in medical benefits cases challenging the methods by which claims administrators calculate participants' co-payments. See *In re Blue Cross of Western Pennsylvania Litigation*, No. 93-1591 (W.D.Pa.); *Kennedy v. United Healthcare of Ohio, Inc.*, No. C2-98-128 (S.D.Ohio); and *Sintich v. Health Care Services Administration,* (N.D. Ohio).

Ms. Doyle is currently the Plaintiffs' Co-Chair of the ABA-ERR's Employee Benefits Sub-Committee and a frequent speaker on employee benefits litigation. She was selected for membership in the Academy of Trial Lawyers of Allegheny County and has served on that organization's Board of Directors, has served as Chair of the Insurance Section of the American Trial Lawyers Association, and has served on the Advisory Committee for the Rules of the United States District Court for the Western District of Pennsylvania. She also serves on the Board of the Women's Law Project.

JOSEPH N. KRAVEC, JR.

Joseph N. Kravec, Jr. is a partner with Feinstein Doyle Payne & Kravec, LLC. He was graduated from the University of Pittsburgh, 1989 *cum laude*, and from the Duquesne University School of Law, 1993. He is admitted to practice law before the Courts of Pennsylvania, the United States District Courts for the District of Columbia and Western District of Pennsylvania, the United States Court of Appeals for the District of Columbia and the Third, Fourth, Sixth and Ninth Circuits, and the United States Supreme Court. Mr. Kravec is a member of the Allegheny County Bar Association, the Pennsylvania Bar Association, the American Bar Association and the American Association for Justice (formerly the Association of Trial Lawyers of America). He was the recipient of the American Jurisprudence Award and a finalist in the Trial Court Moot Competition.

Mr. Kravec is the past Chair of the Insurance Law Section for the Association of Trial Lawyers of America. Mr. Kravec has also served as both a speaker and moderator in numerous educational programs for national and regional audiences conducted by the American Law Institute-American Bar Association, Association of Trial Lawyers of America and American Association for Justice. Mr. Kravec has authored numerous papers and articles published in a variety of legal publications. Included amongst those published articles are "AT&T Mobility, LLC v. Concepcion's Impact on Compulsory Arbitration in Insurance Cases," published in Insurance Law Section, American Association for Justice, Spring 2012 and "Reliance And Consumer Insurance Fraud," published in Insurance Law Section, Association of Trial Lawyers of America, Fall 2001.

Mr. Kravec has a peer review rating of "AV" from Martindale-Hubbell. That rating is awarded only to experienced attorneys who achieve the highest ratings for legal ability and ethical standards.

Since admission to the bar, Mr. Kravec has been a class and mass action litigator practicing in the fields of consumer and commercial litigation, including insurance, consumer fraud, securities and antitrust law, as well as personal tort and complex products liability litigation. He has been primarily involved in class action practice since his admission to the Bar in 1993. During that time, Mr. Kravec has been lead or co-lead counsel in numerous nationwide, multi-state and statewide class actions in federal and state courts throughout the United States, recovering more than $2.5 billion in benefits for millions of class members nationwide.

Among those class actions in which Mr. Kravec has or had a leadership role are the following:

- *Wahl v. American Security Insurance Company*, 2010 WL 1881126 (N.D. Ca.) (improper force-placed property insurance)

- *Spears, et al. v. Washington Mutual Inc. et al.,* 2009 WL 2761331 (N.D. Ca.) (consumer class action for false appraisals on home loans)

- *Ubaldi, et al. v. SLM Corp., et al.,* 852 F.Supp.2d 1190 (N.D. Ca. 2012) (California consumer class action for unlawful late fees and usury on student loans)

- *Kaltwasser v. Cingular Wireless LLC,* 543 F.Supp.2d 1124 (N.D. Ca. 2008), *aff'd* 2009 WL 3157688 (9th Cir., Oct. 1, 2009) (deceptive "fewest dropped calls" advertisements)

- *Larsen, et al. v. Trader Joe's Company*, --- F.Supp.2d ---, 2013 WL 132442 (N.D. Ca.) (consumer class action for deceptive "All Natural" and "100% Natural" labeling of food products)

