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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ARIANNA ROSALES, and CHARLICE ARNOLD, on Behalf of Themselves, All Others Similarly Situated and the General Public, Plaintiffs, v. FITFLOP USA, LLC, Defendant.	Case No.: 11cv0973-W (KSC) CLASS ACTION **NOTICE OF MOTION AND JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Judge: Hon. Thomas J. Whelan Courtroom: 3C, 3rd Floor - Schwartz

PLEASE TAKE NOTICE that pursuant to Fed. R. Civ. P. 23(e), Plaintiff Charlice Arnold and Defendant FitFlop USA, LLC, will and hereby do move this Court for an order granting preliminary approval of the Settlement reached by the Parties, and to enter the [Proposed] Order Preliminarily Approving Class Action Settlement, which is attached as Exhibit 5 to the concurrently submitted Stipulation of Settlement, and (1) grant preliminary approval of the Settlement reached by the Parties, (2) conditionally certify the Class, (3) conditionally designate Plaintiff Charlice Arnold as the Class Representative, (4) appoint Timothy G. Blood of Blood Hurst & O'Reardon, LLP and Janine L. Pollack of Wolf Haldenstein Adler Freeman & Herz, LLP as Class Counsel for the Class, (5) approve the Parties' proposed form, method, and schedule for disseminating Class Notice to the Class, (6) establish deadlines for the Class Members to submit claims, object to, or request exclusion from the Settlement, (7) appoint Garden City Group to serve as the Settlement Administrator, and (8) set a date for the Final Approval Hearing,

This joint motion is based upon this notice, the memorandum of points and authorities submitted herewith, the Declaration of Timothy G. Blood, the Declaration of Jamie Court, the Declaration of Elisa Odabashian, upon all papers and pleadings on file herein, and further evidence and argument as the Court may choose to entertain.

Respectfully submitted,

Dated: December 13, 2013

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Dated: December 13, 2013

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ECF CERTIFICATION

The filing attorney attests that he has obtained concurrence regarding the filing of this document from the signatories to this document.

DATED: December 13, 2013

BLOOD HURST & O'REARDON, LLP

s/ Timothy G. Blood
TIMOTHY G. BLOOD

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

Executed on December 13, 2013.

s/ Timothy G. Blood
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ARIANNA ROSALES, and CHARLICE ARNOLD, on Behalf of Themselves, All Others Similarly Situated and the General Public, Plaintiffs, v. FITFLOP USA, LLC, Defendant.	Case No.: 11cv0973-W (KSC) CLASS ACTION **PLAINTIFF'S MEMORANDUM IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS, ISSUANCE OF NOTICE TO THE CLASS, AND SETTING OF FINAL APPROVAL HEARING** Judge: Hon. Thomas J. Whelan Courtroom: 3C, 3rd Floor - Schwartz

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Rules

Other Authorities

Plaintiff Charlice Arnold ("Plaintiff") submits this memorandum in support of the Parties' joint motion for entry of the [Proposed] Order re: Preliminarily Approval of Class Action Settlement. The Stipulation of Settlement ("Stipulation" or "Settlement") was filed concurrently herewith.

I. INTRODUCTION

Plaintiff seeks preliminary approval of the proposed nationwide Settlement of this class action against defendant FitFlop USA, LLC, FitFlop Limited, Brand Slam Ltd., and Marcia Dyann Kilgore ("Defendant" or "FitFlop").[1] The Settlement meets Plaintiff's goals of this litigation – monetary relief far exceeding the alleged retail price premium and injunctive relief prohibiting FitFlop from making the alleged misrepresentations on a going-forward basis for up to five years absent scientific evidence substantiating the claims.[2]

Plaintiff alleged that FitFlop's advertising for FitFlop Footwear was false, deceptive, and likely to mislead consumers because FitFlop Footwear does not strengthen or tone muscles, reduce joint strain, burn calories, assist in weight loss, reduce cellulite, or provide relief from a host of medical conditions. Plaintiff alleged that on the basis of these misrepresentations, FitFlop was able to charge a price premium for FitFlop Footwear over other sandals and shoes. But, as Plaintiff alleged, FitFlop's health benefits representations are false, misleading and reasonably likely to deceive the public. Plaintiff alleged causes of action for violations of California's Consumers Legal Remedies Act ("CLRA"), Civ. Code §1770, *et seq.*, violation of California's Unfair Competition Law ("UCL"), Bus. & Prof. Code §17200, *et seq.*, and breach of express warranty.

[1] All capitalized terms have the same meaning as set forth in the Stipulation.

[2] For a period of five years from the Effective Date, FitFlop will not make representations that FitFlop Footwear is effective in strengthening, toning, burning calories, or assisting in weight loss unless, at the time of making such representation, it possesses and relies upon competent and reliable scientific evidence that substantiates that the representations are true. *See* Stipulation, at §IV(B)(2).

As a result of this Settlement, Plaintiff has achieved the significant goals of this consumer protection litigation – monetary compensation reimbursing Class Members for their purchases of FitFlop Footwear, and injunctive relief preventing FitFlop from making the claims at issue. In short, each member of the proposed Class is eligible to receive a refund of up to the full average retail price paid for FitFlop Footwear. The Settlement makes monetary refunds available without any proof of purchase requirement for up to two pairs of footwear, and permits Class Members to submit Claims for each pair of FitFlop Footwear they purchased.

The proposed Class that the Parties jointly request that the Court conditionally certify for settlement is:

> All persons or entities that purchased FitFlop Footwear in the United States from January 1, 2007, up to and including the date of the first dissemination of the Class Notice.

Excluded from the Class are: (a) Defendant's board members or executive-level officers, including its attorneys; (b) persons or entities who purchased the FitFlop Footwear primarily for the purpose of resale; (c) retailers or re-sellers of FitFlop Footwear; (d) governmental entities; (e) persons or entities who or which timely and properly exclude themselves from the Class as provided in the Agreement; and (f) persons or entities who purchased the FitFlop Footwear via the Internet or other remote means while not residing in the United States. Also excluded from the Class are claims for personal injuries. *See* Stipulation, at §II, ¶10.

Class Notice specifically targeting Class Members and advising potential them of the Settlement benefits and their rights will be published nationwide in print and online publications and posted on the Settlement Website in accordance with a media plan designed by experts in class action notice and administration. *See* Stipulation, at §VII and Ex. 6.

At the preliminary approval stage, the Court need only "make a preliminary determination of the fairness, reasonableness and adequacy of the

settlement" so that notice of the Settlement may be given to the Class and a fairness hearing may be scheduled to make a final determination regarding the fairness of the Settlement. *See* 4 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions*, §11.25 (4th ed. 2002); David F. Herr, *Annotated Manual for Complex Litigation* ("*Manual*") §21.632 (4th ed. 2008). In so doing, the Court reviews the Settlement to determine that it is not collusive and, "taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Justice v. Civil Serv. Comm.*, 688 F.2d 615, 625 (9th Cir. 1982); *see also Rodriguez v. West Publ'g Co.*, 563 F.3d 948, 965 (9th Cir. 2009).

Here, as set forth in further detail below, the proposed Settlement plainly meets the standard for preliminary approval. Thus, Plaintiff respectfully requests that the Court enter the [Proposed] Order re: Preliminary Approval of Class Action Settlement that, among other things: (1) conditionally certifies the Class for settlement purposes; (2) conditionally designates Plaintiff Charlice Arnold as Class Representative; (3) appoints Blood Hurst and O'Reardon, LLP and Wolf Haldenstein Adler Freeman & Herz LLP as Class Counsel for the Class; (4) grants preliminary approval of the Settlement; (5) approves the proposed Class Notice Plan; and (6) schedules a Final Approval Hearing for the Settlement.

II. HISTORY OF THE LITIGATION

A. Pre-Filing Investigation

Beginning in September 2010, Class Counsel undertook significant investigations before ultimately filing a related proposed class action entitled *Gourin v. FitFlop USA, LLC*, No. 11-cv-2033 (S.D.N.Y.) in March 2011. *See* Declaration of Timothy G. Blood In Support of Motion for Preliminary Approval of Class Action Settlement ("Blood Decl."), ¶4. These investigations included collecting and reviewing the advertising at issue, researching the advertising, pricing and components in FitFlop Footwear's competitor products, and gathering scientific studies and industry pronouncements concerning the ability

of FitFlop Footwear and other toning shoe products to provide the advertised benefits. Class Counsel also worked with an expert in the field of the biomechanical effects of footwear.

B. The Complaints, Defendant's Motions to Dismiss and to Strike, and Plaintiff's Motion for Class Certification

On May 4, 2011, plaintiff Arianna Rosales filed a class action complaint captioned *Rosales v. FitFlop USA, Inc.*, No. 3:11-cv-00973-W(JMA) in the United States District Court for the Southern District of California, on behalf of herself and all other consumers who purchased FitFlop Footwear. (D.E. No. 1). On July 15, 2011, plaintiff Arianna Rosales and Plaintiff Charlice Arnold filed a first amended class action complaint, and, thereafter, Ms. Rosales filed a motion for withdrawal as named plaintiff. (D.E. Nos. 10-11).

On August 19, 2011, Defendant filed a motion to dismiss, and, in the alternative, to strike the amended complaint. (Doc No. 14). Defendant argued for dismissal because of, *inter alia*, an alleged failure to satisfy Fed. R. Civ. P. Rule 9(b)'s pleading requirements, and because Plaintiff lacked Article III and statutory standing. Defendant also argued in the alternative that the class allegations should be stricken. On February 8, 2012, the Court issued an order denying Defendant's motion to dismiss, and, in the alternative, to strike, in its entirety. *See Rosales v. FitFlop USA, LLC*, 882 F. Supp. 2d 1168 (S.D. Cal. 2012). On February 22, 2012, FitFlop filed its answer to the first amended complaint, in which it expressly denied the allegations therein. (D.E. No. 25).

On March 25, 2013, after significant discovery and related motion practice (discussed below), Class Counsel filed a motion for class certification, which proposed Plaintiff or Angie Ojeda as the class representative. (D.E. No. 76). In addition to voluminous evidentiary support, Plaintiff submitted the Declaration of Thomas J. Maronick, DBA, JD, a marketing expert who reviewed FitFlop's

extensive advertising and conducted a scientific survey for this litigation. The Parties fully briefed Plaintiff's motion for class certification. (D.E. Nos. 87, 90).

On April 2, 2013, on behalf of plaintiff Barbara Glaberson, Plaintiff's Counsel filed a complaint in the United States District Court for the District of New Jersey making essentially the same allegations as the California action. *See Glaberson v. FitFlop USA, LLC*, Case No. 13-cv-02051-NLH-AMD (D.N.J.). The complaint in *Glaberson* named as defendants FitFlop USA, LLC, FitFlop Limited, Brand Slam Ltd., and Marcia Diane Kilgore, and alleged violations of New Jersey's consumer fraud law, and breach of express warranty. Defendants had moved to dismiss the *Glaberson* complaint and that motion was fully briefed at the time of the instant Settlement. *See Glaberson*, D.E. Nos. 20, 26, 28.

C. Discovery and Experts

1. Named Party Discovery and Related Motion Practice

Starting in June 2012, Plaintiff began serving discovery requests. In total, Plaintiff served three sets of interrogatories, two sets of requests for admissions, and a set of document requests. In the course of discovery, and following negotiation of a detailed protocol for the production of electronically stored information, Plaintiffs' Counsel received approximately 473,022 pages of documents from Defendant. Blood Decl., ¶3. Plaintiff's Counsel established a dedicated document database for this litigation to review and categorize documents received by Defendant and third-parties. *Id.* In both the United States and in England, Plaintiff's Counsel also took five depositions of Defendant's current or former employees. *Id.*, ¶13. These individual and corporate designee depositions included Defendant's Founder and former Chief Marketing Officer, U.S. President, Press Officer, U.S. Finance Director, and the former Director of North America. *Id.*

Defendant also conducted substantial discovery of Plaintiff. Defendant served interrogatories and document requests, to which Plaintiff provided written

responses and documents. *Id.*, ¶12. Defendant also took Plaintiff's deposition. *Id.*, ¶13.

Throughout the course of this litigation, the Parties engaged in substantial, discovery-related motion practice. In total, Plaintiff filed five motions to compel further discovery responses from Defendant. (D.E. Nos. 39 (August 20, 2012), 47 (October 18, 2012), 52 (November 26, 2012), 55 (December 5, 2012), 72 (March 21, 2013)). Plaintiff's Counsel received significant, additional discovery as a result of these motions, which related to issues including electronically stored information ("ESI") custodians and keywords, the relevant time period for discovery, appropriate deponents, and financial and sales data. Additionally, Defendant moved to compel additional discovery from Plaintiff. (D.E. No. 40).

2. Expert and Third Party Discovery, and Related International Discovery Motion Practice

Plaintiff's Counsel also conducted substantial discovery of relevant third-parties and Defendant's experts. In total, Plaintiff's Counsel served subpoenas for documents on approximately 17 third-parties. Blood Decl., ¶14. These third-parties included marketing and public relations companies hired by FitFlop, over 11 retailers who sold FitFlop Footwear, the American Podiatric Medical Association, the QVC television network, and one of Defendant's former executives. As a result of these substantial discovery efforts, third-parties provided Plaintiff with more than 16,500 documents that were subsequently analyzed. *Id.* Moreover, on November 12-13, 2012, in Manchester, England, Class Counsel took the depositions of two of the primary outside researchers that conducted scientific studies regarding FitFlop Footwear. *Id.*, ¶13.

On November 26, 2012, Plaintiff filed a motion for application for issuance of a letter of request to conduct foreign discovery of seven individuals pursuant to the United Kingdom Evidence (Proceedings in Other Jurisdictions) Act of 1975 (the "Evidence Act"). (D.E. No. 53). Although FitFlop USA is

headquartered in the United States, its parent company and many relevant employees are in England. Additionally, scientists who conducted the studies upon which FitFlop relies for its advertising substantiation (and who FitFlop designated as litigation experts) are located abroad. Class Counsel also retained local counsel in London. Blood Decl., ¶20.

On January 7, 2013, the Parties exchanged expert disclosures. Plaintiff retained experts opining on issues relating to the scientific basis and support for FitFlop's advertising statements, appropriate monetary relief, and the marketing and advertising of FitFlop Footwear. *Id.*, ¶8.

D. Settlement Negotiations

The Parties engaged in numerous, arm's-length mediation sessions. On April 17, 2012, the Parties had an early neutral evaluation conference with the Hon. Karen S. Crawford. The Action did not settle. Thereafter, on October 9, 2012, the Parties held their first formal mediation session with Martin Quinn, Esq. of JAMS San Francisco. Blood Decl., ¶24. In advance of the first mediation session, the Parties had engaged in substantial discovery and motion practice. This first mediation was unsuccessful, and was followed by class certification briefing, depositions, and additional discovery from Defendant and non-parties. On June 19, 2013, the Parties held a second formal mediation session with mediator Martin Quinn. The Action did not settle at the second mediation. *Id.* That last formal mediation session was followed by numerous telephonic conferences until a tentative settlement was reached at the end of July 2013. *Id.* Over the past several months, the Parties have exchanged numerous drafts of settlement documents and negotiated the terms of the agreement memorializing the Settlement.

Every aspect of this Settlement was heavily negotiated, including the overall dollar amount of the Settlement and each aspect of the Settlement Agreement and exhibits, including the amounts available to individual Class

Members making claims, as well as details surrounding the claims process. Blood Decl., ¶25. Class Counsel have determined that a settlement of the Action on the terms reflected in this Agreement is fair, reasonable, adequate, and in the best interests of Plaintiff and the Class.

III. SETTLEMENT TERMS

The Settlement Agreement, filed concurrently with this motion, contains the complete terms of the settlement, which are summarized below.

A. The Settlement Class

The Stipulation defines a national Settlement Class under Rule 23(b)(3) composed of all persons who purchased FitFlop Footwear in the United States from January 1, 2007, to the date Class Notice is first disseminated to the Class. *See* Stipulation, at §II, ¶¶10, 12.

B. Relief to Class Members

1. Injunctive Relief

For a period of five years from the Effective Date of the Settlement, FitFlop will not make the alleged false and deceptive representations, including that FitFlop Footwear is effective in strengthening, toning, burning calories, or assisting in weight loss unless, at the time of making such representation, it possesses and relies upon competent and reliable scientific evidence that substantiates that the representations are true and non-misleading. *See* Stipulation, at §IV(B)(2).

2. Monetary Relief

FitFlop will create a Settlement Fund of $5.3 million to provide monetary relief to Class Members for their purchases of the FitFlop Footwear. To obtain a cash payment for up to two pairs of FitFlop Footwear, Class Members need only fill out and return a simple Claim Form. The Claim Form can be viewed and submitted all online through the Settlement Website, or it can be mailed in. No additional proof of purchase is required. Class Members who submit proof of

purchase may receive cash payment for each of their purchases. Class Members will receive the following relief based on the particular FitFlop Footwear they purchased, the number of FitFlop Footwear purchased and the number of Class Members that submit Eligible Claims:

Eligible Footwear	**Initial Amount**	**Maximum Amount**
Ex. 8, Category 1	$25	$60
Ex. 8, Category 2	$40	$100

See Stipulation, at §IV(A)(2). Exhibit 8 to the Stipulation, which is a list of the Eligible FitFlop Footwear fitting Categories 1 and 2, is prominently posted on the Settlement Website, attached to the Class Notice, and referenced in the Claim Form.

If the total amount of eligible and approved claims submitted by Class Members is less than the available relief, each Class Members' award will be increased on a *pro rata* basis, with a potential maximum increase of more than double the initial amount, as reflected above. These maximum amounts represent the approximate average retail price Class Members would have paid for the FitFlop Footwear. That is, the average suggested retail price for the FitFlop Footwear listed in Schedules A and B is approximately $60 and $100, respectively. This amount represents full compensation to Class Members as measured by the most optimistic measure of damages. Similarly, the initial amounts provided to Class Members generally exceeds the likely alternative measure of damages – the difference between the purchase price for the FitFlop Footwear as represented and the value of the product received, if the product received is compared to regular "non-toning" footwear.

None of the $5.3 million Settlement Fund will revert to FitFlop. If any amounts remain in the $5.3 million Settlement Fund (after payment of all Notice

and Claim Administration Expenses, necessary taxes and tax expenses, Attorneys' Fees and Expenses and Eligible Claims), including after the upward adjustments of Eligible Claims, the amount remaining in the Settlement Fund will be distributed pursuant to the *cy pres* doctrine to Consumers Union of the United States, Inc. and Consumer Watchdog in equal amounts. *See* Stipulation, at §IV(C)(3)(c). Consumers Union is an appropriate nonprofit, civic entity, engaged in the publication of "Consumer Reports" and actively promoting and lobbying for consumers' rights, and especially in the conduct of fair, transparent and accurate advertising. *See* concurrently filed Declaration by Elisa Odabashian, Consumers Union of United States, Inc., ¶2. Consumer Watchdog is also an appropriate nonprofit, civic entity, which, through policy research, investigation, public education, and advocacy (including litigation), fights to expose, confront, and change deceptive corporate practices. *See* concurrently filed Declaration of Jamie Court in Support of *Cy Pres* Designation of Consumer Watchdog, ¶2.

Cy pres distributions are appropriate where proof of individual claims is burdensome or distribution of damages costly or where there are unclaimed funds. *Six (6) Mexican American Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1305 (9th Cir. 1990). A *cy pres* award must be "guided by (1) the objectives of the underlying statute(s) and (2) the interests of the silent class members;" and (3) ... must not benefit a group "too remote from the plaintiff class." *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1039 (9th Cir. 2011); *see also Six (6) Mexican American Workers*, 904 F.2d at 1308. In other words, a court "should not find the settlement fair, adequate and reasonable unless the *cy pres* remedy 'account[s] for the nature of the plaintiffs' lawsuit, the objectives of the underlying statutes, and the interests of the silent class members.'" *Lane v. Facebook*, 696 F.3d 811, 819-820 (9th Cir. 2012) (*quoting Nachshin*, 663 F.3d at 1036).

Here, unclaimed funds are to be distributed to Consumers Union and Consumer Watchdog for the purpose of protecting consumers nationwide by combatting deceptive marketing and advertising practices, and working with regulators, policymakers and consumer protection agencies to improve laws and regulations to better protect consumers from deceptive corporate conduct, including false advertising. The *cy pres* award is not limited by geography and the purpose of the *cy pres* award is directly connected to Plaintiff's allegations concerning false and deceptive advertising.

3. Notice and Administration Costs, Attorneys' Fees and Expenses, and Plaintiffs' Service Awards

All Notice and Claims Administration Expenses (expected to be approximately $600,000), attorneys' fees and expenses, and plaintiff service awards will be paid from the Settlement Fund. *See* Stipulation, at §§IV(C)(6), X(A), X(C). FitFlop agrees to not oppose Class Counsel's application for reasonable attorneys' fees not to exceed $1,325,000 plus reimbursement of out-of-pocket expenses (approximately $180,000 to date). FitFlop also agrees not to oppose any request for Court-awarded service awards of $5,000 to Plaintiff Arnold, and $1,500 to Angie Ojeda and Barbara Glaberson. *See* Stipulation, at § X(C). If any portion of the agreed-upon Plaintiffs' counsel's attorneys' fees and expenses is not awarded by the Court, then such amount will remain in the Settlement Fund, and will not revert to FitFlop. *Id.* at §IV(C)(3)(c).

C. The Class Notice Plan

The Parties have developed a Notice Plan with the help of Garden City Group, Inc., a firm that specializes in developing class action notice plans. Details regarding the Class Notice Plan are attached to the Stipulation as Exhibit 6.

At the center of the Class Notice Plan is the website specifically set up for this Settlement ("Settlement Website"). The address of the Settlement Website,

www.FitFlopSettlement.com (a web address ideally suited for this Action), will appear on all of the notice pieces, and will be hyper-linked where a notice piece appears on the Internet. The short and simple online Claim Form can be completed from and submitted at the Settlement Website. The Settlement Website will also provide information about the Settlement, including the Class Notice.

The vast majority of FitFlop Footwear was sold at retail stores. Thus, FitFlop does not have mailing addresses for these Class Members. Therefore, the Class Notice Plan focuses primarily on publicizing the Settlement through the Publication Notice in targeted periodicals and hyper-linked "banner advertisements" across numerous Internet sites. The Publication Notice and banner advertisements will appear in various sources chosen based on marketing research on the demographics of consumers who purchase FitFlop Footwear, as well as sources where FitFlop itself advertised.

The Publication Notice is designed to provide potential Class Members with information regarding the Settlement and inform them about their rights. The Publication Notice contains a general description of the Action, the Settlement relief, including how a claim can be filed, and a general description of Class Members' legal rights. The Publication Notice also directs Class Members to the Settlement Website and a toll free number Class Members may use to obtain a copy of the detailed Class Notice, Claim Form, and other information. The Publication Notice, which will be distributed nationwide in People magazine (a publication utilized by FitFlop for advertising the FitFlop Footwear, and which has a total readership exceeding 40 million) is attached to the Stipulation of Settlement as Exhibit 5. Banners ads (discussed below) will also appear on People's Internet website.

The Settlement will also be publicized through the use of Internet "banner ads." Banner ads are short, Internet-based advertisements designed to attract

attention. When presented with such an ad, an interested Internet user need only click on the banner ad and immediately will be taken to the Settlement Website. Internet banner ads will be posted on the following families of sites for a period of time to deliver approximately 180,000,000 impressions: Facebook, MSN Living, Microsoft Media Network (targeted to active lifestyle and fitness enthusiasts),[3] Real Media Group (health and fitness channel),[4] approximately 100 Gannett News websites nationwide,[5] People.com, and Prevention.com.[6] *See* Stipulation, Ex. 6. This is particularly helpful because the vast majority of the targeted audience is online and most of them are medium to heavy users of the Internet. The banner ad for this Settlement will substantially appear as follows:

Accompanying the Publication Notice and Internet banner advertisements is a customized press release in the form of the Publication Notice that will be distributed over PR Newswire's National U.S.1 and Hispanic newslines, as well as social networking posts to sites including Twitter, LinkedIn and Facebook. *Id.*

Further, to capture the growing population of cell phone users (who fall squarely into the target audience), mobile banner advertising, similar to Internet banner advertising, will be served to those accessing the Internet through their

[3] The Microsoft Media Network websites include fitness.com, fitnessmagazine.com, muscleandfitness.com, weightwatchers.com, menshealth.com, mensfitness.com, shape.com, and womens-health.com.

[4] The Real Media Group (Health & Fitness Channel) websites include active.com, health.com, healthgrades.com, womenhealthzone.com, and healthnewsdaily.com.

[5] Gannett news websites include local television network affiliates across the country, including in Atlanta, Buffalo, Cleveland, Denver, Jacksonville, Little Rock, Minneapolis-St. Paul, Phoenix, Sacramento, St. Louis, Tampa, and Washington, D.C.

[6] Prevention, an American healthy lifestyle magazine, is one of the largest magazines in the world with a 2.8 million circulation and over 10 million readers a month.

cell phone. *See* Stipulation, Ex. 6. These mobile phone users will see the banner and, if they choose, can click to seek additional information and/or to call the toll free line. This effort will further increase the opportunity for potential Class Members to participate in the Settlement.

Complementing the Publication Notice is the Full Notice. The Full Notice contains detailed information about the Action, the Settlement benefits, the release and how to opt-out, object and exercise other rights under the Settlement. The Full Notice is attached to the Stipulation of Settlement as Exhibit 4. The Full Notice will be available through the Settlement Website established for this case and will be mailed or emailed to callers at their request. *See* Stipulation, at §§V(B), VI(A)(1), VII(B)(2). The lists of Eligible Footwear (Stipulation Ex. 8) will be affixed to the end of the Full Notice.

Finally, the Publication Notice also provides instructions in Spanish directing Class Members to the Settlement Website for additional information in Spanish. *See* Stipulation, at Exhibit 5 (Publication Notice states at top, "*Para información en español, visite la página web, www.FitFlopSettlement.com*"). Spanish speakers may speak with live, Spanish-speaking operators by dialing the toll-free number. The Settlement Website will also contain a unique feature permitting Class Members to view the Settlement Website in Spanish through Google Translate.

IV. THE PROPOSED SETTLEMENT MEETS THE CRITERIA FOR PRELIMINARY APPROVAL

Settlements of class actions are strongly favored. *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned"); *see also Churchill Village, LLC v. Gen. Elec. Co.*, 361 F.3d 566, 576 (9th Cir. 2004); *In re Pacific Enter. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). By their very nature, because of the uncertainties of outcome, difficulties

of proof, and lengthy duration, class actions readily lend themselves to compromise. *See Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976) (public interest in settling litigation is "particularly true in class action suits…which frequently present serious problems of management and expense"). Moreover, the Court should give a presumption of fairness to arm's-length settlements reached by experienced counsel. *See Rodriguez*, 563 F.3d at 965 ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution[.]"). Rule 23(e) sets forth a "two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." *Nat'l Rural Telecomms. Coop v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004).

On preliminary approval, the court does not make a full and final determination regarding fairness. "Because class members will subsequently receive notice and have an opportunity to be heard," the court "need not review the settlement in detail at this juncture." *In re ML. Stern Overtime Litig.*, No. 07-CV-0118-BTM (JMA), 2009 U.S. Dist. LEXIS 31650, at *9 (S.D. Cal. Apr. 13, 2009). "[I]nstead, preliminary approval is appropriate so long as the proposed settlement falls 'within the range of possible judicial approval.'" *Id.* at *9-10 (quoting Newberg on Class Actions, §11.25 (4th ed. 16 2002)); *see also* Manual for Complex Litigation (4th ed. 2009) §§2l.632, 21.633. At this stage, the Court need only conduct a *prima facie* review of the relief and notice provided by the Stipulation of Settlement to determine whether notice should be sent to the settlement Class Members. *In re ML Stein*, 2009 U.S. Dist. LEXIS 31650, at *9-10. The Court's review is "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; *accord Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). This is a minimal threshold:

> [I]f 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***, then the court should direct that the notice be given to the Class members of a formal fairness hearing . . . .

Young v. Polo Retail, LLC, No. C-02-4546 (VRW), 2006 U.S. Dist. LEXIS 81077, at *12-13 (N.D. Cal. Oct. 25, 2006) (emphasis added).

The Ninth Circuit has articulated six factors to use in evaluating the fairness of a class action settlement at the preliminary approval stage: (1) the strength of plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the consideration offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; and (6) the experience and views of counsel. *Jack v. Hartford Fire Ins. Co.*, No. 3:09-cv-1683 MMA (JMA), 2011 U.S. Dist. LEXIS 118764, at *11 (S.D. Cal. Oct. 13, 2011), citing *Molski v. Gleich*, 318 F.3d 937, 954 (9th Cir. 2003) (overruled in part on other grounds); *Hanlon*, 150 F.3d at 1026 (the court's task is to "balance a number of factors," including "the risk, expense, complexity, and likely duration of further litigation," "the extent of discovery completed and the stage of the proceedings," and "the amount offered in settlement").

Here, the proposed settlement plainly satisfies the standard for preliminary approval, as there is no question as to its fairness, reasonableness and adequacy, placing it squarely within the range of possible approval.

A. The Strengths of Plaintiff's Case and Risks Inherent in Continued Litigation and in Securing Certification Favor Preliminary Approval

Settlements resolve the inherent uncertainty on the merits, and are therefore strongly favored by the courts, particularly in class actions. *See Van*

Bronkhorst, 529 F.2d at 950; *United States v. McInnes*, 556 F.2d 436, 441 (9th Cir. 1977). This action is not unique in this regard – the Parties disagree about the merits, and there is substantial uncertainty about the ultimate outcome of this Action.

