

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<hr/>	X	
In re SONY BMG CD TECHNOLOGIES	:	Civil Action No. 1:05-cv-09575-NRB
LITIGATION	:	
<hr/>	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	DECLARATION OF REED R. KATHREIN,
	:	ESQ. IN SUPPORT OF THE RICCIUTI
ALL ACTIONS.	:	CLASS REPRESENTATIVES'
<hr/>	X	MEMORANDUM OF LAW IN SUPPORT
		OF MOTION FOR AN AWARD OF
		ATTORNEYS' FEES AND
		REIMBURSEMENT OF EXPENSES

I, REED R. KATHREIN, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am a member of the law firm of Lerach Coughlin Stoia Geller Rudman & Robbins LLP, one of the counsel of record for plaintiffs in the above-entitled action. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. This firm is counsel of record for plaintiffs Tom Ricciuti, Yvonne Ricciuti, Mary Schumacher, Robert Hull, Joseph Halpin, Edwin Bonner, and Erin Melcon.

3. Attached are true and correct copies of the following exhibits:

Exhibit 1: The details of Internet traffic to [www.eff.org](http://www.alexam.com/data/details/traffic_details?&range=6m&size=medium&compare_sites=&y=r&url=eff.org), available at http://www.alexam.com/data/details/traffic_details?&range=6m&size=medium&compare_sites=&y=r&url=eff.org (last visited April 1, 2006);

Exhibit 2: The traffic details of web traffic to www.sonybmg.com, available at http://www.alexam.com/data/details/traffic_details?q=&url=sonybmg.com (last visited April 1, 2006);

Exhibit 3: Résumé of Lerach Coughlin Stoia Geller Rudman & Robbins LLP;

Exhibit 4: Sony BMG press release dated June 30, 2003, entitled “BMG and Sunncomm Technologies Ink Worldwide Licensing Deal To Protect and Enhance Audio CDs For Global Music Giant,” available at http://www.bmg.com/news/articles/artists_article_030630.html (last visited March 30, 2006);

Exhibit 5: An Electronic Frontier Foundation (“EFF”) article entitled, “Uproot Sony-BMG’s Invasion of Your Privacy and Your Computer,” dated November 3, 2005, posted by Jason Schultz and available at <http://www.eff.org/deeplinks/archives/004117.php> (last visited April 1, 2006);

Exhibit 6: An EFF article entitled, “Are You Infected by Sony-BMG’s Rootkit?,” dated November 9, 2005, posted by Fred von Lohmann and available at <http://www.eff.org/deeplinks/archives/004144.php> (last visited April 1, 2006);

Exhibit 7: An EFF article entitled, “Now the Legalese Rootkit: Sony-BMG’s EULA,” dated November 9, 2005, posted by Fred von Lohmann and

available at <http://www.eff.org/deeplinks/archives/004145.php> (last visited April 1, 2006);

- Exhibit 8: A letter dated November 14, 2005 written by the EFF and Robert S. Green of Green Welling LLP to Daniel M. Mandil of Sony BMG Music Entertainment, Howard Stringer of Sony Entertainment, and Gunter Thielen of Bertelsmann AG regarding “Notice Under California Consumers Legal Remedies Act, Civil Code Sections 1750, *et seq.* and California’s Unfair Competition Law, Business and Professional [sic] Code Section 17200”;
- Exhibit 9: An Open Letter to Sony-BMG dated November 14, 2005, written by the EFF to Andrew Lack of Sony-BMG, Rolf Schmidt-Holtz of Sony-BMG, Howard Stringer of Sony Entertainment, and Gunter Thielen of Bertelsmann AG, available at <http://www.eff.org/IP/DRM/Sony-BMG/?f=open-letter-2005-11-14.html> (last visited April 1, 2006);
- Exhibit 10: An e-mail dated November 17, 2005 at 1:12:39 PM PST from Cindy Cohn of EFF to Jeff Cunard of Debevoise & Plimpton LLP regarding “Suncomm [sic] uninstaller vulnerability”;
- Exhibit 11: An e-mail dated November 17, 2005 at 2:39:21 PM PST from Jeffrey P. Cunard of Debevoise & Plimpton LLP to Cindy Cohn of EFF regarding “Suncomm [sic] uninstaller vulnerability”;
- Exhibit 12: A letter dated November 17, 2005 from the EFF and Robert S. Green of Green Welling LLP to Jeffrey P. Cunard of Debevoise & Plimpton LLP regarding Sony-BMG;
- Exhibit 13: A letter dated November 18, 2005 from Jeffrey P. Cunard of Debevoise & Plimpton LLP to Robert S. Green of Green & Welling LLP regarding “Demand Letter to Sony BMG Music Entertainment”;
- Exhibit 14: A letter dated January 11, 2006 from Jeffrey S. Jacobson of Debevoise & Plimpton LLP to the Honorable Bill Lockyer, Attorney General of California regarding “Notice of Proposed Class Action Settlement” in *In re Sony BMG CD Technologies Litigation*;
- Exhibit 15: Complaint entitled *Robert Hull, Joseph Halpin and Edwin Bonner v. Sony BMG Music Entertainment Corp., Sony Corporation of America, and Bertelsmann, Inc.*, Case No. BC343385, filed in Superior Court for the State of California, County of Los Angeles on November 21, 2005;
- Exhibit 16: Letter dated November 30, 2005 from Cindy Cohn of EFF and Robert J. Green of Green Welling LLP to Jeffrey P. Cunard of Debevoise & Plimpton LLP regarding “MediaMax Security Vulnerability”;

- Exhibit 17: E-mail dated November 30, 2005 at 5:27:25 PM PST from Cindy Cohn of EFF to Jeffrey P. Cunard at Debevoise & Plimpton LLP regarding “Security Vulnerability: Delay on public release”;
- Exhibit 18: E-mail dated November 30, 2005 at 5:38:47 PM PST from Jeffrey P. Cunard at Debevoise & Plimpton LLP to Cindy Cohn at EFF regarding “Security Vulnerability: Delay on Public Release”;
- Exhibit 19: E-mail dated November 30, 2005 at 8:44:37 PM PST from Jeffrey P. Cunard at Debevoise & Plimpton LLP to Cindy Cohn at EFF regarding “MediaMax Access Control Vulnerability report,” and attaching November 29, 2005 report entitled “Media Max Access Control Vulnerability” prepared by Jesse Burns and Alex Stamos of Information Security Partners LLC”;
- Exhibit 20: An e-mail dated December 1, 2005 at 11:24:46 AM PST from Jeffrey P. Cunard at Debevoise & Plimpton LLP to Cindy Cohn at EFF regarding “Security Vulnerability: Delay on public release”;
- Exhibit 21: An e-mail dated December 2, 2005 at 4:44:27 PM PST from Jeffrey P. Cunard at Debevoise & Plimpton LLP to Cindy Cohn at EFF regarding “sony security question”;
- Exhibit 22: An e-mail dated December 3, 2005 at 10:44:33 AM PST from Jeffrey P. Cunard at Debevoise & Plimpton LLP to Kurt Opsahl at EFF regarding “sony security question”;
- Exhibit 23: A letter dated December 6, 2005 from Cindy Cohn at EFF and Robert S. Green at Green Welling LLP to Jeffrey P. Cunard at Debevoise & Plimpton LLP regarding “Sony BMG”;
- Exhibit 24: Joint press release issued December 6, 2005 from EFF and Sony BMG Music Entertainment;
- Exhibit 25: An e-mail dated December 21, 2005 at 11:48:17 AM PST from Paul Singer at the Office of the Texas State Attorney General to Cindy Cohn at EFF regarding “EFF: SunnComm Makes Security Update Available to Address Recently Discovered Vulnerability on Its MediaMax Version 5 Content Protection Software”;
- Exhibit 26: An e-mail dated December 30, 2005 at 8:00:43 AM PST from Cindy Cohn at EFF to Paul Singer at the Office of the Texas State Attorney General regarding “Final version of the class action settlement”;
- Exhibit 27: An e-mail dated January 4, 2006 at 9:57:25 AM PST from Cindy Cohn at EFF to Paul Singer at the Office of the Texas State Attorney General regarding “Sony BMG”;

- Exhibit 28: An email dated December 9, 2005 11:10:43 AM from Cindy Cohn of EFF to Elizabeth C. Pritzker of Girard Gibbs & De Bartolomeo LLP regarding “settlement draft?”;
- Exhibit 29: A letter dated December 9, 2005 from Robert S. Green of Green Welling LLP to Elizabeth C. Pritzker of Girard Gibbs & De Bartolomeo LLP and Scott A. Kamber of Kamber & Associates, LLC regarding “Sony BMG”;
- Exhibit 30: An e-mail dated December 11, 2005 at 12:05:24 PM from Cindy Cohn at EFF to Elizabeth C. Pritzker of Girard Gibbs & De Bartolomeo LLP regarding “A Monday Meeting”;
- Exhibit 31: Thomas Claburn and Gregg Keizer, “Sony Plays The Blues As Bloggers Turn Up The Volume – Company halts sales of CDs with content protection software after complaints,” *Information Week*, Nov. 21, 2005, at 28;
- Exhibit 32: An email dated December 20, 2005 at 9:10:21 AM PST from Elizabeth C. Pritzker of Girard Gibbs & De Bartolomeo LLP to Cindy Cohn at EFF regarding “CMC and notice and other docs”;
- Exhibit 33: An e-mail dated December 28, 2005 at 4:46:48 PM PST from Elizabeth C. Pritzker of Girard Gibbs & De Bartolomeo LLP to Cindy Cohn of EFF regarding “Unfinished Settlement Matters”;
- Exhibit 34: An e-mail dated February 3, 2006 at 7:02:49 PM PST from Cindy Cohn of EFF to Jeffrey S. Jacobson and Jeffrey P. Cunard of Debevoise & Plimpton LLP regarding “Delegation agreement discussions”;
- Exhibit 35: A letter dated February 3, 2006 from Robert M. Rothman of Lerach Coughlin Stoia Geller Rudman & Robbins LLP to the Hon. Naomi Reice Buchwald, United States District Judge, regarding *In re Sony BMG CD Technologies Litigation*;
- Exhibit 36: An e-mail dated February 3, 2006 12:39 PM from Jeffrey S. Jacobson to Scott A. Kamber of Kamber & Associates, LLC, Daniel Girard and Aaron Sheanin of Girard Gibbs & De Bartolomeo LLP, Cindy Cohn and Kurt Opsahl of EFF, Robert S. Green and Jenelle W. Welling of Green Welling LLP, Jeff Friedman of Lerach Coughlin Stoia Geller Rudman & Robbins LLP, and Bruce P. Keller and Jeffrey P. Cunard of Debevoise & Plimpton LLP regarding “Judge Buchwald request”;
- Exhibit 37: A printout from the website of Computer Associates, regarding the Sony Rootkit Patch, available at <http://www3.ca.com/securityadvisor/pest/pest.aspx?id=4530963625> (last visited December 1, 2005);
- Exhibit 38: A printout from the website of the United States Computer Emergency Readiness Team (“US-CERT”), part of the Department of Homeland

Security, available at http://www.us-cert.gov/current/current_activity.html#xcpdrm (last visited December 4, 2005);

- Exhibit 39: “Vulnerability Summary CVE-2005-4069” from the National Cyber-Alert System ranking SunnComm MediaMax software with a vulnerability rating of 4.9 (medium), available at <http://nvd.nist.gov/nvd.cfm?cvename=CVE-2005-4069> (last visited March 30, 2006);
- Exhibit 40: “Vulnerability Summary CVE-2005-3474” from the National Cyber-Alert System ranking XCP software with a vulnerability rating of 5.6 (medium), available at <http://nvd.nist.gov/nvd.cfm?cvename=CVE-2005-3474> (last visited March 30, 2006);
- Exhibit 41: Rick Merritt, “Music mavens change tune,” *EE Times*, dated August 15, 2005, available at <http://www.eetimes.com/showArticle.jhtml?articleID=168601279> (last visited March 31, 2006);
- Exhibit 42: A November 4, 2005 transcript from National Public Radio, Morning Edition, entitled “Analysis: Sony music CDs under fire from privacy advocates”;
- Exhibit 43: A detailed description of contemporaneous time records, including the date, hours expended and the nature of work done by attorneys and staff members at my firm on this case; and
- Exhibit 44: A detailed description of expenses incurred by Lerach Coughlin Stoia Geller Rudman & Robbins LLP pertaining to this case.

4. The total number of hours spent on this litigation by my firm is 454.25. The total lodestar amount for attorney/paralegal time based on the firm’s current rates is \$190,322.50. The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases. A breakdown of the lodestar is as follows:

Time Report from Inception through 03/27/2006

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Kathrein, Reed R.	(P)	116.50	575	66,987.50
Rothman, Robert	(P)	74.50	425	31,662.50
Rudman, Samuel H.	(P)	0.25	550	137.50
Stein, Jonathan	(P)	0.75	475	356.25
Scarlett, Shana E.	(A)	61.25	325	19,906.25

Friedman, Jeffrey D.	(OC)	132.50	425	56,312.50
Paralegal I		7.75	245	1,898.75
Paralegal III		60.75	215	13,061.25
TOTAL:		454.25		190,322.50

(P) Partner

(A) Associate

(OC) Of Counsel

5. My firm incurred a total of \$31,273.62 in unreimbursed expenses in connection with the prosecution of this litigation. They are broken down as follows:

Expense Report from Inception through 03/27/2006

DISBURSEMENT	TOTAL
Meals, Hotel & Transportation	3,638.78
Photocopies	725.50
Telephone & Facsimile	379.54
Messenger & Federal Express	134.42
Filing, Witness & Other Fees	679.55
Lexis, Westlaw & Online Library Research	3,414.55
Experts, Consultants & Investigators	22,045.00
Special Secretarial & Word Processing	256.28
TOTAL:	\$31,273.62

6. The expenses incurred pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of April, 2006, at San Francisco, California.

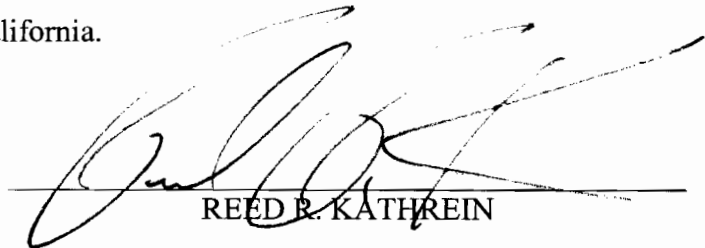

REED R. KATHREIN

Exhibit 1



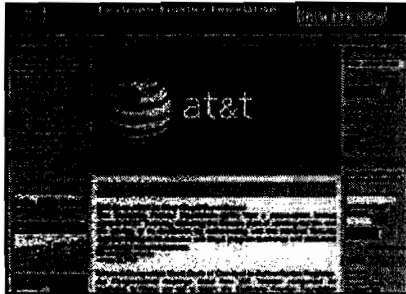
Web Search | Traffic Rankings | Website Directory

eff.org

Get Traffic. Rank Up.

Top 500 - Movers & Shakers

Category: Society / Issues / Human Rights and Liberties / Advocacy Organizations



Electronic Frontier Foundation (EFF)

eff.org
Based in San Francisco, EFF is a donor-supported

membership organization working to protect fundamental rights regardless of technology; to educate the press, policymakers and the general public about civil liberties issues related to technology; and to act as a defender of those liberties.

Avg. Review for eff.org: ★★★★★

Traffic Rank for eff.org: 9,304

See other sites owned

- directvdefense....
- eff.net
- humanrightsadvo...

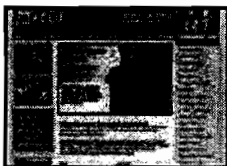
Share your thoughts

Write a review on Amazon.com...

E-mail a friend about this site...

Quick Pick

Aclu.org



Advocating individual rights, by litigating, legislating, and educating the public on a broad array of issues affecting individual freedom in the United States.

EXPLORE THIS SITE

- Overview
- Traffic Details
- Related Links
- Sites Linking in

Sponsored Links (what's this?)

ENTREPRENEUR!

Executive level pay without the stress working from home.

Executive Income From Hom

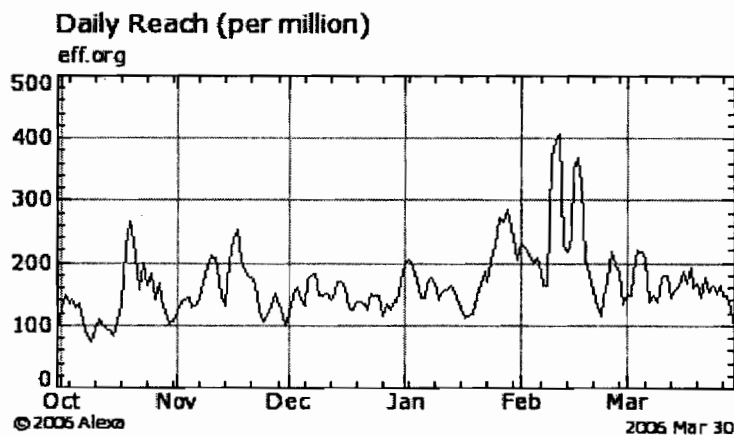
Live your life on your terms. Huge profits. Proven System

Your Ad Here

Reach Rank Page Views

Range: 3m 6m 1y 2y

Size: Medium | Large



Compare: eff.org vs.

[Compare Sites](#)

Put a FREE traffic graph on your site

► Learn more about Traffic...

Traffic Rank for eff.org (what's this)

Today	1 wk. Avg.	3 mos. Avg.	3 mos. Change

Travel Back in Time!

INTERNET ARCHIVE



Use the Wayback Machine to see how Electronic Frontier Foundation (EFF) looked in the past.

Traffic Rank & More!

Take Alexa with you while you surf, for access to reviews and ratings for every site on the web.

► **Get the Free Alexa Toolbar!**



Sell Ad Space on Your Site!

AdBrite is the Internet's ad marketplace. Take control of your ad space today and make money.



[Get Started Now](#)

22,541

12,592

9,304

▲ 2,505

Where do people go on eff.org? (what's this)

- eff.org - 65%
- tor.eff.org - 32%
- action.eff.org - 3%

Reach for eff.org: (what's this)

Reach per million users:

Today	1 wk. Avg.	3 mos. Avg.	3 mos. Change
95	140	188.5	▲ 27%

Page Views for eff.org: (what's this)

Page Views per user:

Today	1 wk. Avg.	3 mos. Avg.	3 mos. Change
1.6	1.9	1.9	▲ 6%

- **I am familiar with this website and want to review it on Amazon.com.**
- E-mail a friend about this site.
- Correct errors and omissions in this listing.

Take the Alexa Toolbar with you for 1-Click access to search, site reviews & more!



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An **amazon.com** company

Exhibit 2



Web Search | Traffic Rankings | Website Directory

sonybm.com

Traffic Details

Top 500 - Movers & Shakers

Category: Business / Arts and Entertainment / Music / Labels / Sony BMG



BMG Entertainment

sonybm.com
Features
corporate
information,
artists, individual
labels, and music
sales.

EXPLORE THIS SITE

- Overview
- Traffic Details**
- Related Links

Sponsored Links (what's this?)

金泉网-企业搜索引擎
中国专业的企业搜索引擎,提供
企业黄页,网络黄页及求职招聘
等商业服务!

BOX.NET - FREE STORAGE

Share and Access your
Files from Anywhere,
FREE!

Traffic Rank for sonybm.com: 64,963

Your Ad Here

See other sites owned

- sonymusic.com
- shakira.com
- jessicasimpson....
- bruce springstee...
- rickymartin.com
- billyjoel.com
- sonyclassical.c...
- legacyrecording...
- lilbowwow.com
- matismusic.com

Share your thoughts

Write a review on
Amazon.com...

E-mail a friend about this
site...

Travel Back in Time!

INTERNET ARCHIVE



Use the Wayback
Machine to see how BMG
Entertainment
looked in the past.

Stop Popups

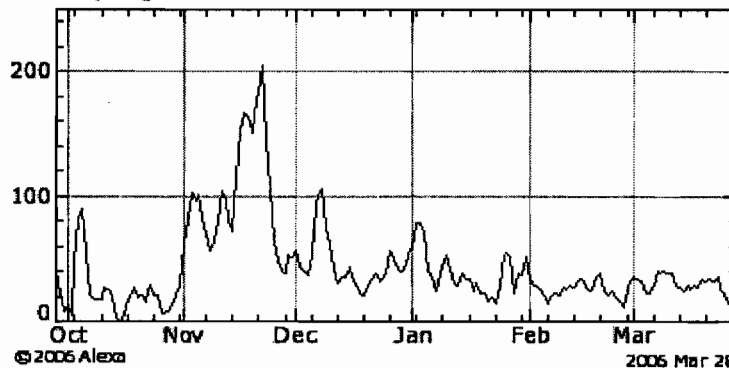
Pestered by popups?
Addled by ads? Don't
get mad... get Alexa.

Reach Rank Page Views

Range: 3m 6m 1y 2y

Size: Medium | Large

Daily Reach (per million) sonybm.com



Compare: sonybm.com vs.

[Compare Sites](#)

Put a FREE traffic graph on your site

[Learn more about Traffic...](#)

Traffic Rank for sonybm.com (what's this)

Today	1 wk. Avg.	3 mos. Avg.	3 mos. Change
145,119	91,251	64,963	↓ 33,345

Where do people go on sonybm.com? (what's this)



► **Get the Free Alexa
Toolbar!**

**Create a Website in
Under 5 minutes!**

Make Money Online - Easy as
pie. PayPal and 40+ tools built
in. Bonus: FREE \$50 Google
Adwords Credit

cityMax

Click for free Trial

- sonybmg.com - 64%
- cp.sonybmg.com - 30%
- xcpexchange.sonybmg.com - 2%
- settlement.sonybmg.com - 2%
- mail.sonybmg.com - 1%
- news.sonybmg.com - 1%

Reach for sonybmg.com: (what's this)

Reach per million users:

Today	1 wk. Avg.	3 mos. Avg.	3 mos. Change
20	23.5	32	↓ 42%

Page Views for sonybmg.com: (what's this)

Page Views per user:

Today	1 wk. Avg.	3 mos. Avg.	3 mos. Change
1.2	1.3	1.5	↓ 12%

- **I am familiar with this website and want to review it on Amazon.com.**
- E-mail a friend about this site.
- Correct errors and omissions in this listing.