- *Sethavanish v. ZonePerfect Nutrition Company*, Case No. 12-cv-02907-SC, 2012 WL 6737800 (N.D. Ca.) (consumer class action for deceptive "All Natural" labeling of food products)

- *Astiana, et al. v. Kashi Company, et al.*, --- F.R.D. ---, 2013 WL 3943265 (S.D.Ca.) (consumer class action for deceptive "All Natural" and "Nothing Artificial" labeling of food products)

- *Astiana, et al. v. Dreyer's Grand Ice Cream, Inc.*, 2012 WL 2990766 (N.D. Ca.) (consumer class action for deceptive "All Natural" and "All Natural Flavors" labeling if ice cream)

- *Zeisel v. Diamond Foods, Inc.*, 2011 WL 2221113 (N.D. Ca.) (unlawful and deceptive omega-3 heart health claims on packaging)

- *Astiana v. Ben & Jerry's Homemade, Inc.*, 2011 WL 2111796 (N.D. Ca.) (deceptive "All Natural" labeling)

- *In Re Tollgrade Communications, Inc. Derivative And Class Action Litigation* (Consolidated Case No. GD-11-003755) (Court of Common Pleas Alleg. Co. 2011) (Derivative and shareholder class action for withholding and concealing information regarding sale of public company to private equity firm)

- *In re Flat Glass Antitrust Litigation (II),* 2009 WL 331361 (W.D. Pa., Feb. 11, 2009) (antitrust price fixing claims against manufacturers of flat glass used in windows and other products)

- *In re: WellPoint, Inc. Out-Of-Network "UCR" Rates Litigation*, 2009 WL 2902564 (JPML, Aug. 19, 2009) (insurer's under-reimbursement of out-of-network health care provider charges by using artificially low UCR rates)

- *Bethea v. Metropolitan Life Insurance Company*, 2009 WL 690852 (N.J., App. Div.) (charging non-smoking juveniles smoker-based life insurance rates) (reinstated by Appellate Division)

- *Baum v. AstraZeneca*, 605 F. Supp. 2d 669 (W.D. Pa. 2009), *Hummell v. AstraZeneca,* 575 F. Supp. 2d 568 (S.D. N.Y. 2008), *Brody v. AstraZeneca,* 2008 WL

6953957 (C.D. Cal., June 11, 2008) (PA, NY and CA state wage and hour cases for unpaid overtime) (appeals pending)

- *Zeno v. Ford Motor Company*, 238 F.R.D. 173 (W.D. Pa. 2006) and 480 F.Supp.2d 825 (W.D. Pa. 2007) (charging for upgraded radiators and not providing them)
- *Brubaker v. Metropolitan Life Insurance Company*, 482 F.3d. 586 (D.C. Cir. 2007) (ERISA claim against employer's pension plan for not paying deferred vested retirees the cost-of-living increases "COLA" paid to all other retirees)
- *Varacallo v. Massachusetts Mutual Life Insurance Company*, 226 F.R.D. 207 (D. N.J. 2005) (various life insurance deceptive sales practices)
- *Taylor, et al. v. Bankers Life & Casualty Co.,* Civil Action No. C08-0447 (W.D. Wash.) (deceptive sales practices and premium increases for long term care insurance)
- *Lambros v. Metropolitan Life Insurance Company*, 111 Cal.App. 4th 43, 3 Cal. Rptr. 3d 320 (2003) (failure to refund *pro rata* life insurance premiums upon surrender)
- *Cranley v. National Life Insurance Company of Vermont*, 318 F.3d 105 (2nd Cir. 2003) (failure to pay adequate compensation in demutualization of insurer)
- *Richard Payne, et al. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 2003 WL 21940609 (4th Cir. (MD) August 14, 2003) (failure to properly invest mutual fund dividends held through a Merrill Lynch ROTH IRA or other custodial account)
- *Magliulo v. Metropolitan Life Insurance Company*, 205 F.R.D. 55 (S.D.N.Y. 2002) (ERISA claim against employee health plan for charging Medicare eligible participants a higher non-Medicare eligible premium rate)
- *Orlowski v. St. Francis Health Systems, et al.*, No. GD 02-17811 (Allegheny County, Pa.) (pensioners' benefits reduced due to improper underfunding of the pension plan)
- *Gaidon v. Guardian Life Insurance Company of America,* 96 N.Y. 2d 201, 750 N.E. 2d 1078, 727 N.Y.S. 2d 30 (2001) (deceptive vanishing premium sales practices)
- *Varacallo v. Massachusetts Mutual Life Insurance Company*, 752 A.2d 807 (N.J. App. Div. 2000) (vanishing premium life insurance sales practices)
- *Delaney, et al. v. Enterprise Rent-a-Car Company, Inc. and ELRAC, Inc.*, Docket No. OCN-L-1160-01, (Superior Ct. of NJ, Ocean County) (rental car customers purchasing insurance products and collision damage waiver from Enterprise)
- *In Re Metropolitan Life Insurance Company Sales Practices Litigation*, 1999 WL 33957897 (W.D.Pa.) (various life and annuity deceptive sales practices)