Assuming that litigation was to proceed, the hurdles that Plaintiff faces prior to certification and trial are substantial. As a preliminary matter, FitFlop has argued that class certification should be denied because Plaintiff is not an adequate or typical class representative, that Plaintiff fails to meet standards recently articulated in *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013) for setting forth appropriate damages theories, and because common issues of fact would not predominate because necessary, individualized inquiries include (a) what advertising representation was made, and (b) whether the class member relied on the advertising representation. (D.E. No. 87).

On the merits, FitFlop strongly contends that its claims regarding the effectiveness of FitFlop Footwear is backed by numerous studies and years of scientific research. In addition, FitFlop disputes the appropriate measures of restitution or damages, and contends that the Class contains many satisfied, uninjured persons. Moreover, FitFlop designated five experts to discuss the research and science supporting its health benefit claims for the FitFlop Footwear.

Given these considerations, preliminary approval of the Stipulation of Settlement is appropriate to avoid the uncertainties of continued litigation.

B. The Risk, Complexity, Expense, and Duration of the Litigation Favor Preliminary Approval

In addition to the substantial risks and uncertainty inherent in continued litigation, the Parties face the certainty that further litigation would be expensive, complex, and time consuming.

Here, the proposed Settlement specifically addresses the alleged deceptive conduct by providing carefully-tailored economic benefits to all Class Members who submit eligible claims. The proposed Settlement is able to provide these benefits without the risk and delays of continued litigation, trial and appeal. The expense, complexity and duration of litigation are significant factors considered in evaluating the reasonableness of a settlement. Litigating this class action through trial would undoubtedly be time-consuming and expensive. As with most class actions, this Action is complex. Indeed, FitFlop is a sophisticated corporation with numerous employees who worked on the FitFlop Footwear, including retaining third-parties to design and develop unique footwear products and conduct scientific research regarding potential health benefits, and continued litigation would require a significant number of additional depositions, the majority of which would take place in Europe, including the depositions of two researchers who initially developed the technology underlying FitFlop Footwear. Plaintiff's Counsel was also faced with renewing the request for seven depositions pursuant to the Evidence Act. Question about the materiality and scientific validity of the health benefits message conveyed by FitFlop's advertisements and labeling is vigorously disputed by the Parties and would require analysis by numerous experts for both Parties. For example, Plaintiff hired a marketing and consumer behavior expert to design and conduct a consumer survey about the advertising at issue. Plaintiff also hired a damages expert to review voluminous financial data obtained from Defendant and third-parties, and opine on the appropriate methodology and amount of damages for Class Members' retail purchases. At a minimum, absent settlement, litigation of these issues would likely continue for a year or two before Plaintiff or the Class would see any recovery. That a settlement would eliminate the delay and expenses strongly weighs in favor of approval. *See Milstein v. Huck*, 600 F. Supp. 254, 267 (E.D.N.Y 1984). This is particularly true in a case like this,

where Class Member addresses are not known, forcing Class Members to claim in to receive payment. The more time that goes by, the more difficult it is to both identify class members and cause them to participate in any resolution.

By reaching this Settlement, the Parties will avoid protracted litigation and establish a means for prompt resolution of Class Members' claims. The avenue of relief provided by the Settlement ensures meaningful benefits to Class Members. Given the alternative of continued, long and complex litigation before this Court, the risks involved in such litigation and the possibility of further appellate litigation, the availability of prompt relief under the Settlement is highly beneficial to the Class.

C. The Substantial Relief Provided by the Settlement Agreement Favors Preliminary Approval

The Settlement Agreement provides real relief for the Class. Class Members who purchased FitFlop Footwear may submit Claims and receive cash reimbursements for all pairs of FitFlop Footwear purchased. Indeed, Class Member may submit claims for up to two product purchases without receipts or other proof of purchase. Thus, without proof of purchase, a Class Member may receive up to $200 cash.

Nevertheless, in evaluating the fairness of the consideration offered in settlement, it is not the role of the court to second-guess the negotiated resolution of the parties. "'[T]he 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 (quoting *Officers for Justice*, 688 F.2d at 625); *accord Rodriguez*, 563 F.3d at 965. The issue is not whether the settlement could have been better in some fashion, but whether it is fair:

"Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon*, 150 F.3d at 1027.

D. The Proposed Settlement Resulted from Serious, Informed and Non-Collusive Arm's-Length Negotiations

The Parties' arm's-length settlement negotiations and participation in numerous mediation sessions with Martin Quinn, Esq. further demonstrates the fairness of the Settlement that was reached, and that the Settlement is not a product of collusion. Typically, "[t]here is a presumption of fairness when a proposed class settlement, which was negotiated at arm's-length by counsel for the class, is presented for Court approval." *Newberg*, §11.41; *see also In re Employee Benefit Plans Secs. Litig.*, No. 3-92-708, 1993 U.S. Dist. LEXIS 21226, at *17 (D. Minn. June 2, 1993) ("[t]he court is entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement").

Here, Counsel for FitFlop and Plaintiff each zealously negotiated on behalf of their clients' best interests. The Parties engaged in protracted negotiations with the assistance of Martin Quinn, an experienced and well-respected mediator with JAMS San Francisco. During these negotiations, Plaintiff and Class Counsel, who are experienced in prosecuting complex class action claims, had a "clear view of the strengths and weaknesses" of their case and were in a strong position to make an informed decision regarding the reasonableness of a potential settlement. *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985); *see also Manchaca v. Chater*, 927 F. Supp. 962, 967 (E.D. Tex. 1996). Moreover, the fact that the Settlement was negotiated over the course of several mediation sessions, in front of an experienced mediator, is one factor that demonstrates the Settlement was anything but collusive. *See, e.g., Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) ("The arms-

length negotiations, including a day-long mediation before Judge Lynch, indicate that the settlement was reached in a procedurally sound manner."); *In re M.L. Stern Overtime Litig.*, No. 07-cv-0118-BTM (JMA), 2009 U.S. Dist. LEXIS 31650, at *13 (S.D. Cal. April 13, 2009) (granting preliminary approval and stating that "the settlement was reached with the supervision and assistance of an experienced and well-respected independent mediator"). Further, the nature of the subsequent negotiations between the Parties, the experience of counsel as longstanding class action attorneys, and the fair result reached are illustrative of the arms-length negotiations that led to the Stipulation of Settlement.

E. The Settlement Agreement Is Fair to Plaintiff and Class Members

The proposed Settlement is fair as to all Class Members in that it provides a minimum monetary recovery exceeding the alleged retail price premium and may potentially provide approximately 100% recovery of the retail purchase price, and through the injunctive relief component, extinguishes the risk of repetition of the alleged offensive actions. Plaintiff and Class Members may submit claims (online or through the mail) for up to two of their purchases, using a simple Claim Form that does not require receipts or other proof of purchase. Class Members who purchased more than two pairs of FitFlop Footwear may submit proof of purchase directly online through the Settlement Website. Further, Plaintiff Charlice Arnold, the other person who stepped forward during litigation as a proposed plaintiff and class representative, Angie Ojeda, and the named plaintiff from the related class action pending in New Jersey, Barbara Glaberson, do not receive any unduly preferential treatment under the Settlement. With the exception of a modest service award – $5,000 to Plaintiff Arnold, and $1,500 each to Angie Ojeda and Barbara Glaberson – to account for their willingness to step forward and represent other consumers, and to compensate them for their time and effort devoted to prosecuting the common claims,

Plaintiff and the two Other Plaintiffs are treated the same as every other Class Member. Such service awards are "fairly typical in class action cases." *Rodriguez*, 563 F.3d at 958; *see also In re Simon v. Toshiba America*, No. C 07-06202 MHP, 2010 U.S. Dist. LEXIS 42501, at *12-13 (N.D. Cal. Apr. 30, 2010); *Williams v. Costco Wholesale Corp.*, No. 02cv2003 IEG (AJB), 2010 U.S. Dist. LEXIS 19674, at *10 (S.D. Cal. Mar. 4, 2010) ("Although [plaintiff] seeks a $5,000 service fee for himself which is not available to other class members, the fee appears to be reasonable in light of [plaintiff's] efforts on behalf of the class members."); *In re M.L. Stern Overtime Litig.*, No. 07-cv-0118-BTM (JMA), 2009 U.S. Dist. LEXIS 94671, at *11 (S.D. Cal. October 9, 2009) (granting final approval and awarding class representative class enhancement awards of $15,000 per class representative).

V. THE PROPOSED CLASS NOTICE PROGRAM SHOULD BE APPROVED

The threshold requirement concerning class notice is whether the means employed to distribute the notice was reasonably calculated to apprise the class of the pendency of the action, the proposed settlement and the class members' rights to opt out or object. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950). The mechanics of the notice process are left to the discretion of the court, subject only to the broad "reasonableness" standards imposed by due process. In this Circuit, it has long been the case that a notice of settlement will be adjudged "satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Rodriguez*, 563 F.3d at 962 (quoting *Churchill*, 361 F.3d at 575); *Hanlon*, 150 F.3d at 1025 (notice should provide each absent class member with the opportunity to opt-out and individually pursue any remedies that might provide a better opportunity for recovery). The notice should also present

information "neutrally, simply, and understandably," including "describ[ing] the aggregate amount of the settlement fund and the plan for allocation." *Rodriguez*, 563 F.3d at 962.

The proposed Notices more than satisfy these requirements. The Parties have negotiated and drafted a Class Notice, which is written in simple terminology and includes: (1) basic information about the lawsuit; (2) a description of the benefits provided by the Settlement; (3) an explanation of how Class Members can obtain Settlement benefits; (4) an explanation of how Class Members can exercise their right to opt-out or object to the Settlement; (5) an explanation that any claims against FitFlop that could have been litigated in this action will be released if the Class Member does not opt out from the Settlement; (6) the names of counsel for the Class and information regarding attorneys' fees, expenses, and service awards; (7) the fairness hearing date; (8) an explanation of eligibility for appearing at the fairness hearing; and (9) the Settlement Website address and a toll free number where additional information can be obtained.

The contents of the proposed Class Notice are more than adequate, and comply with the Federal Judicial Center's model class action notices. *See* www.fjc.gov; *In re Skechers Toning Shoe Prods. Liab. Litig.*, No. 11-2308, 2012 U.S. Dist. LEXIS 113641, at *46-47 (W.D. Ky. Aug. 13, 2012) (approving class notices that "comply with the Federal Judicial Center's illustrative class action notices"). The Notice provides Class Members with sufficient information to make an informed and intelligent decision whether to object to the Settlement. As such, it satisfies the content requirements of Rule 23. *See In re Compact Disc. Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 203 (D. Me. 2003) ("notice must describe fairly, accurately and neutrally the claims and parties in the litigation . . . entitled to participate, including the right to exclude themselves from the class."); *see also Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005 (9th Cir. 2012) (enforcing judgment and settlement agreement in prior

related action against plaintiff did not violate plaintiff's due process rights where plaintiff was a party to the prior suit and was provided full notice of the release and covenant not to sue provisions of the settlement agreement and rejected opt out opportunity).

Additionally, the proposed dissemination of the Class Notice satisfies all due process requirements. The Settlement provides that FitFlop will provide notice to the Class after preliminary approval of the Settlement by the Court. These are small dollar, over-the-counter retail purchases, and there is no way to reasonably identify the vast majority of individual Class Members. Therefore, the Notice Program consists of publishing the Publication Notice in sources specifically targeting Class Members, including sources utilized by FitFlop for advertising the FitFlop Footwear. Additionally, Class Notice will be available through the Settlement Website specifically established for this Action.

In sum, the contents and dissemination of the proposed Class Notice constitutes the best notice practicable under the circumstances and fully complies with the requirements of Rule 23.

VI. THE PROPOSED CLASS SHOULD BE CONDITIONALLY CERTIFIED

The Ninth Circuit recognizes the propriety of certifying a settlement Class to resolve consumer lawsuits. *See 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 Federal Rule of Civil Procedure 23. *Id*. However, where a court is evaluating the certification question in the context of a proposed settlement class, questions regarding the manageability of the case for trial purposes are not considered. *See Wright v. Linkus Enterps., Inc.*, 259 F.R.D. 468, 474 (E.D. Cal. 2009) (citing *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.")). Here, the conditional certification of the Class is appropriate for purposes of settlement because all the requirements of Rule 23 have been met.

A. The Class Satisfies Federal Rule of Civil Procedure 23(a)

Rule 23(a) enumerates four prerequisites for class certification, referred to as: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy. In light of the settlement, the Parties agree that each of these requirements is met.

1. Numerosity

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a); *Wiener v. Dannon Co., Inc.*, 255 F.R.D. 658, 664 (C.D. Cal. 2009). Here, the numerosity requirement is readily met because it is difficult or inconvenient to join all members of the proposed Class. *Jordan v. Los Angeles County*, 669 F.2d 1311, 1319 (9th Cir. 1982), vacated on other grounds, 459 U.S. 810 (1982). Here, FitFlop sold the FitFlop Footwear nationwide over several years at major retailers including Nordstrom, Macy's, Amazon.com, and Zappos during the Class Period. Accordingly, the numerosity requirement is satisfied.

2. Commonality

"Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury . . . Their claims must depend upon a common contention . . . That common contention, moreover, must be of such a nature that it is capable of class-wide resolution – which means 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) (internal citation omitted). Still, "[t]he existence of shared legal issues with divergent factual predicates is sufficient [to satisfy commonality], as is a common core of salient facts coupled with disparate legal remedies within the

class." *Hanlon*, 150 F.3d at 1019; *In re First Alliance Mortg. Co.*, 471 F.3d 977, 990-91 (9th Cir. 2006). The commonality requirement is construed "permissively." *Hanlon*, 150 F.3d at 1019; *Wiener*, 255 F.R.D. at 664. This prerequisite is readily met in this case. To quote *Wiener*: "The proposed class members clearly share common legal issues regarding [Defendant's] alleged deception and misrepresentations in its advertising and promotion of the Products." 255 F.R.D. at 664-65; *see also Johnson v. General Mills, Inc.*, 275 F.R.D. 282, 287 (C.D. Cal. 2011) (plaintiff's claims presented common, core issues of law and fact, including "whether General Mills communicated a representation [] that YoPlus promoted digestive health" and "whether YoPlus does confer a digestive health benefit that ordinary yogurt does not"). Here, as well, the core issue for each Class Member's claim is whether FitFlop Footwear provides the toning and strengthening health benefits promised in the advertising and labeling. (D.E. No. 76-1 at 2-12). Representative examples of the packaging and labeling for FitFlop Footwear, which demonstrate this common message, were submitted in connection with Plaintiff's motion for class certification. (D.E. No. 76-2 at Exs. 6, 8-9).

3. Typicality

Rule 23(a)(3) typicality is satisfied where the plaintiff's claims are "reasonably co-extensive" with absent class members' claims; they need not be "substantially identical." *Hanlon*, 150 F.3d at 1020; *see also Wiener*, 255 F.R.D. at 665. The test for typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named Plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citations omitted). Thus, "[t]he purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class." *Id.* For example, in *Keilholtz v. Lennox Health Prods., Inc.*, 268

F.R.D. 330 (N.D. Cal. 2010), in certifying UCL and CLRA claims, the court found that the typicality requirement was satisfied because "Plaintiffs' claims are all based on Defendants' sale of allegedly dangerous fireplaces without adequate warnings." *Id.* at 338.

Typicality is met here as Plaintiff and the proposed Class assert the same claims, arising from the same course of conduct – FitFlop's uniform, deceptive marketing campaign. All of the labeling and advertising at issue misrepresented the efficacy and core characteristics of FitFlop Footwear, *i.e.* that it would provide strengthening and toning benefits. Plaintiff, like every Class member, was injured when she paid money to purchase FitFlop Footwear. Under the claims alleged, Plaintiff and Class Members also seek the same relief for the same alleged wrongful conduct, *i.e.*, misrepresenting the health benefits of FitFlop Footwear. Plaintiff's claims are the same as those of other Class Members. Therefore, the typicality requirement is met.

4. Adequacy of Representation

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." In the Ninth Circuit, adequacy is satisfied where (i) counsel for the class is qualified and competent to vigorously prosecute the action, and (ii) the interests of the proposed class representatives are not antagonistic to the interests of the class. *See, e.g., Staton v. Boeing*, 327 F.3d 938, 957 (9th Cir. 2003); *Hanlon*, 150 F.3d at 1020; *Molski v. Gleich*, 318 F.3d at 955, *overruled on other grounds in Dukes v. Wal Mart Stores, Inc.*, 603 F.3d 571 (9th Cir. 2010); *Wiener*, 255 F.R.D. at 667.

For purposes of the Settlement, the Parties agree that adequacy has also been met in this case. First, the proposed Class Counsel are qualified and experienced in class action litigation. *See* Blood Decl., Exs. A (Blood Hurst & O'Reardon, LLP Firm Resume) and B (Wolf Haldenstein Adler Freeman & Herz LLP Firm Resume). Further, Plaintiff's Counsel have performed extensive work

to date in identifying and investigating potential claims in this Action, evaluating existing scientific research and acquiring data through discovery from FitFlop and numerous third parties, to develop a detailed understanding of the scientific testing of FitFlop Footwear and its incorporated technology, as well as the scientific research methodologies and bases for claims relating to biomechanics, gait, and strength testing. *See* Blood Decl., ¶¶ 4, 8, 10. The net result of such research and effort, including with the assistance of a retained expert in the field of biomechanical effects of footwear, were represented in a detailed class action complaint, in-depth class certification briefing, and in successfully negotiating the proposed Settlement. *See In re Emulex Corp.*, 210 F.R.D. 717, 720 (C.D. Cal. 2002) (court evaluating adequacy of counsel's representation may examine "the attorneys' professional qualifications, skill, experience, and resources . . . [and] the attorneys' demonstrated performance in the suit itself"). Second, the interests of Plaintiff and Class Members are fully aligned and conflict free: Plaintiff and Class Members are seeking redress from what is essentially the same injury and there are no disabling conflicts of interest.

B. The Class Should Be Preliminarily Approved Under Federal Rule of Civil Procedure 23(b)(3)

Plaintiff seeks certification of a Settlement Class under Rule 23(b)(3). Certification under Rule 23(b)(3) is appropriate "whenever the actual interests of the parties can be served best by settling their difference in a single action." *Hanlon*, 150 F.3d at 1022 (*quoting* 7A C.A. Wright, A.R. Miller, & M. Kane, *Federal Practice & Procedure* §1777 (2d ed. 1986)). There are two fundamental conditions to certification under Rule 23(b)(3): (1) questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and (2) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3); *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas*

Sands, Inc., 244 F.3d 1152, 1162-63 (9th Cir. 2001); *Hanlon*, 150 F.3d at 1022; *Wiener*, 255 F.R.D. at 668. As such, Rule 23(b)(3) encompasses those cases "in which a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem*, 521 U.S. at 615; *Wiener*, 255 F.R.D. at 668.

1. Common Questions Predominate

The Rule 23(b)(3) predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623; *Hartless v. Clorox Co.*, 273 F.R.D. 630, 638 (S.D. Cal. 2011). "Predominance is a test readily met in certain cases alleging consumer . . . fraud . . . ." *Amchem*, 521 U.S. at 625. "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Fed. Prac. & Proc.*, §1778; *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n.13 (1982) (noting that commonality and typicality tend to merge).

The predominance requirement is satisfied here. As discussed above, Plaintiff alleges that the Class Members are entitled to the same legal remedies premised on the same alleged wrongdoing. The central issue for every claimant is whether FitFlop's claim that FitFlop Footwear, with its "Microwobbleboard Technology," did in fact provide toning and strengthening benefits and whether that misrepresentation was false or deceptive to a reasonable consumer. *See Johns v. Bayer Corp.*, 280 F.R.D. 551, 557 (S.D. Cal. 2012) ("the predominating common issues include whether Bayer misrepresented that the Men's Vitamins 'support prostate health' and whether the misrepresentations were likely to deceive a reasonable consumer."). These issues predominate and are together the "heart of the litigation" because they would be decided in every trial brought by

individual Class Members and can be proven or disproven with the same Class-wide evidence. Under these circumstances, predominance under Rule 23(b)(3) is satisfied. *Hartless*, 273 F.R.D. at 638-39 (predominance established where all class members were exposed to the same alleged misrepresentations); *Weiner*, 255 F.R.D. at 669 (predominance satisfied when alleged misrepresentation of product's health benefits were displayed on every package).

2. A Class Action is the Superior Method to Settle this Controversy

Rule 23(b)(3) sets forth the relevant factors for determining whether a class action is superior to other available methods for the fair and efficient adjudication of the controversy. These factors include: (i) the class members' interest in individually controlling separate actions; (ii) the extent and nature of any litigation concerning the controversy already begun by or against class members; (iii) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (iv) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3); *see Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1190-92 (9th Cir. 2001). "[C]onsideration of these factors requires the court to focus on the efficiency and economy elements of the class action so that cases allowed under subdivision (b)(3) are those that can be adjudicated most profitably on a representative basis." *Zinser*, 253 F.3d at 1190 (citations omitted); *see also Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (finding the superiority requirement satisfied where granting class certification "will reduce litigation costs and promote greater efficiency").

Application of the Rule 23(b)(3) "superiority" factors shows that a class action is the preferred procedure for this settlement. The damages at issue for each Class Member are not large. *Zinser*, 253 F.3d at 1191; *Wiener* 255 F.R.D. at 671. It is neither economically feasible, nor judicially efficient, for Class

Members to pursue their claims against FitFlop on an individual basis. *Hanlon*, 150 F.3d at 1023; *Deposit Guaranty Nat'l Bank v. Roper*, 445 U.S. 326, 338-39 (1980); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 808 (1971); *Amchem*, 521 U.S. at 617 ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights"). Additionally, the fact of settlement eliminates any potential difficulties in managing the trial of this Action as a class action. *See Amchem*, 521 U.S. at 620 (when "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"). As such, under the circumstances presented here, a class action is clearly superior to any other mechanism for adjudicating the case. The requirements of Rule 23(b)(3) are satisfied.

VII. PLAINTIFF SHOULD BE APPOINTED CLASS REPRESENTATIVE AND CLASS COUNSEL SHOULD BE APPOINTED FOR THE CLASS

The Parties also requests that the Court designate Plaintiff Charlice Arnold as Class Representative for the Class. As discussed above, Plaintiff will fairly and adequately protect the interests of the Class.

Additionally, Rule 23(g)(1) requires the Court to appoint class counsel to represent the interests of the Class. *See In re Rubber Chems. Antitrust Litig.*, 232 F.R.D. 346, 355 (N.D. Cal. 2005). The Parties respectfully request that Blood Hurst & O'Reardon, LLP ("BHO") and Wolf Haldenstein Adler Freeman & Herz LLP ("Wolf Haldenstein") be appointed Class Counsel for the Class. As set forth above, BHO and Wolf Haldenstein are experienced and well equipped to vigorously, competently and efficiently represent the proposed Class. *See also* Blood Decl., Exs. A-B. Accordingly, the Court should appoint Timothy G. Blood of BHO and Janine L. Pollack of Wolf Haldenstein as Class Counsel for the Class.

VIII. THE PROPOSED SCHEDULE OF EVENTS

The key Settlement-related dates, such as the time to complete publication of the Short-form Notice or to opt-out or object, are based on when preliminary approval of the Settlement is granted and the Final Approval Hearing date. The Settlement-related dates calculated in accordance with the provisions of the Settlement are:

Event	Date
Notice dissemination to the Class begins	Within twenty (20) days after entry of the Preliminary Approval Order
Notice dissemination substantially completed	Within sixty (60) days after entry of the Preliminary Approval Order
Last day for exclusions or objections to the Settlement	No later than thirty (30) days before the date first set for the Final Approval Hearing
Parties to file briefs in support of final approval and in response to objections	No later than forty-five (45) days before the Final Approval Hearing
Parties to file supplemental briefs in support of final approval and in response to objections.	No later than seven (7) days prior to the Final Approval Hearing
First day Final Approval Hearing can be set	No earlier than 120 days after entry of Preliminary Approval Order

Accordingly, the Parties request that the Court schedule the Final Approval Hearing 120 days after entry of its order granting preliminary approval, or as soon thereafter as the Court's schedule permits.

IX. CONCLUSION

For the reasons set forth above, the Parties respectfully request the Court: (1) conditionally certify the Class; (2) appoint Plaintiff Charlice Arnold as Class Representative for the Class; (3) appoint Timothy G. Blood of BHO and Janine L. Pollack of Wolf Haldenstein as Class Counsel for the Class; (4) grant

preliminary approval of the Settlement; (5) approve the proposed Class Notice Plan; and (6) schedule a final approval hearing for the Settlement.

Dated: December 13, 2013

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LESLIE E. HURST (178432)
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By: *s/ Timothy G. Blood*
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Attornevs for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

Executed on December 13, 2013.

s/ Timothy G. Blood

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Attorneys for Plaintiff and Proposed Class Counsel

[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ARIANNA ROSALES, and CHARLICE ARNOLD, on Behalf of Themselves, All Others Similarly Situated and the General Public, Plaintiffs, v. FITFLOP USA, LLC, Defendant.	Case No.: 11cv0973-W (KSC) CLASS ACTION **DECLARATON OF TIMOTHY G. BLOOD IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Judge: Hon. Thomas J. Whelan Courtroom: 3C, 3rd Floor - Schwartz

I, TIMOTHY G. BLOOD, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am the managing partner at Blood Hurst & O'Reardon, LLP, counsel for Plaintiff and one of the firms proposed as Class Counsel pursuant to Fed. R. Civ. P. 23(g). I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto. I submit this declaration in support of the Motion for Preliminary Approval of Class Action Settlement.

2. Attached are true and correct copies of the following documents:

Exhibit A: Blood Hurst & O'Reardon, LLP firm resume; and

Exhibit B: Wolf Haldenstein Adler Freeman & Herz firm resume.

3. This litigation has been hard-fought from the very beginning. There were numerous, contested discovery motions relating to party and non-party discovery, significant party and non-party discovery, including foreign depositions, motions to dismiss and strike concerning several complaints that required extensive briefing, and class certification briefing. As a result of the Parties' extensive meet and confer efforts held virtually continuously throughout this litigation, Class Counsel was able to obtain approximately 500,000 pages of documents from FitFlop, and over 16,500 documents from 17 third-parties upon whom it served subpoenas. Class Counsel organized a team of attorneys who coded and analyzed these documents on a database system. In addition to foreign depositions of primary scientific researchers who conducted studies on FitFlop Footwear and related technology, Plaintiff's Counsel conducted numerous depositions of corporate representatives and current and former FitFlop employees. Class Counsel also retained and worked with designated experts in the fields of scientific evidence concerning FitFlop's advertising claims, marketing, advertising and consumer behavior, and economic injury suffered by consumers. In a related proposed class action entitled *Glaberson v.*

FitFlop USA, LLC, No. 1:13-cv-02051-NLH-AMD (D.N.J.), Class Counsel successfully served certain London-based FitFlop-related entities through the Hague Convention. The following is a summary of the motion practice, discovery efforts and settlement negotiations that were involved in the successful litigation of this Action.

4. **Initial Investigations**: In September 2010, Plaintiffs' Counsel began investigating the veracity of the advertising claims FitFlop made about the health benefits of FitFlop Footwear. Our investigation included gathering and analyzing studies concerning the health benefits, or lack thereof, from wearing the FitFlop Footwear and other so-called rocker-bottom shoes. In so doing, we retained an expert in the fields of clinical research, orthotics, human gait and the biomechanics of the lower limbs. Our investigation also included an extensive search and review of FitFlop's advertising and marketing materials for the FitFlop Footwear. We also researched and analyzed available financial and sales information about FitFlop generally and financial and sales information specifically related to the FitFlop Footwear.

5. ***Gourin v. FitFlop USA, LLC* (S.D.N.Y.)**: On March 23, 2011, Plaintiff's Counsel filed a class action against FitFlop USA, LLC, entitled *Virginia Gourin v. FitFlop USA, LLC*, No. 11-cv-2033 (S.D.N.Y.). On behalf of a proposed nationwide class, *Gourin* alleged violations of New York General Business Law §349, breach of express warranty and unjust enrichment as a result of the false and deceptive FitFlop Footwear health benefits' advertising statements. *Gourin* was voluntarily dismissed on June 16, 2011. Prior to voluntary dismissal, the parties had engaged in the Rule 26(f) process, exchanged initial disclosures, and Plaintiff's Counsel had prepared and served several subpoenas for documents, and propounded requests for admissions, interrogatories and document requests on FitFlop.

6. **Initial Complaint Filing in this Action**: On May 4, 2011, Plaintiff's Counsel filed the original class action complaint in this Action, entitled *Arianna Rosales v. FitFlop USA, LLC*, No. 3:11-cv-00973 (S.D. Cal.). On behalf of a proposed nationwide class, the original complaint in this Action alleged violations of California's Unfair Competition Law, Business & Professions Code §17200 *et seq.*, the Consumers Legal Remedies Act, Cal. Civil Code §1750 *et seq.*, and breach of express warranty as a result of FitFlop's false and deceptive FitFlop Footwear health benefits' advertising statements. (D.E. No. 1).