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Exhibit 3

LERACH COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP

LERACH COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP ("Lerach Coughlin") is a 160-lawyer law firm with offices in San Diego, San Francisco, Los Angeles, New York, Boca Raton, Washington, D.C., Houston, Philadelphia and Seattle (www.lerachlaw.com). Lerach Coughlin is actively engaged in complex litigation, emphasizing securities, consumer, insurance, healthcare, human rights, employment discrimination and antitrust class actions. Lerach Coughlin's unparalleled experience and capabilities in these fields are based upon the talents of its attorneys who have successfully prosecuted thousands of class action lawsuits. As a result, Lerach Coughlin attorneys have been responsible for recoveries of more than \$35 billion.

This successful track record stems from our experienced attorneys, including many who left partnerships at other firms or came to Lerach Coughlin from federal, state and local law enforcement and regulatory agencies, including dozens of former federal prosecutors. Lerach Coughlin also includes more than 25 former federal (circuit and district) and state judicial clerks.

Lerach Coughlin currently represents more institutional investors in securities and corporate litigation – public and multi-employer funds – than any other firm in the United States.

William S. Lerach is widely recognized as one of the leading securities lawyers in the United States. Mr. Lerach founded the West Coast operations of Lerach Coughlin's predecessor firm – Milberg Weiss – almost 30 years ago. He has prosecuted hundreds of securities class and stockholder derivative actions, resulting in recoveries of billions of dollars. Mr. Lerach and the firm are involved in many of the largest and highest profile securities suits in recent years, including *Enron*, *Dynegy*, *AOL-TimeWarner* and *WorldCom*.

Patrick J. Coughlin has been lead counsel in several major securities matters, including *In re Apple Computer Sec. Litig.*, where he obtained a \$100 million verdict. Prior to joining the firm's predecessor, Mr. Coughlin was a federal prosecutor in Washington, D.C. and San Diego handling complex white collar fraud matters. He helped try one of the largest criminal RICO cases ever prosecuted by the United States, *United States v. Brown*, as well as an infamous oil fraud scheme resulting in a complex murder-for-hire trial, *United States v. Boeckman*. Mr. Coughlin now heads up the prosecution of the high profile *HealthSouth* and *Qwest* cases. Mr. Coughlin has handled and resolved a number of large securities cases involving such companies as 3Com, Boeing, IDB Communications Group, Unocal, Sybase, Connor, Media Vision, ADAC, Sunrise Medical, Valence, Sierra Tucson and Merisel. In addition, Mr. Coughlin spearheaded actions against the tobacco industry, resulting in the phase-out of the Joe Camel Campaign and a \$12.5 billion recovery to the cities and counties of California – unique in the nation.

John J. Stoia, Jr. has prosecuted numerous nationwide complex securities class actions, including *In re Am. Cont. Corp./Lincoln Sav. & Loan Sec. Litig.*, MDL No. 834 (D. Ariz.), which arose out of the collapse of Lincoln Savings & Loan and Charles Keating's empire. Mr. Stoia was a major part of the plaintiffs' trial team which resulted in verdicts against Keating and his co-defendants in excess of \$3 billion and recoveries of over \$240 million. Mr. Stoia has been involved in over 40 nationwide class actions brought by policyholders against U.S. and Canadian life insurance companies seeking redress for deceptive sales practices during the 1980s and 1990s, including, among others, Prudential, New York Life, Transamerica Life Insurance Company, General American Life Insurance Company, Manufacturer's Life, Metropolitan Life, American General, US Life, Allianz, Principal Life and Pacific

Life Insurance Company. Because of Mr. Stoia's efforts, victimized policyholders have recovered over \$7 billion. Mr. Stoia also successfully litigated numerous cases brought against life insurance companies for racial discrimination involving the sale of small value or "industrial life" insurance policies during the 20th century, including serving as lead counsel in *McNeil v. Am. Gen. Life Ins. and Accident Co.*, the first major settlement involving discrimination claims (\$234 million recovery). Mr. Stoia has since resolved other race-based insurance cases, including *Brown v. United Life Ins. Co.*, *Morris v. Life Ins. Co. of Georgia* and *Thompson v. Metro. Life*. In late summer 2004, Mr. Stoia filed the first complaint alleging kickbacks and rigged bidding in the insurance industry and was hired by California Insurance Commissioner John Garamendi to represent the citizens of California in suits alleging these practices.

Paul J. Geller has served as lead or co-lead counsel in a majority of the securities class actions that have been filed in the southeastern United States in the past several years, including cases against *Hamilton Bancorp* (\$ 8.5 million), *Prison Realty Trust* (total combined recovery of over \$120 million); *Intermedia Corp.* (\$38 million). Mr. Geller is currently one of the Court-appointed lead counsel in cases involving the alleged manipulation of the asset value of some of the nation's largest mutual funds, including *Hicks v. Morgan Stanley & Co.*, Case No. 01 Civ. 10071 (S.D.N.Y.); *Abrams v. Van Kampen Funds, Inc.*, Case No. 01 C 7538 (N.D. Ill.), and *In Re Eaton Vance Sec. Litig.*, Case No. 01-10911 (D. Mass.).

Mr. Geller has also successfully represented consumers in class-action litigation. He was personal counsel to the lead plaintiff in *Stoddard v. Advanta*, a case that challenged the adequacies of interest rate disclosures by one of the nation's largest credit card companies (\$11 million settlement) and was personal counsel to one of the lead plaintiffs in the American Family Publishers sweepstakes litigation, which alleged that the defendant misled consumers into thinking they would win a lottery if they purchased magazine subscriptions (\$38 million settlement).

Samuel H. Rudman served in the Enforcement Division of the United States Securities & Exchange Commission in its New York Regional Office as a staff attorney, where he was responsible for numerous investigations and prosecutions of violations of the federal securities laws. Thereafter, Mr. Rudman joined one of the largest corporate law firms in the country, where he represented public companies in the defense of securities class actions and also handled several white collar criminal defense matters.

In 1995, Mr. Rudman joined Milberg Weiss, where he was one of the youngest lawyers ever to be made a partner at the firm and was responsible for the investigation and initiation of securities and shareholder class actions. In addition, Mr. Rudman developed a concentration in the area of lead plaintiff jurisprudence and has been responsible for numerous reported decisions in that area of securities law.

Mr. Rudman continues to focus his practice in the area of investigating and initiating securities and shareholder class actions and also devotes a considerable amount of time to representing clients in ongoing securities litigation.

Darren J. Robbins has extensive experience in federal and state securities litigation, serving as lead counsel in the *In re Dollar Gen. Sec. Litig.*, *In re Prison Realty Sec. Litig.*, and *In re Hanover Compressor Sec. Litig.* Mr. Robbins currently represents numerous pension funds in state and federal courts across the country and concentrates his practice in the structuring of corporate governance enhancements

in connection with the resolution of shareholder class and derivative litigations. Mr. Robbins was recognized as *California Lawyer Attorney of the Year* for 2003 as a result of his participation as lead counsel in *Hanover Compressor*, where plaintiffs recovered approximately \$85 million and obtained numerous groundbreaking corporate governance changes, including direct shareholder nomination of board members and the mandatory rotation of the company's outside audit firm.

PRACTICE AREAS AND CURRENT CASES

Securities

As recent corporate scandals clearly demonstrate, it has become all too common for companies and their executives to manipulate the market price of their securities by misleading the public about the company's financial condition or prospects for the future. This misleading information has the effect of artificially inflating the price of the company's securities above their true value. When the underlying truth is eventually revealed, the prices of these securities plummet, harming those innocent investors who relied upon the company's misrepresentations.

Lerach Coughlin is the leader in the fight to provide investors with relief from corporate securities fraud. Lerach Coughlin utilizes a wide range of federal and state laws to provide investors with remedies, either by bringing a class action on behalf of all affected investors or, where appropriate, by bringing individual cases on behalf of large institutional investors.

The firm's reputation for excellence has been repeatedly noted by courts and has resulted in the appointment of Lerach Coughlin attorneys to lead roles in hundreds of complex class action securities and other cases. In the securities area alone, the firm's attorneys have been responsible for a number of outstanding recoveries on behalf of investors which, in the aggregate, exceed \$25 billion. Currently, Lerach Coughlin is lead or named counsel in approximately 500 securities class action or large institutional investor cases, including:

- Enron securities class action
- AOL/Time Warner individual institutional investor private actions
- Cisco Systems securities class action
- Coke securities class action
- Oracle securities class action
- WorldCom Bond individual institutional investor private actions
- HealthSouth securities class action

One of the reasons for Lerach Coughlin's dominance stems from the firm's unparalleled dedication of resources towards investor recovery. For example, the firm has approximately 125 attorneys dedicated to investigating and prosecuting securities fraud class action and derivative cases on behalf of hundreds of institutional investors. In addition to ample human resources, Lerach Coughlin is also well capitalized to meet the demands of prosecuting complex cases.

Lerach Coughlin's securities department includes dozens of former federal and state prosecutors and trial attorneys. The firm's securities practice is also strengthened by the existence of a strong Appellate Department, whose collective work has resulted in numerous legal precedents. The securities department also utilizes an extensive group of in-house economic and damage analysts, investigators and forensic accountants to aid in the prosecution of complex securities issues.

While obtaining recoveries for our clients is our primary focus, Lerach Coughlin attorneys have also been at the forefront of securities fraud **prevention**. The firm's prevention efforts are focused on creating important changes in corporate governance, either as part of the global settlements of derivative and class cases or through court orders. Recent cases in which such changes were made include: *Pirelli Armstrong Tire Corp. Retiree Medical Benefits Trust v. Hanover Compressor Co.*, Case No. H-02-0410 (S.D. Tex.) (groundbreaking corporate governance changes obtained include: direct shareholder nomination of two directors; mandatory rotation of the outside audit firm; two-thirds of the board required to be independent; audit and other key committees to be filled only by independent directors; creation and appointment of lead independent director with authority to set up board meetings); *In re Sprint Shareholder Litig.*, Case No. 00-CV-230077 (Circuit Ct. Jackson County, Mo.) (in connection with the settlement of a derivative action involving Sprint Corporation, the company adopted over 60 new corporate governance provisions which, among other things, established a truly independent Board of Directors and narrowly defines "independence" to eliminate cronyism between the board and top executives; required outside board directors to meet at least twice a year without management present; created an independent director who will hold the authority to set the agenda, a power previously reserved for the CEO; and imposed new rules to prevent directors and officers from vesting their stock on an accelerated basis); *Teachers' Ret. Sys. of Louisiana v. Occidental Petroleum Corp.*, Case No. BC185009 (Cal. Super. Ct. 1998) (as part of the settlement, corporate governance changes were made to the composition of the company's Board of Directors, the company's Nominating Committee, Compensation Committee and Audit Committee); and *Barry v. E*Trade Group, Inc.*, Case No. CIV419804 (Cal. Super. Ct., San Mateo County) (in connection with settlement of derivative suit, excessive compensation of CEO eliminated (reduced salary from \$800,000 to zero; bonuses reduced and to be repaid if company restates earnings; reduction of stock option grant, and elimination of future stock option grants) and important governance enhancements obtained, including the appointment of a new unaffiliated outside director as chair of board's compensation committee). Through these efforts, Lerach Coughlin has been able to create substantial shareholder guarantees to prevent future securities fraud.

The firm works exclusively with noted corporate governance consultant Robert Monks and his firm, LENS Governance Advisors, to shape corporate governance remedies for the benefit of investors.

Insurance

Fraud in the insurance industry by industry executives, agents, brokers, lenders and others is one of the most costly crimes in America. Driving up everyone's insurance prices, some experts estimate the annual cost of this rising tide of white collar crime to be \$120 billion nationally. Lerach Coughlin stands at the forefront in protecting the rights of consumers and state and federal entities against insurance fraud and unfair business practices in the insurance industry.

Beginning in August 2004, Lerach Coughlin was the first to expose the illegal and improper bid-rigging and kickback scandal between insurance companies and their brokers. The firm is currently one of the lead firms representing businesses, individuals, school districts, counties and the State of California in numerous actions in state and federal courts nationwide.

Our attorneys prosecute claims relating to the fraudulent and improper sale and servicing of insurance policies to recoup losses for victimized policyowners. For example, Lerach Coughlin attorneys have represented and continue to represent policyowners against insurance companies who made misrepresentations at the point of sale concerning how the policy will perform, the amount of

money the policy will cost, and whether premiums will “vanish.” Claims also include allegations that purchasers were misled concerning the financing of a new policy, falling victim to a “replacement” or “churning” sales scheme where they were convinced to use loans, partial surrenders or withdrawals of cash values from an existing permanent life insurance policy to purchase a new policy. To date, Lerach Coughlin has been responsible for over \$4 billion in recoveries for defrauded policyholders.

Lerach attorneys have long been at the forefront of race discrimination litigation against life insurance companies for their practice of intentionally charging African-Americans and other minorities more for life insurance than similarly situated Caucasians. Our attorneys have recovered over \$400 million for African-Americans and other minority class members as redress for the civil rights abuses they were subjected to, including landmark recoveries in *McNeil v. Am. Gen. Life & Accident Ins. Co.*, *Thompson v. Metro. Life Ins. Co.* and *Williams v. United Ins. Co. of Am.*

Antitrust

Lerach Coughlin’s antitrust practice focuses on representing plaintiffs in complex litigation, such as small businesses and individuals who have been the victims of price-fixing, unfair trade practices or other anticompetitive conduct. The firm has taken a leading role in many of the largest federal price-fixing and price discrimination cases throughout the United States.

For example, Lerach Coughlin attorneys played a lead role in *In re NASDAQ Market-Makers Antitrust Litig.*, MDL No. 1023 (S.D.N.Y.), serving as Court-appointed co-lead counsel for a class of investors. The class alleged that the NASDAQ market-makers set and maintained wide spreads pursuant to an industry-wide conspiracy in one of the largest and most important antitrust cases in recent history. After three and one half years of intense litigation, the case was settled for a total of \$1.027 billion, the largest antitrust settlement ever. An excerpt from the Court’s opinion reads:

Counsel for the Plaintiffs are preeminent in the field of class action litigation, and the roster of counsel for the Defendants includes some of the largest, most successful and well regarded law firms in the country. It is difficult to conceive of better representation than the parties to this action achieved.

See *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998).

One of the most significant opinions in the case was Judge Sweet’s decision to certify the class of millions of investors over the strenuous objections of defendants. *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493 (S.D.N.Y. 1996). Oral argument on behalf of plaintiffs on the class certification motion was presented by Leonard B. Simon, Of Counsel to Lerach Coughlin.

Other cases include:

- **Hall v. NCAA** (Restricted Earnings Coach Antitrust Litigation), Case No. 94-2392-KHV (D. Kan.). Lerach Coughlin attorneys served as lead counsel and lead trial counsel for one of three classes of coaches who alleged that the National Collegiate Athletic Association illegally fixed their compensation by instituting the “restricted earnings coach” rule. On May 4, 1998, the jury returned verdicts in favor of the three classes for more than \$67 million. Trial counsel included the firm’s attorney Bonny E. Sweeney.

- ***In re Disposable Contact Lens Antitrust Litig.***, MDL No. 1030 (M.D. Fla.). Lerach Coughlin attorneys served as co-lead counsel for a class of contact lens wearers alleging that the principal manufacturers of disposable contact lenses conspired with the leadership of the American Optometric Association and other eye care practitioners to boycott alternative channels of contact lens distribution, including pharmacies and mail order suppliers. The case settled for \$89 million five weeks into a jury trial, shortly after plaintiffs' trial counsel, including Lerach Coughlin attorney Christopher M. Burke, defeated defendants' motion for a directed verdict.
- ***Microsoft I-V Cases***, J.C.C.P. Case No. 4106 (San Francisco Super. Ct.). Lerach Coughlin attorneys served on the executive committee in these consolidated cases, in which California indirect purchasers challenged Microsoft's illegal exercise of monopoly power in the operating system, word processing and spreadsheet markets. In a settlement approved by the Court, class counsel obtained an unprecedented \$1.1 billion worth of relief for the business and consumer class members who purchased the Microsoft products.

Current cases include:

- ***In re Currency Conversion Antitrust Litig.***, MDL No. 1409 (S.D.N.Y.). Lerach Coughlin attorneys are co-lead counsel (with one other firm) in this multi-district litigation, in which a class of general purpose VISA and MasterCard cardholders allege that VISA and MasterCard, and certain leading member banks of Visa and MasterCard, conspired to fix and maintain the foreign currency conversion fee charged to U.S. cardholders. Plaintiffs also allege that defendants failed to adequately disclose the fee in violation of federal law. Discovery continues, and the plaintiffs' motion for class certification is fully briefed.
- ***Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives and Composites, Inc.*** (the ***Carbon Fiber Antitrust Litig.***), Case No. CV-99-7796 (C.D. Cal.). Lerach Coughlin attorneys are co-lead counsel (with one other firm) in this consolidated class action, in which a class of purchasers alleges that the major producers of carbon fiber fixed the price of carbon fiber from 1993 to 1999. The trial Court denied defendants' motions to dismiss and granted plaintiffs' motion to certify the class, and the Ninth Circuit Court of Appeals has rejected defendants' challenge to the Court's class certification Order. Discovery is continuing.
- ***In re Carbon Black Antitrust Litig.***, MDL No. 1543 (D. Mass.). Lerach Coughlin attorneys serve as co-lead counsel for a class of businesses that allege that the major producers of carbon black unlawfully conspired to fix the price of carbon black, which is used in the manufacture of tires, rubber and plastic products, inks and other products, from 1999 through the present. The parties are currently engaged in discovery.
- ***In re DRAM Antitrust Litig.***, MDL No. 1486 (N.D. Cal.). Lerach Coughlin attorneys serve on the executive committee in this multi-district class action, in which a class of purchasers of high density low-cost-per-bit, random access memory chips, known as DRAM, allege that the leading manufacturers of semiconductor products fixed the price

of DRAM from the fall of 2001 through at least the end of June 2002. Lerach Coughlin attorneys took the lead in briefing and successfully opposing defendant's motion to dismiss, which was denied. The parties are engaged in discovery.

- ***In re Medical Waste Services Antitrust Litig.***, MDL No. 1546 (D. Utah). Lerach Coughlin attorneys are co-lead counsel in this multi-district antitrust class action litigation involving two separate cases. In the first (the *Tri-State Class Action*), plaintiffs allege defendants illegally conspired to allocate customers and territories in the market for the collection, transportation and disposal of medical waste in three mountain states. In the second case (the *Stoll Action*), the firm is co-lead counsel for a California class of plaintiffs who allege that Stericycle, the largest provider of medical waste collection and disposal services in the United States, unlawfully monopolized the market for these services in California. Discovery is ongoing, and plaintiffs expect to move for certification of the class in July 2004.
- ***In re Microsoft Antitrust Litig.***, MDL No. 1332 - D. Md. Lerach Coughlin attorneys have served as lead counsel, co-lead counsel and on the executive committees of more than 15 indirect purchaser actions against Microsoft brought in both state and federal courts alleging Microsoft illegally exercised its monopoly power in the operating system, word processing and spreadsheet markets. Plaintiffs successfully defeated motions to dismiss, challenges to class certification and motions for summary judgment in many state cases. Plaintiffs also engaged in a massive discovery effort in order to defeat Microsoft's challenges regarding its unlawful acts, and to prepare for trials in California and Minnesota, both of which ultimately resolved before the cases reached a jury. In many states, the parties are currently in the process of finalizing settlements and/or achieving Court approval in settlements which provide an unprecedented result for indirect purchaser class members.
- ***The California Wholesale Electricity Antitrust Litig.***, Case No. 02-CV-990 (S.D. Cal.). Lerach Coughlin attorneys are co-lead counsel (with one other firm) in this litigation, which alleges buyers and sellers in markets operated by the California Power Exchange and California ISO manipulated markets during the period May 1, 2000 to June 19, 2001. The culmination of several years of litigation, review of company documents and investigation have led to the determination of widespread market manipulation of the California and Western energy markets during 2000 and 2001. The findings show the trading strategies and withholding of power, employed by Enron and other companies, were undertaken in an effort to manipulate the California energy market which led to increased energy prices for consumers. Plaintiffs reached a landmark settlement in the litigation with the Williams Companies worth an estimated \$400 million. The case is currently before the Ninth Circuit Court of Appeals awaiting oral argument on several issues.

Consumer

Lerach Coughlin's attorneys represent plaintiffs nationwide in a variety of important, complex consumer class actions. Lerach Coughlin attorneys have taken a leading role in many of the largest state and federal consumer fraud, human rights, environmental, public health and tobacco-related cases throughout the United States. Lerach Coughlin is also actively involved in numerous cases

relating to the financial services industry, pursuing claims on behalf of individuals victimized by abusive mortgage lending practices, including violations of the Real Estate Settlement Procedures Act, market timing violations in connection with the sale of variable annuities and deceptive consumer credit lending practices in violation of the Truth-In-Lending Act.