- *Cope v. Metropolitan Life Insurance Company*, 696 N.E. 2d 1001 (Ohio 1998) (churning life insurance sales practices)

- *Richard v. Metropolitan Life Insurance Company* (a/k/a *In re Metropolitan Life Insurance Company Policyholders Litigation*) 707 A.2d 512 (Pa. 1998) (churning life insurance sales practices)

- *Warden v. Crown American Realty Trust*, 1998 WL 725946 (W.D.Pa.) (securities fraud class action)

- *Barbara Kenty v. Bank One*, 650 N.E. 2d 863 (Ohio 1995) (companion case 92 F.3d 384 (6th Cir. 1996)) (forced-placed auto loan insurance)

- *Erie Forge and Steel, Inc. v. Cypress Minerals Company*, 1994 WL 485803, 1994 Trade Cases P 70, 653 (W. D. Pa., Jun. 7, 1994) (No. Civ. 94-404) (antitrust price-fixing)

- *Regina G. Bates v. National City Bank, et al.*, Case No. 279634 (Cuyahoga Co. Ct. of Common Pleas, OH) (forced-placed auto insurance)

- *Deal, et al. v. New York Life Insurance Company, et al.*, Civil Action No. 94-8938 (Allegheny Co. Ct. of Common Pleas, PA) (churning life insurance sales practices)

- *Marrs, et al. v. New York Life Insurance Company*, Civil Action No. 94-2037 (Allegheny Co. Ct. of Common Pleas, PA) (retirement life insurance sales practices)

- *George, et al. v. BancOhio National Corporation, et al.*, Civil Action No. C2-92-314 (S.D. Ohio) (forced-placed auto insurance)

PAMINA EWING

Pamina Ewing is a partner with Feinstein Doyle Payne & Kravec, and has been with the firm since 2004. She concentrates on national class actions, primarily in the field of employee benefits. Ms. Ewing represents ERISA plan participants, retirees, union members, and other groups of individuals who challenge unlawful conduct of corporations and other wrongdoers. She has been instrumental in the Firm's success in numerous important class actions. Many of these cases challenged cuts in company-provided retiree health care benefits.

After graduating from Carleton College, Ms. Ewing received her law degree in 1990 from the University of Pittsburgh School of Law. In law school, she served as an Executive Editor of the Law Review, authored a Law Review article, and received an award for best writing by a Third Year student. After law school, Ms. Ewing clerked for two years for the Honorable Gustave Diamond of the United States District Court for the Western District of Pennsylvania. She later worked for six years as an attorney at Reed Smith, where she specialized in employment law and general litigation.

Ms. Ewing has worked on numerous ERISA class actions cases including:

> In re Regions Morgan Keegan ERISA Litigation, 692 F.Supp.2d 944 (W.D. Tenn. 2010) (denying motion to dismiss breach of fiduciary duty claims concerning offering of company stock and proprietary mutual funds in 401(k) plan).
>
> Sims v. First Horizon Nat'l Corp., 2009 WL 1789090 (W.D. Tenn. June 23, 2009) (denying motion for summary judgment); 2009 WL 3241689 (W.D. Tenn. Sept. 30, 2009) (denying motion to dismiss company stock claims); 2011 WL 2182262 (W.D.Tenn. June 3, 2011) (granting motion for class certification in part).
>
> Hayden v. Freightcar America, Inc., 2008 WL 375762 (W.D. Pa. Feb. 11, 2008) (granting preliminary injunction under Sec. 510 of ERISA), later proceedings, 2008 WL 4949039 (W.D. Pa. Nov. 19, 2008) (granting approval to final settlement).
>
> Moore v. Rohm & Haas, Co., 497 F.Supp.2d 855 (N.D. Ohio 2007) (denying motion to transfer venue in retiree health benefits suit), later proceedings, 2008 WL 4449407 (N.D. Ohio Sept. 30, 2008) (granting plaintiffs' motion for summary judgment).
>
> Pringle v. Continental Tire North America, Inc., 2007 WL 2236880 (N.D. Ohio July 31, 2007) (granting motion for summary judgment in retiree health class action).
>
> United Auto Workers v. Chrysler LLC, 2008 WL 1701409 (E.D. Mich. April 10, 2008), later proceedings, 2008 WL 2980046 (E.D. Mich. July 31, 2008) and 2008 WL 4491401 (E.D. Mich. Oct. 2, 2008) (retiree health benefits case worth billions of dollars).
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> United Auto Workers v. Ford Motor Co., 2006 U.S. Dist. LEXIS 70471 (E.D. Mich. July 13, 2006), aff'd, 497 F.3d 615 (6th Cir. 2007), later proceedings, 2007 WL 4571648 (E.D. Mich. Dec. 27, 2007) (retiree health case worth billions of dollars).

United Auto Workers v. General Motors, 2006 WL 334283 (E.D. Mich. Feb. 13, 2006), later proceedings, 2006 WL 891151 (E.D. Mich. March 31, 2006) and 235 F.R.D. 383 (E.D. Mich. 2006), aff'd, 497 F.3d 615 (6th Cir. 2007) (retiree health case worth billions of dollars).

Co-authored "Union Negotiated Lifetime Retiree Health Benefits: Promise or Illusion," 9 *Marquette Elder's Advisor* 319 (2008) (with William T. Payne).

Ms. Ewing is admitted to practice in all state courts in Pennsylvania, and in many federal district courts and federal appellate courts throughout the United States.

STEPHEN M. PINCUS

Stephen M. Pincus is a partner with Feinstein Doyle Payne & Kravec, LLC, focusing on employment, employee benefits, and class action cases.

Mr. Pincus was graduated with honors from the University of Michigan – Ann Arbor (B.A., 1989). He received his law degree (with honors) in 1993 from the University of Maryland School of Law. Following graduation from law school, Mr. Pincus was selected by Yale Law School to be a Robert M. Cover Fellow in Public Interest Law. As a Cover Fellow, Mr. Pincus co-directed a legal clinic at Yale that served the needs of persons with HIV/AIDS. After the two-year fellowship, Mr. Pincus served as the first law clerk to the Honorable Janet Bond Arterton of the United States District Court for the District of Connecticut.

Following the clerkship, Mr. Pincus worked as an attorney with the law firm of Rosen & Dolan in New Haven, Connecticut, where he represented individuals in employment, civil rights, and personal injury cases. Among his more notable cases was a civil rights case against the State of Connecticut in which the jury awarded a record $1 million for the loss of the life of a person with mental retardation. Mr. Pincus also brought numerous cases against municipalities for discriminatory hiring and violations of due process and civil rights laws. See, e.g., *Green v. Town of Hamden*, 73 F.Supp.2d 192 (D.Conn.1999) (obtained preliminary injunction preventing hiring of firefighters due to disparate impact of civil service examination).

Since joining the predecessor to Feinstein Doyle & Payne in 2003, Mr. Pincus has concentrated his work in representing individuals in employment law matters and prosecuting class actions challenging cuts to pension and retiree health benefits. He has worked on numerous ERISA class actions cases including:

> Hayden v. Freightcar America, Inc., 2008 WL 375762 (W.D. Pa. Feb. 11, 2008) (granting preliminary injunction under Sec. 510 of ERISA), later proceedings, 2008 WL 4949039 (W.D. Pa. Nov. 19, 2008) (granting approval to final settlement).
>
> In re Regions Morgan Keegan ERISA Litigation, 692 F.Supp.2d 944 (W.D. Tenn. 2010) (denying motion to dismiss breach of fiduciary duty claims concerning offering of company stock and proprietary mutual funds in 401(k) plan).
>
> Moore v. Rohm & Haas, Co., 497 F.Supp.2d 855 (N.D. Ohio 2007) (denying motion to transfer venue in retiree health benefits suit), later proceedings, 2008 WL 4449407 (N.D. Ohio Sept. 30, 2008) (granting plaintiffs' motion for summary judgment).
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> Pringle v. Continental Tire North America, Inc., 2007 WL 2236880 (N.D. Ohio July 31, 2007) (granting motion for summary judgment in retiree health class action).
>
> Sims v. First Horizon Nat'l Corp., 2009 WL 1789090 (W.D. Tenn. June 23, 2009) (denying motion for summary judgment), later proceedings, 2009 WL 3241689 (W.D. Tenn. Sept. 30, 2009) (denying motion to dismiss company stock claims).

United Auto Workers v. Chrysler LLC, 2008 WL 1701409 (E.D. Mich. April 10, 2008), later proceedings, 2008 WL 2980046 (E.D. Mich. July 31, 2008) and 2008 WL 4491401 (E.D. Mich. Oct. 2, 2008) (retiree health benefits case worth billions of dollars).

United Auto Workers v. Ford Motor Co., 2006 U.S. Dist. LEXIS 70471 (E.D. Mich. July 13, 2006), aff'd, 497 F.3d 615 (6th Cir. 2007), later proceedings, 2007 WL 4571648 (E.D. Mich. Dec. 27, 2007) (retiree health case worth billions of dollars).

United Auto Workers v. General Motors, 2006 WL 334283 (E.D. Mich. Feb. 13, 2006), later proceedings, 2006 WL 891151 (E.D. Mich. March 31, 2006) and 235 F.R.D. 383 (E.D. Mich. 2006), aff'd, 497 F.3d 615 (6th Cir. 2007) (retiree health case worth billions of dollars).

Mr. Pincus is the lead counsel in class action lawsuits representing retired public sector workers in New Hampshire, Colorado, Minnesota and South Dakota against those states' pension systems over cuts to employee pensions.

Since 2008, Mr. Pincus has been an Adjunct Professor at the University of Pittsburgh School of Law, where he co-directs the school's Unemployment Compensation Practicum. The Pennsylvania Bar Foundation recognized the work of the Practicum with its Pro Bono Award in 2010.

Mr. Pincus has been interviewed and quoted about his cases by national publications including the *New York Times*, the *Wall Street Journal*, *Bloomberg Businessweek*, and *Reader's Digest*, and numerous local newspapers such as the *Denver* Post, the *Minneapolis Star Tribune Review* and the *Pittsburgh Post Gazette*. He has also been interviewed by *National Public Radio* and various Pittsburgh radio and television news programs.

Mr. Pincus is a member of the bars of Pennsylvania, Ohio, Connecticut and Maryland (inactive), and numerous federal courts. He has written articles in legal publications including *Trial*, *Public Lawyer* (ABA publication), *Stetson Law Review*, *Clinical Law Review, Municipal Lawyer*, *Pennsylvania Municipalities*, and the Allegheny County Bar Association's *Legal Journal*. He is a frequent speaker at CLE conferences on employment law issues.

In 2005, Mr. Pincus was named by *Pittsburgh Magazine* as one of Pittsburgh's "40 under 40" who are making a positive contribution to the region. In 2006, he was named by the *Legal Intelligencer*, Philadelphia's legal newspaper, as one of Pennsylvania's "Lawyers on a Fast Track."

JOEL R. HURT

Joel R. Hurt is a partner with Feinstein Doyle Payne & Kravec, LLC, focusing on class action litigation. Since graduating law school in 2000, he has limited his practice almost exclusively to litigating class action cases in federal and state courts, including, in particular, pension plan, medical benefits and insurance cases under ERISA and state law.