7. **The First Amended Complaint, Related Motion Practice and the Court's Order Denying the Motion to Dismiss or Motion to Strike**: On July 15, 2011, Plaintiff's Counsel filed a First Amended Class Action Complaint ("FAC"). The FAC added Plaintiff Charlice Arnold as a named plaintiff and proposed class representative. On July 22, 2011, Arianna Rosales withdrew as a named plaintiff in the Action. (D.E. No. 11). On August 15, 2011, FitFlop moved to dismiss the FAC in its entirety pursuant to Fed. R. Civ. P. 12(b)(6), or, in the alternative, to strike the class action allegations from the FAC pursuant to Fed. R. Civ. P. 12(f). (D.E. No. 14). On September 12, 2011, Plaintiff filed her opposition brief. (D.E. No. 16). On September 19, 2011, FitFlop filed its reply brief. (D.E. No. 18). On October 5, 2011, and February 3, 2012, Plaintiff filed supplemental authority in support of her opposition. (D.E. Nos. 19, 22). On January 23, 2012, FitFlop filed supplemental authority in support of its motion to dismiss. (D.E. No. 20). On February 8, 2011, the Court issued a 14-page opinion that denied the motions to dismiss and strike. (D.E. No. 24).

8. **Overview of Expert-Related Efforts**: Prior to filing the complaints in this Action and in the voluntarily dismissed *Gourin* action, Class Counsel retained Dr. Najia Shakoor, a practicing rheumatologist and well-published clinical investigator in the area of biomechanics and osteoarthritis. Dr. Shakoor

reviewed all scientific evidence and studies relating to FitFlop Footwear and other rocker-bottom footwear, assisted with preparing Class Counsel for depositions of scientific researchers hired by FitFlop, and prepared an expert report pursuant to Rule 26. Class Counsel also retained a marketing and consumer behavior expert. Dr. Thomas J. Maronick, DBA, JD, the former in-house marketing expert for all divisions at the Federal Trade Commission, reviewed advertisements and related research and communications relating to FitFlop Footwear, and designed and implemented a survey of 251 consumers concerning reasons for purchasing FitFlop Footwear. Dr. Maronick prepared a detailed declaration that was submitted in connection with Plaintiff's motion for class certification. (D.E. No. 76-4). Class Counsel also retained and worked extensively with Mark Vellrath, Ph.D. M.S., an expert in financial economics. Dr. Vellrath reviewed extensive financial and sales data from FitFlop and third-parties, and prepared an expert report concerning restitution and damages pursuant to Rule 26.

9. **The Related *Glaberson* Class Action Filed in New Jersey**: On April 2, 2013, on behalf of plaintiff Barbara Glaberson, Plaintiff's Counsel filed a complaint in the United States District Court for the District of New Jersey making essentially the same allegations as the California action. *See Glaberson v. FitFlop USA, LLC*, Case No. 13-cv-02051-NLH-AMD (D.N.J.). The complaint in *Glaberson* named as defendants FitFlop USA, LLC, FitFlop Limited, Brand Slam Ltd., and Marcia Diane Kilgore, and alleged violations of New Jersey's consumer fraud law, and breach of express warranty. Defendants had moved to dismiss the *Glaberson* complaint and that motion was fully briefed at the time of the instant Settlement. *See Glaberson*, D.E. Nos. 20, 26, 28. Plaintiff's Counsel successfully served FitFlop Limited and Brand Slam Ltd. through the Hague Convention.

10. **Overview of Discovery Efforts**: On May 21, 2013, the Parties submitted a negotiated protective order. (D.E. No. 33). Since June 2012, the Parties have engaged in a substantial amount of discovery. On June 6, 2012, Class Counsel served a first set of interrogatories, document requests and requests for admissions in this Action. Starting less than one week after serving the first set of discovery requests, Class Counsel began meeting and conferring with Defendant's counsel to negotiate a detailed protocol relating to the discovery of electronically stored information ("ESI") and hard copy documents, including negotiations regarding appropriate custodians and keywords for targeting relevant ESI. FitFlop has provided numerous witnesses for depositions and produced approximately 473,022 pages of documents. Discovery has included productions from both hard-copy files and electronic files. Class Counsel also obtained substantial discovery through non-party depositions and approximately 17 third-party subpoenas it caused to be served on Defendant's retailer partners, the American Podiatric Medical Association, the QVC television network, and one of Defendant's former executives. In total, Plaintiff served three sets of interrogatories, two sets of requests for admissions, and a set of document requests. Throughout the course of discovery the Parties engaged in substantial, discovery-related motion practice. In total, Plaintiff filed five motions to compel further discovery responses from Defendant. (D.E. Nos. 39 (August 20, 2012), 47 (October 18, 2012), 52 (November 26, 2012), 55 (December 5, 2012), 72 (March 21, 2013)). Additionally, Plaintiff sat for deposition, provided documents and written discovery responses, and Defendant moved to compel additional discovery from Plaintiff. (D.E. No. 40).

11. **ESI**: The Parties held substantial negotiations relating to the production of ESI. As part of the meet and confer process, FitFlop provided detailed network and organizational structure and retention policy information. As a result of these extensive meet and confer efforts, FitFlop produced

approximately 500,000 pages of documents from its network folders and the files of approximately 12 current and former employees. As discussed below, subpoenaed third-parties produced more than 16,500 documents. Class Counsel created a dedicated document database for the discovery obtained, and organized a team of attorneys who then analyzed and coded these productions over the course of months. These documents were used throughout the litigation, including in connection with retained experts, depositions, discovery motions, and the preparation of the briefing and related documents for class certification.

12. **Written Discovery**: Plaintiff served substantial amounts of discovery on FitFlop. In June 2012, Plaintiff served a first set of interrogatories, requests for admissions and document requests on FitFlop. These discovery requests generally related to the marketing, science, and sales of FitFlop Footwear. On October 4, 2012, Plaintiff served a second set of interrogatories on FitFlop. This discovery focused on identifying the final advertisements for the FitFlop Footwear. On October 23, 2012, Plaintiff served a third set of interrogatories on FitFlop that related to the retail sales figures for FitFlop Footwear. On March 14, 2013, Plaintiff served a second set of request for admissions that related to scientific testing and product advertising for the FitFlop Footwear. These written discovery requests were also the subject of meet and confer sessions between the Parties. On July 9, 2012, and July 17, 2012, Plaintiff provided written responses to FitFlop's document requests and interrogatories, respectively.

13. **Depositions**: Throughout the course of the litigation, Plaintiff's Counsel conducted seven depositions. Plaintiff Charlice Arnold was also deposed by FitFlop. On November 12-13, 2012, Class Counsel took the depositions of two of the primary researchers hired by FitFlop to conduct scientific research on its FitFlop Footwear. These depositions took place at the University of Salford, in Manchester, England. On November 19-20, 2012,

Class Counsel took the deposition of the President of FitFlop's United States operations, as well as the Fed. R. Civ. P. 30(b)(6) deposition of FitFlop's corporate designee relating to topics concerning the sales, profits and losses from the sale of FitFlop Footwear. On November 28-29, 2012, Plaintiff's Counsel took the deposition of Marcia Kilgore, FitFlop's Founder and former Chief Creative Officer, and Katie Neiman, FitFlop's Press Officer. Ms. Kilgore also testified as a corporate designee pursuant to Rule 30(b)(6). These depositions took place in London, England. On December 5, 2012, Plaintiff's Counsel took the subpoenaed deposition of FitFlop's former Director of North America, Justin Orrell-Jones. As a result of these depositions, Plaintiff received substantial testimony relating to the marketing and sale of FitFlop Footwear, as well as the scientific substantiation purportedly supporting the advertising claims at issue. On August 16, 2012, FitFlop took the deposition of Plaintiff Charlice Arnold.

14. **Third-Party Subpoenas**: Beginning in June 2012, and continuing throughout the litigation, Class Counsel also obtained substantial discovery through approximately seventeen third-party subpoenas:

SUBPOANED PARTY	SUBPOENA SCOPE
AAM Brand Management	Marketing and advertising of FitFlop Footwear.
Alison Brod Public Relations	Marketing and advertising of FitFlop Footwear.
Amazon.com	Retail sales of FitFlop Footwear.
American Podiatric Medical Association ("APMA")	Communications with FitFlop, including concerning seal of approval.
Brooklyn Brothers	Marketing and advertising of FitFlop Footwear.
Benchmark Brands, Inc. d/b/a Footsmart	Retail sales of FitFlop Footwear.

Gap, Inc.	Retail sales of FitFlop Footwear.
Justin Orrell-Jones	Requested documents and testimony from FitFlop's former Director of North America.
Lady Footlocker	Retail sales of FitFlop Footwear.
Macy's	Retail sales of FitFlop Footwear.
Nordstrom, Inc.	Retail sales of FitFlop Footwear.
QVC, Inc.	Communications with FitFlop, including concerning network claims substantiation.
Ross Stores, Inc.	Retail sales of FitFlop Footwear.
Sole Provisions	Retail sales of FitFlop Footwear.
Steiner's	Retail sales of FitFlop Footwear.
Victoria's Secret	Retail sales and marketing of FitFlop Footwear.
Zappos.com	Retail sales of FitFlop Footwear.

Plaintiff's Counsel engaged in meet and confer efforts with the subpoenaed parties, including to obtain responsive documents and thereafter business records certifications. Plaintiff's Counsel also negotiated a separate, stipulated confidentiality order with one third-party, QVC. As a result of Plaintiff's Counsel's extensive efforts, approximately 16,500 documents, including retail sales data, were obtained from third parties.

15. **Plaintiff's First Motion to Compel**: On August 20, 2012, the Parties filed briefing relating to Plaintiff's first motion to compel. (D.E. No. 39). Plaintiff moved to compel, inter alia, draft advertisements, communications among non-executives, draft agreements between FitFlop and third-party researchers, organizational structure information, foreign investigations into

FitFlop Footwear, additional ESI custodians, additional ESI keywords, and supplementation to FitFlop's initial disclosures. *Id.* On December 10, 2012, the Honorable Karen S. Crawford issued an order granting in part and denying in part the first motion to compel. (D.E. No. 57). The Court compelled FitFlop to produce documents in the possession of its foreign, parent corporation, as well as information about its organizational structure, additional ESI custodians, and to supplement its initial disclosures. *Id.*

16. **FitFlop's Motion to Compel**: On August 27, 2012, the Parties filed briefing relating to FitFlop's motion to compel further responses from Plaintiff Charlice Arnold. (D.E. No. 40). FitFlop moved to compel medical information. On December 20, 2012, the Court issued an order concerning FitFlop's motion to compel. (D.E. No. 58).

17. **Plaintiff's Second Motion to Compel**: On October 18, 2012, the Parties filed briefing relating to Plaintiff's second motion to compel. (D.E. No. 47). Plaintiff's second motion to compel concerned the relevant time period for discovery, FitFlop's confidentiality designations, the deposition of FitFlop's CEO, updated sales and expense information, and a document production deadline. *Id.* On January 4, 2013, the Court issued an order granting in part and denying in part Plaintiff's second motion to compel. (D.E. No. 59). The order required FitFlop to provide for deposition the CEO of FitFlop USA and its parent corporation. *Id.* The Court also ordered FitFlop to provide additional ESI, including from the personal email accounts of certain employees. *Id.*

18. **Plaintiff's Motion for Rule 16 Conference**: On November 26, 2012, the Parties filed briefing relating to Plaintiff's request for a Rule 16 conference in light of outstanding discovery and then-pending deadlines. (D.E. No. 49).

19. **Plaintiff's Third Motion to Compel**: On November 26, 2012, the Parties filed briefing relating to Plaintiff's third motion to compel. (D.E. No.

52). Plaintiff's third motion to compel concerned FitFlop's response to a request that it identify certain information about the final versions of its advertisements for FitFlop Footwear. *Id.* On January 14, 2013, the Court issued an order granting in part and denying in part Plaintiff's third motion to compel. As a result of this order, Plaintiff obtained detailed information about the final advertisements for the FitFlop Footwear.

20. **Plaintiff's Motion for International Discovery**: On November 26, 2012, the Parties filed briefing relating to Plaintiff's request under the United Kingdom Evidence (Proceedings in Other Jurisdictions) Act of 1975 (the "Evidence Act"). (D.E. No. 53). Plaintiff sought issuance of a Letter of Request under the Evidence Act to be filed by an English lawyer directly with the Senior Master, Queen's Bench Division of the High Court of Justice of the United Kingdom to secure documents and depositions from persons employed by FitFlop's parent corporation in London, as well as third-party researchers hired by FitFlop. *Id.* Because the proposed deponents were foreign citizens residing in the United Kingdom they could not be compelled to testify at trial in the United States. In connection with Plaintiff's request under the Evidence Act, Class Counsel retained local counsel in London, England. On March 11, 2013, the Court issued an order granting in part and denying in part without prejudice Plaintiff's request for international judicial assistance. (D.E. No. 69).

21. **Plaintiff's Fourth Motion to Compel**: On December 5, 2012, the Parties filed briefing relating to Plaintiff's fourth motion to compel. (D.E. No. 55). Plaintiff's fourth motion to compel concerned information regarding FitFlop's wholesale sales of the FitFlop Footwear. *Id.* On January 17, 2013, the Court issued an order denying Plaintiff's fourth motion to compel. (D.E. No. 62).

22. **Plaintiff's Fifth Motion to Compel**: On March 21, 2013, the Parties filed briefing concerning Plaintiff's fifth motion to compel. (D.E. No.

72). Plaintiff's fifth motion to compel sought further responses concerning FitFlop's sales information.

23. **Plaintiff's Motion for Class Certification**: On March 25, 2013, Plaintiff filed a motion for class certification. (D.E. No. 76). Attached to Plaintiff's opening brief were 56 exhibits concerning the marketing and science relating to the FitFlop Footwear. Also attached was the expert declaration of Dr. Thomas Maronick concerning his survey of 251 consumers regarding advertisements for FitFlop Footwear. On May 6, 2013, FitFlop filed its opposition to the motion for class certification. (D.E. No. 87). On May 13, 2013, Plaintiff filed her reply in support of class certification. (D.E. No. 90). Plaintiff attached substantial evidentiary support with her reply brief as well. As discussed below, the Parties reached this Settlement before the Court ruled on Plaintiff's motion for class certification.

24. **Settlement Negotiations**: At the same time the Parties were engaging in extensive briefing and discovery efforts, they were also engaging in hard-fought and protracted settlement negotiations. After engaging in preliminary negotiations, the Parties agreed to mediation with the Martin Quinn, Esq. of JAMS (San Francisco). The Parties engaged in several, arm's-length mediations sessions before Mr. Quinn. Class Counsel's first mediation session with Martin Quinn was held on October 9, 2012. The Parties were not able to resolve the litigation, and much of the hard-fought litigation described above, occurred following this first mediation session. A second session with Martin Quinn was held on June 19, 2013, following briefing of the motion for class certification. The second mediation session was unsuccessful as well. Following the second formal mediation session, the Parties continued to engage in arms-length negotiations, and as a result, on August 16, 2013, executed a detailed term sheet whose terms are reflected in this Settlement.

25. Every aspect of this Settlement was heavily negotiated, including the overall dollar amount of the Settlement, the injunctive relief, each aspect of the Settlement Agreement and exhibits, the release, the amounts available to individual Class Members making claims, the claims process and the Class Member notice and outreach program. Although all material terms had been agreed upon, over the last few months, the Parties have continued to exchange drafts of each of the Settlement's exhibits and to negotiate the precise wording of the Stipulation of Settlement. This process was also hard-fought and protracted.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 13th day of December, 2013, at San Diego, California.

/s/ Timothy G. Blood
TIMOTHY G. BLOOD

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 13, 2013.

s/ Timothy G. Blood
TIMOTHY G. BLOOD

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FIRM RESUME

BLOOD HURST & O'REARDON | LLP

Blood Hurst & O'Reardon, LLP specializes in the nationwide prosecution of complex class and representative actions. The firm represents the interests of consumers, insurance policy holders and investors in state and federal trial and appellate courts throughout the country. The principals of Blood Hurst & O'Reardon come from a large firm that represented plaintiffs in class action litigation, where they formed the core of the consumer and insurance practice group. Blood Hurst & O'Reardon's principals have been appointed lead counsel and have held other leadership positions in a wide variety of class action matters.

Timothy G. Blood

Mr. Blood is the firm's managing partner. His practice has focused on complex litigation, including class action litigation, since the early 1990's. Mr. Blood has tried class action cases and is highly regarded in the field of consumer protection law, including California's Unfair Competition Law and Consumers Legal Remedies Act.

Mr. Blood has represented millions of retail consumers, holders of life, automobile and homeowner's insurance policies, mortgagors, credit card customers, homeowners, and victims of race discrimination. He practices in both state and federal courts throughout the country, and has represented the interests of consumers formally or informally before the Federal Trade Commission, the California Department of Justice, the California Legislative Analyst's Office and the California Department of Insurance. He has worked with the Federal Trade Commission to obtain record setting recoveries for consumers.

Since 2010, Mr. Blood's court-appointed leadership positions include: Federal Rule of Civil Procedure 23(g) Class Counsel in *Godec v. Bayer Corp.*, Case No. Case No. 1:10-CV-00224-JG (N.D. OH); Federal Rule of Civil Procedure 23(g) Class Counsel in *Johns v. Bayer Corp.*, Case 09-cv-1935-AJB (DHB) (S.D. Cal.); Plaintiffs' Liaison Counsel by the United States District Court for the Southern District of California in the multidistrict litigation *In re: Sony Gaming Networks and Customer Data Breach Security Litigation*; Class Counsel by the district court for the District of Massachusetts in *In re: Reebok Easytone Litigation*; Class Counsel in *Victor E. Bianchi v. Bosa Development California* by the San Diego Superior Court; Co-Lead Class Counsel by the Los Angeles Superior Court in *In re: Toyota Motor Cases*, JCCP No. 4621 (Toyota Unintended Acceleration Consolidated Litigation); Co-Lead Class Counsel by the United States District Court for the Southern District of California in the multidistrict litigation *In re: Hydroxycut Marketing and Sales Practices Litigation*; to the Plaintiffs' Steering Committee by the United States District Court for the Eastern District of Louisiana to lead the multidistrict litigation *In re: Apple iPhone 3G and 3GS "MMS" Marketing and Sales Practices Litigation*; to the plaintiffs' Executive Committee by the United States District Court for the District of New Jersey to lead the multidistrict litigation *In re: Cheerios Marketing & Sales Practices Litigation*; Co-Lead Class Counsel by the United States District Court for the Central District of California in *Johnson v. General Mills, Inc.*; Co-Lead Class Counsel by the United States District Court for the Southern District of California in *Hartless v. Clorox Company*; and Class Counsel by the United States District Court for the Southern District of Florida in *Smith v. Wm. Wrigley, Jr. Company*. Recently, Mr. Blood has acted as lead counsel in a number of "functional food" false advertising class actions, including cases against General Mills and The Dannon Company filed in federal courts around the country. The Dannon litigation resulted in

the largest settlement in food industry history for false advertising. He was lead trial counsel in *Lebrilla v. Farmers Insurance Group, Inc.*, a multistate class action which settled on terms favorable to the class after a month long trial and just before closing arguments. He was also co-lead trial counsel in *In re Red Light Photo Enforcement Litigation*, an action brought on behalf of California motorists.

Mr. Blood has represented millions of purchasers of food, food supplements and over-the-counter drugs arising out of various advertising claims made by manufacturers and retailers. He has also represented owners of motor vehicles in product liability cases, and consumer credit and mortgage borrowers against a number of major lending institutions, including Bank of America, Washington Mutual, Countrywide, GMAC and Wells Fargo.

Mr. Blood has extensive experience litigating against life, auto and other insurance carriers on behalf of consumers. His experience litigating against life insurance companies includes representing owners, holders and beneficiaries of industrial life insurance in race discrimination cases (with class periods dating back to the late 1800's). He also represented those holding traditional life insurance policies in market conduct actions such as the "vanishing premium" life insurance actions. Mr. Blood was responsible for one of only two litigated cases where classes where certified in the vanishing premium series of cases. He was also one of the few plaintiffs' attorneys to obtain class-wide recoveries in the "imitation parts" automobile insurance actions. Insurance companies against whom Mr. Blood has litigated include the American General companies, Farmers Insurance Group of Companies, Mercury Insurance Group, Allstate, State Farm, Great Southern Life, Metropolitan Life, United Life Insurance Company, Midland National Life Insurance Company and General American Insurance Company.

Mr. Blood has also represented consumers in traditional false advertising actions, those victimized by so-called "negative option" sales practices, and owners of a variety of different types of faulty computer equipment and software from manufacturers. Some of these retailers and manufacturers include Apple, Dell, IBM, Procter & Gamble, General Mills, The Dannon Company, Bayer, AG, Bosa Development, Kellogg Company and General Dynamics.

Mr. Blood has been involved in a number of precedent-setting appellate decisions in areas which include consumer and insurance law and class action procedure. These appellate decisions include: *Corvello v. Wells Fargo Bank, NA*, 728 F.3d 878 (9th Cir. 2013) (consumer protection and banking); *Fitzpatrick v. General Mills, Inc.*, 635 F.3d 1279 (11th Cir. 2011) (class certification, consumer law and false advertising); *Westwood Apex v. Contreras*, 644 F.3d 799 (9th Cir. 2011) (CAFA jurisdiction); *Kwikset Corp. v. Superior Court (Benson)*, 51 Cal. 4th 310 (2011) (consumer law and false advertising); *Martinez v. Wells Fargo Home Mortgage, Inc.*, 598 F. 3d 549 (9th Cir. 2010) (banking and preemption); *Troyk v. Farmers Group, Inc.*, 171 Cal. App. 4th 1305 (2009) (insurance law); *Lebrilla v. Farmers Group, Inc.*, 119 Cal. App. 4th 1070 (2004) (automobile insurance and class action procedure); *Moore v. Liberty Nat'l Life Ins. Co.*, 365 F.3d 408 (5th Cir. 2004) (life insurance and civil rights); *McKell v. Washington Mutual Bank, Inc.*, 142 Cal. App. 4th 1457 (2006) (banking law and consumer law); *Lavie v. Procter & Gamble, Inc.*, 105 Cal. App. 4th 496 (2003) (consumer law and false advertising); *Hawaii Medical Ass'n v. Haw. Med. Serv. Ass'n*, 148 P.3d 1179 (Haw. 2006) (health insurance); *Kruse*

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v. Wells Fargo Home Mortgage, Inc., 383 F.3d 49 (2d Cir. 2004) (consumer and banking law); and *Santiago v. GMAC Mortgage Group, Inc*., 417 F.3d 384 (3d Cir. 2005) (consumer and banking law).

Mr. Blood has testified before the California State Assembly and State Senate Judiciary Committees, as well as the Assembly and Senate Committees on Banking, Finance & Insurance. He has worked at both the state and federal level with lawmakers and government agencies to shape legislation to protect consumer rights, including lobbying on the Class Action Fairness Act of 2005 and working to defeat a California state ballot initiative designed to weaken the class action device.

Mr. Blood is a frequent continuing legal education speaker on topics which include complex litigation, class action procedure, financial fraud litigation, insurance litigation and consumer fraud. He has been an invited speaker for American Bar Association practice groups, the Practicing Law Institute, University of San Diego School of Law, Loyola Law School, American Association of Justice, Consumer Attorneys of California, ALI-ABA, the National Practice Institute, Bridgeport Continuing Education, Law Seminars International and the Consumer Attorneys of San Diego, for which he chairs a multi-day seminar on class action litigation.

Mr. Blood is frequently consulted by the media. He has appeared on Good Morning America, ABC World News Tonight, and major network affiliates on behalf of his clients. He has been interviewed for stories featuring consumer rights issues and his cases by *The New York Times*, *The Wall Street Journal*, *Bloomberg*, Reuters, the Associate Press, *The Los Angeles Times*, the *Daily Journal*, *Adweek*, CNBC, Fox News, the Korean Broadcasting Service and others.

Mr. Blood serves on the Board of Directors of the Consumer Attorneys of California, and on the Executive Board of the Consumer Attorneys of San Diego. In 2007, he was a finalist for the Consumer Attorneys of California Lawyer of the Year award for his trial work in a multistate class action against Farmers Insurance. He has been named a "Super Lawyer" since 2006 and has achieved an "AV" rating by Martindale Hubbell. Mr. Blood is also the Legislative Column Editor for *Trial Bar News*.

Mr. Blood is admitted to practice in the state of California, as well as the United States Courts of Appeal for the Third, Fifth, Sixth, Eighth, Ninth and Eleventh Circuits, and the United States District Courts for the Southern, Central, Northern and Eastern Districts of California, the Eastern District of Arkansas and the Eastern District of Michigan. Before starting Blood Hurst & O'Reardon, Mr. Blood was a partner in Milberg Weiss Bershad Hynes & Lerach, LLP and Coughlin Stoia Geller Rudman & Robbins, LLP. Mr. Blood received his Juris Doctor from George Washington University in 1990 and his Bachelor of Arts with honors in Economics from Hobart College in 1987.

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Leslie E. Hurst

Ms. Hurst is a co-founding partner of the firm. Her practice has focused on complex class action lawsuits, including federal multi-district litigation and California Judicial Council Coordinated Proceedings, with an emphasis on consumer fraud and insurance cases under California's consumer protection statutes.

Prior to founding the firm, Ms. Hurst was a partner at Coughlin Stoia Geller Rudman & Robbins LLP and an associate at Milberg Weiss Bershad Hynes & Lerach LLP. While practicing at those law firms, Ms. Hurst worked in a number of practice areas, including areas focusing on cases against: (1) life insurers for misrepresenting the terms of vanishing premium life insurance; (2) auto insurers for repairs with non-OEM parts, diminished value claims and improper collection of installment service charges; (3) financial institutions for a variety of conduct (including aiding in obtaining a favorable appellate ruling in *Corvello v. Wells Fargo Bank, NA*, Slip Op. No. 11-16234 (9th Cir., August 8, 2013(for publication)); (4) insurance companies for race-based discrimination in the sale of small value "industrial" or "burial" insurance policies; and (5) consumer goods manufacturers for false and deceptive advertising.

Between 2003 and 2005, Ms. Hurst took a sabbatical from law and moved to Sri Lanka where she worked for CARE International as Coordinator for Strategic Planning with an emphasis on development of CARE's long-term strategic plan for the conflict-affected areas.

Ms. Hurst is admitted to practice in the state of California, as well as the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Southern, Central and Northern Districts of California. Ms. Hurst received her Juris Doctor degree from the University of California, Hastings College of the Law in 1995. She earned her Master of Arts degree in Sociology from the University of California, Berkeley and a Bachelor of Arts degree in Sociology (*cum laude*) from the University of San Diego. Ms. Hurst is an active member of the Lawyers Club, Consumer Attorneys of San Diego, and Consumer Attorneys of California.

Thomas J. O'Reardon II

Mr. O'Reardon is a co-founding partner of the firm. His practice focuses exclusively on complex class action lawsuits involving consumer fraud, insurance fraud, antitrust and securities fraud litigation. Mr. O'Reardon earned his Bachelor of Arts degree in Politics from Wake Forest University and his Juris Doctor degree from the University of San Diego. He is licensed to practice law in all California state courts, the United States Courts of Appeal for the Sixth, Eighth, Ninth and Eleventh Circuits, as well as the United States District Courts for the Southern, Central, Eastern and Northern Districts of California, and the United States District Court for the Eastern District of Arkansas.

Prior to founding the firm, Mr. O'Reardon worked at Coughlin Stoia Geller Rudman & Robbins LLP. There, Mr. O'Reardon worked on numerous complex class action litigation matters, including actions involving: annuity policies marketed and sold to senior citizens; insurer kickbacks known as "contingent commissions" in the property and casualty insurance

brokerage industry; Sherman Act claims against the world's largest manufacturers of random access memory for computers; invasions of credit card holder's rights of privacy; false and deceptive advertising of consumer goods and wireless telephone services; automobile insurers' unlawful practices with respect to installment pay plans; and dangerous and defective products, including recalled children's toys. He was also part of the team representing the California Department of Insurance against five of the largest employee benefit insurance companies for violations relating to their failure to disclose payments of contingent commissions to brokers. As a result of the action, all five defendants agreed to sweeping changes in their disclosure practices.

Some of the actions on which Mr. O'Reardon has worked include: *In re Skechers Toning Shoes Prods. Liab. Litig.* (nationwide settlement of $45 million involving false advertising of Skechers' Shape-ups toning shoes products); *In re Reebok Easytone Litigation* (nationwide settlement of $25 million involving false advertising of Reebok toning footwear and apparel products); *Dolfo v. Bank of America* (certified class action pending preliminary settlement approval); Johnson *v. General Mills, Inc.* (certified class action involving false advertising of General Mills' YoPlus yogurt, which resulted in a nationwide settlement of $8.5 million); *Johns v. Bayer Corp.* (certified class action involving false advertising of Bayer's One-A-Day multivitamins); *Blessing v. Sirius XM Radio, Inc.* (nationwide settlement valued in excess of $180 million involving monopoly price increases arising out of the merger between Sirius and XM); *In re Dynamic Random Access Memory Antitrust Litig*. (settlement of more than $300 million); *In re Mattel, Inc. Toy Lead Paint Prods. Liab. Litig*. (nationwide settlement valued at over $50 million); *Gemelas v. The Dannon Co., Inc.* (nationwide settlement in excess of $45 million involving false advertising of Dannon's Activia and DanActive yogurt products); *In re Enfamil LIPIL Mktg. & Sales Practices Litig.* (nationwide settlement in excess of $8 million involving false advertising of infant formula); *Smith v. Wm. Wrigley Jr. Co.* (nationwide settlement in excess of $7 million involving false advertising of Wrigley Eclipse chewing gum and mints); *Duffer v. Chattem, Inc.* (nationwide settlement of up to $1.8 million involving false advertising of ACT Total Care mouthwash); *In re Enron Corp. Sec. Litig.* (settlements of $7.3 billion); *AOL Time Warner Cases* (settlements of approximately $630 million); *Morris v. CBS Broadcasting, Inc.* (nationwide settlement on behalf of purchasers of asbestos-laden children's toys); *In re Aqua Dots Prods. Liab. Litig.* (multidistrict litigation on behalf of purchasers of more than 4 million toxic children's toys); and *Berry v. Mega Brands, Inc.* (litigation on behalf of purchasers of more than 10 million lethal children's toys). With the exception of the *Sirius XM Radio* litigation, Mr. O'Reardon and/or his firm served as court-appointed Lead or Co-Lead Counsel in each of the above-mentioned class actions. In granting final settlement approval, which included appointing Mr. O'Reardon as Class Counsel, the Court's order in the *Johnson v. General Mills* (C.D. Cal.) action states that Mr. O'Reardon is "vastly experienced" in consumer class action litigation.