Current consumer cases include:

- ***Dell's Bait and Switch Scheme.*** Plaintiffs have sued Dell, Inc. and its financing partners, Dell Financial Services and CIT Bank, in connection with their bait and switch sales and financing practices. The class action complaint alleges that Dell uses its advertisements to lure customers in, promising low-price computers. At the point of sale, Dell engages in one of several bait and switch schemes, including substituting lesser quality computer components for those ordered and paid for by customers, increasing the purchase price without adequate notice to customers, and canceling orders when Dell does not want to honor advertised deals. This class action also alleges illegal financing behavior, including Dell switching or failing to adequately disclose the terms of Dell's financing agreement, including less favorable financing plans, hidden charges and fees, and much higher interest rates.
- ***eBay Shill Bidding Litigation.*** Lerach Coughlin attorneys represent a plaintiff and class members in litigation against auction company eBay. The class action alleges unlawful shill bidding by eBay in its online auctions. Plaintiff alleges that eBay's practice of increasing winning bids, when an eBay customer uses eBay's proxy bidding tool, violates numerous California auction and consumer laws.
- ***Illegal Internet Gambling Advertisements.*** Lerach Coughlin represents the general public and a class of California residents who have been harmed by the illegal online advertising for gambling casinos. In a complaint upheld by Judge Kramer of the San Francisco complex litigation department, plaintiffs have alleged that the numerous online search engines have violated California Law by taking payment in exchange for advertising illegal gambling websites.
- ***Cellphone Termination Fee Cases.*** Lerach Coughlin attorneys are co-lead counsel in a lawsuit against the six major wireless telephone service providers in California. The plaintiffs allege that the early termination fee provisions in defendants' contracts are illegal penalties under California Law, designed to unfairly tether consumers to long-term contracts and prevent customers from changing their wireless service providers.
- ***Tenet Healthcare Cases.*** Lerach Coughlin attorneys are co-lead counsel in a class action alleging a fraudulent scheme of corporate misconduct, resulting in the overcharging of uninsured patients by the Tenet chain of hospitals. The firm's attorneys represent uninsured patients of Tenet hospitals nationwide who were overcharged by Tenet's admittedly "aggressive pricing strategy" which resulted in price gouging of the uninsured. Judge McCoy of the Los Angeles Superior Court granted preliminary approval of a settlement between plaintiffs and Tenet.
- ***AT&T Wireless Coverage Maps.*** Lerach Coughlin attorneys represent consumers in a Los Angeles action that alleges false and misleading advertising by AT&T Wireless.

Plaintiffs claim that AT&T Wireless's coverage maps are deceptive because they fail to disclose that defendants' service area is riddled with coverage gaps and holes. Plaintiffs seek injunctive relief from the court requiring AT&T Wireless to publish accurate coverage maps indicating where consumers are actually able to place wireless telephone calls throughout the Los Angeles region. AT&T Wireless was acquired by Cingular Wireless.

Prior consumer cases include:

- ***Schwartz v. Visa***. After years of litigation and a six month trial, Lerach Coughlin attorneys won one of the largest consumer protection verdicts ever awarded in the United States. In *Schwartz v. Visa Int'l, et al.*, Case No. 822404-4 (Cal. Super. Ct., Alameda County), California consumers sued Visa and MasterCard for intentionally imposing and concealing a fee from their cardholders. The Court ordered Visa and MasterCard to return \$800,000,000 in cardholder losses, which represented 100% of the amount illegally taken, plus 2% interest. In addition, the Court ordered full disclosure of the hidden fee.
- ***In re Lifescan, Inc. Consumer Litig.***, Case No. CV-98-20321-JF (N.D. Cal.). Lerach Coughlin attorneys were responsible for achieving a \$45 million all-cash settlement with Johnson & Johnson and its wholly-owned subsidiary, Lifescan, Inc., over claims that Lifescan deceptively marketed and sold a defective blood-glucose monitoring system for diabetics. The Lifescan settlement was noted by the District Court for the Northern District of California as providing "exceptional results" for members of the class.

Human Rights, Labor Practices and Public Policy

Lerach Coughlin attorneys have a long tradition of representing the victims of wrongdoing, ranging from unfair labor practices to the violation of human rights. These include:

- ***Does I, et al. v. The Gap, Inc., et al.***, Case No. 01 0031 (D. N. Mariana Islands). In this groundbreaking case, Lerach Coughlin attorneys represented a class of 30,000 garment workers who alleged that they had worked under sweatshop conditions in garment factories in Saipan that produced clothing for top U.S. retailers such as The Gap, Target and J.C. Penney. In the first action of its kind, Lerach Coughlin attorneys pursued claims against the factories and the retailers alleging violations of RICO, the Alien Tort Claims Act and the Law of Nations based on the alleged systemic labor and human rights abuses occurring in Saipan. This case was a companion to two other actions: ***Does I, et al. v. Advance Textile Corp., et al.***, Case No. 99 0002 (D. N. Mariana Islands), which alleged overtime violations by the garment factories under the Fair Labor Standards Act, and ***UNITE, et al. v. The Gap, Inc., et al.***, Case No. 300474 (Cal. Super. Ct., San Francisco County), which alleged violations of California's Unfair Practices Law by the U.S. retailers. These actions resulted in a settlement of approximately \$20 million that included a comprehensive Monitoring Program to address past violations by the factories and prevent future ones. The members of the litigation team were honored as Trial Lawyers of the Year by the Trial Lawyers for

Public Justice in recognition of the team's efforts at bringing about the precedent-setting settlement of the actions.

- ***Kasky v. Nike, Inc.***, 27 Cal. 4th 939 (2002), *cert. dismissed*, 539 U.S. 654 (2003). The California Supreme Court upheld claims that an apparel manufacturer misled the public regarding its exploitative labor practices, thereby violating California statutes prohibiting unfair competition and false advertising. The Court rejected defense contentions that any misconduct was protected by the First Amendment. The Court found the heightened constitutional protection afforded to noncommercial speech was inappropriate in such a circumstance.
- ***The Cintas Litigation***. Brought against one of the nation's largest commercial laundries for violations of the Fair Labor Standards Act for misclassifying truck drivers as salesmen to avoid payment of overtime.

Shareholder derivative litigation brought by Lerach Coughlin at times also involves anti-union activities, including:

- ***Southern Pacific/Overnite***. A shareholder action stemming from several hundred million dollars in loss of value in the company due to systematic violations by Overnite of U.S. labor laws.
- ***Massey Energy***. A shareholder action against an anti-union employer for flagrant violations of environmental laws resulting in multi-million dollar penalties.
- ***Crown Petroleum***. A shareholder action against a Texas-based oil company for self-dealing and breach of fiduciary duty while also involved in a union lockout.

Lerach Coughlin attorneys also represented over 2,300 Taco Bell workers who were denied thousands of hours of overtime pay because, among other reasons, they were improperly classified as overtime exempt employees. Currently, the firm's attorneys represent CINTAS workers with similar claims of violation of federal and state labor laws.

Environment & Public Health

Lerach Coughlin attorneys have also represented plaintiffs in class actions related to environmental law. The firm's attorneys represented, on a *pro bono* basis, the Sierra Club and the National Economic Development and Law Center as *amici curiae* in a federal suit designed to uphold the state and federal use of project labor agreements ("PLAs"). The suit represented a legal challenge to President Bush's Executive Order 13202, which prohibits the use of project labor agreements on construction projects receiving federal funds. Our Amici Brief in the matter outlined and stressed the significant environmental and socio-economic benefits associated with the use of PLAs on large scale construction projects.

Attorneys with Lerach Coughlin have been involved in several other significant environmental cases, including:

- ***Public Citizen v. US DOT***. Lerach Coughlin represented a coalition of labor, environmental, industry and public health organizations including Public Citizen, The

International Brotherhood of Teamsters, California AFL-CIO and California Trucking Industry in a challenge to a decision by the Bush Administration to lift a congressionally-imposed "moratorium" on cross-border trucking from Mexico on the basis that such trucks do not conform to emission controls under the Clean Air Act, and further, that the Administration did not first complete a comprehensive environmental impact analysis as required by the National Environmental Policy Act. The suit was dismissed by the Supreme Court, the Court holding that because the DOT lacked discretion to prevent cross-border trucking, an environmental assessment was not required.

- ***Sierra Club v. AK Steel.*** Brought on behalf of the Sierra Club for massive emissions of air and water pollution by a steel mill, including homes of workers living in the adjacent communities, in violation of the Federal Clean Air Act, RCRA and the Clean Water Act.
- ***MTBE Litigation.*** Brought on behalf of various water districts for befouling public drinking water with MTBE, a gasoline additive linked to cancer.
- ***Exxon Valdez.*** Brought on behalf of fisherman and of Alaska residents for billions of dollars in damages resulting from the greatest oil spill in U.S. history.
- ***Avilla Beach.*** A citizens' suit against UNOCAL for leakage from the oil company pipeline so severe it literally destroyed the town of Avilla Beach, California.

Federal laws such as the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act and state laws such as California Proposition 65 exist to protect the environment and the public from abuses by corporate and government organizations. Companies can be found liable for negligence, trespass or intentional environmental damage and be forced to pay for reparations and to come into compliance with existing laws.

Prominent cases litigated by Lerach Coughlin attorneys include representing more than 4,000 individuals suing for personal injury and property damage related to the Stringfellow Dump Site in Southern California, participation in the Exxon Valdez oil spill litigation, and the toxic spill arising from a Southern Pacific train derailment near Dunsmuir, California.

The Fight Against Big Tobacco

Lerach Coughlin attorneys have led the fight against Big Tobacco since 1991. As an example, Lerach Coughlin attorneys filed the case that helped get rid of Joe Camel representing various public and private plaintiffs, including the State of Arkansas, the general public in California, the cities of San Francisco, Los Angeles and Birmingham, 14 counties in California, and the working men and women of this country in the Union Pension and Welfare Fund cases that have been filed in 40 states. In 1992, Lerach Coughlin attorneys filed the first case in the country that alleged a conspiracy by the Big Tobacco companies.

Pro Bono

Lerach Coughlin attorneys have a long history of engaging in *pro bono* cases and have been recognized for their demonstrated commitment to providing *pro bono* services to the poor and

disenfranchised. In 2003, Lerach Coughlin attorneys Eric Isaacson, Bonny Sweeney and Amber Eck were nominated for the prestigious 2003 California State Bar President's *Pro Bono* Law Firm of the Year award, based in large part on their efforts with the ACLU in *Sanchez v. County of San Diego*. The San Diego office received a commendation from the State Bar President for its "dedication to the provision of *pro bono* legal services to the poor and for the significant contribution [the firm] made to extending legal services to underserved communities." In recommending the firm for the award, Carl Poirot of the San Diego Volunteer Lawyer Program praised the firm for its "extraordinary efforts" in the case, stating that the "legal team generously gave of their time in the vigorous representation of a class of individuals who clearly do not have the financial resources nor wherewithal to retain legal counsel. The County's questionable conduct would have gone unchallenged but for the intervention" of the legal team.

Sanchez is a class action brought on behalf of welfare applicants against the County of San Diego seeking an injunction requiring the County to discontinue its "Project 100%" program. Under Project 100%, investigators from the San Diego D.A.'s office, Public Assistance Fraud Division, enter and search the home of every person who applies for welfare benefits, even though there is no suspicion of fraud or wrongdoing, and despite the fact that every individual is required to undergo an extensive application process with numerous verifications. Plaintiffs contend that these searches by law enforcement officers, performed without cause or suspicion, violate state and federal statutes and the Fourth Amendment of the U.S. Constitution.

The Court certified a class of all present and future applicants for CalWORKs cash aid and food stamps in San Diego County who are subject to a search of their home under Project 100%. Defendants have since admitted that the use of home visits to determine eligibility for food stamps violates California state regulations and has agreed to settle these claims. Although defendants were granted summary judgment on the remaining claims, plaintiffs are currently in the process of filing an appeal with the Ninth Circuit Court of Appeals and are optimistic about the prospects for success there. Due to the substantial number of hours dedicated to this important case, lead attorneys Eric Isaacson, Bonny Sweeney and Amber Eck were awarded the SDVLP Distinguished Service Award.

The San Diego office was also named as one of three finalists for the 1999 *Pro Bono* Law Firm of the Year award by the SDVLP, based in part for its work on the *Badua v. City of San Diego* case. *Badua* was a case brought on behalf of Jenny Badua against the City of San Diego. After working for the City for 15 years, she was placed on Long Term Disability ("LTD") leave due to severe manic depression. Under the City's LTD Plan, which is similar to many other LTD plans, individuals with physical disabilities receive benefits until age 65 or older, but individuals with mental disabilities receive benefits for only two years. We alleged that this differential treatment of persons with mental disabilities violated the Americans with Disabilities Act and federal and state disability nondiscrimination statutes. Unfortunately, after three years of working on the case, the Ninth Circuit Court of Appeals issued an Opinion upholding the constitutionality of an LTD plan nearly identical to the one at issue, and plaintiffs settled the case for a nominal award to the plaintiff. However, the Disability Rights Education & Defense Fund ("DREDF") and the ACLU commended our efforts and described this as one of the most important issues of the year.

Our co-counsel, Linda Kilb of the DREDF, said in recommending us for the award: "The talent, effort and commitment of [Lerach Coughlin attorneys have] been invaluable, and it is difficult to imagine how the case could proceed without them. DREDF is enormously appreciative of [Lerach Coughlin

attorneys'] continuing role in this case, and of SDVLP's assistance in finding us co-counsel of this caliber."

JUDICIAL COMMENDATIONS

Lerach Coughlin attorneys, working under the former Milberg Weiss mantel, have been commended by countless judges all over the country for the quality of representation in class action lawsuits.

When Judge Harmon appointed Lerach Coughlin attorneys as lead counsel for Enron securities purchasers, she commented:

In reviewing the extensive briefing submitted regarding the Lead Plaintiff/Lead Counsel selection, the Court has found that the submissions of [Lerach Coughlin attorneys] stand out in the breadth and depth of its research and insight. Furthermore, Mr. Lerach has justifiably "beat his own drum" in demonstrating the role his firm has played thus far in zealously prosecuting this litigation on Plaintiffs' behalf.

See In re Enron Corp. Sec. Litig., 206 F.R.D. 427, 458 (S.D. Tex. 2002).

In Stanley v. Safeskin Corp., Case No. 99 CV 454-BTM (S.D. Cal. May 25, 2004), where Lerach Coughlin obtained \$55 million for the class of investors, Judge Moskowitz stated:

I said this once before, and I'll say it again. I thought the way that your firm handled this case was outstanding. This was not an easy case. It was a complicated case, and every step of the way, I thought they did a very professional job.

In Roy v. The Independent Order of Foresters, Case No. 97-6225 (SRC), slip op. at 32 (D.N.J. Aug. 3, 1999), Judge Chesler noted in his Opinion on class certification that:

The firm of [Lerach Coughlin], which is co-lead counsel for the plaintiff, was also counsel for the plaintiff class in the Prudential case. Thus, the adequacy of the plaintiff's representation is beyond reproach. Furthermore, the tremendous and unprecedented settlements which the [Lerach Coughlin] firm has helped to secure for the plaintiff classes in both this case and the Prudential case are a testament to counsel's vigorous pursuit of the class interests.

In a November 9, 1998 Order approving settlements totaling over \$1.027 billion, the Court in *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998), commented of Lerach Coughlin attorneys, including Len Simon;

Counsel for the Plaintiffs are preeminent in the field of class action litigation, and the roster of counsel for the Defendants includes some of the largest, most successful and well regarded law firms in the country. It is difficult to conceive of better representation than the parties in this action achieved.

In approving a recovery in excess of \$200 million in *Transamerica*, Judge Danielson of the California Superior Court made it a point to comment on the professionalism of Lerach Coughlin:

It would be hard to imagine what question I could come up with that I haven't already seen the information that I needed in the submissions that have been made to this Court. I can't remember anything so thoroughly and professionally handled in the 20-some odd years that I've been involved in the law. It is interesting to see law practiced honorably. And I think all of the lawyers who have involved themselves in this case can be very proud of their profession.

See Natal v. Transamerica Occidental Life Ins. Co., Case No. 694829, Hearing Transcript dated June 26, 1997, at 39:3-12.

Similarly, in *Prudential*, in approving the settlement of a nationwide class action against a life insurer for deceptive sales practices, Judge Wolin observed:

[T]he results achieved by plaintiffs' counsel in this case in the face of significant legal, factual and logistical obstacles and formidable opposing counsel, are nothing short of remarkable.... Finally, the standing and professional skill of plaintiffs' counsel, in particular Co-Lead Counsel, is high and undoubtedly furthered their ability to negotiate a valuable settlement and argue its merits before this Court. Several members of plaintiffs' counsel are leading attorneys in the area of class action litigation.

See In re Prudential Ins. Co. of Am. Sales Practices Litig., 962 F. Supp. 572, 585-86 (D.N.J. 1997), *vacated on other grounds*, 148 F.3d 283 (3d Cir. 1998). Lerach Coughlin attorneys were co-lead counsel in this litigation. At the Fairness Hearing in *Prudential*, Judge Wolin stated that "there is **no doubt** that Class Counsel have prosecuted the interests of the class members with the utmost vigor and expertise." *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 519 (D.N.J. 1997), *aff'd*, 148 F.3d 283 (3d Cir. 1998) (emphasis added).

In approving a \$100 million settlement in *In re Prudential Securities Limited Partnerships Litig.*, 912 F. Supp. 97, 101 (S.D.N.Y. 1996), for which Lerach Coughlin attorneys, acting under the Milberg Weiss firm name, were part of the lead counsel, Judge Pollack noted that he had "the opportunity at first hand to observe the quality of plaintiffs' class counsel's representation, both here and in prior complex litigation, and [was] impressed with the quality of plaintiffs' class counsel." In his Opinion on class certification, Judge Chesler elaborated that:

The firm of Milberg Weiss Bershad Hynes & Lerach LLP, which is co-lead counsel for the plaintiff, was also counsel for the plaintiff class in the *Prudential* case. Thus, the adequacy of the plaintiff's representation is beyond reproach. Furthermore, the tremendous and unprecedented settlements which the Milberg firm has helped to secure for the plaintiff classes in both this case and the *Prudential* case are a testament to counsel's vigorous pursuit of the class interests.

See Roy v. The Independent Order of Foresters, Case No. 97-6225 (SRC), slip op. at 32 (D.N.J. Aug. 3, 1999).

At the Settlement Hearing in the *Chipcom* litigation, for which Lerach Coughlin attorneys were counsel, Judge Woodlock remarked:

[I]t seems to me that the level of legal services, the quality of legal services, the attention to the case on behalf of the plaintiffs, and ultimately plaintiffs' class, was really very high quality and ought to be recognized by an appropriately high percentage figure here.

Of course, I disagree on the merits of the case. That is not, however, to say that I disagree with the quality of the lawyering or disregarded the quality of the lawyering or thought that the quality of the lawyering was not at the highest level. To the contrary, I thought it was at the highest level and that ought also to be reflected here.

See Nappo v. Chipcom Corp., Case No. CA-95-11114-WD (D. Mass.), Settlement Hearing Transcript dated June 26, 1997, at 13-14.

NOTABLE CLIENTS

Public Fund Clients

- **Alaska Permanent Fund Corporation.**
- **Alaska State Pension Investment Board.**
- **California Public Employees' Retirement System.**
- **California State Teachers' Retirement System.**
- **City of Birmingham Retirement and Relief System (Ala.).**
- **Teachers' Retirement System of the State of Illinois, Illinois Municipal Retirement Fund, Illinois State Board of Investment.**
- **Los Angeles County Employees Retirement Association (LACERA).**
- **Maine State Retirement System.**
- **The Maryland-National Capital Park & Planning Commission Employees' Retirement System.**
- **Milwaukee Employees' Retirement System.**
- **Minnesota State Board of Investment.**
- **New Hampshire Retirement System.**
- **Pompano Beach Police & Firefighters Retirement System.**
- **The Regents of the University of California.**
- **State Universities Retirement System of Illinois.**

- **State of Wisconsin Investment Board.**
- **Tennessee Consolidated Retirement System.**
- **Washington State Investment Board.**
- **Wayne County Employees' Retirement System.**
- **West Virginia Investment Management Board.**

Multi-Employer Clients

- **Alaska Electrical Pension Fund.**
- **Alaska Hotel & Restaurant Employees Pension Trust Fund.**
- **Alaska Ironworkers Pension Trust.**
- **Alaska Laborers Employers Retirement Fund.**
- **Alaska U.F.C.W. Pension Trust.**
- **Chemical Valley Pension Fund of West Virginia.**
- **Carpenters Health & Welfare Fund of Philadelphia & Vicinity.**
- **Carpenters Pension Fund of Baltimore, Maryland.**
- **Carpenters Pension Fund of Illinois.**
- **Carpenters Pension & Annuity Fund of Philadelphia & Vicinity.**
- **Southwest Carpenters Pension Trust (f/k/a Carpenters Pension Trust for Southern California).**
- **Central States, Southeast and Southwest Areas Pension Fund.**
- **Construction Industry and Carpenters Joint Pension Trust for Southern Nevada.**
- **Employer-Teamsters Local Nos. 175 & 505 Pension Trust Fund.**
- **Heavy & General Laborers' Local 472 & 172 Pension & Annuity Funds.**
- **UNITE Family of Funds.**
- **1199 SEIU Greater New York Pension Fund.**
- **Massachusetts State Carpenters Pension Fund.**

- **Massachusetts State Guaranteed Annuity Fund.**
- **New England Health Care Employees Pension Fund.**
- **PACE Industry Union-Management Pension Fund.**
- **Rocky Mountain UFCW Unions & Employers Pension Plan.**
- **SEIU Staff Fund.**
- **Southern California Lathing Industry Pension Fund.**
- **United Brotherhood of Carpenters Pension Fund.**

Additional Institutional Investors

- **The Dot.Com Fund.**
- **Northwestern Mutual Life Insurance Company.**
- **Standard Life Investments.**

PROMINENT CASES AND PRECEDENT-SETTING DECISIONS

Prominent Cases

- ***In re Enron Sec. Litig.***, Case No. H-01-3624 (S.D. Tex.). In appointing Lerach Coughlin lawyers as sole lead counsel to represent the interests of Enron investors, the Court found that the firm's zealous prosecution and level of "insight" set it apart from its peers. Ever since, Lerach Coughlin and lead plaintiff The Regents of the University of California have aggressively pursued numerous defendants, including many of Wall Street's biggest banks and law firms. Despite each defendant's claim that as a matter of law it could not be found liable for plaintiffs' losses, Lerach Coughlin and The Regents have thus far obtained settlements in excess of \$7.1 billion for the benefit of investors. Lerach Coughlin continues to press substantial and sizable claims against numerous defendants, including Enron's senior-most officers and several large international banks, with every intention of winning further large recoveries at trial for the victims of this corporate catastrophe.