Mr. Hurt has helped successfully litigate a number of pension class actions under ERISA. He recently played a major role in obtaining summary judgment in two separate actions brought on behalf of defined benefit plan participants and challenging the calculation of benefits. *See Clemons v. Norton Healthcare, Inc. Retirement Plan*, Civil Action No. 3:08-cv-00069, 2013 WL 5924429 (W.D. Ky Oct. 31, 2013) (granting summary judgment to class of retirees in a pension lawsuit involving the calculation of early retirement subsidies and lump sum distributions); *Cottillion v. United Refining Co.*, C.A. No.: 1:09-cv-00140, 2013 WL 1419705 (April 8, 2013) (granting summary judgment to named plaintiffs and holding that reduction in benefits violated ERISA's anti-cutback rule); 2013 WL 5936368 (November 5, 2013) (certifying class of deferred vested participants, granting summary judgment to class, and ordering declaratory and injunctive relief to all class members and back benefits to class members in pay status).

Mr. Hurt has also served as class counsel or played a major role in a number of cases securing multimillion recoveries for participants in defined contribution plans, including *Kling v. Fidelity Management Trust Co.*, Case 01-11939 (D.Mass.) ($10.85 million recovery for breach of fiduciary duty related to investment in employer stock in 401(k) plan); *In re: CMS ERISA Litigation*, Master File 02-72834 (E.D.Mich) ($28 million settlement of fiduciary breach case involving employer stock in 401(k) plan/ESOP); *In re McKesson HBOC, Inc. ERISA Litigation*, Master File C00-20030 RMW (N.D.Cal.) ($18.2 million settlement of fiduciary breach case involving employer stock in 401(k) plan).

Mr. Hurt also represents active and retired participants asserting claims for health benefits. He played a significant role in three retiree health class actions brought on behalf of retired UAW members, pursuant to which a VEBA trust funded by GM, Ford and Chrysler and worth billions of dollars was established to provide health benefits to retirees for their lifetimes. *See U.A.W. v. General Motors Corp.*, Case 2:07-cv-14074 (E.D. Mich.); *U.A.W. v. Ford Motor Co.*, Case 2:07-cv-14845 (E.D. Mich.); *U.A.W. v. Chrysler, LLC*, Case 2:07-cv-14310 (E.D. Mich). He has also helped litigate *Kennedy, et al. v. United Healthcare of Ohio, Inc.*, Case C2-98-128 (S.D.Ohio), which resulted in a $1.95 million recovery in a class action challenging the calculation of co-payments under group medical benefit plans.

Mr. Hurt also litigates insurance class actions under state law, and played a major role in prosecuting *Pogel v. State Farm Mut. Ins. Co.*, G.D. 97-17582 (C.P. Allegheny), which resulted in a $2.6 million recovery for a class of insureds following a favorable summary judgment ruling as to State Farm's failure to pay replacement cost insurance under homeowners policies.

Mr. Hurt is a Contributing Author to the *ERISA Litigation* legal treatise (4th ed.) (Zanglein, Frolik) (2012 and 2013 Cumulative Supplements). Mr. Hurt's publications also include *CIGNA Corp. v. Amara: Protecting Employees From Disclosure Violations Under ERISA*, BNA Pension

& Benefits Daily, June 2, 2011 (with Tybe A. Brett, Esq.); *Find The Catch In The Contract: "Actual Charges"*, published in Trial Magazine, October 2009 (with Ellen M. Doyle, Esq.); and *Winning With Grammar*, published in the ATLA Insurance Law Section Newsletter, Winter 2006 (addressing use of expert testimony on grammar to demonstrate unreasonableness of insurer's policy interpretation).

Mr. Hurt's presentations include *ERISA Litigation Potpourri: Developing Topics*, a panel presentation at the 26th Annual ERISA Litigation Conference (December 2013); *Fiduciary Update: A Little Bit Of This, A Little Bit Of That*, a panel presentation at the ABA Section of Labor and Employment Law, Employee Benefits Committee 2013 Midwinter Meeting (February 2013), and *Dissecting Cigna v. Amara*, a panel presentation at the Pension Rights Center's annual Pension Training Conference (June 2011). He also presents CLE programs annually through the American Inns of Court on such diverse topics as class and collective actions, ethical issues for attorneys hired by liability insurers to defend their insureds, amendments to the Federal Rules of Civil Procedure concerning expert witness disclosures, the roles social networking websites can play in litigation, and jury selection.