Mr. O'Reardon is an active member of the Consumer Attorneys of San Diego, the Consumer Attorneys of California, and a founding member of the CAOC Young Lawyers Division. He is also a member of, and has been a contributing author for, The Sedona Conference Working Group on Electronic Document Retention and Production. Mr. O'Reardon has been an invited speaker for the University of San Diego School of Law, Consumer Attorneys

of California, and the Consumer Attorneys of San Diego on topics which include complex litigation, electronic discovery, and the class action settlement process.

Paula M. Roach

Paula M. Roach is an associate with the firm. Her practice focuses on complex class action litigation, including consumer and antitrust cases. Ms. Roach earned her Bachelor of Arts degree in Political Science from the University of Washington in 2004 and graduated cum laude from California Western School of Law in 2007. While at California Western, Ms. Roach was a member of the *California Western Law Review* and authored *Parent-Child Relationship Trumps Biology: California's Definition of Parent in the Context of Same-Sex Relationships*, 43 Cal. W. L. Rev. 235 (2006). She is a member of the California Bar and is licensed to practice before the United States District Courts for the Central, Southern and Northern Districts of California, the United States District Court for the Northern District of Illinois and the United States Courts of Appeals for the Eighth and Ninth Circuits.

Prior to joining Blood Hurst & O'Reardon, Ms. Roach was an associate at Coughlin Stoia Geller Rudman & Robbins. While there, she represented plaintiffs in a number of complex class action litigation matters involving: price-fixing claims against the world's largest aftermarket auto lighting parts manufacturers and distributors; monopoly claims against the largest seller of portable media players; price fixing claims against containerboard manufacturers; race-discrimination claims against mortgage lenders; and false and deceptive practices in the sale of defective children's products and toys. Some of these actions include: *In re Apple iPod iTunes Antitrust Litigation* (N.D. Cal.); *In re Mattel, Inc. Toy Lead Paint Prods. Liab. Litigation* (C.D. Cal.); *In re Aftermarket Automotive Lighting Products Antitrust Litigation* (C.D. Cal.); *Payares v. Chase Bank* (C.D. Cal.); *Salazar v. Greenpoint Mortgage* (N.D. Cal.); *Puello v. Citifinancial* (D. Mass.); *Morris v. CBS Broadcasting* (S.D.N.Y.); *In re Aqua Dots Prods. Liab. Litigation* (N.D. Ill.); and *Berry v. Mega Brands, Inc.* (D.N.J.).

EXHIBIT B

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

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FIRM RESUME

Wolf Haldenstein Adler Freeman & Herz LLP

Founded in 1888, Wolf Haldenstein Adler Freeman & Herz LLP is a full service law firm specializing in complex litigation in federal and state courts nationwide. The firm practice groups include pension/benefits, corporate/tax, real estate, trusts and estates, healthcare, bankruptcy, limited partnerships, and civil and commercial litigation. The Firm has a particular specialty in complex class action litigation – including consumer, antitrust, shareholder, ERISA litigation, and biotechnology – under both federal and state law.

Wolf Haldenstein's total practice approach distinguishes it from other firms. Our longstanding tradition of a close attorney/client relationship ensures that each one of our clients receives prompt, individual attention and does not become lost in an institutional bureaucracy. Our team approach is at the very heart of Wolf Haldenstein's practice. All of our lawyers are readily available to all of our clients and to each other. The result of this approach is that we provide our clients with an efficient legal team having the broad perspective, expertise and experience required for any matter at hand. We are thus able to provide our clients with cost effective and thorough counsel focused on our clients' overall goals.

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The Firm

Wolf Haldenstein has been recognized by state and federal courts throughout the country as being highly experienced in complex litigation, particularly with respect to securities, consumer, ERISA, FLSA and state overtime and expense deductions, and antitrust class actions and shareholder rights litigation.

Among its colleagues in the plaintiffs' bar, as well as among its adversaries in the defense bar, Wolf Haldenstein is known for the high ability of its attorneys, and the exceptionally high quality of its written and oral advocacy on behalf of class action clients.

The nature of the Firm's activities in both individual and representative litigation is extremely broad. In addition to a large case load of securities fraud and other investor class actions, Wolf Haldenstein has represented classes of corn and rice farmers in connection with the devaluation of their crops; contact lens purchasers for contact lens manufacturers' violations of the antitrust laws; merchants compelled to accept certain types of debit cards; insurance policyholders for insurance companies' deceptive sales practices; victims of unlawful strip searches under the civil rights laws; and various cases involving violations of Internet users' on-line privacy rights.

The Firm's experience in class action securities litigation, in particular public shareholder rights under state law and securities fraud claims arising under the federal securities laws and regulations, including the Private Securities Litigation Reform Act of 1995 ("PSLRA"), is particularly extensive. The Firm was one of the lead or other primary counsel in securities class action cases that have recouped billions of dollars on behalf of investor classes, in stockholder rights class actions that have resulted in billions of dollars in increased merger consideration to shareholder classes, and in derivative litigation that has recovered billions of dollars for corporations.

Its pioneering efforts in difficult or unusual areas of securities or investor protection laws include: groundbreaking claims that have been successfully brought under the Investment Company Act of 1940 regarding fiduciary responsibilities of investment companies and their advisors toward their shareholders; claims under ERISA involving fiduciary duties of ERISA trustees who are also insiders in possession of adverse information regarding their fund's primary stockholdings; the fiduciary duties of the directors of Delaware corporations in connection with change of control transactions; the early application of the fraud-on-the-market theory to claims against public accounting firms in connection with their audits of publicly traded corporations; and the application of federal securities class certification standards to state law claims often thought to be beyond the reach of class action treatment.

The Class Action Litigation Group consists of 40 attorneys and 8 paraprofessional assistants. Brief resumes of these attorneys begin on page 25.

Also included are the resumes of attorneys from other areas of the Firm's practice who routinely lend their expertise to the Firm's class action litigators in the areas of tax, bankruptcy, corporate, trusts, labor, and ERISA law. The ability to call upon the internal expertise of practitioners in such varied areas of the law greatly enhances the strength and efficiency of the Firm's representative litigation practice and, indeed, makes Wolf Haldenstein unique among national firms specializing in class action litigation.

Judicial Commendations

Wolf Haldenstein has repeatedly received favorable judicial recognition. The following representative judicial comments over the past decade indicate the high regard in which the Firm is held:

- *In re Empire State Realty Trust, Inc. Investor Litig.*, No. 650607/2012 (Sup. Ct. N.Y. Co.) – On May 2, 2013, Justice O. Peter Sherwood praised the Firm in its role as chair of the committee of co-lead counsel as follows: "It is apparent to me, having presided over this case, that class counsel has performed in an excellent manner, and you have represented your clients quite well. You should be complimented for that." In awarding attorneys' fees, the Court stated that the fee was "intended to reward class counsel handsomely for the very good result achieved for the Class, assumption of the high risk of Plaintiffs prevailing and the efficiency of effort that resulted in the settlement of the case at an early stage without protracted motion practice." May 17, 2013 slip. op. at 5 (citations omitted).

- *Roberts v. Tishman Speyer*, 13 N.Y.3d 270 (N.Y. 2009) – On April 9, 2013, Justice Richard B. Lowe III praised the Firm's efforts as follows: "[W]hen you have challenging cases, the one thing you like to ask for is that the legal representation on both sides rise to that level. Because when you have lawyers who are professionals, who are confident, who are experienced, each of you know that each side has a job to do [. . . .] I want to tell you that I am very satisfied with your performance and with your, quite frankly, tenacity on both sides. And it took six years, but look at the history of the litigation. There were two appeals all of the way to the Court of Appeals [. . . .] And then look at the results. I mean, there are dissents in the Court of Appeals, so that shows you the complexity of the issues that were presented in this litigation [. . . .] [I]t shows you effort that went into this and the professionalism that was exhibited [. . . .] So let me just again express my appreciation to both sides."

- *K.J. Egleston L.P. v. Heartland Industrial Partners, et al.*, 2:06-13555 (E.D. Mich.) – where the Firm was Lead Counsel, Judge Rosen, at the June 7, 2010 final approval hearing, praised the Firm for doing "an outstanding job of representing [its] clients," and further commented that "the conduct of all counsel in this case and the result they have achieved for all of the parties confirms that they deserve the national recognition they enjoy."

- *Klein, et al. v. Ryan Beck Holdings, Inc., et al.*, 06-cv-3460 (DAB) (S.D.N.Y.) – where the Firm was Lead Counsel, Judge Deborah A. Batts described the Firm's successful establishment of a settlement fund as follows: "[a] miracle that there is a settlement fund at all." Judge Batts continued: "As I said earlier, there is no question that the litigation is complex and of a large and, if you will, *pioneering magnitude ...*" (Emphasis added).

- *Parker Friedland v. Iridium World Communications, Ltd.*, 99-1002 (D.D.C.) – where the Firm was co-lead counsel, Judge Laughrey said (on October 16, 2008), "[a]ll of the attorneys in this case have done an outstanding job, and I really appreciate the quality of work that we had in our chambers as a result of this case."

- *In re Dynamic Random Access Memory Antitrust Litigation*, MDL-02-1486 (N.D. Cal.) – where the Firm was co-lead counsel, Judge Hamilton said (on August 15, 2007), "I think I can conclude on the basis with my five years with you all, watching this litigation progress and seeing it wind to a conclusion, that the results are exceptional. The percentages, as you have outlined them, do put this [case] in one of the upper categories of results of this kind of [antitrust] class action. I am aware of the complexity . . . I thought that you all did an exceptionally good job of bringing to me only those matters that really required the Court's attention. You did an exceptionally good job at organizing and managing the case, assisting me in management of the case. There was excellent coordination between all the various different plaintiffs' counsel with your group and the other groups that are part of this litigation . . . So my conclusion is the case was well litigated by both sides, well managed as well by both sides."

- *In re Comdisco Sec. Litigation*, 01 C 2110 (N.D. Ill. July 14, 2005) – Judge Milton Shadur observed: "It has to be said . . . that the efforts that have been extended [by Wolf Haldenstein] on behalf of the plaintiff class in the face of these obstacles have been exemplary. And in my view [Wolf Haldenstein] reflected the kind of professionalism that the critics of class actions . . . are never willing

to recognize. . . . I really cannot speak too highly of the services rendered by class counsel in an extraordinary difficult situation."

- *In re MicroStrategy Securities Litigation*, 150 F. Supp. 2d 896, 903 (E.D. Va. 2001) – where the Firm was co-lead counsel, Judge Ellis commented: "Clearly, the conduct of all counsel in this case and the result they have achieved for all of the parties confirms that they deserve the national recognition they enjoy."

Recent Noteworthy Results

Wolf Haldenstein's performance in representative litigation has repeatedly resulted in favorable results for its clients. The Firm has helped recover almost ***seven billion dollars*** on behalf of its clients in the cases listed below. Recent examples include the following:

- *In re Genetically Modified Rice Litigation*, MDL 1811 (E.D. Mo.) - Wolf Haldenstein represented U.S. rice farmers in this landmark action against Bayer A.G. and its global affiliates, achieving a global recovery of $750 million. The case arose from the contamination of the nation's long grain rice crop by Bayer's experimental and unapproved genetically modified Liberty Link rice.

- *Roberts v. Tishman Speyer*, 13 N.Y.3d 270 (N.Y. 2009) - a class action brought on behalf of over 27,500 current and former tenants of New York City's iconic Stuyvesant Town and Peter Cooper Village housing complexes. On April 9, 2013, Justice Richard B. Lowe III of the New York Supreme Court finally approved settlement of the action, which totals over $173 million, sets aside $68.75 million in damages, re-regulates the apartments at issue, and sets preferential rents for the units that will save tenants significant monies in the future. The settlement also enables the tenants to retain an estimated $105 million in rent savings they enjoyed between 2009 and 2012. **The settlement is by many magnitudes the largest tenant settlement in United States history.**

- *In re Empire State Realty Trust, Inc. Investor Litig.*, Index No. 650607/2012 – The firm served as Chair of the Executive Committee of Co-Lead Counsel for the Plaintiffs in a class action settlement finally approved on May 2, 2013 that provides for the establishment of a $55 million settlement fund for investors, in addition to substantial tax deferral benefits estimated to be in excess of $100 million.

- *American International Group Consolidated Derivative Litigation*, Civil Action No. 769-VCS (Del. Ch.) The Firm acted as co-lead counsel and the settlement addressed claims alleging that the D&O Defendants breached their fiduciary duties to the Company and otherwise committed wrongdoing to the detriment of AIG in connection with various allegedly fraudulent schemes during the 1999-2005 time period.

- *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, Master File No. 09 MD 2058 (S.D.N.Y.) (firm was co-lead counsel in parallel derivative action pending in Delaware (*In Re Bank of America Stockholder Derivative Litigation*, C.A. No. 4307-CS (Del. Ch.)) (increase of settlement cash recovery from $20 million to $62.5 million).

- *The Investment Committee of the Manhattan and Bronx Service Transit Operating Authority Pension Plan v. JPMorgan Chase Bank,* N.A., 1:09-cv-04408-SAS (S.D.N.Y.) (class recovered $150 million).

- *In re Tremont Sec. Law, State Law and Insurance Litig*., No. 08-civ-11117 (TPG) (SDNY) (class recovered $100 million). The firm was court-appointed co-lead counsel in the Insurance Action, 08 Civ. 557, and represented a class of persons who purchased or otherwise acquired Variable Universal Life ("VUL") insurance policies or Deferred Variable Annuity ("DVA") policies issued by Tremont International Insurance Limited or Argus International Life Bermuda Limited from May 10, 1994 - December 11, 2008 to the extent the investment accounts of those policies were exposed to the massive Ponzi scheme orchestrated by Bernard L. Madoff through one or more Rye funds.

- *In re Initial Public Offering Securities Litigation*, 21 MC 92 (SAS) (S.D.N.Y.) (class recovered $586 million). Wolf Haldenstein served as Co-Lead Counsel of one of the largest securities fraud cases in history. Despite the United States Court of Appeals for the Second Circuit's decision to vacate the district court's class certification decision, on remand, counsel for plaintiffs were able to press on to a settlement on April 1, 2009, ultimately recovering in excess of a half-billion dollars.

FIRM PRACTICE AREAS

Securities and Derivative Cases

Wolf Haldenstein is a leader in the class and derivative action litigation field and is currently or has been the court-appointed lead counsel, co-lead counsel, or executive committee member in some of the largest and most significant class action and derivative action lawsuits in the United States. For example, the class action *Roberts v. Tishman Speyer*, 13 N.Y.3d 270 (N.Y. 2009) was recently described by a sitting member of the U.S. House of Representatives as the greatest legal victory for tenants in her lifetime. In *Roberts*, the Firm obtained a victory in the New York Court of Appeals requiring the reregulation of thousands of apartment units in the Stuyvesant Town complex in Manhattan, New York. Many of the firm's other successful results are summarized within.

Private Actions for Institutional Investors

In addition to its vast class action practice, the Firm also regularly represents institutional clients such as public funds, investment funds, limited partnerships, and qualified institutional buyers in private actions. The Firm has represented institutional clients in non-class federal and state actions concerning a variety of matters, including private placements, disputes with investment advisors, and disputes with corporate management.

The Firm has also acted as special counsel to investors' committees in efforts to assert and advance the investors' interests without resorting to litigation. For example, the Firm served as Counsel to the Courtyard by Marriott Limited Partners Committee for several years in its dealings with Host Marriott Corporation, and as Special Counsel to the Windsor Park Properties 7 and 8 limited partners to insure the fairness of their liquidation transactions.

Antitrust Litigation

Wolf Haldenstein is a leader in the field of antitrust and competition litigation. The Firm actively seeks to enforce the federal and state antitrust laws to protect and strengthen the rights and claims of businesses, organizations, Taft-Hartley funds, and consumers throughout the United States. To that end, Wolf Haldenstein commences large, often complex, antitrust and trade regulation class actions and other cases that target some of the most powerful and well-funded corporate interests in the world. Many of these interests exert strong influence over enforcement policy that is in the hands of elected officials, so that private enforcement provides the only true assurance that unfair and anticompetitive conduct will be duly scrutinized for compliance with

the law. These cases frequently bring to light concealed, unlawful behavior such as price fixing, monopolization, market allocation, monopoly leveraging, essential facilities, tying arrangements, vertical restraints, exclusive dealing, and refusals to deal. Wolf Haldenstein's Antitrust Practice Group has successfully prosecuted numerous antitrust cases and aggressively advocates remedies and restitution for businesses and investors wronged by violations of the antitrust laws. For example, in *In re DRAM Antitrust Litigation*, No. 02-cv-1486 (PJH) (N.D. Cal.) the firm successfully prosecuted an antitrust case resulting in a $315 million recovery. Many of the firm's successful results are summarized within.

Wolf Haldenstein attorneys currently serve as lead counsel, co-lead counsel, or as executive committee members in some of the largest and most significant antitrust class action lawsuits.

Biotechnology and Agricultural Litigation

Wolf Haldenstein is a leader in biotechnology and agricultural litigation. The firm has represented U.S. row crop farmers and others harmed by crop supply contamination, price fixing of genetically-modified crop seeds, and false claims and representations relating to purportedly "organic" products. The firm has prosecuted actions in these fields against domestic and international biotechnology and crop science companies under the federal and state antitrust laws, consumer protection and deceptive trade practice statues, and the common law. As a leader in this field, Wolf Haldenstein pioneered approaches now commonly used in these types of cases, including the use of futures-based efficient market analyses to fashion damages models relating to the underlying commodity crops. The firm has served or is currently serving as lead or co-lead counsel in some of the most significant biotechnology and agricultural class actions pending or litigated in the United States. For example, in *In re Genetically Modified Rice Litigation*, MDL 1811 (E.D. Mo.) the firm prosecuted a multidistrict product liability litigation brought on behalf of United States long-grain rice producers that ultimately settled in July 2011 for $750 million. Many of the firm's other successful results are summarized within.

Overtime and Compensation Class Actions

Wolf Haldenstein is a leader in the field of class action litigation on behalf of employees who have not been paid overtime or other compensation they are entitled to receive, or have had improper deductions taken from their compensation. These claims for violations of the federal Fair Labor Standards Act and state labor laws allege improper failure to pay overtime and other wages, and improper deductions from compensation for various company expenses. Wolf Haldenstein has served as lead or co-lead counsel,

or other similar lead role, in some of the most significant overtime class actions pending in the United States, and has recovered hundreds of millions of dollars in recovered wages for its clients. For example, in *LaVoice v. Citigroup Global Markets, Inc*., Case No. C 07-801 (CW) (N.D. Cal.)) the firm secured a $108 million settlement. Many of the firm's other successful results in this field are summarized within.

Real Estate

In keeping with out commitment to provide a full range of services to our clients, Wolf Haldenstein Adler Freeman & Herz LLP has a comprehensive real estate practice, which encompasses representation of clients in the acquisition, sale, financing, leasing, development, restructuring, syndication and management of commercial and residential properties throughout the United States. In addition, we have one of the largest practices in the New York Metropolitan area, representing cooperative corporations, and condominium associations. The Firm also has a comprehensive litigation practice that covers all facets of real estate matters ranging from landlord/tenant matters to construction litigation. Our comprehensive knowledge of the real estate industry is coupled with a solid understanding of the complex laws that affect it, and, in particular, the Federal, State, and City income tax consequences associated with the acquisition, operation and disposition of real property.

Healthcare

The counsel provided by Wolf Haldenstein's Healthcare Group includes corporate and transactional matters, New York State regulatory matters, compliance issues, electronic medical records and financings. The Firm's healthcare attorneys have deep knowledge and experience in the issues unique to the industry, including Medicaid and Medicare reimbursement, managed care, electronic medical records, regulatory requirements, integrated delivery systems and compliance issues. The Firm acts as general counsel for many healthcare provider clients, handling their day-to-day needs in the following areas: corporate and transactional matters; New York State regulatory authorities; compliance; financing; and discharge planning.

Other Substantial Recoveries In Class Action And Derivative Cases in Which Wolf Haldenstein Was Lead Counsel or Had Another Significant Role

- *In re Beacon Associates Litigation*, Master File No. 09 Civ. 0777 (LBS) (S.D.N.Y.) (**$219 million** settlement in this and related action).
- *In re Mutual Fund Investment Litigation*, MDL No. 1586 (D. Md.) (derivative counsel in consolidated cases against numerous mutual fund companies involved in market timing resulting in class/derivative settlements totaling more than **$300 million**).
- *Inland Western Securities Litigation*, Case No. 07 C 6174 (N.D. Ill.) (settlement value of shares valued between **$61.5 million** and **$90 million**).
- *In re Direxion Shares ETF Trust*, No. 09-Civ-8011 (KBF) (S.D.N.Y.) (class recovered **$8 million**).
- *In re BankAmerica Corp. Securities Litigation*, MDL Docket No. 1264 (JFN) (E.D. Mo.) (class recovered **$490 million**).
- *In re Dynamic Random Access Memory Antitrust Litigation*, (MD-02 1486 (N.D. Cal.) (class recovered **$325 million**).
- *In re MicroStrategy, Inc. Securities Litigation*, Civ. No. 00-473-A (E.D. Va.) (class recovered **$160 million** in cash and securities).
- *Kurzweil v. Philip Morris Cos.*, 94 Civ. 2373, 94 Civ. 2546 (S.D.N.Y.) (securities fraud) (class recovered **$116.5 million** in cash).
- *In re Starlink Corn Products Liability Litigation*, (N.D. Ill.) (class recovered **$110 million**).
- *In Computer Associates 2002 Class Action Sec. Litigation*, 2:02-CV-1226 (E.D.N.Y.) (**$130 million** settlement in this and two related actions).
- *In re Sepracor Inc. Securities Litigation, Civ. No.* 02-12338 (MEL) (D. Mass.) (classes recovered **$52.5 million**).
- *In re Transkaryotic Therapies, Inc., Securities Litigation*, C.A. No. 03-10165-RWZ (D. Mass) (class recovered **$50 million**).

- *In re Iridium Securities Litigation,* C.A. No. 99-1002 (D.D.C.) (class recovered **$43 million**).

- *In re J.P. Morgan Chase Securities Litigation,* MDL No. 1783 (N.D. Ill.) (settlement providing for adoption of corporate governance principles relating to potential corporate transactions requiring shareholder approval).

- *LaVoice v. Citigroup Global Markets, Inc.*, Case No. C 07-801 (CW) (N.D. Cal.)) (**$108 million** settlement).

- *Steinberg v. Morgan Stanley & Co., Inc.*, Case No. 06-cv-2628 (BEN) (S.D. Cal.) (**$50 million** settlement).

- *Poole v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, Case No. CV-06-1657 (D. Or.) (**$43.5 million** settlement).

- *In re Wachovia Securities, LLC Wage and Hour Litigation*, MDL No. 07-1807 DOC (C.D. Cal.) (**$39 million** settlement).

- *In re Wachovia Securities, LLC Wage and Hour Litigation (Prudential)*, MDL No. 07-1807 DOC (C.D. Cal.) (**$11 million** settlement).

- *Basile v. A.G. Edwards, Inc.*, 08-CV-00338-JAH-RBB (S.D. Cal.) (**$12 million** settlement).

- *Miguel Garcia, et al. v. Lowe's Home Center, Inc. et al.* – Case No. GIC 841120 (Barton) (Cal. Sup. Ct, San Diego) (co-lead, **$1.65 million** settlement w/ average class member recovery of $5,500, attorney fees and cost awarded separately).

- *Neil Weinstein, et al. v. MetLife, Inc., et al.* – Case No. 3:06-cv-04444-SI (N.D.Cal) (co-lead, **$7.4 million** settlement).

- *Creighton v. Oppenheimer*, Index No. 1:06 - cv - 04607 - BSJ - DCF (S.D.N.Y.) (**$2.3 million** settlement).

- *Klein v. Ryan Beck*, 06-CV-3460 (DAB)(S.D.N.Y.) (**$1.3 million** settlement).

- *In re American Pharmaceutical Partners, Inc. Shareholder Litigation,* Consolidated C.A. No. 1823-N (Del. Ch. Ct.) (**$14.3 million** settlement).

- *Egleston v. Collins and Aikman Corp.*, 06-cv-13555 (E.D. Mich.) (class recovered **$12 million**).

- *In re Merrill Lynch & Co., Inc. Global Technology Fund Securities Litigation*, 02 CV 7854 (JFK) (SDNY); and *In re Merrill Lynch & Co., Inc. Focus Twenty Fund Securities Litigation*, 02 CV 10221 (JFK) (SDNY) (class recovered **$39 million** in combined cases).

- *In re CNL Hotels & Resorts, Inc. Securities Litigation*, No. 6:04-cv-1231 (Orl-31) (class recovered **$35 million**, and lawsuit also instrumental in **$225 million** benefit to corporation).

- *In re Cablevision Systems Corp. Shareholder Derivative Litigation*, Master File No. 06-CV-4130-DGT-AKT (**$34.4 million** recovery).

- *In re Monster Worldwide, Inc. Stock Option Derivative Litigation*, Master File No. 06cv4622 (S.D.N.Y.) (**$32 million** recovery and corporate governance reforms).

- *Berger v. Compaq Computer Corp.*, Docket No. 98-1148 (S.D. Tex.) (class recovered **$29 million**).

- *In re Arakis Energy Corporation Securities Litigation*, 95 CV 3431 (E.D.N.Y.) (class recovered **$24 million**).

- *In re E.W. Blanche Holdings, Inc. Securities Litigation*, Civ. No. 01-258 (D. Minn.) (class recovered **$20 million**).

- *In re Globalstar Securities Litigation*, Case No. 01-CV-1748 (SHS) (S.D.N.Y.) (class recovered **$20 million**).

- *In re Luxottica Group S.p.A. Securities Litigation*, No. CV 01-3285 (E.D.N.Y) (class recovered **$18.25 million**).

- *In re Musicmaker.com Securities Litigation*, CV-00-2018 (C.D. Cal.) (class recovered **$13.75 million**).

- *In re Comdisco Securities Litigation*, No. 01 C 2110 (MIS) (N.D. Ill.) (class recovered **$13.75 million**).

- *In re Acclaim Entertainment, Inc., Securities Litigation*, C.A. No. 03-CV-1270 (E.D.N.Y.) (class recovered **$13.65 million**).

- *In re Concord EFS, Inc. Securities Litigation*, No. 02-2097 (MA) (W.D. Tenn) (class recovered **$13.25 million**).

- *In re Bausch & Lomb, Inc. Securities Litigation*, 01 Civ. 6190 (CJS) (W.D.N.Y.) (class recovered **$12.5 million**).

- *In re Allaire Corp. Securities Litigation*, 00-11972 (D. Mass.) (class recovered **$12 million**).
- *Bamboo Partners LLC v. Robert Mondavi Corp.*, No. 26-27170 (Cal. Sup. Ct.) (class recovered **$10.8 million**).
- *Curative Health Services Securities Litigation*, 99-2074 (E.D.N.Y.) (class recovered **$10.5 million**).
- *City Partnership Co. v. Jones Intercable*, 99 WM-1051 (D. Colo.) (class recovered **$10.5 million**).
- *In re Aquila, Inc.*, (ERISA Litigation), 04-865 (W.D. Mo.) (**$10.5 million** recovery for the class).
- *In re Tenfold Corporation Securities Litigation*, 2:00-CV-652 (D. Utah) (class recovered **$5.9 million**).
- *In re Industrial Gas Antitrust Litigation*, 80 C 3479 and related cases (N.D. Ill.) (class recovered **$50 million**).
- *In re Chor-Alkalai and Caustic Soda Antitrust Litigation*, 86-5428 and related cases (E.D. Pa.) (class recovered **$55 million**).
- *In re Infant Formula Antitrust Litigation*, MDL No. 878 (N.D. Fla.) (class recovered **$126 million**).
- *In re Brand Name Prescription Drugs Antitrust Litigation*, No. 1:94-cv-00897, M.D.L. 997 (N.D. Ill.) (class recovered **$715 million**).
- *Landon v. Freel*, M.D.L. No. 592 (S.D. Tex.) (class recovered **$12 million**).
- *Holloway v. Peat, Marwick, Mitchell & Co.*, No. 84 C 814 EU (N.D. Okla.) (class recovered **$38 million**).
- *In re The Chubb Corp.* Drought Insurance Litigation, C-1-88-644 (S.D. Ohio) (class recovered **$100 million**).
- *Wong v. Megafoods*, Civ-94-1702 (D. Ariz.) (securities fraud) (class recovered **$12.25 million**).
- *In re Del Val Financial Corp. Securities Litigation*, 92 Civ 4854 (S.D.N.Y.) (class recovered **$11.5 million**).