- ***In re NASDAQ Market-Makers Antitrust Litig.***, MDL No. 1023 (S.D.N.Y.). Lerach Coughlin attorneys served as Court-appointed co-lead counsel for a class of investors. The class alleged that the NASDAQ market-makers set and maintained wide spreads pursuant to an industry wide conspiracy in one of the largest and most important antitrust cases in recent history. After three and one half years of intense litigation, the case was settled for a total of \$1.027 billion, the largest antitrust settlement ever. An excerpt from the Court's Opinion reads:

Counsel for the Plaintiffs are preeminent in the field of class action litigation, and the roster of counsel for the Defendants includes some of the largest, most successful and well regarded law firms in the country. It is difficult to conceive of better representation than the parties to this action achieved.

- ***In re Dynegy Sec. Litig.***, Case No. H-02-1571 (S.D. Tex.). As sole lead counsel representing The Regents of the University of California and the class of Dynegy investors, Lerach Coughlin obtained a combined settlement of \$474 million from Dynegy Inc., Citigroup, Inc. and Arthur Andersen LLP for their involvement in a clandestine financing scheme known as Project Alpha. Given Dynegy's limited ability to pay, Lerach Coughlin structured a settlement (reached shortly before the commencement of trial) that maximized plaintiffs' recovery without bankrupting the company. Most notably, the settlement agreement provides that Dynegy will appoint two board members to be nominated by the Regents, which Lerach Coughlin and the Regents believe will result in benefits to all of Dynegy's stockholders.

- ***In re Am. Cont. Corp./Lincoln Sav. & Loan Sec. Litig.***, MDL No. 834 (D. Ariz.). Lerach Coughlin attorneys served as the Court-appointed co-lead counsel for a class of persons who purchased debentures and/or stock in American Continental Corp., the parent company of the now infamous Lincoln Savings & Loan. The suit charged Charles Keating, other insiders, three major accounting firms, three major law firms, Drexel Burnham, Michael Milken and others with racketeering and violations of securities laws. Recoveries totaled \$240 million on \$288 million in losses. A jury also rendered verdicts of more than \$1 billion against Keating and others.

- ***In re 3Com, Inc. Sec. Litig.***, Case No. C-97-21083-JW (N.D. Cal.). A hard-fought class action alleging violations of the federal securities laws in which Lerach Coughlin attorneys served as lead counsel for the class and obtained a recovery totaling \$259 million.

- ***Mangini v. R.J. Reynolds Tobacco Co.***, Case No. 939359 (Cal. Super. Ct., San Francisco County). In this case, R.J. Reynolds admitted, “the *Mangini* action, and the way that it was vigorously litigated, was an early, significant and unique driver of the overall legal and social controversy regarding underage smoking that led to the decision to phase out the Joe Camel Campaign.”

- ***Cordova v. Liggett Group, Inc., et al.***, Case No. 651824 (Cal. Super. Ct., San Diego County), and ***People v. Philip Morris, Inc., et al.***, Case No. 980864 (Cal. Super. Ct., San Francisco County). Lerach Coughlin attorneys, as lead counsel in both these actions, played a key role in these cases which were settled with the Attorneys General global agreement with the tobacco industry, bringing \$26 billion to the State of California as a whole and \$12.5 billion to the cities and counties within California.

- ***Does I, et al. v. The Gap, Inc., et al.***, Case No. 01 0031 (D. N. Mariana Islands). In this ground-breaking case, Lerach Coughlin attorneys represented a class of 30,000 garment workers who alleged that they had worked under sweatshop conditions in garment factories in Saipan that produced clothing for top U.S. retailers such as The Gap, Target and J.C. Penney. In the first action of its kind, Lerach Coughlin attorneys pursued claims against the factories and the retailers alleging violations of RICO, the Alien Tort Claims Act and the Law of Nations based on the alleged systemic labor and human rights abuses occurring in Saipan. This case was a companion to two other actions: ***Does I, et al. v. Advance Textile Corp., et al.***, Case No. 99 0002 (D. N. Mariana Islands) – which alleged overtime violations by the garment factories under the Fair Labor Standards Act, and ***UNITE, et al. v. The Gap, Inc., et al.***, Case No. 300474 (Cal. Super. Ct., San Francisco County), which alleged violations of California’s Unfair Practices Law by the U.S. retailers. These actions resulted in a settlement of approximately \$20 million that included a comprehensive Monitoring Program to address past violations by the factories and prevent future ones. The members of the litigation team were honored as Trial Lawyers of the Year by the Trial Lawyers for Public Justice in recognition of the team’s efforts at bringing about the precedent-setting settlement of the actions.

- ***In re Exxon Valdez***, Case No. A89 095 Civ. (D. Alaska), and ***In re Exxon Valdez Oil Spill Litig.***, Case No. 3 AN 89 2533 (Alaska Super. Ct., 3d Jud. Dist.). Lerach Coughlin attorneys served on the Plaintiffs’ Coordinating Committee and Plaintiffs’ Law Committee in the massive litigation resulting from the Exxon Valdez oil spill in Alaska in March 1989. A jury verdict of \$5 billion was obtained and is currently on appeal.

- ***In re Washington Public Power Supply Sys. Sec. Litig.***, MDL No. 551 (D. Ariz.). A massive litigation in which Lerach Coughlin attorneys served as co-lead counsel for a class that obtained recoveries totaling \$775 million after several months of trial.

- ***Hall v. NCAA*** (Restricted Earnings Coach Antitrust Litigation), Case No. 94-2392-KHV (D. Kan.). The firm was lead counsel and lead trial counsel for one of three classes of coaches in consolidated price fixing actions against the National Collegiate Athletic Association. On May 4, 1998, the jury returned verdicts in favor of the three classes for more than \$54.5 million.

- ***Newman v. Stringfellow*** (Stringfellow Dump Site Litigation), Case No. 165994 MF (Cal. Super. Ct., Riverside County). Lerach Coughlin attorneys represented more than 4,000 individuals suing for personal injury and property damage arising from their claims that contact with the Stringfellow Dump Site may have caused them toxic poisoning. Recovery totaled approximately \$109 million.

- ***In re Prison Realty Sec. Litig.***, Case No. 3:99-0452 (M.D. Tenn.). Lerach Coughlin attorneys served as lead counsel for the class, obtaining a \$105 million recovery.

- ***In re Honeywell Int'l, Inc. Sec. Litig.***, Case No. 00-cv-03605 (DRD) (D. N.J.). Lerach Coughlin attorneys served as lead counsel for a class of investors that purchased Honeywell's common stock. The case charged defendants Honeywell and its top officers with violations of the federal securities laws, alleging defendants made false public statements concerning Honeywell's merger with Allied Signal, Inc., and also alleging that defendants falsified Honeywell's financial statements. After extensive discovery, Lerach Coughlin attorneys obtained a \$100 million settlement for the class.

- ***In re AT&T Corp. Sec. Litig.***, MDL No. 1399 (N.J.). Lerach Coughlin attorneys served as lead counsel for a class of investors that purchased AT&T common stock. The case charged defendants AT&T Corporation and its former Chairman and Chief Executive Officer, C. Michael Armstrong, with violations of the federal securities laws in connection with AT&T's April 2000 initial public offering of its wireless tracking stock, the largest IPO in American history. After two weeks of trial, and on the eve of scheduled testimony by Armstrong and infamous telecom analyst Jack Grubman, defendants agreed to settle the case for \$100 million. In granting approval of the settlement, the Court stated the following about Lerach Coughlin:

Lead Counsel are highly skilled attorneys with great experience in prosecuting complex securities action[s], and their professionalism and diligence displayed during litigation substantiates this characterization. The Court notes that Lead Counsel displayed excellent lawyering skills through their consistent preparedness during court proceedings, arguments and the trial, and their well-written and thoroughly researched submissions to the Court. Undoubtedly, the attentive and persistent effort of Lead Counsel was integral in achieving the excellent result for the Class.

- ***City of San Jose v. PaineWebber***, Case No. C-84-20601(RFP) (N.D. Cal.). Lerach Coughlin attorneys filed a lawsuit on behalf of the City of San Jose to recover speculative trading losses from its former auditors and 13 brokerage firms. In June 1990, following a six-month trial, the jury returned a verdict for the City, awarding over \$18 million in damages plus pre-judgment interest. The City also recovered an additional \$12 million in settlements prior to and during the trial.

- ***Hicks v. Nationwide***, Case No. 602469 (Cal. Super. Ct., San Diego County). Lerach Coughlin attorneys represented a class of consumers alleging fraud involving military purchasers of life insurance, in which a jury trial resulted in a full recovery for the class, plus punitive damages.

- ***In re Nat'l Health Labs. Sec. Litig.***, Case No. CV-92-1949-RBB (S.D. Cal.). Lerach Coughlin attorneys served as co-lead counsel and obtained a pretrial recovery of \$64 million in this securities fraud class action.

- ***In re Informix Corp. Sec. Litig.***, Case No. C-97-1289-CRB (N.D. Cal.). Lerach Coughlin attorneys served as co-lead counsel for the class and obtained a recovery of \$137.5 million.

- ***In re Apple Computer Sec. Litig.***, Case No. C-84-20148(A)-JW (N.D. Cal.). Lerach Coughlin attorneys served as lead counsel and after several years of litigation obtained a \$100 million jury verdict in this securities fraud class action. The verdict was later upset on post-trial motions, but the case was settled favorably to the class.

- ***In re Nat'l Med. Enters. Sec. Litig.***, Case No. CV-91-5452-TJH (C.D. Cal.). Lerach Coughlin attorneys served as co-lead counsel and recovered \$60.75 million in this securities fraud class action.
- ***In re Nucorp Energy Sec. Litig.***, MDL No. 514 (S.D. Cal.). Lerach Coughlin attorneys served as co-lead counsel in this consolidated class action and recovered \$55 million.
- ***In re U.S. Fin. Sec. Litig.***, MDL No. 161 (S.D. Cal.). Lerach Coughlin attorneys acted as chairman of the Plaintiffs' Steering Committee and achieved a pretrial recovery of over \$50 million.
- ***Barr v. United Methodist Church***, Case No. 404611 (Cal. Super. Ct., San Diego County). Lerach Coughlin attorneys served as lead and trial counsel in this class action on behalf of elderly persons who lost their life savings when a church-sponsored retirement home that had sold them prepaid life-care contracts went bankrupt. After four years of intensive litigation – three trips to the U.S. Supreme Court and five months of trial – plaintiffs obtained a settlement providing over \$40 million in benefits to the class members. In approving that settlement, Judge James Foucht praised the result as “a most extraordinary accomplishment” and noted that it was the “product of the skill, effort and determination of plaintiffs’ counsel.”
- ***Grobow v. Dingman*** (The Henley Group Litigation), Case No. 575076 (Cal. Super. Ct., San Diego County). Lerach Coughlin attorneys served as co-lead counsel and obtained \$42 million derivatively on behalf of The Henley Group, Inc.
- ***In re Intel Sec. Litig.***, Case No. C-79-2168A-RPA (N.D. Cal.). Lerach Coughlin attorneys served as co-lead counsel in this securities class action that recovered \$40 million.
- ***In re Fin. Corp. of Am.***, Case No. CV-84-6050-TJH(Bx) (C.D. Cal.). Lerach Coughlin attorneys served as co-lead counsel and obtained a recovery of \$41 million.
- ***In re Oak Indus. Sec. Litig.***, Case No. 83-0537-G(M) (S.D. Cal.). Lerach Coughlin attorneys served as co-lead counsel in this case and obtained a recovery of \$33 million.
- ***In re Wickes Cos. Sec. Litig.***, MDL No. 513 (S.D. Cal.). Lerach Coughlin attorneys served as liaison counsel in this consolidated securities law class action that recovered \$32 million.
- ***Weinberger v. Shumway*** (The Signal Companies, Inc.), Case No. 547586 (Cal. Super. Ct., San Diego County). Lerach Coughlin attorneys served as co-lead counsel in this derivative litigation challenging executive “golden parachute” contracts, and obtained a recovery of approximately \$23 million.
- ***In re Seafirst Sec. Litig.***, Case No. C-83-771-R (W.D. Wash.). Lerach Coughlin attorneys served as co-lead counsel in this class action and obtained a pretrial recovery of \$13.6 million.
- ***In re Waste Mgmt. Sec. Litig.***, Case No. 83-C2167 (N.D. Ill.). Lerach Coughlin attorneys served as co-lead counsel in this case and obtained a pretrial recovery of \$11.5 million.
- ***In re IDB Commc'ns Group, Inc. Sec. Litig.***, Case No. CV-94-3618 (C.D. Cal.). Lerach Coughlin attorneys served as co-lead counsel in this case and obtained a pretrial recovery of \$75 million.

- ***In re Boeing Sec. Litig.***, Case No. C97-1715Z (W.D. Wash.). A securities class action in which Lerach Coughlin attorneys served as co-lead counsel for the class obtaining a recovery in the amount of \$92.5 million.
- ***Thurber v. Mattel, Inc., et al.***, Case No. CV-99-10368-MRP (C.D. Cal.). Lerach Coughlin attorneys served as Chair of the Executive Committee of Plaintiffs' Counsel and obtained a recovery of \$122 million.
- ***In re Dollar Gen. Sec. Litig.***, Case No. 3:01-0388 (M.D. Tenn.). Lerach Coughlin attorneys served as co-lead counsel and obtained a recovery of \$172.5 million.
- ***Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Hanover Compressor Co.***, Case No. H-02-0410 (S.D. Tex.). Lerach Coughlin attorneys served as lead counsel and obtained a recovery of \$85 million.
- ***In re Reliance Acceptance Group, Inc. Sec. Litig.***, MDL No. 1304 (D. Del.). Lerach Coughlin attorneys served as co-lead counsel and obtained a recovery of \$39 million.
- ***Schwartz v. Visa Int'l, et al.***, Case No. 822404-4 (Cal. Super. Ct., Alameda County). After years of litigation and a six month trial, Lerach Coughlin attorneys won one of the largest consumer protection verdicts ever awarded in the United States. Lerach Coughlin attorneys represented California consumers who sued Visa and MasterCard for intentionally imposing and concealing a fee from their cardholders. The Court ordered Visa and MasterCard to return \$800,000,000 in cardholder losses, which represented 100% of the amount illegally taken, plus 2% interest. In addition, the Court ordered full disclosure of the hidden fee.
- ***Morris v. Lifescan, Inc.***, Case No. CV-98-20321-JF (N.D. Cal.). Lerach Coughlin attorneys were responsible for achieving a \$45 million all-cash settlement with Johnson & Johnson and its wholly-owned subsidiary, Lifescan, Inc., over claims that Lifescan deceptively marketed and sold a defective blood glucose monitoring system for diabetics. The Lifescan settlement was noted by the U.S. District Court for the Northern District of California as providing "exceptional results" for members of the class.
- ***Thompson v. Metro. Life Ins. Co.***, 216 F.R.D. 55 (S.D.N.Y. 2003). Lerach Coughlin attorneys served as lead counsel and obtained \$145 million for the class in a settlement involving racial discrimination claims in the sale of life insurance.
- ***In re Prudential Ins. Co. of Am. Sales Practices Litig.***, 962 F. Supp. 450 (D. N.J. 1997). In one of the first cases of its kind, Lerach Coughlin attorneys obtained a settlement of over \$1.2 billion for deceptive sales practices in connection with the sale of life insurance involving the "vanishing premium" sales scheme.
- ***Brody v. Hellman***, Case No. 00-CV-4142 (D. Colo.). Lerach Coughlin was Court-appointed counsel for a class of former stockholders of US West, Inc. who sought to recover a dividend declared by US West before its merger with Qwest. The merger closed before the record and payment dates for the dividend, which Qwest did not pay following the merger. The case was hard fought, and the plaintiffs survived a motion to dismiss, two motions for summary judgment and successfully certified the class over vigorous opposition from defendants. In certifying the class, the Court commented,

"Defendants do not contest that Plaintiffs' attorneys are extremely well qualified to represent the putative class. This litigation has been ongoing for four years; in that time Plaintiffs' counsel has proven that they are more than adequate in ability, determination, and resources to represent the putative class." The case settled for \$50 million, an outstanding settlement for the class given the novel and difficult legal questions raised in the case.

Precedent-Setting Decisions

Investor and Shareholder Rights

- ***Dura Pharm., Inc. v. Broudo***, __ U.S. __, 125 S. Ct. 1627; 161 L. Ed. 2d 577 (2005). Resolving a conflict among the circuits on pleading and proving loss causation, the Supreme Court adopted a rule that investors may proceed by pleading and proving that securities they purchased declined in value because of the fraud alleged – as, for example, by alleging that the securities' market price fell when news of the issuer's true financial state began to leak out.

- ***In re Daou Systems Inc. Sec. Litig.***, 411 F.3d 1006 (9th Cir. 2005). The Ninth Circuit sustained investors' allegations of accounting fraud and ruled that loss causation was adequately alleged by pleading that the value of the stock they purchased declined when the issuer's true financial condition was revealed.

- ***Barrie v. Intervoice-Brite, Inc.***, 409 F.3d 653 (5th Cir. 2005). The Fifth Circuit held that where corporate officers made public statements together, an investor's allegations of the false statements meets the heightened pleading requirements for federal securities claims, and that the corporate officer who stood by silently while false statements were made – failing to correct them – may be liable along with the officer who actually made them.

- ***Newby v. Enron Corp.***, 394 F.3d 296 (5th Cir. 2004). The Fifth Circuit upheld a partial settlement in a complex case that was structured to support further litigation of that case in order to maximize recovery against the remaining defendants.

- ***Illinois Municipal Retirement Fund v. Citigroup, Inc.***, 391 F.3d 844 (7th Cir. 2004). The Seventh Circuit upheld a district court's decision that the Illinois Municipal Retirement Fund was entitled to litigate its claims under the federal Securities Act of 1933 against WorldCom's underwriters before a state court rather than before the federal forum sought by the defendants.

- ***City of Monroe Employees Retirement System v. Bridgestone Corp.***, 387 F.3d 468 (6th Cir. 2005). The Sixth Circuit held that a statement regarding objective data supposedly supporting a corporation's belief that its tires were safe was actionable, where jurors could have found a reasonable basis to believe the corporation was aware of undisclosed facts seriously undermining the statement's accuracy.

- ***Nursing Home Pension Fund, Local 144 v. Oracle Corp.***, 380 F.3d 1226 (9th Cir. 2004). The Ninth Circuit ruled that defendants' fraudulent intent could be inferred from allegations concerning their false representations, insider stock sales and improper accounting methods.

- ***Southland Sec. Corp. v. INSpire Ins. Solutions Inc.***, 365 F.3d 353 (5th Cir. 2004). The Fifth Circuit sustained allegations that an issuer's CEO made fraudulent statements in connection with a contract announcement.
- ***No. 84 Employer-Teamster Joint Council Pension Trust Fund v. Am. W. Holding Corp.***, 320 F.3d 920 (9th Cir. 2003). *America West* is a landmark Ninth Circuit decision holding that investors pleaded with particularity facts raising a strong inference of corporate defendants' fraudulent intent under heightened pleading standards of the Private Securities Litigation Reform Act of 1995.
- ***Pirraglia v. Novell, Inc.***, 339 F.3d 1182 (10th Cir. 2003). In *Pirraglia*, the Tenth Circuit upheld investors' accounting-fraud claims, concluding that their complaint presented with particularity facts raising a strong inference of the defendants' fraudulent intent, and that absence of insider trading by individual defendants did not mean they lacked a motive to commit fraud.
- ***In re Cavanaugh***, 306 F.3d 726 (9th Cir. 2002). In *Cavanaugh*, the Ninth Circuit disallowed judicial auctions to select lead plaintiffs in securities class actions, and protected lead plaintiffs' right to select the lead counsel they desire to represent them.
- ***Lone Star Ladies Inv. Club v. Schlotzsky's, Inc.***, 238 F.3d 363 (5th Cir. 2001). In *Lone Star Ladies*, the Fifth Circuit upheld investors' claims that securities-offering documents were incomplete and misleading, reversing a district court Order that had applied inappropriate pleading standards to dismiss the case.
- ***Bryant v. Dupree***, 252 F.3d 1161 (11th Cir. 2001). The Eleventh Circuit held that investors were entitled to amend their securities-fraud complaint to reflect further developments in the case, reversing a contrary district court Order.
- ***Bryant v. Avado Brands***, 187 F.3d 1271 (11th Cir. 1999). Interpreting the Private Securities Litigation Reform Act of 1995, the Eleventh Circuit held that its provision requiring investors to plead facts raising a strong inference of scienter does not abrogate the principle that recklessness suffices to establish liability for violations of §10(b) of the Securities Exchange Act of 1934.
- ***Berry v. Valence Tech., Inc.***, 175 F.3d 699 (9th Cir. 1999). The Ninth Circuit held that negative articles in the financial press do not cause the one-year "inquiry notice" statute of limitations to run, and indicated possible acceptance of an "actual knowledge" standard that would greatly extend the statute of limitations for victims of securities fraud.
- ***Hertzberg v. Dignity Partners, Inc.***, 191 F.3d 1076 (9th Cir. 1999). The Ninth Circuit reversed dismissal of investors' claims that securities-offering documents were misleading, holding purchasers who bought shares in the aftermarket had standing to bring claims under the Securities Act of 1933 where a material fact is misstated or omitted from a registration statement.
- ***StorMedia, Inc. v. Superior Court***, 20 Cal. 4th 449 (1999). Interpreting the anti-manipulation provisions of California's state securities laws, the California Supreme Court held that a corporation engages in the offer or sale of securities when it maintains an employee stock option or stock purchase plan, and thus may be liable under the statute for disseminating false or misleading public statements.