Mr. Hurt graduated from Westminster College *magna cum laude* and is a 2000 graduate of the University of Pittsburgh School of Law. He is admitted to practice before the courts of Pennsylvania; the United States District Courts for the Western District of Pennsylvania, the Western District of Tennessee, the Northern District of Illinois, the Eastern District of Michigan, and the Eastern District of Wisconsin; and the United States Courts of Appeals for the Third, Sixth, Eighth and Eleventh Circuits. His professional memberships include the American Bar Association, Allegheny County Bar Association, Lawyers Coordinating Committee of the AFL-CIO, and The Honorable Amy Reynolds Hay Chapter of The American Inns of Court (where he serves as Barrister Representative to the Executive Board).

WYATT A. LISON

Wyatt A. Lison is an associate with Feinstein Doyle Payne & Kravec, LLC. He was graduated with a B.S. in Biology from Allegheny College in 1996 and attended graduate school at The Bayer School of Natural and Environmental Sciences at Duquesne University before graduating from law school at the University of Pittsburgh School of Law in 2002. Mr. Lison is admitted to practice law before the Supreme Court of Pennsylvania, the United States Court of Appeals for the Second Circuit, and the United States District Court for the Western District of Pennsylvania. Mr. Lison is currently a member of the Allegheny County Bar Association and the American Association for Justice.

Since admission to the bar, Mr. Lison has spent his legal career representing individuals and corporations in complex and class action cases. Mr. Lison has been a complex, mass and class action litigator primarily practicing in the fields of consumer and commercial litigation, consumer fraud, securities and antitrust law. He has also taught a continuing legal education (CLE) seminar on class action rules and litigation of complex actions in Federal Court.

Among those class and mass actions in which Mr. Lison has been involved are the following:

- *Astiana, et al. v. Kashi Company, et al.*, --- F.R.D. ---, 2013 WL 3943265 (S.D.Ca.) (consumer class action for deceptive "All Natural" and "Nothing Artificial" labeling of food products)

- *Thurston, et al. v. Bear Naked, Inc.*, Case No. 3:11-cv-02890-H-BGS (S.D.Ca.) (consumer class action for deceptive "100% Natural" and "100% Pure & Natural" labeling of food products)

- *Zeisel v. Diamond Foods, Inc.*, 2011 WL 2221113 (N.D. Ca.) (Consumer class action for unlawful and deceptive omega-3 heart health claims placed on the packaging of shelled walnuts)

- *Wahl v. American Security Insurance Company*, 2010 WL 1881126 (N.D. Ca.) (Consumer class action for the improper placement of lender-placed property insurance)

- *Spears, et al. v. Washington Mutual Inc. et al.,* 2009 WL 2761331 (N.D. Ca.) (Consumer class action for conspiracy to falsify appraisals on home loans)

- *Ubaldi, et al. v. SLM Corp., et al.,* 852 F.Supp.2d 1190 (N.D. Ca. 2012) (California consumer class action for unlawful late fees and usury on student loans)

- *Kaltwasser v. Cingular Wireless LLC,* 543 F.Supp.2d 1124 (N.D. Ca. 2008), *aff'd* 2009 WL 3157688 (9th Cir. Oct. 1, 2009) (Consumer class action for false advertising and deceptive "fewest dropped calls" advertisements)

- *In Re Tollgrade Communications, Inc. Derivative And Class Action Litigation* (Consolidated Case No. GD-11-003755) (Court of Common Pleas Alleg. Co. 2011) (Derivative and shareholder class action for withholding and concealing information regarding sale of public company to private equity firm)

- *Larsen, et al. v. Trader Joe's Company*, --- F.Supp.2d ---, 2013 WL 132442 (N.D. Ca.) (consumer class action for deceptive "All Natural" and "100% Natural" labeling of food products)

- *Sethavanish v. ZonePerfect Nutrition Company*, Case No. 12-cv-02907-SC, 2012 WL 6737800 (N.D. Ca.) (consumer class action for deceptive "All Natural" labeling of food products)

- *In re Flat Glass Antitrust Litigation (II),* 2009 WL 331361 (W.D. Pa., Feb. 11, 2009) (Antitrust price fixing claims on behalf of purchasers of construction flat glass from several national and international companies)