- *In re Home Shopping Network Shareholders Litigation,* Consolidated Civil Action No. 12868, (Del. Ch. 1995) (class recovered **$13 million**).
- *In re Paine Webber Limited Partnerships Litigation,* 94 Civ 8547 (S.D.N.Y.) (class recovered **$200 million**).
- *In re Bristol-Meyers Squibb Co. Securities Litigation,* 92 Civ 4007 (S.D.N.Y.) (class recovered **$19 million**).
- *In re Spectrum Information Technologies Securities Litigation,* CV 93-2245 (E.D.N.Y.) (class recovered **$13 million**).
- *In re Chase Manhattan Securities Litigation,* 90 Civ. 6092 (LJF) (S.D.N.Y.) (class recovered **$17.5 million**).
- *Prostic v. Xerox Corp.,* No. B-90-113 (EBB) (D. Conn.) (class recovered **$9 million**).
- *Steiner v. Hercules,* Civil Action No. 90-442-RRM (D. Del.) (class recovered **$18 million**).
- *In re Ambase Securities Litigation,* 90 Civ 2011 (S.D.N.Y.) (class recovered **$14.6 million**).
- *In re Southmark Securities Litigation,* CA No. 3-89-1402-D (N.D. Tex.) (class recovered **$70 million**).
- *Steiner v. Ideal Basic Industries, Inc.,* No. 86-M 456 (D. Colo. 1989) (securities fraud) (class recovered **$18 million**).
- *Tucson Electric Power Derivative Litigation,* 2:89 Civ. 01274 TUC. ACM (corporation recovered **$30 million**).
- *Alleco Stockholders Litigation,* (Md. Cir. Ct. Pr. Georges County) (class recovered **$16 million**).
- *In re Revlon Group, Inc. Shareholders Litigation*, No. 8362 (Del. Ch.) (class recovered **$30 million**).
- *In re Taft Broadcasting Company Shareholders Litigation,* No. 8897 (Del. Ch.) (class recovered **$20 million**).
- *In re Southland Corp. Securities Litigation,* No. 87-8834-K (N.D.Tex.) (class recovered **$20 million**).

- *In re Crocker Bank Securities Litigation*, CA No. 7405 (Del. Ch.) (class recovered **$30 million**).

- *In re Warner Communications Securities Litigation*, No. 82 Civ. 8288 (JFK) (S.D.N.Y.) (class recovered **$17.5 million**).

- *Joseph v. Shell Oil*, CA No. 7450 (Del. Ch.) (securities fraud) (class recovered **$200 million**).

- *In re Flight Transportation Corp. Securities Litigation*, Master Docket No. 4-82-874, MDL No. 517 (D. Minn.) (class recovered **$50 million**).

- *In re Whittaker Corporation Securities Litigation*, CA000817 (Cal. Super. Ct., Los Angeles County) (class recovered **$18 million**).

- *Naevus International, Inc. v. AT&T Corp.*, C.A. No. 602191/99 (N.Y. Sup. Ct.) (consumer fraud) (class recovered **$40 million**).

- *Sewell v. Sprint PCS Limited Partnership*, C.A. No. 97-188027/CC 3879 (Cir. Ct. for Baltimore City) (consumer fraud) (class recovered **$45.2 million**).

- *In re Vytorin/Zetia Marketing, Sales Practices and Products Liability Litigation*, 2:08-cv-285 (D.N.J.) (class recovered **$41.5 million**).

Representative Reported Opinions Since 1990 in Which Wolf Haldenstein Was Lead Counsel or Had Another Significant Role

Federal Appellate and District Court Opinions

- *DeFrees v. Kirkland*, 2012 U.S. Dist. LEXIS 52780 (C.D. Cal. Apr. 11, 2012).
- *In re Beacon Associates Litigation.*, 745 F. Supp. 2d 386 (S.D.N.Y. 2010); *In re Beacon Associates Litig.*, 282 F.R.D. 315 (S.D.N.Y. 2012)
- *Messner v. Northshore University HealthSystem*, 669 F.3d 802, No. 10-2514 (7th Cir. Jan. 13, 2012).
- *In re Text Message Antitrust Litigation*, 630 F.3d, 622 (7th Cir. 2010).
- *In re Apple & ATTM Antitrust Litig.*, 2010 U.S. Dist. LEXIS 98270 (N.D. Cal. July 8, 2010).
- *Freeland v. Iridium World Communications Ltd.*, 545 F.Supp.2d 59 (D.D.C. 2008).
- *In re Apple & AT&TM Antitrust Litig.*, 596 F. Supp. 2d 1288 (N.D. Cal. 2008).
- *Harzewski v. Guidant Corp.*, 489 F.3d 799 (7th Cir. 2007).
- *In re JP Morgan Chase & Co. Securities Litigation*, No. 06 C 4674, 2007 U.S. Dist. LEXIS 93877 (N.D. Ill. Dec. 18, 2007).
- *Schoenbaum v. E.I. Dupont De Nemours and Co.*, 2007 WL 2768383 (E.D. Mo. Sept. 20, 2007).
- *Jeffries v. Pension Trust Fund*, 99 Civ. 4174 (LMM), 2007 U.S. Dist. LEXIS 61454 (S.D.N.Y. Aug. 20, 2007).
- *Klein v. Ryan Beck*, 06-Civ. 3460 (WCC), 2007 U.S. Dist. LEXIS 51465 (S.D.N.Y. July 13, 2007).
- *Cannon v. MBNA Corp.* No. 05-429 GMS, 2007 U.S. Dist. LEXIS 48901 (D. Del. 2007).
- *In re Aquila ERISA Litig.*, 237 F.R.D. 202 (W.D. Mo. 2006).
- *Smith v.* Aon Corp., 238 F.R.D. 609 (N.D. Ill. 2006).

- *In re Sepracor Inc. Securities Litigation*, 233 F.R.D. 52 (D. Mass. 2005).
- *In re Transkaryotic Therapies, Inc. Securities Litigation*, No. 03-10165, 2005 U.S. Dist. LEXIS 29656 (D. Mass. Nov. 28, 2005).
- *In re Luxottica Group, S.p.A. Securities Litigation*, 2005 U.S. Dist. LEXIS 9071 (E.D.N.Y. May 12, 2005).
- *In re CNL Hotels & Resorts, Inc. Securities Litigation*, 2005 U.S. Dist. LEXIS 38876, No. 6:04-cv-1231-Orl-31KRS (M.D. Fla. May 9, 2005).
- *Johnson v. Aegon USA, Inc.*, 1:01-CV-2617 (N.D. Ga. Sept. 20, 2004).
- *Freeland v. Iridium World Communications, Ltd.*, 99-1002 (D.D.C. Aug. 31, 2004).
- *In re Acclaim Entertainment, Inc. Securities Litigation*, 03-CV-1270 (E.D.N.Y. June 22, 2004).
- *In re Sepracor Inc. Securities Litigation*, 308 F. Supp. 2d 20 (D. Mass. 2004).
- *In re Concord EFS, Inc. Securities Litigation*, No. 02-2697 (W.D. Tenn. Jan. 7, 2004).
- *In re Pharmatrak, Inc. Privacy Litig.*, 2003 U.S. App. LEXIS 8758 (1st Cir. May 9, 2003).
- *In re Enterprise Mortgage Acceptance Co., LLC, Sec. Litig.*, 02-Civ. 10288 (SWK) (S.D.N.Y. Nov. 5, 2003).
- *In re PerkinElmer, Inc. Securities Litigation*, 286 F. Supp. 2d 46 (D. Mass. 2003).
- *In re Initial Public Offering Securities Litigation*, 241 F. Supp. 2d 281 (S.D.N.Y. 2003).
- *In re Comdisco Securities Litigation*, No. 01 C 2110, 2003 U.S. Dist. LEXIS 5047 (N.D. Ill. Mar. 31, 2003).
- *Berger v. Compaq Computer Corp.*, 257 F.3d 475 (2001), clarified, 279 F.3d 313 (5th Cir. 2002).
- *City Partnership Co. v. Cable TV Fund 14-B*, 213 F.R.D. 576 (D. Colo. 2002).
- *In re Allaire Corporation Securities Litigation*, Docket No. 00-11972 - WGY, 2002 U.S. Dist. LEXIS 18143 (D. Mass., Sept. 27, 2002).

- *In re StarLink Corn Products Liability Litigation*, 212 F.Supp.2d 828 (N.D. Ill. 2002).
- *In re Bankamerica Corp. Securities Litigation*, 263 F.3d 795 (8th Cir. 2001).
- *In re Comdisco Securities Litigation*, 166 F.Supp.2d 1260 (N.D. Ill. 2001).
- *In re Crossroads Systems, Inc. Securities Litigation*, Master File No. A-00-CA-457 JN, 2001 U.S. Dist. LEXIS 14780 (W.D. Tx. Aug. 15, 2001).
- *In re MicroStrategy, Inc. Securities Litigation*, 150 F. Supp. 2d 896 (E.D. Va. 2001).
- *Lindelow v. Hill*, No. 00 C 3727, 2001 U.S. Dist. LEXIS 10301 (N.D. Ill. July 19, 2001).
- *In re MicroStrategy, Inc. Securities Litigation*, 148 F. Supp. 2d 654 (E.D. Va. 2001).
- *Jeffries v. Pension Trust Fund of the Pension, Hospitalization & Benefit Plan of the Electrical Industry*, 172 F. Supp. 2d 389 (S.D.N.Y. 2001).
- *Carney v. Cambridge Technology Partners, Inc.*, 135 F. Supp. 2d 235 (D. Mass. 2001).
- *Weltz v. Lee*, 199 F.R.D. 129 (S.D.N.Y. 2001).
- *Schoers v. Pfizer, Inc.*, 00 Civ. 6121, 2001 U.S. Dist. LEXIS 511 (S.D.N.Y. Jan. 23, 2001).
- *Kurzweil v. Philip Morris Cos.*, 94 Civ. 2373 (MBM), 2001 U.S. Dist. LEXIS 83 (S.D.N.Y. Jan. 9, 2001).
- *Goldberger v. Bear, Stearns & Co.*, 98 Civ. 8677 (JSM), 2000 U.S. Dist. LEXIS 18714 (S.D.N.Y. Dec. 28, 2000).
- *In re Newell Rubbermaid, Inc., Securities Litigation*, Case No. 99 C 6853, 2000 U.S. Dist. LEXIS 15190 (N.D. Ill. Oct. 2, 2000).
- *Stanley v. Safeskin Corp.*, Case No. 99 CV 454 BTM (LSP), 2000 U.S. Dist. LEXIS 14100, Fed. Sec. L. Rep. (CCH) P91, 221 (S.D. Cal. Sept. 18, 2000).
- *In re MicroStrategy, Inc. Securities Litigation*, 115 F. Supp. 2d 620 (E.D. Va. 2000).
- *In re USA Talks.com, Inc. Securities Litigation*, 2000 U.S. Dist. LEXIS 14823, Fed. Sec. L. Rep. (CCH) P91, 231 (S.D. Cal. Sept. 14, 2000).

- *In re Sotheby's Holdings, Inc. Securities Litigation*, 00 CIV. 1041 (DLC), 2000 U.S. Dist. LEXIS 12504, Fed. Sec. L. Rep. (CCH) P91, 059 (S.D.N.Y. Aug. 31, 2000).
- *Dumont v. Charles Schwab & Co., Inc.*, Civil Action No. 99-2840 2000 U.S. Dist. LEXIS 10906 (E.D. La. July 21, 2000).
- *Berger v. Compaq Computer Corp.*, Civil Action No. H-98-1148, 2000 U.S. Dist. LEXIS 21424 (S.D. Tex. July 17, 2000).
- *In re BankAmerica Corp. Securities Litigation*, 95 F. Supp. 2d 1044 (E.D. Mo. 2000).
- *In re Carnegie International Corp. Securities Litigation*, 107 F. Supp. 2d 676 (D. Md. 2000).
- *Berger v. Compaq Computer Corp.*, Civil Action No. H-98-1148, 2000 U.S. Dist. LEXIS 21423 (S.D. Tex. Mar. 13, 2000).
- *In re Imperial Credit Industries Securities Litigation*, CV 98-8842 SVW, 2000 U.S. Dist. LEXIS 2340 (C.D. Cal. Feb. 23, 2000).
- *Sturm v. Marriott Marquis Corp.*, 85 F. Supp. 2d 1356 (N.D. Ga. 2000).
- *In re Health Management Systems Securities Litigation*, 82 F. Supp. 2d 227 (S.D.N.Y. 2000).
- *Dumont v. Charles Schwab & Co., Inc.*, Civil Action No. 99-2840, 2000 U.S. Dist. LEXIS 619 (E.D. La. Jan. 19, 2000).
- *In re MicroStrategy, Inc. Securities Litigation*, 110 F. Supp. 2d 427 (E.D. Va. 2000).
- *In re BankAmerica Corp. Securities Litigation*, 78 F. Supp. 2d 976 (E.D. Mo. 1999).
- *Kurzweil v. Philip Morris Cos.*, 94 Civ. 2373 (MBM), 1999 U.S. Dist. LEXIS 18378 (S.D.N.Y. Nov. 24, 1999).
- *In re Nanophase Technologies Corp. Litigation*, 98 C 3450, 1999 U.S. Dist. LEXIS 16171 (N.D. Ill. Sept. 27, 1999).
- *In re Clearly Canadian Securities Litigation*, File No. C-93-1037-VRW, 1999 U.S. Dist. LEXIS 14273 Cal. Sept. 7, 1999).
- *Yuan v. Bayard Drilling Technologies, Inc.*, 96 F. Supp. 2d 1259 (W.D. Okla. 1999).

- *In re Spyglass, Inc. Securities Litigation*, No. 99 C 512, 1999 U.S. Dist. LEXIS 11382 (N.D. Ill. July 20, 1999).
- *Carley Capital Group v. Deloitte & Touche, L.L.P.*, 1:97-CV-3183-TWT, 1999 U.S. Dist. LEXIS 11595 (N.D. Ga. June 30, 1999).
- *Blue Cross & Blue Shield of N.J., Inc. v. Philip Morris, Inc.*, 98 CV 3287, 1999 U.S. Dist. LEXIS 11363 (E.D.N.Y. June 1, 1999).
- *Carley Capital Group v. Deloitte & Touche, L.L.P.*, 1:97-CV-3183-TWT, 1999 U.S. Dist. LEXIS 1368, Fed. Sec. L. Rep. (CCH) P90, 429 (N.D. Ga. Jan. 19, 1999).
- *Longman v. Food Lion, Inc.*, 186 F.R.D. 331 (M.D.N.C. 1999).
- *Wright v. Ernst & Young LLP*, 152 F.3d 169 (2d Cir. 1998).
- *Romine v. Compuserve Corp.*, 160 F.3d 337 (6th Cir. 1998).
- *Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998).
- *Walsingham v. Biocontrol Technology, Inc.*, 66 F. Supp. 2d 669 (W.D. Pa. 1998).
- *Sturm v. Marriott Marquis Corp.*, 26 F. Supp. 2d 1358 (N.D. Ga. 1998).
- *Carley Capital Group v. Deloitte & Touche, L.L.P.*, 27 F. Supp. 2d 1324 (N.D. Ga. 1998).
- *In re MobileMedia Securities Litigation*, 28 F.Supp.2d 901 (D.N.J. 1998).
- *Weikel v. Tower Semiconductor, Ltd.*, 183 F.R.D. 377 (D.N.J. 1998).
- *In re Health Management Systems Securities Litigation*, 97 Civ. 1865 (HB), 1998 U.S. Dist. LEXIS 8061 (S.D.N.Y. May 27, 1998).
- *In re Painewebber Ltd. Partnership Litigation*, 999 F. Supp. 719 (S.D.N.Y. 1998).
- *Carley Capital Group v. Deloitte & Touche, L.L.P.*, 1:97-cv-3183-TWT, 1998 U.S. Dist. LEXIS 23222 (N.D. Ga. Feb. 10, 1998).
- *Brown v. Radica Games (In re Radica Games Securities Litigation)*, No. 96-17274, 1997 U.S. App. LEXIS 32775 (9th Cir. Nov. 14, 1997).
- *Robbins v. Koger Properties*, 116 F.3d 1441 (11th Cir. 1997).

- *In re TCW/DW North American Government Income Trust Securities Litigation*, 95 Civ. 0167 (PKL), 1997 U.S. Dist. LEXIS 18485 (S.D.N.Y. Nov. 20, 1997).
- *Wright v. Ernst & Young, LLP*, 97 Civ. 2189 (SAS), 1997 U.S. Dist. LEXIS 13630 (S.D.N.Y. Sept. 9, 1997).
- *Felzen v. Andreas*, No. 95-2279, 1997 U.S. Dist. LEXIS 23646 (C.D. Ill. July 7, 1997).
- *Felzen v. Andreas*, No. 95-2279, 1997 U.S. Dist. LEXIS 23647 (C.D. Ill. July 7, 1997).
- *A. Ronald Sirna, Jr., P.C. Profit Sharing Plan v. Prudential Securities, Inc.*, 964 F. Supp. 147 (S.D.N.Y. 1997).
- *Kurzweil v. Philip Morris Companies*, 94 Civ. 2373 (MBM), 1997 U.S. Dist. LEXIS 4451 (S.D.N.Y. April 8, 1997).
- *Bobrow v. Mobilmedia, Inc.*, Civil Action No. 96-4715, 1997 U.S. Dist. LEXIS 23806 (D.N.J. March 31, 1997).
- *Kalodner v. Michaels Stores, Inc.*, 172 F.R.D. 200 (N.D.Tex. 1997).
- *In re Painewebber Ltd. Partnerships Litigation*, 171 F.R.D. 104 (S.D.N.Y. 1997).
- *A. Ronald Sirna, Jr., P.C. Profit Sharing Plan v. Prudential Securities, Inc.*, 95 Civ. 8422 (LAK), 1997 U.S. Dist. LEXIS 1226 (S.D.N.Y. Feb. 7, 1997).
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- *Glassman v. Computervision Corp.*, 90 F.3d 617 (1st Cir. 1996).
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ATTORNEY BIOGRAPHIES

Partners

JASON ATLAS: ***admitted*****:** New York; United States District Court for the Southern and Eastern Districts of New York. ***Education:*** New York University (B.A. 1993); Hofstra University School of Law (J.D. 1996). As a partner in the firm's Health Care Department, he specializes in the counseling of nursing homes and hospitals, and litigation on providers' behalves to ensure continuity of payment and successful reimbursement through private payments and spend downs, Medicare, Medicaid and private insurance.

Mr. Atlas' practice areas include litigation and transactional endeavors involving debtor-creditor law, elder law, regulatory matters, wills trusts and estates, contractual matters, asset and real estate conveyances, Article 81 guardianship proceedings, and Medicaid appeals via Administrative Fair Hearings and Article 78 proceedings.

CHARLES H. BALLER: ***admitted***: New York. ***Education***: New York University (B.S., *magna cum laude*, 1954); Columbia University (L.L.B., 1957); New York University (L.L.M., Taxation, 1962). Beta Gamma Sigma; Beta Alpha Psi. Harlan Fiske Stone Scholar. Co-Editor and Contributing Author, April, 1981, with 1986 Supplement, *Business Acquisitions*, Practicing Law Institute. Member: The Association of the Bar of the City of New York; New York State and American Bar Associations. Mr. Baller has worked in the office of Chief Counsel, Internal Revenue Service (Interpretative Division). A lecturer and author for the Practicing Law Institute (co-editor of the reference work *Business Acquisitions: Planning and Practice*), Mr. Baller is a corporate and tax attorney with extensive expertise in mergers and acquisitions, complex estate planning (particularly relating to corporate and business holdings), and employee benefits and compensation, including ERISA.

DEMET BASAR: ***admitted***: New York; New Jersey; U.S. District Court for the District of New Jersey, Southern District of New York, Eastern District of Wisconsin, U.S. Court of Appeals for the Second and Seventh Circuits. ***Education***: Fairleigh Dickinson University (B.A., *summa cum laude*, 1984), Phi Omega Epsilon; Rutgers University School of Law (J.D., 1990). Recipient, West's Scholarship Award, Senior Notes and Comments Editor, *Rutgers Law Review*. Member: The Association of the Bar of the City of New York. Languages: Turkish.

Ms. Basar's practice is primarily concentrated in securities class actions and derivative litigation. She is the co-chair of the firm's *Madoff Litigation Task Force*. Her recent cases include *In re Tremont Securities Law, State Law and Insurance Litigation*, No. 08-civ-11117

(TPG) (SDNY) ($100 million settlement for investors in the Tremont family of Madoff feeder funds), *In re Beacon Associates Litigation*, Master File No. 09 Civ. 0777 (LBS) (SDNY) ($219 million settlement for investors in the Beacon family of Madoff feeder funds, among others), and other Madoff feeder fund-related securities class actions, including *In re J. Ezra Merkin and BDO Seidman Securities Litigation*, No. 08-cv-10922 (SDNY) and *Newman v. Family Management Corp.*, No. 08-cv-11215 (SDNY). She has served as lead counsel, co-lead counsel or individual counsel in *In re American Pharmaceutical Partners, Inc. Shareholder Litigation*, Consolidated C.A. No. 1823-N (Del. Ch. Ct. ($14.3 million settlement), *In re Loral Space & Communications Shareholders Securities Litigation*, 03-cv-8262 (SDNY) ($3.45 million settlement), *Steed Finance LDC v. LASER Advisors*, No. 99-cv-4222 (SDNY), *In re AMBAC Financial Group, Inc.*, C.A. No. 3521 (Del. Ch. Ct.), and several multidistrict securities litigations, including *In re Mutual Fund Investment Litigation*, MDL No. 1586 (D. Md.) and *In re J.P. Morgan Chase Securities Litigation*, MDL No. 1783 (N.D. Ill.).

MARIA BELTRANI: ***admitted***: New York (1989); Florida (1991). ***Education:*** Queens College of the City University of New York and Brooklyn Law School. Ms. Beltrani is a skilled civil litigator who handles a wide range of disputes involving issues of breach of contract, fraud, forgery, tortious interference with contractual relations, breach of fiduciary duty, misappropriation of corporate assets, and slander and libel.

She represents the firm's many cooperative and condominium clients in landlord and tenant disputes as well as Chapter 13 bankruptcy proceedings initiated by shareholders and owners of condominium units. She has litigated cases from noise disputes among neighbors, as well as those involving commercial establishments, to illegal subletting, unauthorized alterations, violations of "No Pet" policies, nuisance actions and HP proceedings. She regularly handles cases arising from the failure to pay maintenance and common charges, including common charge lien foreclosure actions and non-judicial U.C.C. foreclosure proceedings.

Ms. Beltrani's practice encompasses rent regulation, including substantial rehabilitation and harassment proceedings before the New York State Division of Housing Community and Renewal. She has represented both landlords and tenants in actions based upon non-primary residence, non-payment of rent, illegal use and other lease defaults. Ms. Beltrani has defended housing discrimination cases where the complainants have asserted housing discrimination based on a physical disability, marital status, sexual orientation and ethnicity.

Her cases include *360 Riverside Owners Corp.*, (1st Dep't 2000), where the Appellate Division affirmed the dismissal of a shareholder's fraud claims against his cooperative, and *London Terrace Towers, Inc. v. Davis*, where the 2004 New York City Civil Court

ruling upheld the right of the cooperative's board of directors to terminate a shareholder's proprietary lease for objectionable conduct.

Outside the firm, Ms. Beltrani serves as an arbitrator for the Civil Court of the City of New York.

STACEY KELLY BREEN: ***admitted*:** New York; New Jersey; U.S. District Courts for the Southern and Eastern Districts of New York. ***Education*:** New York University (B.A., 1997); Rutgers School of Law - Newark (J.D., 2000). Ms. Breen is located in the firm's New York Office. Her practice is concentrated in class actions and complex commercial litigation. Ms. Breen represented long grain rice producers seeking to recover damages they sustained resulting from the contamination of the U.S. rice supply with unapproved, genetically modified rice seed traits, in the case captioned *In re Genetically Modified Rice Litigation*, MDL 1811 (E.D. Mo.). That case settled on July 1, 2011 for $750 million. In addition, Ms. Breen played a significant role in litigating numerous securities class actions and derivative cases, including *American International Group, Inc. v. Greenberg*, which resulted in a $90 million recovery for AIG; *In re Sepracor Corp. Securities Litigation*, which resulted in a $52.5 million recovery in a securities fraud class action; and *In re American Pharmaceutical Partners, Inc. Shareholder Litigation*, which resulted in a $14.3 million recovery for shareholders.

THOMAS H. BURT: ***admitted*:** New York; U.S. District Courts for the Southern and Eastern Districts of New York, Eastern District of Michigan. ***Education***: American University (B.A., 1993); New York University (J.D., 1997). Articles Editor with New York University Review of Law and Social Change. Mr. Burt is a litigator with a practice concentrated in securities class actions and complex commercial litigation. After practicing criminal defense with noted defense lawyer Jack T. Litman for three years, he joined Wolf Haldenstein, where he has worked on such notable cases as *In re Initial Public Offering Securities Litigation*, No. 21 MC 92 (SAS) (S.D.N.Y.)(a novel and sweeping amalgamation of over 300 class actions which resulted in a recovery of $586 million); *In re MicroStrategy Securities Litigation*, No. 00-473-A (E.D. Va.) (recovery of $192 million); *In re DRAM Antitrust Litigation*, No. 02-cv-1486 (PJH) (N.D. Cal.) (antitrust case resulting in $315 million recovery); *In re Computer Associates 2002 Class Action Securities Litigation*, No. 02-cv-1226 (TCP) (E.D.N.Y.)(settled, together with a related fraud case, for over $133 million); *K.J. Egleston L.P. v. Heartland Industrial Partners, et al.*, 2:06-13555 (E.D. Mich.) (recovery included personal assets from former Reagan Administration budget director David A. Stockman); and *Parker Friedland v. Iridium World Communications, Ltd.*, 99-1002 (D.D.C.)(recovery of $43.1 million). Mr. Burt has spoken on several occasions to investor and activist groups regarding the intersection of litigation and corporate social responsibility.

MICHAEL E. FLEISS: ***admitted:*** New York; United States District Courts for the Southern and Eastern Districts of New York; United States Court of Appeals for the Second Circuit. ***Education:*** Columbia College, summa cum laude, 1987, Columbia Law School, (Harlan Fiske Stone Scholar). Mr. Fleiss is an experienced litigator whose practice focuses principally on real estate-related cases, with a concentration on condominium and cooperative matters. He has handled a large number and wide variety of construction defect cases involving virtually every aspect of building construction and design and virtually every building system. He also provides general legal counsel to the boards and managing agents of the firm's condominium and cooperative clients.

Mr. Fleiss has also represented cooperative and condominium boards in disputes with shareholders and unit owners, sponsors, banks, architects and engineers, contractors, and adjacent landowners. He has handled litigation matters involving, among other things, lien and mortgage foreclosures, ownership disputes, trespass, nuisance, ground and apartment leases, commercial leases, the Interstate Land Sales Full Disclosure Act, code and regulatory compliance, cooperative and condominium conversions, and building management. Mr. Fleiss represented the rental tenants of Ruppert and Yorkville Towers in opposing the efforts of the developer of that complex to withdraw from New York's Mitchell-Lama low- and moderate-income housing program, and successfully negotiated a landmark settlement that allowed tenants to purchase their apartments at substantial discounts or alternatively to remain as renters with varying levels of limitations on rent increases and rent subsidies from New York City and the landlord, depending on each tenant's income. Mr. Fleiss' practice also includes commercial litigation.

His reported cases include *Board of Managers of Barrow Street Condominium v. Royal Blue Realty*, 264 A.D.2d 636, 695 N.Y.S.2d 347 (1st Dep't 1999), involving a condominium's effort to prevent a commercial unit owner from subdividing the commercial unit into residential units; *Levin v. 40 Fifth Avenue Corp.*, 24 A.D.3d 244, 806 N.Y.S.2d 491 (1st Dep't 2005), affirming a judgment after trial in favor of a cooperative corporation requiring a shareholder to remove unauthorized alteration work in his apartment; *SRN Corp. v. Glass*, 244 A.D.2d 545, 664 N.Y.S.2d 357 (2d Dep't 1997), reversing the lower court's dismissal of a complaint alleging breach of contract for failure to certify eligibility under the New York State Medical Assistance (Medicaid) program; *William Stevens, Inc. v. Kings Village Corp.*, 234 A.D.2d 287, 650 N.Y.S.2d 307 (2d Dep't 1996), granting summary judgment to a cooperative corporation dismissing its managing agent's claim for wrongful termination, where the agent had acted contrary to the directions of the cooperative board; *B&L Auto Group, Inc. v. Zelig*, 188 Misc.2d 851, 730 N.Y.S.2d 400 (Civ. Ct. N.Y. Co. 2001), dismissing an automobile dealer's claim to recover a down payment from a purchaser and voiding the sales contract, where the

dealership's license had lapsed prior to the sale; and *Eastern Systems, Inc. v. West 45th Street Industrial Condominiums, Inc.*, 1991 WL 90733 (S.D.N.Y.), an effort by a bankrupt tenant to exercise purchase options it held on certain industrial space.

Mr. Fleiss is a member of the New York City Bar Association and the American Bar Association.

ELI D. GREENBERG: ***admitted***: New York. ***Education***: New York University (B.S., *magna cum laude*, 1981). New York University (J.D., 1984). Beta Gamma Sigma. Lecturer, New York University. Member: American Health Lawyers Association. Mr. Greenberg has extensive experience in pension, tax, benefits, and ERISA.

FRANCIS M. GREGOREK: ***admitted:*** California; New York; United States Courts of Appeals for the Second and Ninth Circuits; United States District Courts for the Southern and Eastern Districts of New York and the Southern, Central, and Northern Districts of California. ***Education:*** University of Virginia (B.A., *magna cum laude*, 1975). Phi Beta Kappa, Phi Alpha Theta International Historical Honor Society; University College, Durham University, England; New York University School of Law (J.D., 1978). Mr. Gregorek is the Managing Partner of the Firm's San Diego office. Throughout his 32 year career, Mr. Gregorek's practice has focused on complex commercial litigation and class action practice on both the trial and appellate court levels, in federal and state courts nationwide, in the areas of securities, antitrust, consumer protection, and technology. Mr. Gregorek has also represented foreign governments involved in complex commercial litigation in United States federal courts. As part of that representation, Mr. Gregorek has worked in conjunction with the heads of ministerial departments, ambassadors, and consular officials of those countries charged by their governments with overseeing the litigations, as well as the attorney general of a government he was representing. Throughout these litigations, Mr. Gregorek met with such government officials to advise and plan strategy in addition to keeping them fully up-to-date on the progress of the litigation.