- ***Diamond Multimedia Sys., Inc. v. Superior Court***, 19 Cal. 4th 1036 (1999). The California Supreme Court held that the California State securities laws' broad anti-manipulation provisions provide a remedy for out-of-state investors damaged by manipulative acts committed within the State of California.
- ***Cooper v. Pickett***, 137 F.3d 616 (9th Cir. 1998). *Cooper* is the leading Ninth Circuit precedent on pleading accounting fraud with particularity. The Court held that plaintiffs stated claims against a company, its independent auditors and its underwriters, for engaging in a scheme to defraud involving improper revenue recognition.
- ***McGann v. Ernst & Young***, 102 F.3d 390 (9th Cir. 1996). *McGann* is a leading federal appellate precedent interpreting Securities Exchange Act of 1934 §10(b)'s provision prohibiting manipulative or deceptive conduct "in connection with" the purchase or sale of a security. The Court rejected contentions that auditors could not be liable for a recklessly misleading audit opinion if they directly participated in no securities transactions. Rather, an accounting firm is subject to liability if it prepares a fraudulent audit report knowing that its client will include the report in an SEC filing.
- ***Provenz v. Miller***, 102 F.3d 1478 (9th Cir. 1996). In *Provenz*, the Ninth Circuit reversed a district court's entry of summary judgment for defendants in an accounting fraud case. The decision is a leading federal appellate precedent on the evidence required to prove fraudulent revenue recognition.
- ***Knapp v. Ernst & Whinney***, 90 F.3d 1431 (9th Cir. 1996). The Ninth Circuit affirmed a jury verdict entered for stock purchasers against a major accounting firm.
- ***Warshaw v. Xoma Corp.***, 74 F.3d 955 (9th Cir. 1996). *Warshaw* is a leading federal appellate precedent on pleading falsity in securities class actions, sustaining allegations that a pharmaceutical company misled securities analysts and investors regarding the efficacy of a new drug and the likelihood of FDA approval. The Court also held that a company may be liable to investors if it misled securities analysts.
- ***Gohler v. Wood***, 919 P.2d 561 (Utah 1996). The Utah Supreme Court held that investors need not plead or prove "reliance" on false or misleading statements in order to recover under a state law prohibiting misleading statements in connection with the sale of a security.
- ***Fecht v. Price Co.***, 70 F.3d 1078 (9th Cir. 1995). *Fecht* is another leading precedent on pleading falsity with particularity. It sustained allegations that a retail chain's positive portrayal of its expansion program was misleading in light of undisclosed problems that caused the program to be curtailed. The Ninth Circuit held that investors may draw on contemporaneous conditions – such as disappointing results and losses in new stores – to explain why a company's optimistic statements were false and misleading. It also clarified the narrow scope of the so-called "bespeaks caution" defense.
- ***In re Software Toolworks Sec. Litig.***, 50 F.3d 615 (9th Cir. 1995). In *Software Toolworks*, the Ninth Circuit reversed the summary judgment entered for defendants, including a company and its top insiders, independent auditors and underwriters. Among other things, the Court held that auditors and underwriters could be liable for their role in drafting a misleading letter sent to the SEC on the corporate defendant's attorneys' letterhead.

- ***In re Pac. Enters. Sec. Litig.***, 47 F.3d 373 (9th Cir. 1995). The Ninth Circuit approved shareholders' settlement of a derivative suit as fair, reasonable, and adequate.
- ***Kaplan v. Rose***, 49 F.3d 1363 (9th Cir. 1994). The Court reversed entry of summary judgment for defendants because investors presented sufficient evidence for a jury to conclude that a medical device did not work as well as defendants claimed.
- ***In re Wells Fargo Sec. Litig.***, 12 F.3d 922 (9th Cir. 1993). *Wells Fargo* is a leading federal appellate decision on pleading accounting fraud, sustaining investors' allegations that a bank misrepresented the adequacy of its loan-loss reserves.
- ***Krangel v. Gen. Dynamics Corp.***, 968 F.2d 914 (9th Cir. 1992). The Ninth Circuit dismissed defendants' appeal from a district court's Order upholding plaintiff investors' choice of forum by remanding the matter to the state court.
- ***Colan v. Mesa Petroleum, Co.***, 951 F.2d 1512 (9th Cir. 1991). In a shareholder derivative action, the Ninth Circuit held that exchange of common stock for debt securities was a "sale" subject to the Securities Exchange Act of 1934's regulation of short-swing profits.
- ***In re Apple Computer Sec. Litig.***, 886 F.2d 1109 (9th Cir. 1989). The Ninth Circuit reversed summary judgment for defendants, holding that investors could proceed to trial on claims that a company's representations about its new disk drive were misleading because they failed to disclose serious technical problems.
- ***Blake v. Dierdorff***, 856 F.2d 1365 (9th Cir. 1988). The Ninth Circuit reversed a district court's dismissal of claims for fraud brought against a corporation's directors and its lawyers.
- ***Mosesian v. Peat, Marwick, Mitchell & Co.***, 727 F.2d 873 (9th Cir. 1984). The Ninth Circuit upheld an investor's right to pursue a class action against an accounting firm, adopting statute of limitation rules for §10(b) suits that are favorable to investors.

ADDITIONALLY, IN THE CONTEXT OF SHAREHOLDER DERIVATIVE ACTIONS, Lerach Coughlin attorneys have been at the forefront of protecting shareholders' investments by causing important changes in corporate governance as part of the global settlement of such cases. Three recent cases in which such changes were made include:

- ***Teachers' Retirement Sys. of Louisiana v. Occidental Petroleum Corp.***, Case No. BC185009 (Cal. Super. Ct.). As part of the settlement, corporate governance changes were made to the composition of the company's board of directors, the company's nominating committee, compensation committee and audit committee.
- ***In re Sprint Shareholder Litig.***, Case No. 00-CV-230077 (Circuit Ct. Jackson County, Mo.) In connection with the settlement of a derivative action involving Sprint Corporation, the company adopted over 60 new corporate governance provisions, which, among other things, established a truly independent Board of Directors and narrowly defined "independence" to eliminate cronyism between the board and top executives; required outside board directors to meet at least twice a year without management present; created an independent director who will hold the authority to set the agenda, a power previously reserved for the CEO; and imposed new rules to prevent directors and officers from vesting their stock on an accelerated basis.

- ***Pirelli Armstrong Tire Corp. Retiree Medical Benefits Trust v. Hanover Compressor Co.***, Case No. H-02-0410 (S.D. Tex.). Groundbreaking corporate governance changes obtained include: direct shareholder nomination of two directors; mandatory rotation of the outside audit firm; two-thirds of the board required to be independent; audit and other key committees to be filled only by independent directors; and creation and appointment of lead independent director with authority to set up board meetings.

Insurance

- ***Lebrilla v. Farmers Group, Inc.***, 119 Cal. App. 4th 1070 (2004). Reversing the trial court, the California Court of Appeal ordered class certification of a suit against Farmers, one of the largest automobile insurers in California. The case involves Farmers' practice of using inferior imitation parts when repairing insureds' vehicles.

- ***Dehoyos v. Allstate Corp.***, 345 F.3d 290 (5th Cir. 2003), *cert. denied*, 2004 U.S. LEXIS 3088 (Apr. 26, 2004). The Fifth Circuit Court of Appeals held that claims under federal civil rights statutes involving the sale of racially discriminatory insurance policies based upon the use of credit scoring did not interfere with state insurance statutes or regulatory goals and were not preempted under the McCarran-Ferguson Act. Specifically, the Appellate Court affirmed the district court's ruling that the McCarran-Ferguson Act does not preempt civil-rights claims under the Civil Rights Act of 1866 and the Fair Housing Act for racially discriminatory business practices in the sale of automobile and homeowners insurance. The U.S. Supreme Court denied defendants' petition for certiorari and plaintiffs can now proceed with their challenge of defendants' allegedly discriminatory credit scoring system used in pricing of automobile and homeowners insurance policies.

- ***In re Monumental Life Ins. Co.***, 345 F.3d 408, (5th Cir. 2004). The Fifth Circuit Court of Appeals reversed a district court's denial of class certification in a case filed by African-Americans seeking to remedy racially discriminatory insurance practices. The Fifth Circuit held that a monetary relief claim is viable in a Rule 23(b)(2) class if it flows directly from liability to the class as a whole and is capable of classwide "computation by means of objective standards and not dependent in any significant way on the intangible, subjective differences of each class member's circumstances."

- ***Moore v. Liberty Nat'l Life Ins. Co.***, 267 F.3d 1209 (11th Cir. 2001). The Eleventh Circuit affirmed the district court's denial of the defendant's motion for judgment on the pleadings, rejecting contentions that insurance policyholders' claims of racial discrimination were barred by Alabama's common law doctrine of repose. The Eleventh Circuit also rejected the insurer's argument that the McCarran-Ferguson Act mandated preemption of plaintiffs' federal civil rights claims under 42 U.S.C. §§1981 and 1982.

- ***Massachusetts Mutual Life Ins. Co. v. Superior Court***, 97 Cal. App. 4th 1282 (2002). The California Court of Appeal affirmed a trial court's Order certifying a class in an action by purchasers of so-called "vanishing premium" life-insurance policies who claimed violations of California's consumer-protection statutes. The Court held that common issues predominate where plaintiffs allege a uniform failure to disclose material information about policy dividend rates.

Consumer Protection

- ***Kasky v. Nike, Inc.***, 27 Cal. 4th 939 (2002), *cert. dismissed*, 539 U.S. 654 (2003). The California Supreme Court upheld claims that an apparel manufacturer misled the public regarding its exploitative labor practices, thereby violating California statutes prohibiting unfair competition and false advertising. The Court rejected defense contentions that such misconduct was protected by the First Amendment.
- ***West Corp. v. Superior Court***, 116 Cal. App. 4th 1167 (2004). The California Court of Appeal upheld the trial court's finding that jurisdiction in California was appropriate over the out-of-state corporate defendant whose telemarketing was aimed at California residents. Exercise of jurisdiction was found to be in keeping with considerations of fair play and substantial justice.
- ***Spielholz v. Superior Court***, 86 Cal. App. 4th 1366 (2d Dist. 2001). The California Court of Appeal held that false advertising claims against a wireless communications provider are not preempted by the Federal Communications Act of 1934.
- ***Day v. AT & T Corp.***, 63 Cal. App. 4th 325 (1998). The California Court of Appeal held that an action which seeks only to enjoin misleading or deceptive practices in the advertising of telephone rates does not implicate the federal filed-rate doctrine, and can proceed under Cal. Bus. & Prof. Code §§17200 and 17500. The Court also held that the claims were not preempted by the Federal Communications Act, that the California Public Utilities Commission does not have exclusive jurisdiction, that the doctrine of primary jurisdiction did not compel dismissal or stay of the action, and that the plaintiffs were not required to exhaust their administrative remedies.
- ***Mangini v. R.J. Reynolds Tobacco Co.***, 7 Cal. 4th 1057 (1994). The California Supreme Court upheld allegations that a cigarette manufacturer committed an unlawful business practice by targeting minors with its advertising. It flatly rejected the manufacturer's contention that the action was preempted by federal cigarette labeling laws.
- ***Jordan v. Dep't of Motor Vehicles***, 75 Cal. App. 4th 449 (1999). The California Court of Appeal invalidated a non-resident vehicle "smog impact" fee imposed on out-of-state autos being registered for the first time in California, finding that the fee violated the Interstate Commerce Clause of the U.S. Constitution.
- ***Clothesrigger, Inc. v. GTE Corp.***, 191 Cal. App. 3d 605 (1987). The California Court of Appeal reversed the trial court's decision refusing to apply California Law to the claims of nonresident plaintiffs. In reversing the lower court's ruling, the Court found that California Law may constitutionally apply to the claims of proposed nationwide class members who are not residents of California, provided there are significant contacts to the claims asserted by each member.
- ***Lazar v. Hertz Corp.***, 143 Cal. App. 3d 128 (1983). The California Court of Appeal ordered a consumer class certified in an Opinion that significantly broadened the right of injured consumers to bring class actions.
- ***Barr v. United Methodist Church***, 90 Cal. App. 3d 259 (1979). The California Court of Appeal rejected constitutional defenses to an action for civil fraud and breach of contract committed by religiously affiliated defendants.

Antitrust

- ***Law v. NCAA***, 134 F.3d 1010 (10th Cir. 1998). The Tenth Circuit upheld summary judgment on liability for plaintiffs in college coaches' antitrust action against the National Collegiate Athletic Association on the issue of antitrust liability under §1 of the Sherman Antitrust Act, 15 U.S.C. §1 (plaintiffs subsequently prevailed on a damages trial). It also upheld the district court's Order permanently enjoining the NCAA from enforcing the "restricted earnings coach" rule, through which NCAA member institutions limited the salary of certain coaches to \$12,000 during the academic year.
- ***In re NASDAQ Market-Makers Antitrust Litig.***, 172 F.R.D. 119 (S.D.N.Y. 1997). In a case where plaintiffs alleged that approximately 30 NASDAQ market-makers engaged in a conspiracy to restrain or eliminate price competition, the District Court certified a class of millions of investors – including institutional investors to be represented by five public pension funds.
- ***In re Disposable Contact Lens Antitrust Litig.***, 170 F.R.D. 524 (M.D. Fla. 1996). Plaintiff contact lens purchasers alleged that defendant manufacturers conspired on a nationwide basis to eliminate competition and maintain artificially inflated prices for replacement contact lenses. The District Court denied defendant manufacturers' motion to dismiss plaintiffs' Clayton Act claims and granted their motion for class certification, finding that plaintiffs' vertical-conspiracy evidence was general to the class and provided a colorable method of proving impact on the class at trial.
- ***In re Currency Conversion Fee Antitrust Litig.***, 265 F. Supp. 2d 385 (S.D.N.Y. 2003). In a case consolidating more than 20 putative class actions, plaintiff credit card holders alleged that two credit-card networks, Visa and MasterCard, and their member banks, conspired to fix the foreign-currency conversion fees they charged. The District Court found that plaintiffs pleaded facts sufficient to permit the inference of an antitrust conspiracy, denying defendants' motion to dismiss the antitrust allegations.
- ***Pharmacare v. Caremark***, 965 F. Supp. 1411 (D. Haw. 1996). The District Court denied defendant's motion to dismiss plaintiffs' Robinson-Patman Act claim in a case where the largest company in the alternate-site infusion therapy industry had pleaded guilty to mail fraud for making improper payments to physicians in exchange for their referrals of patients. Plaintiffs, defendant's competitors, alleged that they suffered injury as a result of defendant's agreements, which violated the anti-kickback provisions of the Clayton Act, §2(c) as amended by the Robinson-Patman Act, 15 U.S.C. §13(c).

THE FIRM'S PARTNERS

WILLIAM S. LERACH is widely recognized as one of the leading securities lawyers in the United States. He has headed the prosecution of hundreds of securities class and stockholder derivative actions resulting in recoveries for defrauded shareholders amounting to billions of dollars. Mr. Lerach has been the subject of considerable media attention and is a frequent commentator on securities and corporate law, as well as a frequent lecturer. He represents numerous public and multi-employer pension funds in corporate securities matters.

He is the author of *Plundering America: How American Investors Got Taken for Trillions by Corporate Insiders - The Rise of the New Corporate Kleptocracy*, 8 Stanford J. of Law, Bus. and Fin. 1 (2002); *Why Insiders Get Rich, and the Little Guy Loses*, L.A. Times, Jan. 20, 2002; *The Chickens Have Come Home to Roost: How Wall Street, the Big Accounting Firms and Corporate Interests Chloroformed Congress and Cost America's Investors Trillions; Achieving Corporate Governance Enhancements Through Litigation*, keynote address to Council of Institutional Investors spring meeting, Mar. 27, 2001; *The Private Securities Litigation Reform Act of 1995 - 27 Months Later: Securities Class Action Litigation Under The Private Securities Litigation Reform Act's Brave New World*, Washington U. L. Rev., Vol. 76, No. 2 (1998); *An Alarming Decline In the Quality of Financial Reporting* (unpublished paper presented to 7th Annual BusinessWeek CFO Forum (June 1998); co author of *Civil RICO in Shareholders Suits Involving Defense Contractors* in Civil RICO Practice: Causes of Action, published by John Wiley & Sons, Inc. (1991); *The Incorporation Trap: How Delaware Has Destroyed Corporate Governance* (unpublished paper presented to the Council of Institutional Investors (1990)); *Securities Class Actions and Derivative Litigations Involving Public Companies: A Plaintiff's Perspective*, ALI/ABI, Civil Practice and Litigation in Federal and State Courts

(1985), ABA Fall Meeting (1985) and PLI Securities Litigation, Prosecution and Defense Strategies (1985); *Alternative Approaches for Awarding Attorneys' Fees in Federal Court Litigation: It's Time to Unload the Lodestar* (unpublished paper presented to the Ninth Circuit Judicial Conference (1984)); *Class Action and Derivative Suits in the Aftermath of Control Contests, Mergers and Acquisitions: Choice of Forum and Remedies; Attorney/Client Privilege in Class and Derivative Cases*, ABA 1984 Annual Meeting (1984); *Class Actions: Plaintiffs' Perspectives, Tactics and Problems*, ALI/ABA, Civil Practice and Litigation in Federal and State Courts (1984); *Life After Huddleston: Streamlining and Simplification of the Securities Class Action*, 7 Class Action Reports 318 (1982). He is also the author of *Termination of Class Actions: The Judicial Role*, McGough & Lerach, 33 U. Pitt L. Rev. 446 (1972); *Class and Derivative Actions Under the Federal Securities Laws* (1980 Regents of the University of California).

Mr. Lerach is chief counsel in many of the largest and highest profile securities class action and corporate derivative suits in recent years, including *Enron*, *Dynegy*, *Qwest* and *WorldCom*. He is listed in the "Best Lawyers in America" and is a Master of the American Inns of Court. Mr. Lerach has been the President of the National Association of Securities and Commercial Lawyers (NASCAT), a national group of attorneys concentrating in commercial and securities litigation. Mr. Lerach is a member of the Editorial Board of Class Action Reports and frequently lectures on class and derivative actions, accountants' liability, and attorneys' fees, and has been a guest lecturer at Stanford University, University of California at Los Angeles and San Diego, University of Pittsburgh, San Diego State University and at the Council of Institutional Investors and the International Corporate Governance Network. He is also a member of

the American Law Institute faculty on Federal and State Class Action Litigation.

Mr. Lerach received his Bachelor of Arts degree from the University of Pittsburgh in 1967 and his Juris Doctor degree in 1970 where he graduated second in his class, *magna cum laude*, and was a member of the Order of the Coif. Mr. Lerach was admitted to the Pennsylvania Bar in 1970 and to the California Bar in 1976. Mr. Lerach was a partner with Pittsburgh firm Reed Smith Shaw & McClay before opening the West Coast office of Milberg Weiss in 1976. Mr. Lerach served as Co-Chairman of Milberg Weiss and serves as Chairman of Lerach Coughlin. He is a member of the Pennsylvania and California Bar Associations and has been admitted to practice before numerous federal and state courts. He is a member of the ABA Litigation Section's Committee on Class Actions and Derivative Skills.

Mr. Lerach has testified before federal and state legislative committees concerning corporate governance and securities matters and is frequently quoted in the national media regarding corporate issues.

Mr. Lerach was honored by President Clinton who appointed him to be a member of the United States Holocaust Memorial Council.

PATRICK J. COUGHLIN has been lead counsel for several major securities matters including one of the largest class action securities cases to go to trial, *In re Apple Computer Sec. Litig.*, Case No. C-84-20148(A)-JW (N.D. Cal.). Formerly, Mr. Coughlin was an Assistant U.S. Attorney in Washington, D.C. and San Diego handling complex white collar fraud matters. During this time, Mr. Coughlin helped try one of the largest criminal RICO cases ever prosecuted by the United States, *United States v. Brown, et al.*, 86-3056-SWR, as well as an infamous oil fraud scheme resulting in a complex murder-for-hire trial, *United States v. Boeckman, et al.*, 87-0676-K. Mr. Coughlin has instructed on the

current state of securities class action litigation in light of U.S. Congressional action aimed at weakening U.S. securities laws.

While at Milberg Weiss, Mr. Coughlin handled a number of large securities cases involving such companies as IDB Communications Group (\$75 million recovery); Unocal (\$47.5 million recovery); Media Vision (\$25 million recovery); Boeing (\$92.5 million recovery); Sunrise Medical (\$20 million recovery); Sybase (\$28.5 million recovery); Conner Peripherals (\$26 million recovery); and 3Com (\$259 million recovery). Mr. Coughlin also prosecuted a number of actions against the tobacco industry which resulted in the phase-out of the Joe Camel Campaign and a \$12.5 billion recovery to the cities and counties of California. Mr. Coughlin's trials include a RICO case against the tobacco industry (March 1999) and securities cases which went to trial against Wells Fargo (October 1999) and California Amplifier (February 2000).

JOHN J. STOIA, JR. received his Bachelor of Science degree from the University of Tulsa in 1983. While working on his degree, Mr. Stoia was elected President of the National Political Science Honor Society and graduated with highest honors. In 1986, Mr. Stoia received his Juris Doctor degree from the University of Tulsa and graduated in the top of his class.

In 1987, Mr. Stoia graduated from the Georgetown University Law Center in Washington, D.C., receiving his Masters of Law in Securities Regulation. Thereafter, Mr. Stoia served as an enforcement attorney with the U.S. Securities and Exchange Commission until joining Milberg Weiss. Mr. Stoia was a partner with Milberg Weiss until co-founding Lerach Coughlin.

Mr. Stoia worked on numerous nationwide complex securities class actions, including *In re Am. Cont. Corp./Lincoln Sav. & Loan Sec. Litig.*, MDL No. 834 (D. Ariz.), which arose out of the collapse of Lincoln Savings & Loan and Charles

Keating's empire. Mr. Stoia was a member of plaintiffs' trial team which obtained verdicts against Mr. Keating and his co-defendants in excess of \$3 billion and settlements of over \$240 million.