- *In re: Heparin Products Liability Litigation*, MDL No. 1953. (N.D.Ohio 2008) (Pharmaceutical liability litigation on behalf of patients who received a contaminated blood thinner by an upstream manufacturer of the drug API)

- *Balanced Beta Fund v. Southworth, et al.,* (Case No. 11724-11) (Court of Common Pleas Erie Co. 2011) (Derivative and shareholder class action for breach of fiduciary duty in misstatements made in Proxy Statement for sale of public company to private firm)

MAUREEN DAVIDSON-WELLING

Maureen Davidson-Welling was an associate with the firm. She was graduated from University of Pennsylvania Law School in 2007. She is admitted to practice law before the Supreme Court of Pennsylvania, United States District Court for the Western District of Pennsylvania, and United States District Court for the Western District of Tennessee. Ms. Davidson-Welling is a member of the Allegheny County Bar Association, the American Bar Association, the American Association for Justice, the Western Pennsylvania Employment Lawyers Association, and the National Employment Lawyers Association.

Since her admission in 2007, Ms. Davidson-Welling has worked as a vigorous advocate on behalf of workers and consumers, and she focuses on consumer, civil rights, employment, employee benefits, and class action litigation. Ms. Davidson-Welling has entered her appearance on behalf of plaintiffs in class action cases, including the following:

- *Zeisel v. Diamond Foods, Inc.*, 2011 WL 2221113 (N.D. Ca.) (Consumer class action; national class certified June 7, 2011); and

- *Yost et al v. First Horizon National Corp.*, 2011 WL 2182262 (W.D. Tenn.) (ERISA employee benefits class action; national classes conditionally certified June 3, 2011).

Ms. Davidson-Welling has been selected as a 2013 Pennsylvania Rising Star by Super Lawyers Magazine.

McKean J. Evans

McKean J. Evans has practiced in the firm's class action litigation group since 2012, representing plaintiffs in class actions seeking to vindicate the legal rights of consumers and retired workers. Mr. Evans is admitted to practice law before the courts of Pennsylvania and the United States District Court for the Western District of Pennsylvania.

Mr. Evans earned his J.D. *cum laude* from the University of Pittsburgh School of Law. He served as a Research Editor on the University's Law Review, where he published the Note *The Future of Conflicts Between Islamic and Western Financial Systems: Profit, Principle and Pragmatism*. He received numerous scholarly awards, including the "Order of the Barristers" for excellent oral and written advocacy at the Willem C. Vis International Commercial Arbitration Moot, the CALI "Award for Excellence in the Future" in Constitutional Law and in Freedom of Religion, and the Dean's Scholarship for outstanding academic performance.

Mr. Evans' current cases include *Spears, et al. v. First American EAppraiseIT,* Case No. 08-868-RMW (N.D.Cal.) (consumer class action alleging false appraisals on home loans); *Larsen, et al. v. Trader Joe's Company,* Case No. 11-5188-WHO (N.D.Cal.) (consumer class action alleging false advertising); *Barton et al v. Constellium Rolled Products-Ravenswood, LLC*, Case No. 13-3127 (S.D.W.Va.) (class action protecting retired union workers' retiree benefits); and *Amos, et al. v. PPG Industries, Inc., et al.*, Case No. 05-70 (S.D.Ohio) (class action protecting retired union workers' retiree benefits).

Prior to joining Feinstein Doyle Payne & Kravec, LLC, Mr. Evans served as a law clerk to the Honorable Robert L. Boyer, Common Pleas Judge of the 28th Judicial District of Pennsylvania. While a student at the University of Pittsburgh School of Law, Mr. Evans worked as a research assistant to Professor Haider Hamoudi. He served as an intern in the chambers of the Honorable Joy Flowers Conti of the U.S. District Court for the Western District of Pennsylvania. Mr. Evans also practiced as a certified legal intern in the University of Pittsburgh School of Law Civil Practice Clinic, providing *pro bono* representation to indigent members of the local community.

Prior to attending law school at the University of Pittsburgh, Mr. Evans attended the University of Maine, completing his B.A. in Political Science *magna cum laude* in three years. He is a graduate of the Maine School of Science and Mathematics, Maine's premiere magnet boarding school.