Mr. Gregorek has served as lead counsel, co-lead counsel, or in other leadership positions in numerous class and other complex litigations throughout the United States. For example, *In re Dole Shareholder Litigation*, Case No. BC281949 (recovered $172 million for shareholders) (Super. Ct. Los Angeles County, 2003). At the time of the case's settlement, the $172 million recovered for the class was one of the top 10 recoveries ever achieved on behalf of a class. Judge Anthony J. Mohr, who presided over the action, stated at the final settlement hearing: "Co-Lead Counsel did excellent first class work." *Id*.

As an additional example, Mr. Gregorek and the Firm served as co-lead counsel in *Bamboo Partners LLC v. The Robert Mondavi Corp., et al.*, Case No. 26-27170 (Super. Ct. Napa County, 2004), a class action arising from an unsolicited $1.3 billion offer (cash and debt assumption) from Constellation Brands, Inc. for The Robert Mondavi Corp.

MATTHEW M. GUINEY: ***admitted:*** New York; U.S. District Courts for the Southern and Eastern District of New York. ***Education*****:** The College of William & Mary (B.A. in Government and Economics 1998); Georgetown University Law Center (J.D. 2002). Mr. Guiney's primary areas of practice are securities class actions under the Securities Act of 1933 and the Exchange Act of 1934, complex commercial litigation, *Employee Retirement Income Security Act* (*ERISA*) actions on behalf of plan participants, *Fair Labor Standards Act* of 1938 actions concerning overtime payment, and fiduciary duty actions under various state laws. Mr. Guiney has helped recover hundreds of millions of dollars for victims of corporate fraud and abuse in federal and state litigation across the country. Some of Mr. Guiney's notable results on behalf of investors include: *Mallozzi v. Industrial Enterprises of America, Inc. et al.*, 1:07-cv-10321-DLC (S.D.N.Y.) ($3.4 million settlement on behalf of shareholders); *In re Luxottica Group S.p.A. Securities Litigation*, No. CV 01-3285 (JBW) (MDG) (E.D.N.Y.) ($18.5 million settlement on behalf of shareholders); *In re MBNA Corp. ERISA Litigation,* Master Docket No. 05-429 (GMS), (D. Del) ($4.5 million settlement on behalf of plan participants). Recent publications include: *Citigroup and Judicial Immunity in ERISA: An Emerging Trend?*, Compensation and Benefits Review, Vol. 42, No. 3, 172-78 (May/June 2010) (with Mark C. Rifkin); *Case of the Moenchies: Moench Provision Expansion,* Employment Law360/Securities Law360 Newswires, Guest Column (June 2, 2010) (with Mark C. Rifkin).

PETER C. HARRAR: ***admitted*****: New York;** United States Court of Appeals for the Fourth Circuit and the United States District Courts for the Southern and Eastern Districts of New York. ***Education***: Columbia Law School (J.D. 1984); Princeton University, Phi Beta Kappa, *magna cum laude.* Mr. Harrar is a partner in the firm and has extensive experience in complex securities and commercial litigation on behalf of individual and institutional clients.

He has represented investment funds, hedge funds, insurance companies and other institutional investors in a variety of individual actions, class actions and disputes involving mortgage-backed securities and derivative instruments. Examples include *In re EMAC Securities Litigation*, a fraud case concerning private placements of securitized loan pools, and *Steed Finance LDC v. LASER Advisors, Inc.*, a hybrid individual and class action concerning the mispricing of swaptions.

Over the years, Mr. Harrar has also served as lead or co-lead counsel in numerous securities class and derivative actions throughout the country, recovering hundreds of

millions of dollars on behalf of aggrieved investors and corporations. Recent examples are some of the largest recoveries achieved in resolution of derivative actions, including *American International Group Consolidated Derivative Litigation*) ($90 million), and *Bank of America/Merrill Derivative Litigation* ($62.5 million).

CHARLES J. HECHT: ***admitted:*** New York, United States Supreme Court, United States Court of Appeals for the Second Circuit; United States Court of Appeals for the Fifth Circuit; United States Court of Appeals for the Seventh Circuit; United States Court of Appeals for the Sixth Circuit; United States Court of Appeals for the Third Circuit; United States Court of Appeals for the Ninth Circuit; United States Court of Appeals for the Eleventh Circuit; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States District Court for the; Eastern District of Wisconsin and the United States Court of Appeals for the Seventh Circuit. ***Education:*** Mr. Hecht is a graduate of Cornell University and Cornell University Law. Charles J. Hecht is a partner of the firm, with over 40 years' experience in securities and commodities transactions, litigation, and arbitration. He has more than 50 published decisions on cases in which he was the sole or lead counsel, in areas ranging from securities and commodities fraud to constitutional and contract disputes.

Mr. Hecht has provided expert testimony before the Internal Revenue Service with respect to the impact of proposed tax regulations on preferred stock hedged with commodity futures and options. He has authored articles on mergers and acquisitions, earn outs, commodities, hedging, derivatives, and arbitration jurisdiction and damages. Since 2005 he has been the legal columnist for smartpros.com, an online newsletter for financial professionals.

He has been active in the New York State Bar Association's continuing legal education program, regularly speaking about class actions and serving as the Chairman of the program on securities arbitration in 1995. In 1996, Mr. Hecht was a principal coauthor of the New York Federal Practice Section's Report on Securities Class Fees. He is also an arbitrator for the American Arbitration Association and COMEX.

Before entering private practice, Mr. Hecht was with the Division of Corporate Finance (Washington, D.C. main office) of the Securities and Exchange Commission. He is actively involved with businesses in China and is a member of the United States-China Chamber of Commerce.

Notable Cases include *CMIA Partners Equity Ltd. v. O'Neill*, 2010 NY Slip Op 52068(U) (Sup. Ct. N.Y. Co., 2010), *Hecht v. Andover Assocs. Mgmt. Corp*., 27 Misc 3d 1202(A) (Sup. Ct. Nassau Co., 2010), and *Sacher v. Beacon Assoc. Mgmt. Corp.*, 27 Misc 3d 1221(A) (Sup.

Ct. Nassau Co., 2010). The *CMIA* case is the first time that a New York state court examined shareholder derivative suits under Cayman Islands law.

FRED TAYLOR ISQUITH: ***admitted*:** New York; Supreme Court of the United States; U.S. Courts of Appeals for the First, Second, Third, Fourth and Eighth Circuits; U.S. District Courts for the Southern, Eastern and Northern Districts of New York; District of Columbia; District of Arizona; District of Colorado; Northern and Central District of Illinois; Western District of Michigan and District of Nebraska. ***Education***: Columbia University Law School (J.D. 1971), City University of New York (Brooklyn) (B.A., 1968).

A frequent author, lecturer, and participant in bar committees and other activities, Mr. Isquith has devoted his career to complex financial litigation and business matters.

Mr. Isquith currently writes a weekly column of class action for *The Class Act*, a publication of the National Association of Shareholders and Consumer Attorneys and appears monthly as a columnist for *Law 360*. Among his articles and writings are: *Let's Really Consider The Idea Of A 2 Year Law Degree* (October, 2013); *Spotlight On Spoliation* (September, 2013); *More Restrictions For ERISA Fiduciaries* (August, 2013); *Questionable Constitutionality: Supreme Court's Amex Ruling* (co-authored with Alexander Schmidt of Wolf Haldenstein) (July, 2013); *How Facebook Informs Exclusive Jurisdiction Provisions* (May, 2013); *Sui Generis At Supreme Court* (May, 2013); *Another Look At Amgen* (April, 2013); *How Not To Plead A Multistate Class Action* (March, 2013); *Supreme Court Spotlight: Sex, Race And ... Commerce* (January, 2013); *Rule 23 'Preliminary' Requirement As Seen By 7th Circ.* (December, 2012); *Exhaustion - Patent And Copyright And The Supreme Court* (November, 2012); *Case Study: In Re AIG Securities Litigation* (October, 2012); *Case Study: Rosado V. China North East Petroleum* (September, 2012); *A Dissection Of Rule 23* (August, 2012); *A 2nd Look At Class Action Requirements* (July, 2012); *The Continued Robustness Of Rule 23(b)(2)* (June, 2012); *The Simmonds Case (§16 Ruling) In The Litigation Context* (May, 2012); *A Look At Litigated And Settled Class Certification* (April, 2012); *Concepcion Commands a Case-by-Case Analysis* (March, 2012); *Dec. 20, 2011 - 3 Big Decisions* (February, 2012); *Case Study: Damasco v. Clearwire* (January, 2012); *Redefining Loss Causation In Mutual Fund Cases* (December, 2011).

Further he is a lecturer called upon by the Academy and Bar. For example, *Class Actions with Caution*, (Touro School, 2011); The Federal Pleading Standards after Twombly; Touro Law School (2010). Panelist with the Antitrust Committee of the New York City Bar Association Regarding Private Equity Transactions and the Implications of the Supreme Court's Recent Decisions (2008); Developments in Class Actions; (NYSBA, 2007); IPO Tie In/Claims Seminar, Professional Liability Underwriter Society; Securities Arbitration New York State Bar Association; Real Estate Exit Strategies, American Conference Institute; Fundamental Strategies in Securities Litigation (NYSBA, CLE

Program). He has been active in the Bar Association's activities: President's Committee on Access to Justice (2010); Committee on Evidence (2007 -); Committees on Legislation and Federal Courts, 1984-1988), Committee on Securities, The Association of the Bar of the City of New York (Committee on Federal Courts; Committee on Antitrust); New York County Lawyers' Association (Former Chair: Business Tort/Consumer Fraud-Tort Law Section); Brooklyn (Member: Committee on Civil Practice Law and Rules, 1983-1987; New York State (Member: Committee on Legislation, Trial Lawyers Section, 1981-); the District of Columbia Bar; and Legislation and Civil Practice Law and Rules Committee of the Brooklyn Bar Association; Vice President if the Institute for Law and Economic Policy. Mr. Isquith has been Chairman of the Business Tort/Consumer Fraud Committee of the Tort Law Section of the New York State Bar Association and is a member of that Association's Committees on Securities Law and Legislation. He also serves as a judge for the Moot Court Competition of Columbia University Law School. Mr. Isquith served as President of the National Association of Securities and Commercial Law Attorneys in 2003 and 2004.

Mr. Isquith is frequently quoted in the Wall Street Journal, the New York Times, and other national publications.

The April 1987 issue of Venture magazine listed Mr. Isquith as among the nation's top securities class action attorneys. Since 2006 Mr. Isquith has been elected as among the top 5% of attorneys in the New York City metropolitan area chosen to be included in the Super Lawyers Magazine. Martindale Hubbell registers Mr. Isquith as one of the Preeminent Lawyers (2010), Avenue Magazine, Legal Elite (2010).

MICHAEL JAFFE: ***admitted*:** California; New York; U.S. District Courts for the Southern and Eastern Districts of New York. ***Education***: University of California at Berkeley (B.S., with highest distinction, 1982); Hastings College of the Law, University of California (J.D., 1987). Judicial Extern to the Honorable Thelton E. Henderson, Northern District of California, 1986-1987. Member: The Association of the Bar of the City of New York. Languages: French.

ANITA B. KARTALOPOULOS: ***admitted*:** New York; New Jersey; U.S. Court of Appeals for the Federal and Third Circuits. ***Education***: University of Toledo, B.A.; Seton Hall University, J.D. Ms. Kartalopoulos, a former member of Milberg LLP, litigates claims in the areas of securities fraud, derivative litigation, and mergers and acquisitions. She focuses her practice on lead plaintiff litigation, as well as breach of fiduciary and transactional litigation. She works closely with the institutional investor clients, including trustees of public and private funds, throughout the U.S. providing counsel on asset recovery, fiduciary education, and risk management.

Ms. Kartalopoulos has extensive experience in litigating complex securities cases including *In re Sears, Roebuck & Co. Securities Litigation* ($215 million settlement), *In re Chiron Corp. Securities Litigation* ($30 million settlement), and others. Ms. Kartalopoulos has also achieved noteworthy results including improved corporate governance and disclosures as well as increased share value in recent litigations including in *In re Topps Co. Shareholder Litigation*, *In re Anheuser-Busch Cos. Shareholders Litigation*, *In re Net Logic*, *In re Smith International*, *In re L-3 Communication Holdings, Inc.*, *In re Republic Services, Derivative Litigation*, and many others.

Prior to entering private practice, Ms. Kartalopoulos served in senior regulatory positions involving insurance and health in the State of New Jersey, including serving as Deputy Commissioner of Insurance, for Life and Health; Director of Legal and Regulatory Affairs (Department of Health); and Executive Director of the New Jersey State Real Estate Commission. She managed the New Jersey Insurance Department's Multi-State Task Force investigating the sales practices of the Prudential Insurance Company, which resulted in a $50 million fine against Prudential and a $4 billion recovery for policyholders. She also served on the Board of Directors of MBL Insurance Company as a rehabilitator and managed litigation on behalf of the company.

Ms. Kartalopoulos is a regular speaker at numerous conferences focused on fiduciary education, ethics, and U.S. securities litigation, including the Investment Education Symposium, the Institutional Investor European Pensions Symposium, the Canadian Hedge Funds Investment Roundtable, the New York Hedge Funds Roundtable, and the AEDBF (*Association Europeenne de Droit Bancaire et Financier*), FPPTA Trustee School, GAPPT, MATTER, LATEC. She also speaks regularly on the complex legal environment that institutional investors face when addressing losses due to securities fraud as well as their proactive and reactive alternatives.

Ms. Kartalopoulos has co-authored "Deterring Executive Compensation Excesses: Regulatory Weaknesses, Litigation Strengths" (03/05, NY, NY), and "Vintage Wine in New Bottles: The Curious Evolution of the Concept of Loss Causation" (11/05, NY, NY).

BENJAMIN Y. KAUFMAN: ***admitted*:** New York. ***Education***: Yeshiva University, B.A.; Benjamin N. Cardozo School of Law, Yeshiva University, J.D. Mr. Kaufman focuses on class actions on behalf of defrauded investors and consumers. Mr. Kaufman's successful securities litigations include *In re Deutsche Telekom AG Securities Litigation*, No. 00-9475 (S.D.N.Y.), a complex international securities litigation requiring evidentiary discovery in both the United States and Europe, which settled for $120 million. Mr. Kaufman was also part of the team that recovered $46 million for investors in *In re Asia Pulp & Paper Securities Litigation*, No. 01-7351 (S.D.N.Y.); and $43.1 million, with contributions of $20 million, $14.85 million and $8.25 million from Motorola, the

individual defendants, and defendant underwriters respectively, in *Freeland v. Iridium World Communications, Ltd*.

Mr. Kaufman's outstanding representative results in derivative and transactional litigations include: *In re Trump Hotels Shareholder Derivative Litigation* (Trump personally contributed some of his holdings; the company increased the number of directors on its board, and certain future transactions had to be reviewed by a special committee); *Southwest Airlines Derivative Litigation (Carbon County Employee Retirement System v. Kelly* (Dist. Ct. Dallas Cnty., Tex.)) (a derivative matter that resulted in significant reforms to the air carrier's corporate governance and safety and maintenance practices and procedures for the benefit of Southwest and its shareholders).

He argued the appeal in *In re Comverse Technology, Inc. Derivative Litig.*, 56 A.D.3d 49 (1st Dep't 2008) which led to the seminal New York Appellate Division opinion which clarified the standards of demand futility, and held that a board of directors loses the protection of the business judgment rule where there is evidence of self-dealing and poor judgment by the directors; and *In re Topps Company, Inc. Shareholders Litigation* which resulted in a 2007 decision which vindicated the rights of shareholders under the rules of comity and doctrine of forum non conveniens and to pursue claims in the most relevant forum notwithstanding the fact that jurisdiction might exist as well in the state of incorporation. Mr. Kaufman has also lectured and taught in the subjects of corporate governance as well as transactional and derivative litigation.

In addition, Mr. Kaufman represents many corporate clients in complex commercial matters, including *Puckett v. Sony Music Entertainment*, No. 108802/98 (Sup. Ct. N.Y. Cnty. 2002) (a complex copyright royalty class action); *Shropshire v. Sony Music Entertainment*, No. 06-3252 (S.D.N.Y.), and *The Youngbloods v. BMG Music*, No. 07-2394 (S.D.N.Y.); and *Mich II Holdings LLC v. Schron,* No. 600736/10 (Sup. Ct. N.Y. Cnty.) (represented certain defendants in connection with real estate dispute and successfully litigated motion to dismiss all claims against those defendants; he continues to represent those clients' interests in several related litigations in New York and Delaware). Mr. Kaufman has also represented clients in arbitrations and litigation involving oppressed minority shareholders in closely held corporations.

Prior to joining WHAFH and Milberg in August of 1998, Mr. Kaufman was a Court Attorney for the New York State Supreme Court, New York County (1988-1990) and Principal Law Clerk to Justice Herman Cahn of the Commercial Division of the New York State Supreme Court, New York County (1990-1998).

Mr. Kaufman is an active member of the Commercial and Federal Litigation Section of the New York State Bar Association, the International Association of Jewish Lawyers and Jurists and the Jewish Lawyers Guild. He has also lectured on corporate

governance issues to institutional investor conferences across the United States and abroad. Mr. Kaufman is a member of the Board of Trustees of the Hebrew Academy of the Five Towns and Rockaways.

LAWRENCE P. KOLKER: ***admitted*:** New York; U.S. Courts of Appeals for the Second and Eleventh Circuits; U.S. District Courts for the Southern and Eastern Districts of New York, Western District of Michigan and the District of Colorado. ***Education***: State University of New York at Binghamton (B.A., 1978); Brooklyn Law School (J.D., 1983). Editor, *Brooklyn Law Review*, 1982-1983. Panelist, Early Neutral Evaluator for the Eastern District of New York, 1992-1997. Lecturer, Brooklyn Law School, 1989. Assistant Corporation Counsel, City of New York, 1983-1987. Member: The Association of the Bar of the City of New York; New York State Bar Association.

Mr. Kolker has often represented investors in direct investments, such as REITs and limited partnerships, including Inland Western REIT, Wells REIT, CNL Hotels & Resorts, Inc., General Electric (Polaris Aircraft limited partnerships), Jones Intercable, Nooney and Sierra Pacific (American Spectrum roll-up), Real Estate Associates (NAPICO roll-up), and Marriott Hotel Properties II. He was appointed Counsel to the Courtyard by Marriott Limited Partners Committee in its dealings with Host Marriott Corporation, and Special Counsel to the Windsor Park Properties 7 and 8 limited partners to insure the fairness of their liquidation transactions.

He has tried several securities actions to verdict. His notable judicial decisions include *Stepak v. Addison*, 20 F.3d 398 (11th Cir. 1994); *In re Comdisco Securities Litigation*, 2003 U.S. Dist. LEXIS 5097 (N.D. Ill. March 3, 2003); *City Partnership Co. v. Cable TV Fund 14-B*, 213 F.R.D. 576 (D. Colo. 2002); *Sturm v. Marriott Marquis Corp*., 85 F. Supp. 2d 1356 (N.D. Ga. 2000); *In re Southeast Hotel Properties Limited Partnership Investor Litigation*, 151 F.R.D. 597 (W.D.N.C. 1993); *Prostic v. Xerox Corp*., [1991 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 96,1967 (D. Conn. July 19, 1991); *In re Cencom Cable Income Partners, L.P. Litigation*, Consolidated C.A. No. 14634, 2000 Del. Ch. LEXIS 10 (Jan. 27, 2000); and *Wallace v. Wood*, 752 A.2d 1175 (Del. Ch. 1999). Mr. Kolker is a frequent speaker at conferences of the American Conference Institute, the Investment Program Association and the Strategic Research Institute, and has published articles in Standard & Poor's *Review of Securities and Commodities Regulation* entitled "Litigation Strategies for Limited Partnership Tender Offers" (February 1996) and "Limited Partnership Five Percent Tender Offers" (October 1997). Mr. Kolker has acted as lead counsel in numerous class and derivative actions asserting the rights of investors since joining Wolf Haldenstein in 1989. He also counsels investment management firms in transactional and securities matters and represents them in corporate and business litigation.

DANIEL W. KRASNER: ***admitted:*** New York; Supreme Court of the United States; U.S. Courts of Appeals for the Second, Third, Fourth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits; U.S. District Courts for the Southern and Eastern Districts of New York, Central District of Illinois, and Northern District of Michigan. ***Education:*** Yale Law School (LL.B., 1965); Yeshiva College (B.A., 1962). Mr. Krasner, a partner in the Firm's New York office, is the senior partner of Wolf Haldenstein's Class Action Litigation Group. He began practicing law with Abraham L. Pomerantz, generally credited as the "Dean of the Class Action Bar." He founded the Class Litigation Group at Wolf Haldenstein in 1976.

Mr. Krasner received judicial praise for his class action acumen as early as 1978. *See, e.g.*, *Shapiro v. Consolidated Edison Co.*, [1978 Transfer Binder] Fed. Sec. L. Rep. (CCH) & 96,364 at 93,252 (S.D.N.Y. 1978) ("in the Court's opinion the reputation, skill and expertise of . . . [Mr.] Krasner, considerably enhanced the probability of obtaining as large a cash settlement as was obtained"); *Steiner v. BOC Financial Corp.*, [1980 Transfer Binder] Fed. Sec. L. Rep. (CCH) & 97,656, at 98,491.4, (S.D.N.Y. 1980) ("This Court has previously recognized the high quality of work of plaintiffs' lead counsel, Mr. Krasner"). The New York Law Journal referred to Mr. Krasner as one of the "top rank plaintiffs' counsel" in the securities and class action fields. In connection with a failed 1989 management buyout of United Airlines, Mr. Krasner testified before Congress.

More recently, Mr. Krasner has been one of the lead attorneys for plaintiffs in some of the leading Federal multidistrict cases in the United States, including the IPO Litigation in the Southern District of New York, the Mutual Fund Market Timing Litigation in the District of Maryland, and several Madoff-related litigations pending in the Southern District of New York. Mr. Krasner has also been lead attorney in several precedent-setting shareholder actions in Delaware Chancery Court and the New York Court of Appeals, including *American International Group, Inc. v. Greenberg*, 965 A.2d 763 (Del. Ch. 2009) and the companion certified appeal, *Kirschner v. KPMG LLP*, Nos. 151, 152, 2010 N.Y. LEXIS 2959 (N.Y. Oct. 21, 2010); *Teachers' Retirement System of Louisiana and City of New Orleans Employees' Retirement System, derivatively on behalf of nominal defendant American International Group, Inc., v. PricewaterhouseCoopers LLP*, No. 152 (New York, October 21, 2010); *In re CNX Gas Corp. S'holders Litig.*, C.A. No. 5377-VCL, 2010 Del. Ch. LEXIS 119 (Del. Ch., May 25, 2010); *In re CNX Gas Corp. S'holders Litig.*, C.A. No. 5377-VCL, 2010 Del. Ch. LEXIS 139, (Del. Ch. July 5, 2010), appeal refused, 2010 Del. LEXIS 324, 2010 WL 2690402 (Del. 2010).

Mr. Krasner has lectured at the Practicing Law Institute; Rutgers Graduate School of Business; Federal Bar Council; Association of the Bar of the City of New York; Rockland County, New York State, and American Bar Associations; Federal Bar Council, and before numerous other bar, industry, and investor groups.

ERIC B. LEVINE: ***admitted***: New York; U.S. Courts of Appeals for the Second and Eleventh Circuits; U.S. District Courts for the Southern and Eastern Districts of New York, and Eastern District of Michigan; U.S. Tax Court. ***Education***: State University of New York at Buffalo (B.A., *summa cum laude*, 1974); University of Pennsylvania (J.D., *cum laude*, 1977). Order of the Coif, Phi Beta Kappa. Associate Editor, *University of Pennsylvania Law Review*, 1976-1977. Member: The Association of the Bar of the City of New York; New York State Bar Association. Mr. Levine's practice focuses on complex commercial and civil litigation, including in the area of bankruptcy and receivership litigation, creditors' rights, and lender liability.

INGRID C. MANEVITZ: ***admitted:*** New York (2003); New Jersey. ***Education:*** Brandeis University (B.A., History, 1999); Brooklyn Law School (J.D. 2002). In June 2000, she studied International and Comparative Corporate and Securities Law and European Union Contract Law at Universita degli Studi di Bologna (University of Bologna School of Law) in Bologna, Italy. Ms. Manevitz is a member of the New York County Lawyer's Association. Her practice areas include commercial and real estate litigation, with an emphasis on cooperative and condominium litigation.

BETSY C. MANIFOLD: ***admitted*:** Wisconsin; New York; California; U.S. District Courts for the Western District of Wisconsin, Eastern and Southern Districts of New York, and Northern, Central and Southern Districts of California. ***Education***: Elmira College; Middlebury College (B.A., *cum laude*, 1980); Marquette University (J.D., 1986); New York University. Thomas More Scholar. Recipient, American Jurisprudence Award in Agency. Member: The Association of the Bar of the City of New York. Languages: French.

Ms. Manifold served as co-lead counsel in the following cases to recovery on behalf of employees: *Miguel Garcia, et al. v. Lowe's Home Center, Inc. et al.* – Case No. GIC 841120 (Barton) (Cal. Sup. Ct, San Diego) ($1.65 million settlement w/ average class member recovery of $5,500, attorney fees and cost awarded separately) and *Neil Weinstein, et al. v. MetLife, Inc., et al.* – Case No. 3:06-cv-04444-SI (N.D. Cal) ($7.4 million settlement) . Ms. Manifold also served as co-lead counsel in the following derivative actions: *In re Atmel Corporation Derivative Litigation*, Master File No. CV 06-4592-JF (N.D. Cal.) ($9.65 million payment to Atmel) and *In re Silicon Storage Technology Inc. Derivative Litig,*, Case No. C 06-04310 JF (N.D. Cal.) (cash payment and re-pricing of options with a total value of $5.45 million). Ms. Manifold also worked as lead counsel on the following class action: *Lewis v. American Spectrum Realty*, Case No. 01 CC 00394, Cal. Sup. Ct (Orange County) ($6.5 million settlement).

GREGORY M. NESPOLE: ***admitted*:** New York; U.S. District Courts for the Southern and Eastern Districts of New York; United States Court of Appeals for the Second, Fourth, and Fifth Circuits. ***Education***: Bates College (B.A., 1989); Brooklyn Law School (J.D., 1993). Member: The Association of the Bar of the City of New York; New York State Bar Association. Mr. Nespole's experience includes complex civil and criminal litigation. Mr. Nespole is responsible for the investigation, initiation and prosecution of securities class actions and derivative litigations on behalf of the firm throughout the Country. Mr. Nespole also devotes a considerable amount of time to litigating issues surrounding mergers and acquisitions. Mr. Nespole also represents corporate defendants with respect to class certification issues and structuring class-wide settlements. He has been approved as a panel attorney by a major insurance company to address certification issues. Mr. Nespole is the co-chair of the firm's *Madoff Litigation Task Force.* He has been elected a "Super Lawyer" each year since 2009.

BRETT D. NUSSBAUM: ***admitted:*** New York; United States District Court for the Eastern and Southern Districts of New York. ***Education:*** Cornell University (B.S, 1987); Hofstra University School of Law (J.D. 1990).

A partner of the firm in the Health Care Department, he practices in the areas of guardianship, self-pay, Medicaid, and estate collection litigation. Mr. Nussbaum represents nursing homes throughout New York State, advising them in all areas of reimbursement related issues. He has extensive experience in representing nursing homes in Mental Hygiene Law Article 81 Guardianship proceedings in an effort to obtain Medicaid eligibility for their residents. Mr. Nussbaum also advises and represents hospitals in an effort to solve complex discharge planning problems. He has brought actions in New York State Supreme Court and Surrogate's Court to solve clients' accounts receivables troubles.

Mr. Nussbaum is recognized in New York State in the elder law and guardianship field. He has given numerous lectures to Nursing Home and Hospital Associations in an effort to have these entities streamline their nursing home admissions process and limit their potential liability from non-paying individuals. Mr. Nussbaum, for the past several years, has been a mentor in the New York Law School Elder Law Clinic.

Before joining the firm, Mr. Nussbaum began his career as a prosecutor in the Bronx County District Attorney's office and later was a partner in a Long Island law firm.

He is a member of the New York State Bar Association, Elder Law Section, and Guardianship Committee. He also is a member of the Healthcare Financial Management Association.

JANINE L. POLLACK: ***admitted*****:** New York (1990); New Jersey (1989); U.S. District Courts for the Southern and Eastern Districts of New York and the District of New Jersey, among others. ***Education***: Rutgers University (1986), with high honors, Phi Beta Kappa; University of Pennsylvania School of Law (1989), Editor - Journal of International Business Law. Ms. Pollack has successfully prosecuted many consumer and securities cases. She is one of the lead counsel in the recent $28.5 million settlement in *In re Reebok EasyTone Litigation* (D. Mass.), as well as the $45 million settlement in *In re Skechers Toning Shoes Product Liability Litigation* (*Grabowski*) (W.D. Ky.), false advertising class actions involving toning shoes. She is also lead counsel in numerous other class actions involving consumer fraud, including *Bezdek v. Vibram USA Inc.* (D. Mass.), against the maker of so-called barefoot running shoes. In addition, Ms. Pollack recently won a jury trial against R.J. Reynolds in a wrongful death tobacco case in Florida state court. She was also lead trial counsel in a federal court case against a major mutual fund advisor.