Mr. Stoia was involved in over 40 nationwide class actions brought by policyholders against U.S. and Canadian life insurance companies seeking redress for deceptive sales practices during the 1980s and 1990s. Mr. Stoia was actively involved in cases against, among others, Prudential, New York Life, Transamerica Life Insurance Company, General American Life Insurance Company, Manufacturer's Life, Metropolitan Life, American General, US Life, Allianz, Principal Life and Pacific Life Insurance Company. While at Milberg Weiss, Mr. Stoia was appointed lead counsel for plaintiffs and class members in all deceptive sales practices cases in which Milberg Weiss was involved.

Mr. Stoia was also involved in numerous cases brought against life insurance companies for racial discrimination involving the sale of small value or "industrial life" insurance policies during the 20th century. Mr. Stoia was lead counsel in *McNeil, et al., v. Am. Gen. Life Ins. and Accident Ins. Co.*, the first major settlement involving discrimination claims which resulted in a \$234 million recovery for class members. Mr. Stoia resolved other race-based insurance cases, including *Brown v. United Life Ins. Co.* (\$40 million), *Morris v. Life Ins. Co. of Georgia* (\$55 million) and *Thompson v. Metropolitan Life* (\$145 million).

Mr. Stoia currently represents numerous large institutional investors who suffered hundreds of millions of dollars in losses as a result of the major financial scandals, including WorldCom and AOL-Time Warner.

Mr. Stoia is a frequent lecturer at ALI-ABA, Practicing Law Institute and American Trial Lawyers Association seminars and conferences: Speaker: *ALI-ABA Program: Life and Health*

Insurance Litigation; Co-chair, *ALI-ABA Program: Financial Services and Insurance Industry Litigation*; Speaker, *ATLA Winter Convention – Securities Fraud: Rights and Remedies of Shareholders*; Speaker, *ATLA Annual Convention – Insurance Law Section*, Panel: *Broker/Dealer Liability*; Speaker, *ACI Consumer Finance Class Actions Conference*; Speaker, *Barreau du Quebec Class Action Seminar*.

PAUL J. GELLER received his Bachelor of Science degree in Psychology from the University of Florida, where he was a member of the University Honors Program. Mr. Geller then earned his Juris Doctor degree, with highest honors, from Emory University School of Law. At Emory, Mr. Geller was an Editor of the *Law Review*, was inducted into the Order of the Coif legal honor society, and was awarded multiple American Jurisprudence Book Awards for earning the highest grade in the school in a dozen courses.

After spending several years representing blue chip companies in class action lawsuits at one of the largest corporate defense firms in the world, Mr. Geller was a founding partner and head of the Boca Raton offices of the national class action boutiques Cauley Geller Bowman & Rudman, LLP and Geller Rudman, PLLC. In June 2004, through a merger of Lerach Coughlin and Geller Rudman, PLLC, Mr. Geller opened the Boca Raton, Florida office of the firm.

In July 2002, Mr. Geller was named by the *National Law Journal* as one of the nation's "40 Under 40" – an honor bestowed upon 40 of the country's top young litigators. In July 2003, Mr. Geller was featured in *Florida Trend* magazine and the *South Florida Business Journal* as one of Florida's top lawyers.

Mr. Geller is rated AV by Martindale Hubbell (the highest rating available) and has served as lead or co-lead counsel in a majority of the securities class actions that have been filed in

the southeastern United States in the past several years, including cases against *Hamilton Bancorp* (\$8.5 million settlement); *Prison Realty Trust* (co-lead derivative counsel; total combined settlement of over \$120 million), and *Intermedia Corp.* (\$38 million settlement). Mr. Geller is currently one of the court-appointed lead counsel in cases involving the alleged manipulation of the asset value of some of the nation's largest mutual funds, including *Hicks v. Morgan Stanley & Co.*, Case No. 01 Civ. 10071 (S.D.N.Y.); *Abrams v. Van Kampen Funds, Inc.*, Case No. 01 C 7538 (N.D. Ill.), and *In re Eaton Vance Sec. Litig.*, Case No. C.A. No. 01-10911 (D. Mass.). Mr. Geller is also heavily involved in corporate governance litigation. For example, Mr. Geller represented a shareholder of *Applica, Inc.* who was concerned with allegedly reckless acquisitions made by the company. Mr. Geller and his partners secured a settlement that required *Applica* to establish a new independent acquisitions committee charged with conducting due diligence and approving future acquisitions, even though such a committee is not required by SEC regulations. In another corporate governance lawsuit, Mr. Geller and his co-counsel challenged the independence of certain members of a special committee empaneled by *Oracle Corp.* to look into certain stock sales made by its Chairman and Chief Executive Officer, Larry Ellison. After Delaware Chancery Court Vice Chancellor Leo E. Strine issued an Order agreeing that the special committee was "fraught with conflicts," the *Wall Street Journal* called the decision "one of the most far-reaching ever on corporate governance."

Mr. Geller has also successfully represented consumers in class action litigation. He was personal counsel to the lead plaintiff in *Stoddard v. Advanta*, a case that challenged the adequacies of interest rate disclosures by one of the nation's largest credit card companies (\$11 million settlement), and was personal counsel to one of the lead plaintiffs in the American Family Publishers sweepstakes

litigation, which alleged that the defendant misled consumers into thinking they would win a lottery if they purchased magazine subscriptions (\$38 million settlement).

During the past few years, several of Mr. Geller's cases have received regional and national press coverage. Mr. Geller has appeared on CNN's Headline News, CNN's Moneyline with Lou Dobbs, ABC, NBC and FOX network news programs. Mr. Geller is regularly quoted in the financial press, including the *New York Times*, the *Wall Street Journal*, the *Washington Post* and *Business Week*.

Mr. Geller has been or is a member of the Association of Trial Lawyers of America, the Practicing Law Institute, the American Bar Association, the Palm Beach County Bar Association (former Member of Bar Grievance Committee) and the South Palm Beach County Bar Association (former Co-Chair of Pro Bono Committee).

SAMUEL H. RUDMAN received his Bachelor of Arts degree in Political Science from Binghamton University in 1989 and earned his Juris Doctor degree from Brooklyn Law School in 1992. While at Brooklyn Law School, Mr. Rudman was a Dean's Merit Scholar and a member of the *Brooklyn Journal of International Law* and the Moot Court Honor Society.

Upon graduation from law school, Mr. Rudman joined the Enforcement Division of the United States Securities & Exchange Commission in its New York Regional Office as a staff attorney. In this position, Mr. Rudman was responsible for numerous investigations and prosecutions of violations of the federal securities laws. Thereafter, Mr. Rudman joined one of the largest corporate law firms in the country, where he represented public companies in the defense of securities class actions and also handled several white-collar criminal defense matters.

Shortly after the passage of the Private Securities Litigation Reform Act of 1995, Mr. Rudman joined the firm of Milberg Weiss, where he was one of the youngest lawyers ever to be made a partner at the firm and was responsible for the investigation and initiation of securities and shareholder class actions. In addition, Mr. Rudman developed a focus in the area of lead plaintiff jurisprudence and has been responsible for numerous reported decisions in this area of securities law.

Mr. Rudman continues to focus his practice in the area of investigating and initiating securities and shareholder class actions and also devotes a considerable amount of time to representing clients in ongoing securities litigation.

DARREN J. ROBBINS received his Bachelor of Science and Master of Arts degrees in Economics from the University of Southern California. Mr. Robbins received his Juris Doctor degree from Vanderbilt Law School, where he served as the Managing Editor of the *Vanderbilt Journal of Transnational Law*.

Mr. Robbins oversees Lerach Coughlin's merger and acquisition practice. Mr. Robbins has extensive experience in federal and state securities class action litigation. Mr. Robbins served as one of the lead counsel in the *In re Prison Realty Sec. Litig.* (\$120+ million recovery), *In re Dollar Gen. Sec. Litig.* (\$172.5 million recovery) and *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Hanover Compressor Co.* (\$85+ million recovery). Mr. Robbins currently represents institutional and individual investors in securities actions in state and federal courts across the country, including The Regents of the University of California in the *Enron* litigation and numerous public pension funds in the *WorldCom* bond litigation.

Mr. Robbins is a frequent speaker at conferences and seminars concerning securities

matters and shareholder litigation across the country.

KEITH F. PARK graduated from the University of California at Santa Barbara in 1968 and from the Hastings College of Law of the University of California in 1972.

Mr. Park is responsible for the recoveries in more than 1,000 securities class actions, including actions involving: Dollar General (\$162 million recovery); Mattel (\$122 million recovery); Prison Realty (\$105 million recovery); Honeywell (in addition to the \$100 million recovery, obtained Honeywell's agreement to adopt significant corporate governance changes relating to compensation of senior executives and directors, stock trading by directors, executive officers and key employees, internal and external audit functions, and financial reporting and board independence); Sprint (in addition to \$50 million recovery, obtained important governance enhancements, including creation of "Lead Independent Director" and expensing of stock options); Hanover Compressor (on top of \$85 million recovery, obtained the following governance enhancements, among others: direct shareholder nomination of Board and mandatory rotation of audit firm); 3COM (\$259 million recovery); Chiron (\$43 million recovery); MedPartners (\$56 million recovery); NME (\$60.75 million recovery); and TCI (\$26.5 million recovery).

He is admitted to practice in California and New York.

HELEN J. HODGES received her Bachelor of Science degree in accounting from Oklahoma State University in 1979. While attending Oklahoma State, Ms. Hodges obtained her private pilot's license and in 1980 was a member of Oklahoma State's flying team, which won top honors at the National Intercollegiate Flying Association competition. Ms. Hodges became a certified public accountant in 1982 and received her Juris

Doctor degree from the University of Oklahoma in 1983, where she was the Managing Editor of the *Law Review*. She was admitted to the State Bars of Oklahoma in 1983 and California in 1987.

Before partnership with Lerach Coughlin, Ms. Hodges was a partner with Milberg Weiss. Formerly, she was staff accountant with Arthur Andersen & Co. and served as the law clerk for the *Penn Square* cases in the Western District of Oklahoma. Ms. Hodges has been involved in numerous securities class actions, including: *Knapp v. Gomez*, Civ. No. 87-0067-H(M) (S.D. Cal.), in which a plaintiffs' verdict was returned in a Rule 10b-5 class action; *National Health Labs*, which was settled for \$64 million; and *Thurber v. Mattel*, which was settled for \$122 million.

REED R. KATHREIN, prior to his partnership with Lerach Coughlin, was partner of the San Francisco office of Milberg Weiss, which he opened in 1994. For the past 15 years, he has focused his practice on complex and class action litigation, principally involving securities or consumer fraud. He was lead counsel in numerous state as well as federal court actions around the country, including co-lead counsel in the *In re 3Com Sec. Litig.*, which settled for \$259 million.

Mr. Kathrein publishes and lectures extensively in the fields of litigation, consumer and securities law, class actions, and international law. He annually co-chairs the Executive Enterprises program for corporate officers and counsel entitled, "Dealing With Analysts and the Press." He has spoken to the American Bar Association, the American Business Trial Lawyers Association, the Consumer Attorneys of California, the Practising Law Institute, the Securities Law Institute, the National Investor Relations Institute, state and local bar groups, private seminar organizations and corporations. He testified before the Senate Foreign Relations Committee on behalf of the American Bar Association in favor of advice

and consent to ratification of treaties on international sales, arbitration, evidence and service of process. He testified before the California Assembly and Senate Committees on Y2K litigation, the unfair trade practice act and changes in the business judgment rule. He actively fought the passage of the Private Securities Litigation Reform Act of 1995 and the Securities Litigation Uniform Standard Act of 1998. He worked behind the scenes to shape the Sarbanes-Oxley Act of 2002 on corporate responsibility and accountability.

He served as chairman of the Private International Law Committee of the American Bar Association from 1984-1990, as a director and officer of the International Business Counsel Mid-America from 1983-1988, where he also chaired the policy committee. He acted as an advisor to the U.S. State Department's Advisory Committee on Private International Law from 1984-1990. He is a member of the executive committee of the National Association of Securities and Commercial Law Attorneys, and since 1998 has been a member of the Board of Governors of the Consumer Attorneys of California.

Formerly, Mr. Kathrein was a partner in the Chicago law firm Arnstein & Lehr, where he represented national and international corporations in litigation involving antitrust, commercial, toxic tort, employment and product and public liability disputes. Mr. Kathrein graduated from the University of Miami in 1977, where he received his Bachelor of Arts degree, *cum laude*. He served as Editor-in-Chief of the *International Law Journal*. He is admitted to the Bar of the States of Illinois (1977), Florida (1978) and California (1989).

ERIC ALAN ISAACSON received his A.B. *summa cum laude* from Ohio University in 1982. He earned his Juris Doctor with high honors from the Duke University School of Law in 1985 and was elected to the Order of the Coif. Mr. Isaacson served as a Note and Comment Editor

for the *Duke Law Journal*, and in his third year of law school became a member of the Moot Court Board. After graduation, Mr. Isaacson clerked for the Honorable J. Clifford Wallace of the United States Court of Appeals for the Ninth Circuit.

In 1986, Mr. Isaacson joined the litigation department of O'Melveny & Myers, where his practice included cases involving allegations of trademark infringement, unfair business practices and securities fraud. He served as a member of the trial team that successfully prosecuted a major trademark infringement action.

Prior to his partnership at Lerach Coughlin, Mr. Isaacson was a partner at Milberg Weiss, where he took part in prosecuting many securities fraud class actions. He was a member of the plaintiffs' trial team in *In re Apple Computer Sec. Litig.*, Case No. C 84-20198(A)-JW (N.D. Cal.).

Since the early 1990s, his practice has focused on appellate matters in cases before the California Courts of Appeal, the California Supreme Court, the United States Court of Appeals and the United States Supreme Court. See, e.g., *In re Daou Sys., Inc., Sec. Litig.*, 411 F.3d 1006 (9th Cir. 2005); *Illinois Municipal Retirement Fund v. CitiGroup, Inc.*, 391 F.3d 844 (7th Cir. 2004); *Lone Star Ladies Inv. Club v. Schlotzsky's Inc.*, 238 F.3d 363 (5th Cir. 2001); *Hertzberg v. Dignity Partners, Inc.*, 191 F.3d 1076 (9th Cir. 1999); *Warshaw v. Xoma Corp.*, 74 F.3d 955 (9th Cir. 1996); *Fecht v. Price Co.*, 70 F.3d 1078 (9th Cir. 1995); *Mangini v. R.J. Reynolds Tobacco Co.*, 7 Cal. 4th 1057 (1994).

Mr. Isaacson's publications include: *What's Brewing in Dura?* (coauthored with Patrick J. Coughlin and Joseph D. Daley), *Loyola University Chicago Law Journal* (publication forthcoming in 2005); *Duped Investors See "Dura" as Diamond in the Rough*, (coauthored with Patrick J. Coughlin and Joseph D. Daley), *Los Angeles Daily Journal*, July 5, 2005, p. 8;

Pleading Scienter Under Section 21D(b)(2) of the Securities Exchange Act of 1934: Motive, Opportunity, Recklessness and the Private Securities Litigation Reform Act of 1995 (co-authored with William S. Lerach), 33 *San Diego Law Rev.* 893 (1996); *Securities Class Actions in the United States* (co-authored with Patrick J. Coughlin), in William G. Horton & Gerhard Wegen, editors, *Litigation Issues in the Distribution of Securities: An International Perspective* 399 (Kluwer International/International Bar Association, 1997); *Pleading Standards Under the Private Securities Litigation Reform Act of 1995: The Central District of California's Chantal Decision* (co-authored with Alan Schulman & Jennifer Wells), *Class Action & Derivative Suits*, Summer 1996, at 14; *Commencing Litigation Under the Private Securities Litigation Reform Act of 1995* (co-authored with Patrick J. Coughlin), in Jay B. Kasner & Bruce G. Vanyo, editors, *Securities Litigation 1996*, 9-22 (Practicing Law Institute 1996); *The Flag Burning Issue: A Legal Analysis and Comment*, 23 *Loyola of Los Angeles Law Rev.* 535 (1990).

Mr. Isaacson also has received awards for *pro bono* work from the California Star Bar and the San Diego Volunteer Lawyer Program. He has filed *amicus curiae* briefs on behalf of a variety of organizations, including the Social Justice Committee and Board of Trustees of the First Unitarian Universalist Church of San Diego. Since January 2004, Mr. Isaacson has served as a member of the Board of Directors – and since March 2005 as Board President – of the San Diego Foundation for Change, an organization dedicated to funding and supporting community-led efforts that promote social equality, economic justice, and environmental sustainability. Its grantees have included groups as diverse as Activist San Diego, the Interfaith Committee for Worker Justice, and the San Diego Audubon Society.

Mr. Isaacson has been a member of the California Bar since 1985. He is also admitted to practice before the United States Supreme

Court, the United States Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits, and before all federal district courts in the State of California.

MARK SOLOMON earned his law degrees at Trinity College, Cambridge University, England (1985), Harvard Law School (1986), and the Inns of Court School of Law, England (1987). He is admitted to the Bar of England and Wales (Barrister), Ohio and California, as well as to various U.S. Federal District and Appellate Courts. Mr. Solomon regularly represents both U.S. - and U.K. - based pension funds and asset managers in class and non-class securities litigation.

Before studying law in England, Mr. Solomon served as a British police officer. After qualifying as a barrister, he first practiced at the international firm Jones Day in Cleveland, Ohio (1987-1990), followed by practice at the Los Angeles office of New York's Stroock & Stroock & Lavan (1990-1993). At those firms, Mr. Solomon's representations included the defense of securities fraud and other white-collar crimes, antitrust, copyright, commercial and real estate litigation and reinsurance arbitration. While practicing in Los Angeles, acting for plaintiffs, Mr. Solomon took to trial and won complex commercial contract and real estate actions in the Orange County and Los Angeles Superior Courts, respectively. Thereafter, Mr. Solomon joined Milberg Weiss, where he remained as a partner until becoming a founding partner of Lerach Coughlin in 2004.

Since 1993, Mr. Solomon has spearheaded the prosecution of many significant cases. He has obtained substantial recoveries and judgments for plaintiffs through settlement, summary adjudications and trial. He litigated, through trial, *In re Helionetics*, where he and his trial partner, Paul Howes, won a unanimous \$15.4 million jury verdict in November 2000. He has successfully led many other cases, among

them: *Schwartz v. TXU et al.* (\$150 million recovery plus significant corporate governance reforms); *In re Informix Corp. Sec. Litig.* (\$142 million recovery); *Rosen, et al. v. Macromedia, Inc.* (\$48 million recovery); *In re Community Psychiatric Ctrs Sec. Litig.* (\$42.5 million recovery); *In re Advanced Micro Devices Sec. Litig.* (\$34 million recovery); *In re Tele-Communications, Inc. Sec. Litig.* (\$33 million recovery); *In re Home Theater Sec. Litig.* (\$22.5 million judgment); *In re Diamond Multimedia Sec. Litig.* (\$18 million recovery); *Hayley, et al. v. Parker, et al.* (\$16.4 million recovery); *In re Gupta Corp. Sec. Litig.* (\$15 million recovery); *In re Radius Sec. Litig.*; *In re SuperMac Tech., Inc. Sec. Litig.* (combined recovery of \$14 million); *Markus, et al. v. The North Face, et al.* (\$12.5 million recovery); *In re Brothers Gourmet Coffees, Inc. Sec. Litig.* (\$9 million recovery); *Anderson, et al. v. EFTC, et al.* (\$9 million recovery); *In re Flir Sys. Inc. Sec. Litig.* (\$6 million recovery); *In re Nike, Inc. Sec. Litig.* (\$8.9 million recovery); *Sharma v. Insignia* (\$8 million recovery); and *In re Medeva Sec. Litig.* (\$6.75 million recovery).

Mr. Solomon chaired the American Bar Association Directors and Officers Liability Subcommittee and the Accountants Liability Subcommittee between 1996 and 2001.

RANDI D. BANDMAN is a partner at Lerach Coughlin whose responsibilities include the management of the Los Angeles office and the firm's Institutional Investor Department. Ms. Bandman received her Juris Doctor degree from the University of Southern California in 1989 and her Bachelor of Arts degree in English from the University of California at Los Angeles in 1986. Having been associated with the Lerach Coughlin lawyers for more than 14 years, Ms. Bandman's practice has focused on securities and consumer class actions in both state and federal court. She has represented shareholders of companies in industries as diverse as aircraft manufacturing, battery technology, and computer software. These cases, which yielded significant recoveries for

the plaintiffs, were against such companies as: WorldCom (\$650 million); National Health Labs (\$64 million); Sybase (\$28.5 million) and Unocal (\$47.5 million). Ms. Bandman was responsible for running one of the largest class actions in the country over a four-year period against the Boeing Company, which settled for more than \$90 million. Ms. Bandman was also an early member of the team that directed the prosecution of the cases against the tobacco companies.

Using her extensive experience in asserting claims for injured investors, Ms. Bandman lectures and advises multi-employer and public pension funds both domestically and internationally on their options for seeking redress for losses due to fraud sustained in their portfolios. Ms. Bandman is currently interfacing with numerous public and Taft-Hartley pension funds, including those workers for various States and Municipalities, the Entertainment Industry, Sheetmetal Workers, Construction, Air Conditioning, Food and Hospitality, and Plumbers and Teamsters.

Ms. Bandman has served as a lecturer on numerous matters concerning securities litigation to attorneys for continuing legal education, as well as a panelist for the Practicing Law Institute.