Ms. Pollack is co-chair of the Women's Initiative of the National Association of Shareholder & Consumer Attorneys (NASCAT), for which she organizes meetings and charity events. A frequent public speaker, Ms. Pollack has given lectures on such topics as consumer fraud, securities regulation, time and stress management, Cy Pres, and other related topics. Ms. Pollack was recently appointed to the New York City Bar Association's Women in the Profession Committee. Ms. Pollack's recent achievements include being named as a New York Super Lawyer in 2012.

JEFFREY S. REICH: ***admitted:*** Florida (1993); New York (1994). ***Education:*** University of Miami School of Law, *cum laude*, where he served as an editor on the University of Miami Entertainment and Sports Law Review; Tulane University, where he was elected to the honorary fraternities Beta Gamma Sigma and Beta Alpha Psi. Mr. Reich, who has an undergraduate degree in accounting and passed all four parts of the CPA exam, brings strong financial expertise to his practice.

As a partner in the firm, Mr. Reich concentrates on the practice of real estate law. He represents a diverse group of clients, including real estate developers, lenders, investors and cooperative and condominium boards. Mr. Reich represented three of the country's largest condominium and cooperative developments borrowing approximately $750,000,000 to facilitate the rehabilitation of more than 25,000 apartments in New York City. He also represented a developer in connection with the conversion and sale of some of the most spectacular loft condominiums in the city's downtown area.

Mr. Reich is a regular contributor to The Cooperator, one of New York's premier publications for the co-op and condo community. In addition, he is a frequent lecturer

on a range of topics concerning cooperative and condominium law, speaking to the legal community, real estate professionals, and individual unit owners.

RACHELE R. RICKERT: ***admitted:*** California; U.S. District Court for the Southern District of California. ***Education:*** Point Loma Nazarene College (B.A., 1994); University of California, Hastings College of the Law (J.D., 1997). Member: State Bar of California. Former Deputy Alternate Public Defender for the County of San Diego. Ms. Rickert is located in the firm's San Diego office. She practices corporate derivative and class action litigation including securities, consumer, antitrust, employment and general corporate and business litigation. Ms. Rickert has played a significant role in litigating numerous class and derivative actions, including *In re Apple & AT&TM Antitrust Litigation*, Master File No. C 07-05152 JW (N.D. Cal.) (antitrust class action against Apple Inc. and AT&T Mobility LLC regarding aftermarkets for iPhone wireless service and applications); *Ardon v. City of Los Angeles* (2011) 52 Cal.4th 241 (challenging the City of Los Angeles' telephone users tax on behalf of the City's taxpayers); *McWilliams v. City of Long Beach*, 2013 Cal. LEXIS 3510, Cal. Supreme Ct. No. S202037 (April 25, 2013) (challenging the City of Long Beach's telephone users tax on behalf of the City's taxpayers); *DeFrees, et al. v. Kirkland, et al*., No. CV 11-04272 GAF(SPx) (C.D. Cal.) (shareholder derivative action); *Bamboo Partners LLC, et al. v. Robert Mondavi Corp., et a*l. (shareholder class action that settled for $10.8 million in 2007); and *Lewis, et al. v. American Spectrum Realty, Inc., et al*., (shareholder class action that settled for $6.5 million in 2004).

MARK C. RIFKIN: ***admitted*:** New York; Pennsylvania; New Jersey; U.S. Supreme Court; U.S. Courts of Appeals for the Second, Third, Fifth, and D.C. Circuits; U.S. District Courts for the Southern and Eastern Districts of New York, the Eastern and Western Districts of Pennsylvania, the District of New Jersey, the Eastern District of Wisconsin and the Western District of Michigan. ***Education*:** Princeton University (A.B., 1982); Villanova University School of Law (J.D. 1985). Contributor, PACKEL & POULIN, *Pennsylvania Evidence* (1987). Mr. Rifkin has extensive experience in complex class and derivative actions in securities, ERISA, antitrust, intellectual property, and consumer protection litigation. Mr. Rifkin has extensive trial experience in class and derivative actions, including *In re National Media Corp. Derivative Litig*., C.A. 90-7574 (E.D. Pa.), *Upp v. Mellon Bank, N.A.*, C.A. No. 91-5229 (E.D. Pa.), where the verdict awarded more than $60 million in damages to the Class (later reversed on appeal, 997 F.2d 1039 (3d Cir. 1993)), and *In re AST Research Securities Litigation*, No. 94-1370 SVW (C.D. Cal.), as well as a number of commercial matters for individual clients. Mr. Rifkin has lectured before diverse business and professional organizations in the areas of securities and complex litigation and corporate governance, serves as a moot court judge for the A.B.A. and at New York University Law School, and is a frequent guest lecturer to graduate and undergraduate economics and finance students on corporate governance topics.

ALEXANDER H. SCHMIDT: ***admitted:*** New York; New Jersey; United States Supreme Court, United States Court of Appeals for the Second Circuit, and the United States Court of Federal Claims. ***Education:*** State University of New York, Stony Brook (B.A., 1981); Brooklyn Law School (J.D., 1985). Mr. Schmidt concentrates on sophisticated commercial litigation, including matters involving antitrust, class actions, real estate, banking, commercial factoring, securities fraud, civil RICO, intra-corporate and partnership disputes, and legal and accounting malpractice. Most recently, he acted as lead counsel in the landmark *Roberts v. Tishman Speyer*, 13 N.Y.3d 270 (N.Y. 2009), described by a sitting member of the U.S. House of Representatives as the greatest legal victory for tenants in her lifetime. In *Roberts*, Mr. Schmidt obtained a victory in the New York Court of Appeals requiring the reregulation of thousands of apartment units in the Stuyvesant Town complex in Manhattan, New York. Mr. Schmidt was also the sole plaintiffs' counsel in *Dresses For Less, Inc. v. CIT Group/Commercial Services, Inc*. (S.D.N.Y.), in which the court sustained Sherman Act claims he brought on behalf of victims of group boycotts by the commercial factoring industry. The case resulted in a very satisfying, confidential settlement for his clients and ended the garment center factors' 80-year old practice of conducting illegal twice-weekly meetings to discuss and make joint credit decisions concerning their common customers. Among other noteworthy matters, Mr. Schmidt also conceived and helped sustain a precedent setting Kodak aftermarket monopolization claim in an antitrust and computer fraud and abuse act class action brought by purchasers of Apple's highly popular iPhone, who are challenging Apple's undisclosed, five-year exclusive service contract with AT&T Mobility. *In re Apple & ATTM Antitrust Litigation* (N.D. Ca.). In *Atkins & O'Brien L.L.P. v. ISS Int'l Serv. Sys*. (N.Y. App. Div.), Mr. Schmidt resurrected an archaic estoppel exception to the general rule that a client can fire its lawyer at any time, enabling his law firm clients to recover several years of future fees under a general retainer contract. Recently, without filing a lawsuit, Mr. Schmidt successfully represented the tenants association of a multi-building, 1400 apartment complex in renegotiating a ten-year old settlement agreement. The amended agreement reduced rents and plugged a loophole that had enabled rent-protected units to be converted to fully deregulated market apartments. Mr. Schmidt is admitted to practice in New York and New Jersey and before the United States Supreme Court, United States Court of Appeals for the Second and Ninth Circuits, and the United States Court of Federal Claims. Mr. Schmidt was an Assistant Adjunct Professor of Law at Brooklyn Law School in 1998 and 1999, where he co-taught a seminar on Federal Discovery Practice. He served as the Executive Notes & Topics Editor for the Brooklyn Law Review.

JEFFREY M. SCHWARTZ: ***admitted:*** New York (1987). ***Education:*** State University of New York at Binghamton; Tulane Law School, *cum laude.* A partner of the firm, Mr. Schwartz has extensive experience in transactional real estate work. His real estate practice includes the leasing, financing, acquisition and sale of commercial property, as

well as the operation, conversion and sale of residential properties. He is also counsel to a significant number of cooperative and condominium buildings throughout the metropolitan area.

Mr. Schwartz has chaired the New York County Lawyer's Association's symposiums on Commercial Leasing as well as the Purchase and Sale of Real Estate in New York. He is a member of the New York State Bar Association's Committee on Cooperatives and Condominiums and was recently appointed to the New York City Bar Association's Committee on Cooperatives and Condominiums.

MARK C. SILVERSTEIN: ***admitted***: New York. ***Education***: State University of New York at Binghamton (B.S., *summa cum laude*, 1980); New York University (J.D., *cum laude*, 1983). Order of the Coif. Editor, *Journal of International Law and Politics*, 1982-1983. Member: the Association of the Bar of the City of New York; New York State; American Bar Associations. Mr. Silverstein serves as general counsel to corporations and handles matters involving tax planning and mergers and acquisitions. He also provides counseling in the structure of complex settlements and the administration of complex claims administrations.

STEVEN D. SLADKUS: ***admitted:*** New York; New Jersey; United States District Courts for the Southern and Eastern Districts of New York, District of New Jersey and the U.S. Court of Appeals, Second Circuit. ***Education:*** Brandeis University (B.A. 1991); Brooklyn Law School (J.D. 1994); LL.M. (Masters of Laws) in Taxation, New York University School of Law (1995).

Mr. Sladkus focuses primarily on representing clients in real estate-related litigation with a concentration on cooperatives and condominiums. He regularly handles a wide variety of construction defect, mold and general commercial and corporate-law cases as well as the defense of discrimination claims, including those against cooperative and condominium boards. Mr. Sladkus also provides general counseling to the boards and managing agents of the firm's cooperative and condominium clients and also lectures on many of these topics.

His reported cases include *Weinreb v. 37 Apartments Corp.*, dismissing shareholders' cause of action for permanent injunction against directors of residential cooperative corporation where only substantive claim against them had previously been dismissed; *61 W. 62 Owner's Corp. v. CGM EMP LLC*, granting injunction in favor of residential cooperative corporation against nearby bar from causing noise nuisance; *Peacock v. Herald Square Loft Corp.*, dismissing shareholders' claim for breach of fiduciary duty against board members in their individual capacities; *Raimondi v. Board of Managers of Olympic Tower Condominium*, granting summary judgment to condominium holding

that an agreement between the board and a purchaser as a condition for waiving the board's right of first refusal was enforceable; *Teitelbaum v. Mordowitz*, granting summary judgment on personal guaranty for real estate loan; *Terk v. 40059 Owners Corp.*, reversing summary judgment against co-op where question existed whether tenant waived proprietary lease notice requirement for co-op's repairs; *Equal Employment Opportunity Commission v. Barney Skanska Construction Company*, granting summary judgment to defendant construction company dismissing plaintiff's claim that defendant was liable for discrimination as a successor-in-interest of company purchased by defendant; and *178 East 80th Street Owners, Inc. v. Jenkins*, denial of defendant's motion to vacate the parties' freely negotiated settlement agreement.

Mr. Sladkus serves as an arbitrator in the Civil Court of the City of New York, is a member of the Cooperative and Condominium Committee of the Association of the Bar of the City of New York and is the Co-Chairman of the Cooperative and Condominium Committee of the Real Property Law Section of the New York State Bar Association.

Mr. Sladkus also has been featured in articles concerning cooperatives and condominiums in The New York Times, The New York Post, Crain's, The Real Deal, Habitat Magazine and the Cooperator and is regularly called upon to contribute to The New York Times Real Estate Section's Q & A.

JEFFREY G. SMITH: ***admitted:*** New York; California; Supreme Court of the United States; U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Circuits; U.S. Tax Court; U.S. District Courts for the Southern and Eastern Districts of New York, Southern, Central and Northern Districts of California and the Districts of Colorado and Nebraska. ***Education***: Woodrow Wilson School of Public and International Affairs, Princeton University (M.P.A., 1977); Yale Law School (J.D., 1978); Vassar College (A.B., *cum laude generali*, 1974). At Yale Law School, Mr. Smith was a teaching assistant for the Trial Practice course and a student supervisor in the Legal Services Organization, a clinical program. Member: The Association of the Bar of the City of New York; New York State and American (Section on Litigation) Bar Associations; State Bar of California (Member: Litigation Section); American Association for Justice. Mr. Smith has frequently lectured on corporate governance issues to professional groups of Fund trustees and investment advisors as well as to graduate and undergraduate business student groups, and has regularly served as a moot court judge for the A.B.A. and at New York University Law School. Mr. Smith has substantial experience in complex civil litigation, including class and derivative actions, tender offer, merger, and takeover litigation. Mr. Smith is rated "AV" by Martindale Hubble and, since its inception in 2006, has been selected as among the top 5% of attorneys in the New York City metropolitan area chosen to be included in the Super Lawyers Magazine.

LISA A. SMITH: ***admitted:*** New York (1996); Massachusetts (1996). ***Education:*** Colgate University (B.A. 1992); Hofstra University School of Law (J.D. 1995). As a partner in the firm, Ms. Smith practices transactional real estate in New York and nationally, representing parties in acquisitions and sales, construction and mortgage financing, and residential and commercial leasing.

Ms. Smith represents cooperative and condominium buildings on an ongoing basis in connection with their general corporate and condominium association matters, including those relating to tenant stockholders and unit owners, board members, managing agents and contractors. In recent years, she has also represented numerous developers and sponsors of cooperative and condominium offering plans for major development projects throughout New York City.

ROBERT D. STEELE: ***admitted:*** New York (1982); United States Tax Court (1996). ***Education:*** Brooklyn College of the City University of New York, *summa cum laude*; University of Virginia School of Law (J.D., 1981), where he was a Senior Editor of the Virginia Journal of International Law. He served as a law clerk to an appellate court justice before entering private practice in 1982.

Mr. Steele is head of the Trusts & Estates Department. He practices in the areas of estate planning, taxation and administration of estates and trusts, and not-for-profit corporations, as well as practicing mediation as a certified mediator in the New York State Courts. He has extensive experience in estate planning for clients in numerous situations, including small business owners, entrepreneurs, executives of publicly held corporations, and in various family situations including members of traditional and non-traditional families. Mr. Steele has wide experience in drafting wills and various types of trusts. He also has extensive experience in the administration of estates of all sizes and complexity, including the valuation of limited partnerships and closely held corporations. He also has brought or defended actions of many varieties, including will contests and contested fiduciary accountings, and has represented guardians, conservators, committees, and trust and estate beneficiaries in related court proceedings.

Mr. Steele is a recognized leader in the use of computers and the Internet in all aspects of practicing law, especially in estate planning, estate and trust administration, complex tax calculations, and research, as well as in heir searches, asset valuation, and lost asset searches. Utilizing these technologies allows for more efficient and less costly estate planning and administration.

Mr. Steele has been mediating in the New York State courts and at community dispute resolution centers since 2004, mediating disputes involving a variety of subject matters.

Mr. Steele co-chaired The Basics of Mediating Trusts & Estates Disputes in May, 2012, sponsored by the New York State Bar Association, believed to be the first such program offered in New York State, and co-authored an article with the same title discussing the program in New York Dispute Resolution Lawyer, Fall 2012.

Mr. Steele is the Editor of eReport, the electronic newsletter of the American Bar Association's Section of Real Property, Trust and Estate law (2010 - present), and previously was Trust and Estate Editor of eReport (2006-2010). Previously, he was Managing Editor of its predecessor, E-STATE.

Mr. Steele is the author or co-author of: "Revenue Ruling 2011-28: Life insurance can be subject to a grantor's power of substitution," eReport, February, 2013, "The Basics of Mediating trusts and Estate Law," New York Dispute Resolution Lawyer, Fall 2012, "Smartphones for Lawyers 2.0," eReport, December, 2012, "Smartphones for Lawyers," eReport, December, 2011, "IRS Notice 2009-55: Transactions Of Interest," eReport, August, 2009, "New York State Department of Taxation and Finance, Advisory Opinion on the New York estate taxation of non-resident owned S Corporations and single member LLCs which own New York Real Estate," eReport, February, 2009, "Internet Research Tools and Estate Planning and Tax Software," E-STATE issue 2003.2, "The Pro Bono Response to September 11th," E-STATE issue 2003.1, and co-author of "Preparation of the Federal Estate Tax Return: Schedules B, C, and F," The Practicing Law Institute. He has also been a lecturer at the American Bar Association.

Mr. Steele is a member of the American Bar Association, a vice chair of the Real Property, Probate and Trust Law standing Committee on Publications, a vice chair of the Emotional and Psychological Issues in Estate Planning Committee, former chair of the Public Website and E-STATE committee, former vice-chair of the Committee on Technology in the Practice, and is a member of the Committees on Insurance Planning and BioEthics.

Mr. Steele is also a member of the New York State Bar Association, and is the liaison between the Trusts and Estates Section and the Dispute Resolution Section.

He is rated AV, the highest rating possible from Martindale-Hubbell®, the country's foremost legal directory and has been selected for inclusion in the New York Metro Super Lawyers® listing every year since its inception in 2006.

Special Counsel

JUSTICE HERMAN CAHN: ***admitted:*** New York. ***Education***: Harvard Law School and a B.A. from City College of the City University of New York. Justice Herman Cahn was first elected as Judge of the Civil Court of the City of New York in 1976. He

subsequently served as an Acting Justice of the Supreme Court from 1980 until 1992, when he was elected to the Supreme Court. Throughout his decades on the bench, he principally handled civil cases, with the exception of 1981 until 1987, when he presided over criminal matters. Justice Cahn was instrumental in the creation of, and a founding Justice in, the Commercial Division within the New York State Supreme Court. He served as a Justice of the Commercial Division from its inception in 1993.

Among his most notable recent cases are the consolidated cases stemming from the Bear Stearns merger with JP Morgan (*In re Bear Stearns Litigation*); litigation regarding the America's Cup Yacht Race (*Golden Gate Yacht Club v. Société Nautique de Genève*); litigation stemming from the attempt to enjoin the construction of the new Yankee Stadium (*Save Our Parks v. City of New York*); and the consolidated state cases regarding the rebuilding of the World Trade Center site (*World Trade Center Properties v. Alliance Insurance; Port Authority v. Alliance Insurance*).

Justice Cahn is a member of the Council on Judicial Administration of the Association of the Bar of the City of New York. He has also recently been appointed to the Character and Fitness Committee of the Appellate Division, First Department. He is on the Register of Mediators for the United States Bankruptcy Court, Southern and Eastern Districts of New York.

Before ascending the bench, Justice Cahn practiced law in Manhattan. He was first admitted to the New York bar in 1956. He is admitted to practice in numerous courts, including the New York State courts, the Southern District of New York and the United States Supreme Court.

Of Counsel

Robert Abrams: ***admitted*:** New York; U.S. Court of Appeals for the Third Circuit; U.S. District Courts for the Southern and Eastern Districts of New York, Eastern District of Missouri, District of Maryland, and District of Delaware. ***Education:*** Haverford College (B.A., 1961); Columbia University (Ph.D., 1966), Brooklyn Law School (J.D., 1992). Woodrow Wilson Fellow; International Business Law Fellow. Adjunct Professor, Mediation Clinic, Brooklyn Law School, 1983-1984. Mr. Abrams was formerly a Professor of Political Science at Brooklyn College and the Graduate Center of the City University of New York. Member: New York State Bar Association. Mr. Abrams is the author of books on the theory of collective choice (Columbia University Press) and voting theory (Sage), as well as articles on Soviet politics, game theory and bargaining and negotiations. He has focused his practice on complex securities, ERISA, and consumer actions.

He was co-lead counsel in *In re Tyson Foods, Inc.*, before the Delaware Chancery Court, which settled claims of breach of fiduciary duty in connection with related party transactions and spring loading of options for Tyson management.

He is currently active in litigation on behalf of securities brokers, bringing claims for overtime pay and improper deductions from compensation against six major brokerage houses under the federal Fair Labor Standards Act and New York, New Jersey and Connecticut Labor Law. These cases include *Lavoice v. Citigroup Global Markets, Inc.*; *Basile v. A.G. Edwards, Inc.*; *Rosenthal v. A.G. Edwards & Sons, Inc.*; *Palumbo v. Merrill Lynch*; *Garrison v. Merrill Lynch*; *Roles v. Morgan Stanley*; *Lenihan v. Morgan Stanley*; *Klein v. Ryan Beck*; and *Badain v. Wachovia*.

Mr. Abrams was the firm's primary representative to the executive committee representing NationsBank shareholders in *In re BankAmerica Corp. Sec. Litig.*, which resulted in an award of $490 million to NationsBank and BankAmerica shareholders. He was also co-lead counsel in a New York state consumer protection class action against AT&T Wireless Corp., *Naevus v. AT&T Corp.*, which resulted in an award valued at $40 million for the class members. Mr. Abrams was named a Super Lawyer from 2010 through 2012.

THEODORE B. BELL: ***admitted:*** Illinois; Michigan; U.S Court of Appeals for the Seventh Circuit; U.S. District Courts for the Northern, Central, and Southern Districts of Illinois and the Eastern District of Michigan. ***Education:*** University of Michigan (B.A., Sociology, 1988); University of Detroit, Mercy School of Law (J.D., 1992). Mr. Bell is Of Counsel to the firm and is located in the firm's Chicago office. He worked with the firm as a contract attorney for several years before eventually joining the firm as an associate in 2006.

Mr. Bell has nearly 20 years of civil litigation experience. His practice is focused on class actions with an emphasis on antitrust actions. Some of the notable cases that Mr. Bell has played or is currently playing a significant role in litigating include *The Shane Group, et al. v. Blue Cross Blue Shield of Michigan*, No. 10-cv-14360-DPH-MKM (E.D. Mi.) (price fixing through the use of most favored nation agreements); *In re Dairy Farmers of America, Inc. Cheese Antitrust Litigation*, No. 09-3960, M.D.L. No. 2031, (N.D. Ill.) (manipulation of cheese and milk futures to raise prices of dairy products); *In re Evanston Northwestern Healthcare Corp. (ENH) Antitrust Litigation*, No. 07-4446-JHL (N.D. Ill.) (illegal monopolization and attempted monopolization of relevant market); *In re McDonough, et al. v. Toys "R" Us, Inc., et al.*, No 06 CV 00242-AB (E.D. Pa.) (retail price maintenance antitrust litigation); and *In re Sulfuric Acid Antitrust Litigation*, No. 03-4576, M.D.L. No. 1536 (N.D. Ill.) (price fixing and output restriction antitrust litigation).

KELLY A. KULAK: ***admitted:*** New York (2000); New Jersey (2000). ***Education:*** Ramapo College of New Jersey (1994); Seton Hall University School of Law (J.D., 1999). Ms. Kulak is Of Counsel in the Firm's Real Estate Department. Her practice focuses on commercial real estate transactions, including the acquisition, financing, development, leasing and sale of commercial property, including office buildings, hotels, mixed use properties and shopping centers.

Her practice has been diverse, extending from the creation of residential condominiums in Union Square and Tribeca to the sale, acquisition, financing and refinancing of office buildings, mixed-use properties, and hotels in Manhattan and the surrounding Tri-State Area, and retail and office leasing for various clients, including large Tri-State Area developers. She also has experience counseling clients in loan work-outs and restructurings. Prior to joining the Firm, Kelly was at Morrison Cohen and Cole Schotz, where she obtained extensive experience representing Tri-State Area developers and building owners, and national big box retailers in acquisitions, grounds leases and sales.

ALAN MCDOWELL: ***admitted:*** New York. ***Education:*** University of Virginia (B.A., 1985); William & Mary Law School (J.D., 1990); New York University (M.S., Clinical Social Work, 2003). Mr. McDowell practices principally in the area of complex corporate and commercial civil litigation, including corporate law, contracts, and real estate.

KATE M. MCGUIRE: ***admitted*:** New York; U.S. District Courts for the Southern and Eastern Districts of New York. ***Education***: University of California at Santa Cruz (B.A. 1995), Georgetown University Law Center (J.D., 1998); Member: *Georgetown Immigration Law Journal*. Her primary area of practice is class action litigation.

STEPHEN H. OREL: ***admitted:*** New York; New Jersey; United States Supreme Court; United States Court of Appeals for the Second and Ninth Circuits. ***Education:*** Cornell University (1981); University of Pennsylvania Law School, (*cum laude,* 1984); Editor of the Law Review. Mr. Orel concentrates on commercial, corporate, professional liability, real estate and insurance litigation, often involving cooperatives and condominiums. Mr. Orel has broad experience in litigation and advice involving the insurance industry, including defense and coverage issues under commercial property, commercial general liability and directors & officers liability policies.

CARL R. SLOAN: ***admitted:*** New York Federal Courts; United States Supreme Court. ***Education***: Polytechnic Institute of NYU (B.C.E., 1960); Fordham Law School (J.D., 1967). Of Counsel to the firm, Mr. Sloan concentrates his practice on transactional real estate matters. He has over 40 years of experience in representing clients in all types of commercial and residential real estate transactions, including acquisition, disposition,

financing, leasing and land use. He has extensive experience in mortgage foreclosures, mechanic's lien law cases and real estate brokerage cases.

ROBERT B. WEINTRAUB: ***admitted*:** New York; Supreme Court of the United States; U.S. Court of Appeals for the Federal, Second and Fifth Circuits; District of Columbia; U.S. District Courts for the Southern and Eastern Districts of New York. ***Education***: Syracuse University (B.A., *cum laude*, 1972); Georgetown University Law Center (J.D., 1977). Member: 1975-1977, Articles Editor and Member: Executive Board, 1976-1977, Law and Policy in International Business, *Georgetown International Law Journal*. Assistant Editor, Competition Working Group, "The OECD Guidelines for Multinational Enterprises: A Business Appraisal," 1977. Author, "Entering the Uncharted Waters of Oz: FAS 157 Pulls Back the Curtain on the Valuation of Asset-Backed Securities," Bloomberg Law Reports, Securities Law, vol. 2, no. 14, April 7, 2008; "Law Backs Women Warriors," *National Law Journal*, June 7, 1993. Co-contributor: Chapter 7, "The Celler-Kefauver Act of 1950," 4 *Legislative History of the Federal Antitrust Laws and Related Statutes*, edited by E. Kintner, Chelsea House Publishers, 1980. Speeches, "Litigation versus Arbitration and Alternative Dispute Resolution: Are Arbitration and ADR all They are Cracked-up to Be?" (Speech before the Rotary Club of New York). Mediator, U.S. District Court, Southern District of New York. Member: The Association of the Bar of the City of New York (Member: Committee on Securities Regulation; Council on International Affairs; Chair, 1991-1994 and Member: 1987-1990, Committee on Military Affairs and Justice; International Arms Control and Security Affairs, 1990-1991); Committee on Federal Courts 2012 – present; Banking Law Committee 2003-2006; Sports Law Committee 2009-2012; and American Bar Association.

Mr. Weintraub has counseled corporations on contract negotiation and antitrust matters, and provided antitrust advice on mergers to the arbitrage department of a major brokerage house. He has served as an arbitrator for the NYSE, the NASD and the Municipal Securities Rulemaking Board and as a mediator for the federal District Court in New York. Mr. Weintraub also previously served as Senior Vice President and General Counsel of a broker-dealer investment bank which is a member of the NYSE, the NASD and other principal exchanges. Mr. Weintraub has particular experience in litigation involving investment firms and broker-dealers.

Associates

GITI BAGHBAN: ***admitted*:** New York; California; United States District Court for the Southern District of New York. ***Education***: Barnard College (B.A., Economics, 1998); Cornell Law School (J.D. 2007), where she was a general editor of the *Journal of Law and Public Policy*.

KAMBER L. BRISBANE: ***admitted:*** New York. ***Education:*** City University of New York John Jay College (B.S., 1996); City University of New York School of Law (J.D., 1999). Her practice areas are real estate litigation with an emphasis on landlord/tenant, cooperatives, and condominiums. Prior to joining Wolf Haldenstein, Ms. Brisbane was an associate at a preeminent New York City public interest firm where she specialized in all areas of landlord/tenant litigation.

MALCOLM T. BROWN: ***admitted****:* New York, New Jersey, Pennsylvania, United States District Courts for the Southern and Eastern Districts of New York, District of New Jersey and Eastern District of Pennsylvania. ***Education:*** University of Pennsylvania (B.A., Political Science 1988) and Rutgers University School of Law (J.D. 1994).

CHRISTOPHER COBB: ***admitted:*** New York; S.D.N.Y.; U.S. Court of Appeals for the D.C. Circuit. Education***:*** Roanoke College (B.A. 1996); The American University, Washington College of Law (J.D., *cum laude,* 2000). As an associate in the firm's real estate litigation group, Mr. Cobb has extensive experience representing clients in real estate-related litigation with a concentration on cooperatives and condominiums. He provides general counseling to the boards and managing agents of the firm's cooperative and condominium clients, and his broad litigation experience (at trial and appellate levels, as well as in arbitration and mediation forums) includes a wide variety of real estate and general commercial matters, including: construction defects, the liability of officers and directors of our cooperative and condominium clients, commercial lending, unauthorized alterations, contract and ownership disputes, representations made in cooperative and condominium offering plans, excessive noise, nuisance, and disputes with unit owners, tenants, sponsors, and neighboring buildings, among others.

MELANIE R. CONSTANTINO: ***admitted:*** New York; New Jersey; United States District Court for the District of New Jersey. ***Education:*** Boston University (1997); Fordham University School of Law (J.D., 2007); Senior Notes and Comments Editor on the Intellectual Property, Media & Entertainment Law Journal. Her note, Fairly Used: Why Google's Book Project Should Prevail Using a Fair Use Analysis, was published in the journal in 2006. An associate with the firm's Healthcare Group, Ms. Constantino's practice focuses representing health care providers through the state of New York in litigation and estate proceedings.

Prior to joining Wolf Haldenstein, Ms. Costantino was an associate at a prominent northern New Jersey law firm, where her practice focused on litigation, with an emphasis on collections, bankruptcy, foreclosures and elder law. She has served as a court-appointed attorney, temporary and permanent guardian, and as a guardian ad

litem in numerous New Jersey guardianship proceedings. She also served as a condemnation commissioner for an eminent domain matter in Bergen County.

During the 2007-2008 judicial term, Ms. Costantino served as the law clerk to the Honorable Renee Jones Weeks, J.S.C. (ret.), Superior Court of New Jersey, General Equity Part, Essex County.

PATRICK DONOVAN: ***admitted:*** New York (2012). Education: Iona College (B.A., Business Management, 2007); St. John's University School of Law (J.D., 2011). Mr. Donovan's primary areas of focus are securities, derivative and M&A litigation.

JONATHAN L. DREIZEN: ***admitted:*** New York (2007); Connecticut (2007). ***Education:*** Boston University (B.A., History, 1996); Hofstra University School of Law (J.D., 2006) Mr. Dreizen practices commercial and residential real estate litigation. He represents a diverse group of clients, including real estate developers and both cooperative and condominium boards. Mr. Dreizen is a member of the New York State Bar Association.

MITCHELL J. FLACHNER: ***admitted:*** New York; United States District Court for the Southern and Eastern Districts of New York. ***Education:*** State University of New York at Binghamton (B.A. 1996); St. John's University School of Law (J.D., *cum laude,* 1999), Executive Articles Editor for the American Bankruptcy Institute Law Review. Mr. Flachner's practice areas are real estate litigation with an emphasis on cooperatives and condominiums and general litigation.

Previously, Mr. Flachner was an associate at a prominent New York City law firm where he primarily practiced general litigation, real estate litigation and real estate transactions. He began his legal career at the Kings County District Attorney's Office where, as an Assistant District Attorney, he prosecuted a variety of criminal cases.

JULIE B. FREEMAN: ***admitted:*** New York. ***Education:*** Wesleyan University (B.A., 2004); University of Washington School of Law (J.D., 2010), with a concentration in Health Care Law. Ms. Freeman is an associate in the firm's Health Care Department and is a member of the New York State Bar Association's Health Law Section.

JESSICA R. FURGIUELE: ***admitted:*** New York. ***Education:*** University of Michigan (2008); Fordham Law School (2012); Staff Member for the Fordham Journal of Corporate and Financial Law; recipient of the Archibald R. Murray Public Service Award for her participation in the Housing Rights Clinic.

STEPHEN C. GIAMETTA: ***admitted:*** New York (2003); Connecticut. ***Education:*** New York Institute of Technology (B.S.); St. John's University School of Law (J.D., 2002). Mr. Giametta is an associate in the firm's Health Care Department. He practices in the area

of litigation, representing health care providers throughout New York State. Previously, Mr. Giametta was an associate at a well-established Long Island law firm where he specialized in collections litigation and lender liability law.

LYDIA A. KEANEY: ***admitted*****:** New York (2008), United States District Court for the Southern District of New York (2009). ***Education***: Temple University (B.A. *magna cum laude*, Phi Beta Kappa, English, 2004); University of Pennsylvania Law School (J.D. 2007), where she was a Production Editor of the *University of Pennsylvania Journal of Constitutional Law*. Prior to joining Wolf Haldenstein, Ms. Keaney was an associate at SNR Denton US LLP, where her practice focused on complex commercial litigation with an emphasis on class actions. She also has experience in commercial arbitrations, constitutional law, and appellate practice.

BETH LANDES: ***admitted:*** New York (2011). ***Education:*** Connecticut College (B.A., Philosophy, 2005); Duke University Law School (J.D., 2010). Ms. Landes' primary areas of focus are securities, derivative and ERISA litigation.

MICHAEL LISKOW: ***admitted:*** California, New York, U.S. District Courts for the Northern District of California and the Southern and Eastern Districts of New York. ***Education:*** University of Kansas (B.A., Psychology, 2001); University of Pennsylvania Law School (J.D. 2005), where he was the Symposium Editor of the *Journal of Constitutional Law*. Before joining Wolf Haldenstein, Mr. Liskow was a clerk for the Honorable Steven H. Levinson of the Supreme Court of Hawaii, and a Fulbright Teaching Assistant to the Slovak Republic.

MARISA LIVESAY: ***admitted*****:** California; United States District Courts for the Southern, Central and Northern District of California; Ninth Circuit. ***Education***: University of Arizona (B.A., History & Spanish, 1999); University California Los Angeles Law School (J.D. 2002).

MAJA LUKIC: ***admitted:*** New York (2011). ***Education:*** Memorial University of Newfoundland (B.F.A., Theater, 2007); Cornell Law School (J.D. 2010), where she served as an Articles Editor on the *Cornell Law Review*.

CARL MALMSTROM: ***admitted:*** Illinois; Minnesota; N.D. Illinois. ***Education:*** University of Chicago (A.B., Biological Sciences, 1999, A.M., Social Sciences, 2001); University of Hawaii at Manoa (M.A., Anthropology, 2004); Loyola University Chicago (J.D., 2007). Prior to joining Wolf Haldenstein, he was a law clerk in the City of Chicago Law Department. His primary area of practice is class action litigation.

PATRICK H. MORAN: ***admitted:*** Wisconsin, the United States Court of Appeals for the Seventh Circuit and the United States District Court for the Eastern District of

Wisconsin. ***Education***: University of Iowa (B.A. Economics, 1999); Marquette University Graduate School of Business Administration (M.B.A., Accounting, 2004); Marquette University Law School (J.D. 2003), where he was a member of the *Marquette University Law Review* and published "The Federal and Ninth Circuits Square Off: Refusals to Deal and the Precarious Intersection between Antitrust and Patent Law," 87 MARQ. L. REV. 387 (2003). Before joining Wolf Haldenstein, Mr. Moran served as a law clerk to the Hon. John L. Coffey of the United States Court of Appeals for the Seventh Circuit. In addition, Mr. Moran has held positions with a big four accounting firm as an international tax consultant and as an associate for a large securities class action law firm, specializing in litigation concerning mergers and acquisitions.

SHELBY E. NEISS: ***admitted:*** New York (2006); New Jersey (2005). ***Education***: Indiana University (B.S., Public Health Administration); Seton Hall University School of Law (J.D., concentration in Health Law); internship in the legal department of the University of Medicine & Dentistry of New Jersey. Ms. Neiss began practicing in insurance defense and commercial litigation, and then moved on to practice in the specialized field of elder law in New Jersey. She joined the firm's Health Care Department in March 2013. Her practice concentrates on the representation of health care entities in New York and New Jersey to assure continuity of payment and reimbursement through the use of Medicaid applications and appeals, guardianships, estate litigation and administration, general civil litigation, and various other remedies. She is a graduate of the Joseph Halpern-David Furman American Inn of Court and is a member of the New Jersey State Bar Association's Elder & Disability Law Section.

JARED E. PAIOFF: ***admitted:*** New York. ***Education:*** The George Washington University (B.B.A., Finance, 2004); Fordham Law School (J.D., 2008); Staff Member of the Environmental Law Review; recipient of the Archibald R. Murray Public Service Award *cum laude* for his participation in the Criminal Defense Clinic. As an associate of the firm, Mr. Paioff's practice areas primarily include general commercial and real estate litigation, with an emphasis on cooperative and condominium litigation. Prior to joining Wolf Haldenstein, Mr. Paioff served as a law clerk to the Honorable Marcy S. Friedman of the New York Supreme Court for the County of New York.

PARAG PAREKH: ***admitted:*** Connecticut (2009); New York (2010)**.** ***Education:*** Adelphi University (B.A., Psychology, 2006); Pace Law School (J.D., 2009); Georgetown University Law Center (LL.M., Taxation, 2010). Parag Parekh is an associate in the firm's real estate department. Parag represents developers, purchasers, sellers and investors in a variety of commercial and real estate transactions, including the sale, acquisition and leasing of commercial and residential properties, and counsels clients

on the registration requirements of the New York State Department of Law, including the preparation and submission of offering plans, amendments and related regulatory filings.

RACHAEL G. RATNER: ***Education:*** University of North Carolina at Chapel Hill (Phi Beta Kappa, 2004); University of North Carolina at Chapel Hill School of Law (2007); Articles Editor for the North Carolina Journal of International Law and Commercial Regulation; member of the Julius L. Chambers Civil Rights Appellate Advocacy Team. Ms. Ratner concentrates her practice on real estate litigation, specializing in matters involving cooperatives and condominiums. She has experience litigating a wide range of disputes, including those concerning construction defects, sales and share transfers, transient occupancy and subletting issues, as well as housing and employment discrimination claims.

DEBRA M. SCHOENBERG: ***admitted:*** New York; United States District Court for the Southern and Eastern Districts of New York. ***Education:*** State University at Albany (B.A., *cum laude*, 1996); Brooklyn Law School (2000); Articles Editor of the Brooklyn Law Review. Ms. Schoenberg's primary practice areas are general litigation and real estate litigation, with a focus on cooperative and condominium litigation. Prior to joining Wolf Haldenstein, Ms. Schoenberg was an associate at a preeminent New York City real estate litigation firm where she specialized in all areas of real estate litigation and commercial contract disputes.

STU SPODEK: ***admitted:*** New York (2006); New Jersey. ***Education:*** Yeshiva University (B.A., 2002); Fordham University School of Law (J.D., 2005). Mr. Spodek is an associate in the firm's Health Care Department. He practices in the area of litigation, representing health care providers throughout New York State. Previously, Mr. Spodek was an associate at a New York City real estate firm where he specialized in all areas of real estate, commercial, and construction litigation.

RAPHAEL TAWIL: ***admitted:*** New York (2000). ***Education:*** New York University (B.A., History, 1993); Benjamin N. Cardozo School of Law (J.D., 1999). Mr. Tawil represents numerous developers and landlords in commercial real estate transactions, including acquisitions and financing, with a concentration in office and retail leasing.

DANIEL TEPPER: ***admitted:*** New York. ***Education:*** University of Texas at Austin (National Merit Scholar); New York University School of Law. Mr. Tepper is an associate of the firm, and concentrates his practice on commercial litigation and securities arbitration. His reported cases include *CMIA Partners Equity Ltd. v. O'Neill*, 2010 NY Slip Op 52068(U) (Sup. Ct. N.Y. Co., 2010), which was the first time that a New York state court examined shareholder derivative suits under Cayman Islands law;

Hecht v. Andover Assocs. Mgmt. Corp., 27 Misc 3d 1202(A) (Sup. Ct. Nassau Co., 2010), which was the first Madoff-related feeder fund case in the country to survive a motion to dismiss; and *In re Belzberg v. Verus Investments Holdings*, 95 A.D.3d 713 (1st Dep't 2012), compelling a non-signatory to arbitrate a dispute arising out of a brokerage agreement under the doctrine of direct benefits estoppel. Mr. Tepper's practice also includes FINRA arbitration, private placements, hedge fund formation and advising investment advisors on regulatory matters.

ASTRA M. TUDISCO: ***education:*** State University at Albany (B.S., *cum laude*, 1986); Fordham University School of Law (J.D., 1989). Ms. Tudisco is an associate in the firm's real estate department. She has experience representing lenders in both residential and commercial transactions. She currently represents developers, purchasers, sellers and investors in a wide range of commercial and residential real estate transactions.

ALAN D. WEISS: ***admitted:*** Florida (1994); United States District Court for the Southern District of Florida. Education: Tufts University (B.A., economics, 1985; M.A., Economics, 1988); University of Miami School of Law (J.D., 1993). Prior to joining the firm, Mr. Weiss was a Vice President and Financial Advisor for a major Wall Street brokerage firm. Previously, Mr. Weiss ran his own broker-dealer where he was an options trader for eight years and through which he became the portfolio manager of an options arbitrage based hedge fund. Mr. Weiss started his law career in Hollywood, Florida where he represented investors who were harmed by fraudulent or unsuitable investments, against major Wall Street brokerage firms. His primary area of practice is securities class action litigation.

Non-Discrimination Policies

Wolf Haldenstein does not discriminate or tolerate harassment against any employee or applicant because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, or alienage or citizenship status and designs its hiring practices to ensure that minority group members and women are afforded equal employment opportunities without discrimination. The Firm is in compliance with all applicable Federal, State, County, and City equal employment opportunity laws.

Wolf Haldenstein is proud of its long history of support for the rights of, and employment opportunities for, women, the disadvantaged, and minority group persons, including the participation in civil rights and voter registration activities in the South in the early 1960s by partners of the Firm; the part-time employment of disadvantaged youth through various public school programs; the varied *pro bono* activities performed by many of the Firm's lawyers; the employment of many women and minority group persons in various capacities at the Firm, including at the partner level; the hiring of ex-offenders in supported job training programs; and the use of minority and women-owned businesses to provide services and supplies to the Firm.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ARIANNA ROSALES, and CHARLICE ARNOLD, on Behalf of Themselves, All Others Similarly Situated and the General Public, Plaintiffs, v. FITFLOP USA, LLC, Defendant.	Case No.: 11cv0973-W (KSC) CLASS ACTION **DECLARATION BY ELISA ODABASHIAN, CONSUMERS UNION OF UNITED STATES, INC.** Judge: Hon. Thomas J. Whelan Courtroom: 3C, 3rd Floor – Schwartz Date Filed: May 5, 2011 Trial Date: TBD

I, ELISA ODABASHIAN, declare as follows:

1. I am the Director, West Coast Office and State Campaigns for Consumers Union of the United States, Inc. ("Consumers Union"), a not-for profit organization exempt from federal income taxes under Section 501©(3) of the Internal Revenue Code. I have personal knowledge of the facts contained in this declaration, and if called as a witness, would be competent to testify to them.

2. Consumers Union, the non-profit policy and advocacy arm of Consumer Reports, has a long history of working to protect consumers in the marketplace from misleading advertising and unsafe products. Since its first issue in 1936, *Consumer Reports* has never accepted paid ads. Free from the pressures of advertisers and commercial influence, Consumer Reports has tackled some of the toughest safety issues of the time, testing and evaluating new products, services and technologies, warning consumers about potential dangers and unfounded claims by advertisers, and fighting for accurate labeling.

3. Consumers Union's mission: to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. When Consumers Union was founded in 1936, the mass media was being flooded with advertising for the first time. Consumers lacked a reliable source of information they could depend on to help them distinguish hype from fact and good products from bad ones. In the nearly 80 years since then, Consumers Union, its publications (*Consumer Reports*, *ShopSmart*, *Consumer Report On Health*, and *Consumer Reports Money Adviser*), and its non-profit subsidiary, *Consumerist*, have filled that vacuum with a broad range of consumer information.

4. In addition to the headquarters, located in Yonkers, New York, Consumers Union has three advocacy offices throughout the United States – in Austin Texas, Washington, D.C., and San Francisco, California. Consumers Union works with its 1.2 million e-activists and volunteers to help pass federal

and state consumer protection laws, to urge state and federal regulators to promulgate rules that protect consumers, to advocate against corporations that do wrong by their customers, and to encourage companies that are heading in the right direction. Consumer education about how to avoid being harmed in the marketplace is also a big part of what Consumers Union does. Consumers Union's Share Your Story database now has nearly 100,000 stories from consumers that describe their experiences purchasing products and services in the marketplace. Consumers Union works with the storytellers to develop and fact-check their stories and, with permission, provides the stories to reporters who are writing about a particular problem in the marketplace and to legislators who are looking for real-life "victims" of a particular problem their legislation is endeavoring to fix. People who share their stories become some of Consumers Union's most active and engaged volunteers.

5. Consumers Union employs attorneys, policy analysts, grassroots organizers, researchers, media experts, and outreach specialists who advocate for consumer protections in the areas of financial services, food safety, product safety, health care, and clean energy. Consumers Union has received more than two-dozen *cy pres* awards since the early 1980s, and is currently named as a *cy pres* recipient in nine pending cases.

6. The following are some examples of Consumers Union's efforts to combat misleading advertising and unsafe products, and to educate consumers about how to avoid getting harmed or taken advantage of in the marketplace:

a. Snake Oil For The 21st Century: Health Claims That Are Too Good To Be True
http://www.consumerreports.org/cro/magazine/2013/11/health-claims-too-good-to-be-true/index.htm

b. Toning Shoes May Leave You Wobbly – Or Worse
http://www.consumerreports.org/cro/magazine-archive/2011/august/recalls-and-safety-alerts/toning-shoes/index.htm

c. Watch Out For Health Reform Insurance Scams: Offers To Enroll You In A New Health Insurance 'Marketplace' Before Oct. 1 Are Bogus
http://www.consumerreports.org/cro/news/2013/08/watch-out-for-health-reform-insurance-scams/index.htm

d. Toning Shoes: One False Step Can Lead To the ER
http://www.consumerreports.org/cro/news/2011/05/toning-shoes-one-false-step-can-lead-to-the-er/index.htm

e. Tests Show Ford Fusion, C-Max Hybrids Don't Live Up To 47-MPH Claims
http://www.consumerreports.org/cro/news/2012/12/tests-show-ford-fusion-c-max-hybrids-don-t-live-up-to-47-mpg-claims/index.htm

f. Are Toning Shoes Unsafe? Reports of Injuries Raise Concern
http://www.consumerreports.org/cro/news/2011/05/are-toning-shoes-unsafe-reports-of-injuries-raise-concern/index.htm

g. Six Outrageous Health Claims Busted in 2012
http://www.consumerreports.org/cro/2012/12/6-outrageous-health-claims-busted-in-2012/index.htm

h. ShopSmart Summit: How To Avoid Scams and Deceptive Marketing Tactics
http://www.consumerreports.org/cro/news/2011/05/shopsmart-summit-how-to-avoid-scams-and-deceptive-marketing-tactics/index.htm

i. FTC Tells Skechers Shape-Ups Shoe Owners: Your Check Is In the Mail
http://www.consumerreports.org/cro/news/2013/07/ftc-tells-skechers-shape-ups-shoe-owners-your-check-is-in-the-mail/index.htm

j. Don't Buy a Troublesome Automotive Service Contract
http://www.consumerreports.org/cro/news/2011/07/don-t-buy-a-troublesome-automotive-service-contract/index.htm

k. After Disaster Strikes Beware of Charity and Home Repair Scams
http://www.consumerreports.org/cro/news/2012/03/after-disaster-strikes-beware-of-charity-and-home-repair-scams/index.htm

l. Ten Ways You May Be Getting Hosed
http://consumerist.com/2010/05/19/10-ways-you-may-be-getting-hosed/

m. Vacation Scams Can Cost You Any Time of Year: Watch For the Warning Signs Of Travel Fraud
http://www.consumerreports.org/cro/news/2013/08/don-t-fall-for-travel-scams/index.htm

n. Be Your Own Consumer Watchdog: How to Check Out A Company Before You Commit Your Cash
http://www.consumerreports.org/cro/2011/01/be-your-own-consumer-watchdog/index.htm

o. Avoid 'Summer Slamming' Burglar Alarm Scams
http://www.consumerreports.org/cro/news/2011/05/avoid-summer-slamming-burglar-alarm-scams/index.htm

p. Protect Yourself From The Latest Scams: Investment, Mortgage, Internet, and Other Kinds of Fraud Are On The Rise
http://www.consumerreports.org/cro/magazine/2012/10/protect-yourself-from-the-latest-scams/index.htm

7. Consumers Union, voted one of the most trusted organizations in America in a Harris Poll (http://voices.yahoo.com/poll-consumer-reports-trusted-most-moveonorg-least-708171.html), is a tireless fighter on behalf of its only constituency – the public.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 19, 2013, at San Francisco, California.

By: Elisa Odabashian

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ARIANNA ROSALES, and CHARLICE ARNOLD, on Behalf of Themselves, All Others Similarly Situated and the General Public, Plaintiffs, v. FITFLOP USA, LLC, Defendant.	Case No.: 11cv0973-W (KSC) CLASS ACTION **DECLARATION OF JAMIE COURT IN SUPPORT *CY PRES* DESIGNATION OF CONSUMER WATCHDOG** Judge: Hon. Thomas J. Whelan Courtroom: 3C, 3rd Floor – Schwartz Date Filed: May 5, 2011 Trial Date: TBD

I, JAMIE COURT, declare as follows:

1. I am President of Consumer Watchdog. I submit this declaration in support of the parties' Joint Motion for *Cy Pres* Designation and Distribution. This declaration is based upon my personal knowledge, as well as on information provided to me by my staff. If called as a witness, I would be competent to testify to the facts stated herein.

2. Consumer Watchdog is a tax-exempt 501(c)(3) nonprofit organization dedicated to educating and advocating on behalf of consumers for over 25 years. Through policy research, investigation, public education, and advocacy (including litigation), Consumer Watchdog fights to expose, confront, and change deceptive corporate practices. Consumer Watchdog challenges corporations engaged in false advertising and fraudulent corporate marketing practices through the media, complaints to regulatory agencies, litigation, and direct consumer outreach. Our national consumer group has stopped and changed deceptive marketing and advertising practices of health and property insurance companies, and in the technology, automotive, consumer products and services, oil and telecommunications industries. These efforts have helped consumers recover billions in overcharges and have sought to hold companies accountable for breaking advertising promises to their customers. Our advocates field complaints from consumers nationwide and work with regulators, policymakers and consumer protection agencies to improve laws and regulations to better protect consumers from deceptive corporate conduct including false advertising, anti-competitive behavior, and bait-and-switch marketing.

3. Most consumer protection authority lies within the powers of the states and a handful of federal regulatory agencies. With offices in California and Washington, D.C., Consumer Watchdog is able to fight on both the state and federal levels, strategically choosing which agencies, governments and battlegrounds are most likely to result in a desired outcome. Work done by

Consumer Watchdog to change the consumer protection laws and regulations in one state has often resulted in other states passing similar protections. Consumer Watchdog also strives to help identify and define the most pressing consumer protection issues of the day. The scope of our work is broad and varied, but exclusively focused on protecting the interests of consumers. Our unique ability to increase media exposure for important, but sometimes obscure, consumer protection issues plays an important part in our ability to expose and correct unfair advertising claims by companies.

4. On the federal level, Consumer Watchdog advocates on behalf of consumers with agencies and regulators tasked with protecting consumers to stop deceptive advertising claims. We bring problems with false and misleading advertising and broken promises to the attention of companies, regulators and the public in order to correct them. Some involve false claims with both an environmental and pocketbook impact on consumers. For example, after receiving many complaints from Hyundai owners across the country about inflated "40 Miles Per Gallon" claims in a national print advertising and television commercial campaign, and on MPG window stickers for the Elantra and three other models, Consumer Watchdog asked the US Environmental Protection Agency to audit Hyundai and retest the vehicles in November 2011. We exposed the problem in the news media and called on Hyundai to drop the MPG claims from their Super Bowl advertisements that year. Hyundai pulled the false ads. In November 2012 the EPA confirmed Consumer Watchdog's allegations after retesting the vehicles, and announced the largest mandatory correction of MPG window stickers in American history. Hyundai and KIA were required to change false MPG window sticker claims on 16 of their vehicles, including the Elantra. Consumer Watchdog has called for retesting of other cars over false advertising claims, worked with Congress on changing the advertising standard, and is prosecuting lawsuits on behalf of Hyundai owners

who purchased their vehicles after relying on the auto company's false advertising. Our lawsuits allege the automaker violated Federal Trade Commission standards by omitting reference to City as well as Highway MPG standards and misrepresenting the car as the "40 MPG Elantra."

5. Consumer Watchdog has made sure regulators take into account companies' past deceptive advertising problems as future requests are up for consideration. In August 2011, Consumer Watchdog filed a complaint asking the Federal Communications Commission ("FCC") and the Justice Department to reject AT&T's proposed takeover of the T-Mobile cellular network. The anti-trust complaint was based on deceptive claims made by AT&T seven years ago during its takeover of the Cingular network, when AT&T had made false promises of preserved legacy service and improved networks. Those claims were nearly identical to the false promises AT&T was making about the T-Mobile deal, and Consumer Watchdog warned that the result would also be the same: broken promises, degraded legacy service and consumers forced into higher-priced plans by the dominant market participant. On August 31, 2011, the Justice Department filed suit to stop the merger, an action approved by the Federal Communications Commission. AT&T dropped the merger in the face of the opposition. Consumer Watchdog continues to prosecute litigation it brought on behalf of consumers against AT&T over the false advertising promises made during the Cingular merger.

6. Consumer Watchdog issues reports to the public about systemic patterns of deceptive advertising in order to promote regulatory action and public awareness. For example, a February 2011 Consumer Watchdog report into advertising practices at Google, "Liars and Loans: How Deceptive Advertisers Use Google," investigated dubious advertising claims made by the home loan modification and credit repair industries using Google's AdWords advertising network. The report highlighted Google's practice of barring deceptive

advertisers only after the advertisers are sued by federal regulators, and prompted a federal government investigation into deceptive lending practices online. The investigation led to the removal of deceptive advertisements from Google that allowed mortgage modification scammers to target financially troubled homeowners, often by misrepresenting themselves as affiliates of federal government programs, and the shutdown of several dozen mortgage scammers by the U.S. Treasury Department in November 2011.

7. Consumer Watchdog meets and works regularly with the Federal Trade Commission ("FTC") staff and Chair to highlight false advertising issues and work toward improvement of consumer protection policies. We also petition the Commission to make policy changes. For example, Consumer Watchdog petitioned the FTC to investigate incidents of unfair and deceptive advertising practices concerning confidential medical and health information gathered by health marketers through various online services. These marketers gather vast amounts of personal medical information through various means and use the data to target advertising. There are also concerns that the information is added to vast digital dossiers about consumers and could later be used by health insurers or employers against consumers to deny coverage or reject job applicants. Consumers are not given accurate information, if they are given any at all, about the data collection or ad targeting.

8. Consumer Watchdog is the foremost watchdog of the insurance industry's fraudulent marketing and advertising claims. Over the years, Consumer Watchdog has stopped many unfair and false marketing practices by the auto, home and health insurance industries, including: preventing auto insurance companies from charging higher rates than advertised because they failed to include broker commissions in the price (*Krumme v. Mercury* and multiple legislative proposals); stopping health insurance companies from closing certain health plans and then marketing only higher-cost, lower-benefit

policies to customers with pre-existing conditions from those plans (*Feller, Freed, et al. v. Blue Cross*); and, blocking federal legislation to legalize "junk insurance" that is marketed as comprehensive health coverage but in fact caps benefits at a fraction of the cost of care. Most recently, in the health insurance arena, Consumer Watchdog filed a class-action lawsuit against Anthem Blue Cross for "bait-and-switch" marketing on behalf of hundreds of thousands of consumers who purchased health insurance policies that advertised specific "annual" deductibles and other "yearly" out of pocket costs which were dramatically increased *in the middle of the year*. The dollar value in an advertised plan name, for example Blue Cross PPO Share $2500, was marketed as the amount of the plan's annual deductible. The amount was then increased, in this case to $2,950.00, just a few short months after the policy year began. Blue Cross also told consumers that it may change *any* terms of consumers' contracts with just 60 days' notice, including the health care services and benefits covered (*Kassouf, et al. v. Blue Cross; Taub v. Blue Cross*).

9. Consumer Watchdog also challenges industry-wide marketing practices that mislead consumers. For example, Consumer Watchdog was the first advocacy organization to expose oil companies' "hot fuel" misrepresentations: because fuel, like any liquid, expands as it warms up, consumers lose out on every gallon of gasoline that is sold above 60 degrees. The oil industry measures gasoline at 60 degrees, so gas sold at hotter temperatures has less energy and provides fewer miles per gallon than advertised and paid for. Consumer Watchdog petitioned the National Conference on Weights and Measures and Congress to require temperature-adjusted pumps. The spotlight on "hot fuel" forced oil companies to make additional disclosures that can now be found at any gasoline pump in California, prompted a federal class action lawsuit on consumers' behalf, and led at least one major retailer, Costco, to commit to selling temperature-adjusted fuel.

10. In addition, Consumer Watchdog represents consumers in court when they are deceptively marketed defective products and services. For example, Consumer Watchdog successfully challenged Apple over defects in its iPod Nano devices because consumers were not getting the gorgeous colors and display capacity promised in the company's widespread advertising. Our legal team proved that despite promises of sleek beauty in the Nano, normal and reasonable use of the product, including the use specified by Apple, resulted in severe scratches, streaks, scuffing and cracking on the device's screen. After providing extensive documents through the "discovery process" Apple settled the case. Apple agreed to pay a total of $22.5 million into a settlement fund. The monies were distributed to people who bought Nanos that were "uncoated" – those that did not have a protective coating that Apple began applying to the Nanos after receiving complaints about scratching – and who experienced scratching that impaired use or enjoyment of the Nano.

11. Due to these and other efforts, Consumer Watchdog was a recent recipient of a *Cy Pres* award in another similar case involving deceptive advertising in the Southern District of Florida, *Smith v. Wrigley*.

12. Consumer Watchdog's ability to achieve results on behalf of America's consumers has been driven by the quality of our work and effectiveness of our efforts. The consistent and compelling research and advocacy has allowed Consumer Watchdog to turn important consumer problems into major policy issues receiving widespread attention. Consumer Watchdog's regular presence in the media makes our organization a go-to resource for consumers struggling with unfair business practices and false advertising. Our

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prominence in the traditional media has been amplified in recent years as we have provided consumer education and information to hundreds of thousands of website visitors at http://ConsumerWatchdog.org and more than 60,000 "friends" on Facebook. Consumer Watchdog also has 250,000 email subscribers.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 4th day of December 2013, at Santa Monica, California.

By: _____
JAMIE COURT