THEODORE J. PINTAR received his Bachelor of Arts degree from the University of California at Berkeley in 1984 where he studied Political Economies of Industrial Societies. Mr. Pintar received his Juris Doctor degree from the University of Utah College of Law in 1987, where he was Note and Comment Editor of the *Journal of Contemporary Law* and the *Journal of Energy Law and Policy*. Formerly, Mr. Pintar was associated with the firm of McKenna, Conner & Cuneo in Los Angeles, California, where he focused in commercial and government contracts defense litigation. Mr. Pintar is co-author of *Assuring Corporate Compliance with Federal Contract Laws and*

Regulations, Corporate Criminal Liability Reporter, Vol. 2 (Spring 1988).

Prior to partnership with Lerach Coughlin, Mr. Pintar was a partner with Milberg Weiss, where he worked for 14 years. Mr. Pintar participated in the successful prosecution of numerous securities fraud class actions and derivative actions, including participation on the trial team in *Knapp v. Gomez*, Case No. 87-0067-H(M) (S.D. Cal.), which resulted in a plaintiff's verdict. Mr. Pintar also participated in the successful prosecution of numerous consumer class actions, including: (i) actions against major life insurance companies such as Manulife (\$555 million settlement value) and Principal Life Insurance Company (\$379 million settlement value); (ii) actions against major homeowners insurance companies such as Allstate (\$50 million settlement) and Prudential Property and Casualty Co. (\$7 million settlement); and (iii) actions against Columbia House (\$55 million settlement value) and BMG (\$10 million settlement value), a direct marketer of CDs and cassettes.

Mr. Pintar is a member of the State Bar of California and the San Diego County Bar Association.

JOY ANN BULL received her Juris Doctor degree, *magna cum laude*, from the University of San Diego in 1988. She was a member of the University of San Diego National Trial Competition Team and the *San Diego Law Review*. Ms. Bull focuses on the litigation of complex securities and consumer class actions. For nine years, Ms. Bull has concentrated her practice in negotiating and documenting complex settlement agreements and obtaining the required court approval of the settlements and payment of attorneys' fees. These settlements include: *In re Dole Shareholders' Litig.*, Case No. BC281949 (Cal. Super. Ct., Los Angeles County) (\$172 million recovery plus injunctive relief); *Lindmark v. Am. Express*, Case No. 00-8658-JFW(CWx) (C.D. Cal.) (\$38 million cash payment plus injunctive relief); *In*

re Disposable Contact Lens Antitrust Litig., MDL No. 1030 (M.D. Fla.) (cash and benefits package over \$90 million plus injunctive relief); *In re LifeScan, Inc. Consumer Litig.*, Case No. C-98-20321-JF(EAI) (N.D. Cal.) (\$45 million cash recovery); *In re Bergen Brunswig Corp. Sec. Litig.*, Case No. SACV-99-1305-AHS(ANx) (C.D. Cal.) (\$27.9 million cash recovery); *Hall v. NCAA*, Case No. 94-2392-KHV (D. Kan.) (\$54.4 million cash recovery); *In re Glen Ivy Resorts, Inc.*, Case No. SD92-16083MG (Banker. Ct. C.D. Cal.) (\$31 million cash recovery); and *In re Advanced Micro Devices Sec. Litig.*, Case No. C-93-20662-RPA(PVT) (N.D. Cal.) (\$34 million cash recovery).

BONNY E. SWEENEY received her Bachelor of Arts degree from Whittier College in 1981 and a Master of Arts degree from Cornell University in 1985. She graduated *summa cum laude* from Case Western Reserve University School of Law in 1988, where she served as an editor of the *Law Review* and was elected to the Order of the Coif.

Ms. Sweeney was with Milberg Weiss for eight years and was a partner prior to her partnership with Lerach Coughlin. Formerly, she practiced in the litigation department of the Boston law firm of Foley, Hoag & Eliot. Ms. Sweeney concentrates her practice in antitrust and unfair competition litigation. Ms. Sweeney participated in the prosecution of several antitrust and unfair competition cases that have resulted in significant settlements, including: *In re NASDAQ Market-Makers Antitrust Litig.*, MDL No. 1023 (S.D.N.Y.), which settled for \$1.027 billion in 1997, the largest antitrust settlement ever; *In re Airline Ticket Comm'n Antitrust Litig.*, MDL No. 1058 (D. Minn.), which settled for more than \$85 million in 1996; and *In re LifeScan, Inc. Consumer Litig.*, No. C-98-20321-JF(EAI) (N.D. Cal.), which settled just before trial for \$45 million. Ms. Sweeney was also one of the trial counsel for a class of coaches in *Hall v. NCAA*, Case No. 94-2392-KHV (D. Kan.), an antitrust class action that resulted in a \$67 million jury

verdict in three consolidated cases after a three-week trial.

Ms. Sweeney has served on the Executive Committee of the Antitrust and Unfair Competition Law Section of the California State Bar since 2002 and is currently Vice Chair of Antitrust Programs. She also lectures on California's Unfair Competition Law and antitrust topics. In 2003, Ms. Sweeney was a recipient of the Wiley M. Manuel Pro Bono Services Award and the San Diego Volunteer Lawyer Program Distinguished Service Award.

Ms. Sweeney is admitted to practice in California and Massachusetts, and is a member of the Antitrust Section of the American Bar Association, the Antitrust and Unfair Competition Section of the California Bar Association and the San Diego County Bar Association.

TRAVIS E. DOWNS III received his Bachelor of Arts degree in History, *cum laude*, from Whitworth College in 1985, and received his Juris Doctor degree from University of Washington School of Law in 1990. Mr. Downs concentrates his practice in securities class actions and shareholders' derivative actions. Formerly a partner with Milberg Weiss, he was responsible for the prosecution and recovery of significant settlements in the following cases: *In re Informix Corp. Sec. Litig.*, Case No. C-97-1289-CRB (N.D. Cal.) (\$137.5 million recovery); *In re MP3.com, Inc. Sec. Litig.*, Case No. 00-CV-1873-K(NLS) (S.D. Cal.) (\$36 million recovery); *In re Conner Peripherals, Inc. Sec. Litig.*, Case No. C-95-2244-MHP (N.D. Cal.) (\$26 million recovery); *In re Silicon Graphics, Inc. II Sec. Litig.*, Case No. 97-4362-SI (N.D. Cal.) (\$20.3 million recovery); *In re J.D. Edwards Sec. Litig.*, Case No. 99-N-1744 (D. Colo.) (\$15 million recovery); *In re Sony Corp. Sec. Litig.*, Case No. CV-96-1326-JGD(JGx) (C.D. Cal.) (\$12.5 million recovery); *In re Veterinary Ctrs. of Am., Inc. Sec. Litig.*, Case No. 97-4244-CBM(MCx) (C.D. Cal.) (\$6.75 million recovery); *In re JDN Realty Corp. Derivative Litig.*, Case No. 00-CV-1853

(N.D. Ga.) (obtained extensive corporate governance enhancements); *In re Hollywood Entertainment Corp. Sec. Litig.*, Case No. 95-1926-MA (D. Or.) (\$15 million recovery); *In re Legato Sys., Inc. Derivative Litig.*, Case No. 413050 (Cal. Super. Ct., San Mateo Cty.) (obtained extensive corporate governance enhancements); and *In re Flagstar Cos., Inc. Derivative Litig.*, Case No. 736748-7 (Cal. Super. Ct., Alameda County) (obtained extensive corporate governance enhancements). Mr. Downs is a member of the Bar of the State of California and is also admitted to practice before the district courts of the Central, Northern and Southern Districts of California. He is also a member of the American Bar Association and the San Diego County Bar Association. Mr. Downs lectures and participates in professional education programs.

G. PAUL HOWES, after Marine Corps Vietnam service, received his Bachelor of Arts degree with distinction from the University of New Mexico, was elected to Phi Beta Kappa and Phi Kappa Phi, and was the tympanist for the New Mexico Symphony Orchestra. He received his Juris Doctor degree and Masters in Public Administration from the University of Virginia. He served as a Special Assistant to the Director of the FBI, Judge William H. Webster, and then as a law clerk to Judge Roger Robb, United States Circuit Court of Appeals for the District of Columbia Circuit. He was an ABC News correspondent for the Washington Bureau and then served for 11 years as an Assistant U.S. Attorney for the District of Columbia, primarily prosecuting complex drug organization homicides. He is a member of the New Mexico, District of Columbia and California Bars.

SPENCER A. BURKHOLZ received his Bachelor of Arts degree in Economics, *cum laude*, from Clark University in 1985, where he was elected to Phi Beta Kappa, and received his Juris Doctor degree from University of Virginia School of Law in 1989. Mr. Burkholz concentrates his practice in securities class

actions. A former partner of Milberg Weiss, he has recovered settlements in the following cases: *3Com* (\$259 million); *Vesta Ins.* (\$78 million); *Samsonite* (\$24 million); *Emulex* (\$39 million); *Mossimo* (\$13 million); *Triteal* (\$13.8 million); *Price Co.* (\$15 million); *Stratosphere Corp.* (\$9 million); and *IMP* (\$9.5 million). Mr. Burkholz was also on the trial team in *Long v. Wells Fargo*. Mr. Burkholz is currently representing large public and multi-employer pension funds seeking to recover for their investments in WorldCom bonds. Mr. Burkholz is a member of the California Bar and has been admitted to practice in numerous federal courts throughout the country.

TIMOTHY G. BLOOD graduated *cum laude* and with honors in Economics from Hobart College in 1987 and the National Law Center of George Washington University in 1990. He was elected to Phi Beta Kappa, Omicron Delta Epsilon (Economics) and the Moot Court Board (first year honors).

Prior to partnership with Lerach Coughlin, Mr. Blood was a partner with Milberg Weiss. Mr. Blood focuses on consumer fraud and unfair competition litigation with a focus on actions brought by policyholders against life and property and casualty insurers for deceptive sales practices, racial discrimination and systematic failures in claims adjustment. Mr. Blood has been involved in a number of cases that have resulted in significant settlements, including *McNeil v. Am. Gen. Life & Accident Ins. Co.* (\$234 million), *Lee v. USLife Corp.* (\$148 million), *Garst v. Franklin Life Ins. Co.* (\$90.1 million), *In re Gen. Am. Sales Practices Litig.* (\$67 million), *Williams v. United Ins. Co. of Am.* (\$51.4 million); and *Sternberg v. Apple Computer, Inc.* (\$50 million).

Mr. Blood is also responsible for several precedent-setting appellate decisions, including *Lebrilla v. Farmers Group, Inc.*, 119 Cal. App. 4th 1070 (2004). Mr. Blood is a frequent lecturer on class action procedure and consumer fraud issues and is a member of

the Board of Governors of the Consumer Attorneys of California.

Mr. Blood is admitted to practice in California and in the U.S. Courts of Appeals for the Fifth, Sixth, Eighth, Ninth and Eleventh Circuits and the U.S. District Courts for the Southern, Central, Eastern and Northern Districts of California. He is a member of the San Diego County and American Bar Associations, the State Bar of California, the Association of Business Trial Lawyers, the Association of Trial Lawyers of America and the Consumer Attorneys of California.

ARTHUR C. LEAHY graduated with a Bachelor of Arts degree in Business from Point Loma College in 1987. In 1990, Mr. Leahy graduated *cum laude* and received a Juris Doctor degree from the University of San Diego School of Law, where he served as Managing Editor of the Law Review. While in law school, Mr. Leahy authored an article published in the *San Diego Law Review* and other articles published in another law journal. In addition, he served as a judicial extern for the Honorable J. Clifford Wallace of the U.S. Court of Appeals for the Ninth Circuit. After law school, Mr. Leahy served as a judicial law clerk for the Honorable Alan C. Kay of the U.S. District Court for the District of Hawaii.

Prior to partnership with Lerach Coughlin, Mr. Leahy was a partner with Milberg Weiss, where for eight years he worked on securities fraud and consumer class actions in which his clients recovered millions of dollars. Mr. Leahy is a member of the California Bar and has been admitted in numerous federal courts throughout the country.

FRANK J. JANECEK, JR. received his Bachelor of Science degree in Psychology from the University of California at Davis in 1987, and his Juris Doctor degree from Loyola Law School in 1991. He is admitted to the Bar of the State of California, the district courts for all districts California, and to the U.S. Court of Appeals for

the Sixth, Ninth and Eleventh Circuits. Prior to joining Lerach Coughlin, Mr. Janeczek was a partner with Milberg Weiss where, for 11 years, he practiced in the area of consumer, Proposition 65, taxpayer and tobacco litigation. He has participated as a panelist and a speaker in continuing legal education programs relating to California's Unfair Competition laws, public enforcement tobacco litigation and challenging unconstitutional taxation schemes.

Mr. Janeczek litigated several Proposition 65 actions, including *People ex. rel. Lungren v. Superior Court*, 14 Cal. 4th 294 (1996), which was jointly prosecuted with the Attorney General's office. These actions resulted in the recovery of more than \$10 million in disgorgement and/or civil penalties and warnings to consumers of their exposure to cancer-causing agents and reproductive toxins. Mr. Janeczek chaired several of the litigation committees in California's tobacco litigation, which resulted in the \$25.5 billion recovery for California and its local entities. Mr. Janeczek also handled a constitutional challenge to the State of California's Smog Impact Fee, in the case *Ramos v. Dep't of Motor Vehicles*, Case No. 95AS00532 (Sacramento Super. Ct.). As a result of the *Ramos* litigation, more than a million California residents received full refunds, plus interest, totaling \$665 million.

Mr. Janeczek is the co-author with Patrick J. Coughlin of "A Review of R.J. Reynolds' Internal Documents Produced in *Mangini v. R.J. Reynolds Tobacco Co.*, No. 939359 - The Case that Rid California and the American Landscape of 'Joe Camel'" (January 1998), which, along with more than 60,000 internal industry documents, was released to the public through Congressman Henry Waxman. He is also the author of *California's Unfair Competition Act and Its Role in the Tobacco Wars* (Fall 1997). Mr. Janeczek is a member of the American Bar Association, the California Bar Association, the San Diego County Bar

Association and the Consumer Attorneys of California and San Diego.

DAVID J. GEORGE earned his Bachelor of Arts degree in Political Science from the University of Rhode Island, *summa cum laude*. Mr. George then graduated at the top of his class at the University of Richmond School of Law. At the University of Richmond, Mr. George was a member of *Law Review*, was the President of the McNeill Law Society/Order of the Coif, and earned numerous academic awards, including outstanding academic performance in each of his three years there and outstanding graduate.

Before joining Lerach Coughlin, he was a partner in the Boca Raton office of Geller Rudman, PLLC. While at Geller Rudman, Mr. George, a zealous advocate of shareholder rights, has been lead and/or co-lead counsel with respect to various securities class action matters, including *In re Cryo Cell Int'l, Inc. Sec. Litig.* (M.D. Fla.), *In re Gilead Scis. Sec. Litig.* (N.D. Cal.) and *Mobility Electronics Sec. Litig.* (D. Ariz.). Mr. George has also acted as lead counsel in numerous consumer class actions. Before joining Geller Rudman, Mr. George spent more than a decade as a commercial litigator with two of the largest corporate law firms in the United States. During that time, Mr. George aggressively prosecuted and defended a wide array of complex commercial litigation matters, including securities class action matters, non-compete litigation, fraud claims, and real estate-based litigation matters.

Mr. George is licensed to practice law in the state courts of Florida, as well as the United States District Courts for the Southern, Middle and Northern Districts of Florida. He is currently or has been a member of the American Bar Association, the Academy of Florida Trial Lawyers, the Palm Beach County Bar Association and the South Palm Beach County Bar Association.

SANFORD SVETCOV is a partner with the Appellate Practice Group of Lerach Coughlin. He was formerly a partner with Milberg Weiss. He has briefed and argued more than 300 appeals in state and federal court, including: *Braxton v. Mun. Court*, 10 Cal. 3d 138 (1973) (First Amendment); *Procunier v. Navarette*, 434 U.S. 555 (1978) (civil rights); *Parker Plaza West Partners v. UNUM Pension & Ins. Co.*, 941 F.2d 349 (5th Cir. 1991) (real estate); *Catellus Dev. Corp. v. United States*, 34 F.3d 748 (9th Cir. 1994) (CERCLA); *United States v. Hove*, 52 F.3d 233 (9th Cir. 1995) (criminal law); *Kelly v. City of Oakland*, 198 F.3d 779 (9th Cir. 1999) (employment law, same gender sexual harassment); *United States v. Henke*, 222 F.3d 633 (9th Cir. 2000) (securities fraud); *Moore v. Liberty Nat'l Life Ins. Co.*, 267 F.3d 1209 (11th Cir. 2001) (civil rights); and *In re Cavanaugh*, 306 F.3d 726 (9th Cir. 2002) (securities fraud).

Mr. Svetcov's professional appellate litigation experience includes securities fraud litigation, CERCLA, CEQA, commercial litigation, Clean Water Act, Civil Rights Act litigation, toxic torts, federal criminal law, California writ practice, employment law and ERISA.

Prior to joining Milberg Weiss in July 2000, Mr. Svetcov was a partner with the firm of Landels Ripley & Diamond, LLP, in San Francisco, from 1989 to 2000. His extensive legal experience includes service as: Chief, Appellate Section, U.S. Attorney's Office, San Francisco, 1984-1989; Attorney-in-Charge, Organized Crime Strike Force, San Francisco, 1981-1984; Chief Assistant U.S. Attorney, San Francisco, 1978-1981; Deputy Attorney General, State of California, 1969-1977; Legal Officer, U.S. Navy, VT-25, Chase Field, Beeville, Texas, 1966-1969; and Deputy Legislative Counsel, Legislature of California, Sacramento, 1965-1966.

Mr. Svetcov is certified as a Specialist in Appellate Practice by the State Bar of California Board of Legal Specialization. He was selected by the Attorney General for the Department of Justice's John Marshall Award

for Excellence in Appellate Advocacy in 1986 and is a member and past President (1998) of the American Academy of Appellate Lawyers, and a member of the California Academy of Appellate Lawyers.

In 1999, Chief Justice Rehnquist appointed Mr. Svetcov to a three-year term on the Federal Appellate Rules Advisory Committee. He is also an ex-officio member of the Ninth Circuit Rules Advisory Committee on Rules and Internal Operating Procedures. His other memberships and service commitments to the legal profession include: the California Academy of Appellate Lawyers; the Bar Association of San Francisco (Appellate Courts section); the American Bar Association (Appellate Judges Conference) Committee on Appellate Practice; and the Northern California Federal Bar Association, Board of Directors.

Mr. Svetcov earned his Bachelor of Arts degree, *cum laude*, from Brooklyn College in 1961 and his Juris Doctor degree from the University of California at Berkeley in 1964. He is a member of the Bars of the State of California, the U.S. Supreme Court, the Court of Appeals, Fifth, Eighth, Ninth and Eleventh Circuits, and the U.S. District Court, Northern District of California.

For two decades, he has been active as a teacher and lecturer at continuing legal education programs, including those of the ABA Appellate Practice Institutes (1990-2000); the Ninth Circuit Federal Bar Association Appellate Practice Seminar, and the N.I.T.A. Appellate Advocacy Seminar and Fifth Circuit Bar Association Appellate Practice Seminars (1991-1999). He has served as an adjunct professor at Hastings College of Law and an instructor in Appellate Advocacy at the U.S. Attorney General's Advocacy Institute (1980-1989).

Mr. Svetcov is also active in community affairs. He has been a member of the San Francisco Jewish Community Relations Council since 1982, its president from 1991-1992, and during

the years 1993-1995, he also served on the Northern California Hillel Council.

MICHAEL J. DOWD graduated from Fordham University, *magna cum laude*, with a Bachelor of Arts degree in History and Latin in 1981. While at Fordham, he was elected to Phi Beta Kappa. He earned his Juris Doctor degree from the University of Michigan School of Law in 1981 and entered private practice in New York that same year. He was admitted to practice in New York in 1985 and in California in 1988.

Mr. Dowd served as an Assistant U.S. Attorney in the Southern District of California from 1987-1991 and again from 1994-1998. As an Assistant U.S. Attorney, Mr. Dowd obtained extensive trial experience, including the prosecution of bank fraud, bribery, money laundering and narcotics cases. He is a recipient of the Director's Award for Superior Performance as an Assistant U.S. Attorney. Prior to joining Lerach Coughlin, Mr. Dowd was a partner with Milberg Weiss. Mr. Dowd has been responsible for prosecuting complex securities cases and obtaining recoveries for investors, including cases involving *Safeskin* (\$55 million recovery), *Bergen Brunswick* (\$42.5 million recovery), and *P-Com* (\$16 million recovery). Mr. Dowd was the lead lawyer for the Lerach Coughlin trial team in *In re AT&T Corp. Sec. Litig.*, which was tried in the District of New Jersey and settled after two weeks of trial for \$100 million. Mr. Dowd is currently one of the lead litigators in the firm's *WorldCom* litigation, representing over 70 public and multi-employer pension funds and other financial institutions. Mr. Dowd has also participated in the firm's tobacco and firearms cases.

DAVID C. WALTON earned his Bachelor of Arts degree in Accounting from the University of Utah and his Juris Doctor degree from the University of Southern California Law Center in 1993. While there, he was a staff member of the *Southern California Law Review* and a

member of the Hale Moot Court Honors Program.

Mr. Walton was formerly a partner with Milberg Weiss, where he worked for ten years prior to joining Lerach Coughlin. He is a member of the Bar of California. Mr. Walton, a Certified Public Accountant (California, 1992) and Certified Fraud Examiner, who is also fluent in Spanish, focuses on class actions on behalf of defrauded investors, particularly in the area of accounting fraud. He has investigated and participated in the litigation of many large accounting scandals, including Enron, WorldCom, Informix, HealthSouth, Dynegy and Dollar General. In 2003-2004, Mr. Walton served as a member of the California Board of Accountancy which is responsible for regulating the accounting profession in California.

RANDALL H. STEINMEYER earned his Bachelor of Science degree from the University of Southern California in 1993, and his Juris Doctor degree, *cum laude*, from Hamline University School of Law in 1996, where he was a member of the *Hamline Law Review*. He is the author of *The Interrelationship Between NASD Arbitrations and NASD Disciplinary Proceedings*, 281 Practising Law Institute (1998). Prior to joining Lerach Coughlin, Mr. Steinmeyer was with Milberg Weiss for five years. Formerly, Mr. Steinmeyer headed the securities litigation department of Reinhardt & Anderson in St. Paul, Minnesota. Mr. Steinmeyer is a member of the Bar of Minnesota and the U.S. District Court for the District of Minnesota. Mr. Steinmeyer is a former securities broker and held a Series 7 license with the National Association of Securities Dealers.

In 2003, he was a guest lecturer at Oxford University on the impact of corporate and broker dealer fraud on the investment community. Prior to joining Lerach Coughlin, Mr. Steinmeyer was a partner with Milberg Weiss. He also sits on the Board of Directors of the Hedge Fund Association. He has authored

numerous articles on the hedge fund industry and offshore financial community.

Mr. Steinmeyer focuses on class actions on behalf of defrauded investors. Prior to joining Milberg Weiss, Mr. Steinmeyer was appointed lead counsel in several large and complex class actions which resulted in the recovery of tens of millions of dollars for aggrieved investors. Mr. Steinmeyer's reported cases include: *Ganesh LLC v. Computer Learning Ctrs.*, 1998 WL 892622 (E.D. Va. 1998); *Gart v. Electroscope*, 1998 WL 757970 (D. Minn. 1998); *Chill v. Green Tree Fin. Corp.*, 181 F.R.D. 398 (D. Minn. 1998); and *In re Transcript Int'l Sec. Litig.*, Case No. 4:98CV3099, 1999 U.S. Dist. LEXIS 17540 (D. Neb. Nov. 4, 1999).

JEFFREY W. LAWRENCE received his Bachelor of Arts degree, *magna cum laude*, from Tufts University in 1976. In 1979, Mr. Lawrence graduated *magna cum laude* with a Juris Doctor degree from Boston School of Law. He was a staff member of the *Boston University Law Review* from 1977-78, and its editor from 1978-79.

From September 1979 to September 1980, Mr. Lawrence served as a law clerk to the Honorable Walter Jay Skinner, U.S. District Court, District of Massachusetts. He was admitted to the Massachusetts Bar in 1979, and to the Bar of California in 1991. He is licensed to practice before the U.S. Court of Appeals, First and Ninth Circuits, the U.S. District Court, District of Massachusetts and the Northern District of California.

From 1983-1994, Mr. Lawrence was an Assistant U.S. Attorney, Criminal Division, where he obtained extensive trial experience in white-collar crimes, ranging from money-laundering to stock fraud. He was formerly a partner with Milberg Weiss, where he worked for eight years.

HENRY ROSEN obtained his Bachelor of Arts degree in 1984 from the University of

California, after attending American College in Paris. In 1988, Mr. Rosen received his Juris Doctor degree from the University of Denver, where he was Editor-in-Chief for the *University of Denver Law Review*. Mr. Rosen served as Judicial Law Clerk to the Honorable Jim R. Carrigan, U.S. District Court, District of Colorado, from 1989 to 1990. He is a member of the firm's Hiring Committee and is also a member of the firm's Technology Committee, which focuses on applications to digitally manage documents produced during litigation and internally generate research files.

Prior to joining Lerach Coughlin, Mr. Rosen had 13 years of experience prosecuting securities fraud actions with Milberg Weiss on behalf of individual clients and investor classes. Major clients include Minebea Co., Ltd., a Japanese manufacturing company, represented in a securities fraud arbitration against a U.S. investment bank. Mr. Rosen has significant experience prosecuting every aspect of securities fraud class actions and has obtained hundreds of millions of dollars on behalf of defrauded investors. Prominent cases include: *In re Storagetek Sec. Litig.*, Case No. 92-B-750 (D. Colo.); *In re Access HealthNet Sec. Litig.*, Case No. SACV-96-1250-GLT(EEEx) and Case No. SACV-97-191-GLT(EEEx) (C.D. Cal.); *In re Valence Sec. Litig.*, Case No. C-95-20459-JW(EAI) (N.D. Cal.); *In re J.D. Edwards Sec. Litig.*, Case No. 99-N-1744 (D. Colo.); *In re Bergen Brunswig Sec. Litig.* and *Bergen Brunswig Capital Litig.*, Case No. SACV-99-1462-AHS(ANx) (C.D. Cal.); *In re Advanced Lighting Sec. Litig.*, No. 1:99CV8936 (N.D. Ohio); and *In re Safeskin Sec. Litig.*, Case No. 99cv454-BTM(LSP) (S.D. Cal.).

Mr. Rosen is admitted to the California Bar (1991) and the Colorado Bar (1988). He is a member of the State Bar of California, the American Bar Association (Litigation Section), the Association of Trial Lawyers of America, the California Trial Lawyers of America, California Trial Lawyers Association and the San Diego Trial Lawyers Association.

RANDALL J. BARON was born in Albuquerque, New Mexico in 1964. Mr. Baron received his Bachelor of Arts degree from University of Colorado at Boulder in 1987, and his Juris Doctor degree, *cum laude*, from University of San Diego School of Law in 1990. He was a member of the *San Diego Law Review* from 1988-1989. Mr. Baron was admitted to the California Bar in 1990 and the Colorado Bar in 1993. Since 1997, Mr. Baron is licensed to practice in Colorado State Court as well as the U.S. District Court for the Southern, Northern and Central Districts of California, as well as the District of Colorado. Formerly, Mr. Baron served as a Deputy District Attorney in Los Angeles County. From 1990-1994, he was a trial deputy in numerous offices throughout Los Angeles County, where he tried over 70 felony cases. From 1990-1994, Mr. Baron was part of the Special Investigation Division of the Los Angeles District Attorneys office, where he investigated and prosecuted public corruption cases. Mr. Baron was formerly a partner with Milberg Weiss, where he worked for seven years prior to joining Lerach Coughlin. He concentrates his practice in securities litigation and actions for breach of fiduciary duty.

EDWARD P. DIETRICH was born in White Plains, New York on October 14, 1961. Mr. Dietrich received his Bachelor of Arts degree from Skidmore College in 1983. He received his Juris Doctor degree from George Washington University in 1986 and was elected to Phi Beta Kappa. He was a member of the Moot Court Board. He was admitted to the New York State Bar in 1987. Mr. Dietrich is able to practice in U.S. District Court, Southern and Eastern Districts of New York, U.S. District Court, Northern District of California (1994), California and U.S. District Courts, Central District of California (1995), U.S. District Court, Southern and Eastern Districts of California, U.S. District Court, District of Arizona and U.S. Court of Appeals, Ninth Circuit (1997).

JACK REISE earned his Bachelor of Arts degree in History from Binghamton University. He

graduated *cum laude* from University of Miami School of Law where he was an Associate Editor on the *University of Miami Inter-American Law Review* and was also the recipient of the American Jurisprudence Book Award in Contracts.

Since he began practicing law, Mr. Reise has been devoted to protecting the rights of those who have been harmed by corporate misconduct. Mr. Reise started his legal career representing individuals suffering the debilitating affects of asbestos exposure back in the 1950s and 1960s.

Mr. Reise has since concentrated his practice on class action litigation, including securities fraud, shareholder derivative actions, consumer protection, unfair and deceptive insurance practices and antitrust. Prior to joining the firm, Mr. Reise was a partner at the law firm of Cauley Geller. He was also an associate with Milberg Weiss from 1998-2000.

A substantial portion of Mr. Reise's practice is devoted to representing shareholders in actions brought under the federal securities laws. He is currently serving as lead counsel in more than a dozen cases nationwide, including *Abrams v. Van Kampen Funds*, Case No. 01 C 7538 (N.D. Ill.) (involving a mutual fund that is charged with improperly valuating its net asset value), and *In re NewPower Holdings Sec. Litig.*, Case No. 02 Civ. 1550 (CLB) (S.D.N.Y.), which settled with several of the defendants for \$26 million.

Mr. Reise has been admitted to the Florida Bar since 1995. He is also admitted to practice before United States Courts of Appeals for the First, Fourth and Eleventh Circuits, as well as the Southern and Middle District Courts of Florida.

PAMELA M. PARKER received her Bachelor of Arts degree in Political Science and French, with a concentration in International Politics, from the State University of New York at

Binghamton, and was elected to Phi Beta Kappa. Ms. Parker received a Juris Doctor degree from Harvard Law School, *cum laude*, in 1982. While at Harvard, Ms. Parker was an Articles Editor of the *Civil Rights/Civil Liberties Law Review*. After graduation, she served as a law clerk to the Honorable Frank J. Battisti, Chief Judge of the U.S. District Court, Northern District of Ohio. Upon leaving the clerkship, Ms. Parker worked as an associate with the New York firm of Paul Weiss Rifkind Wharton & Garrison. In 1988, Ms. Parker became associated with the New York firm of Lankenau Kovner & Bickford, concentrating her practice in representation of publications, libel defense and First Amendment law.

Ms. Parker was formerly with Milberg Weiss for 13 years. As a partner there, her practice included appellate matters and environmental, consumer fraud and securities fraud litigation. Ms. Parker participated in the successful prosecution of several important actions including: *In re The Exxon Valdez*, Case No. A89-095 (D. Alaska), in which she served as a member of the trial support team, and which resulted in a \$5 billion jury verdict; *Pinney v. Great Western Bank, et al.*, Case No. CV-95-2100-I(RNBx) (C.D. Cal.), in which she served as one of the principal attorneys for plaintiffs and which resulted in a settlement of \$17.2 million; and *Does I, et al. v. The Gap, Inc., et al.*, Case No. 01 0031 (D. N. Mariana Islands), in which she was the lead prosecuting attorney and which resulted in a \$20 million settlement, including a precedent-setting Monitoring Program to monitor labor and human rights practices in Saipan garment factories. In July 2003, Ms. Parker was named Trial Lawyer of the Year by the Trial Lawyers for Public Justice in recognition of her work on the case in the Northern Mariana Islands.

Ms. Parker is a member of the Appellate Practice Group of Lerach Coughlin. She has worked on a variety of appellate matters before numerous courts, including the U.S. Courts of Appeal for the Fifth, Sixth, Ninth and

Tenth Circuits and the appellate courts of California, Alabama, Ohio and Tennessee. She is a Lawyer Representative to the Ninth Circuit Judicial Conference.

Ms. Parker is admitted to practice in California and New York. She has been an active member of the Federal Bar Association, the San Diego County Bar Association and the Lawyers Club of San Diego, and also holds memberships with the American Bar Association and California Women Lawyers. She sits on the Board of Directors for the Legal Aid Society of San Diego.

STEVEN W. PEPICH received his Bachelor of Science degree in Economics from Utah State University in 1980 and his Juris Doctor degree from De Paul University in 1983. Mr. Pepich is admitted to practice before the Courts of California and the District Court for the Southern, Central, Eastern and Northern Districts of California. Formerly a partner with Milberg Weiss, Mr. Pepich has been engaged in a wide variety of civil litigation, including consumer fraud, mass tort, royalty, civil rights, human rights, ERISA and employment law actions, as well as many securities and corporate litigations. He was part of the plaintiffs' trial team in *Mynaf v. Taco Bell Corp.*, which settled after two months of trial on terms favorable to two plaintiff classes of restaurant workers, for recovery of unpaid wages. He was also a member of the plaintiffs' trial team in *Newman v. Stringfellow* where, after a nine-month trial in Riverside, California, all claims for exposure to toxic chemicals were ultimately resolved for \$109 million. Mr. Pepich has also participated in the successful prosecution of numerous securities fraud class actions, including: *Gohler v. Wood*, Case No. 92-C-181 (\$17.2 million recovery); *In re Advanced Micro Devices Sec. Litig.*, Case No. C-93-20662-RPA(PVT) (\$34 million recovery); *In re Catalyst Semiconductor Sec. Litig.*, Case No. C-93-2096 (\$15 million recovery); *In re Gupta Corp. Sec. Litig.*, Case No. C-94-1517 (\$6 million recovery); *In re Louisiana-Pacific Corp. Sec.*

Litig., Case No. C-95-707 (\$65 million recovery); and *In re Boeing Sec. Litig.*, Case No. C-97-1715Z (\$92 million recovery). Mr. Pepich is a member of the American Bar Association, the San Diego Bar Association and the Association of Business Trial Lawyers of San Diego. Mr. Pepich co-authored with William S. Lerach *Personal Liability Considerations of Officers and Directors in the Takeover Context*, CEB, Business Law Institute, April 1986, and *New Diligence Considerations in the Context of the Federal Securities Laws*, CEB Fourth Annual Securities Institute, May 1986.

LAURA ANDRACCHIO, prior to joining Lerach Coughlin, was a partner with Milberg Weiss. Her practice focuses primarily on litigation under the federal securities laws. Ms. Andracchio has litigated dozens of cases against public companies in federal and state courts throughout the country, and has contributed to hundreds of millions of dollars in recoveries for injured investors. Ms. Andracchio also led the litigation team in *Brody V Hellman*, a case against Qwest and former directors of U.S. West to recover an unpaid dividend, recovering \$50 million. In late 2004, Ms. Andracchio was a lead member of the trial team in *In re AT&T Corp. Sec. Litig.*, which was tried in district court in New Jersey, and which settled after two weeks of trial for \$100 million. Prior to trial, Ms. Andracchio was responsible for managing and litigating the case, which was pending for four years. Ms. Andracchio was also the lead litigator in *In re P-Com, Inc. Securities Litigation*, which resulted in a \$16 million recovery for the plaintiff class; *In re Urohealth, Inc.*, yielding a \$7 million recovery, and in a case against Intel under the Williams Act, which settled for \$4.5 million. In addition, Ms. Andracchio was a member of the litigation team in several other actions that have yielded substantial recoveries for investors of public companies, including Oakley, Inc. (\$16 million), MTel, Inc. (\$10 million) and Trimble Navigation (\$7 million).

Ms. Andracchio received her Bachelor of Arts degree from Bucknell University in 1986, and her Juris Doctor degree with honors from Duquesne University School of Law in 1989. While at Duquesne, Ms. Andracchio was elected to the Order of Barristers and represented the Law School in the National Samuel J. Polsky Appellate Moot Court competition, in which she placed as a finalist, and in the regional Gourley Cup Trial Moot Court competition.

JOHN K. GRANT was born in Provo, Utah in 1961. Mr. Grant received his Bachelor of Arts degree from Brigham Young University in 1988 and his Juris Doctor degree from the University of Texas at Austin in 1990. Mr. Grant was admitted to the California Bar in 1994.

KATHLEEN A. HERKENHOFF received a Bachelor of Arts in English Literature from the University of California at Berkeley in 1989 and received a Juris Doctor degree from Pepperdine University School of Law in 1993. While at Pepperdine, she received American Jurisprudence Awards in Constitutional Law and Agency-Partnership Law. After graduation from Pepperdine, Ms. Herkenhoff was an enforcement attorney with the U.S. Securities and Exchange Commission. Prior to joining Lerach Coughlin, she was a partner with Milberg Weiss. Ms. Herkenhoff is a 1993 admittee to the State Bar of California and has been admitted to practice before the U.S. District Courts for the Northern, Central, Eastern and Southern Districts of California. Ms. Herkenhoff has successfully prosecuted several complex securities class actions, including obtaining a \$122 million settlement against Mattel, Inc. and several of its former officers and directors.

KIMBERLY C. EPSTEIN is a partner with the San Francisco office of Lerach Coughlin. Having been associated with the Lerach Coughlin lawyers since 1994, Ms. Epstein's practice has focused on securities class actions in both state and federal court. She has represented

shareholders of companies in industries as diverse as microchip developers, pump and valve manufacturers and golf apparel. Over the past decade, Ms. Epstein has litigated cases that have recovered tens of millions of dollars on behalf of defrauded shareholders.

Ms. Epstein obtained her Juris Doctor degree from University of San Francisco in 1993, where she was a joint J.D./MBA candidate, and her Bachelor of Science degree in Business Administration from California State University at Hayward in 1988. Prior to her employment with the securities litigation bar, she clerked for the Honorable William J. Cahill. She is licensed to practice in the state of California and before the U.S. District Courts in Northern and Central California, Arizona and the U.S. Court of Appeals, Ninth Circuit.

MICHELLE M. CICCARELLI represents workers, consumers and shareholders in a broad range of complex class action litigations for securities fraud, fraudulent business practices, human rights abuses, labor and employment violations, as well as derivative litigation for breaches of fiduciary duties by corporate officers and directors. She is the Editor of *Lerach Coughlin's Corporate Governance Bulletin and Taking Action - Fighting Corporate Corruption*, and the author of *Pension Power: How Union Pension Funds Are Recovering Stolen Assets and Changing the Way Public Companies Do Business* and *Improving Corporate Governance through Litigation Settlements*, Corporate Governance Review, 2003. She is a frequent lecturer on securities fraud, corporate governance, and other issues of import to institutional investors.

Prior to partnership with Lerach Coughlin, she was a partner at Milberg Weiss, where she participated in the successful prosecution of several important actions, including *Does I, et al. v. The Gap, Inc. et al.*, Case No. 01-0031 (D N. Mariana Islands), in which she was one of the lead litigators, spending several months on Saipan working with clients, investigating

claims, and obtaining discovery. The case was successfully concluded with a \$20 million settlement, including a precedent-setting Monitoring Program to monitor labor and human rights practices in Saipan garment factories.

Formerly, she practiced in Kentucky in the area of labor and employment law. She was the co-editor of the *Kentucky Employment Law Letter* (1998) and co-author of *Wage and Hour Update* (Lorman 1998). She was also a regular lecturer for the Kentucky Cabinet for Economic Development.

She was a law clerk to the Honorable Sara Walter Combs, Kentucky Court of Appeals (1994-95) after obtaining her Juris Doctor degree from the University of Kentucky in 1993. She is a member of the California and Kentucky Bars, and is admitted to practice before the U.S. District Courts for both jurisdictions as well as the Sixth Circuit Court of Appeals.

JAMES I. JACONETTE was born in San Diego, California in 1967. Mr. Jaconette is one of three partners responsible for the day-to-day prosecution of *In re Enron Corp. Sec. Litig.* (S.D. Tex.) and *In re Dynegy, Inc. Sec. Litig.* (S.D. Tex.), on behalf of lead plaintiff the Regents of the University of California, and the large classes of public investors represented in those actions. Mr. Jaconette has litigated securities class actions and corporate governance/merger & acquisition-related actions since 1995. To date, cases in which Mr. Jaconette executed a primary litigating role, including *In re Informix Corp. Sec. Litig.* (N.D. Cal.), have resulted in approximately \$300 million in settlements, judgments, or common funds that benefited investors.

Mr. Jaconette attended San Diego State University, receiving his Bachelor of Arts degree with honors and distinction in 1989 and his M.B.A. in 1992. In 1995, Mr. Jaconette received his Juris Doctor degree *cum laude*

from Hastings College of the Law, University of California, San Francisco. Mr. Jaconette was the Mortar Board Vice President from 1988-1989, a member of the *Hastings Law Journal* from 1993-1994, and Associate Articles Editor for same from 1994-1995. Mr. Jaconette authored *The Fraud-on-the-Market Theory in State Law Securities Fraud Suits*, *Hastings Law Journal*, Volume 46, August, 1995. In 1993, Mr. Jaconette served as law clerk to the Honorable Barbara J. Gamer, and in 1994, as extern to the Honorable William H. Orrick, Jr., District Judge.

In 1995, Mr. Jaconette was admitted to the California Bar and licensed to practice before the U.S. District Court, Southern District of California.

TOR GRONBORG was born in Portland, Oregon in 1969. Mr. Gronborg received his Bachelor of Arts degree in 1991 from the University of California at Santa Barbara and was a recipient of an AFL-CIO history scholarship. In 1992, Mr. Gronborg did graduate work in international relations and strategic studies at the University of Lancaster, UK on a Rotary International Fellowship. Mr. Gronborg received his Juris Doctor degree from Boalt Hall at the University of California at Berkeley where he was a member of the Moot Court Board.

Mr. Gronborg was admitted to the California Bar in 1995, and in 1997 was licensed to practice in the courts of the Ninth Circuit and the Northern, Central and Southern Districts of California. Mr. Gronborg's practice areas at Lerach Coughlin include securities litigation, and campaign and election law.

THOMAS E. EGLER was born in Pittsburgh, Pennsylvania in 1967. Mr. Egler received his Bachelor of Arts degree from Northwestern University in 1989. Mr. Egler received his Juris Doctor degree in 1995 from Catholic University of America, Columbus School of Law, where he served as Associate Editor for *Catholic University Law Review* from 1994-1995. From 1995-1997, Mr. Egler was Law Clerk to the

Honorable Donald E. Ziegler, Chief Judge, U.S. District Court, Western District of Pennsylvania.

Mr. Egler was admitted to the California Bar in 1995 and the Pennsylvania Bar in 1996. He is admitted to practice before the U.S. District Courts for the Western District of Pennsylvania, the Northern, Southern and Central Districts of California, and the U.S. Court of Appeals for the Third and Eleventh Circuits.

PATRICK W. DANIELS earned his Bachelor of Arts degree, *cum laude*, from the University of California, Berkeley in 1993, and his Juris Doctor degree from the University of San Diego School of Law in 1997. He is the author of *The Capital Formation and Securities Fraud Enforcement Act of 1996: Historic and Economic Perspectives*, Joint Interim Hearing, California State Senate Finance, Investment and International Trade and Assembly Banking and Finance Committees, Information Hearing Final Report, at 393 (1997). He was admitted to practice in California in 1997.

Mr. Daniels represents workers, consumers and shareholders in a broad range of complex litigation class actions for fraudulent business practices, human rights abuses and shareholder actions for defrauded investors. Mr. Daniels represents a number of international public and jointly-trusted labor-management pension funds, as well as fund managers in securities fraud and individual actions involving Enron, WorldCom and AOL Time Warner, among many others. Mr. Daniels has been a featured speaker at pension fund conferences in the United States, Europe, the South Pacific and Australia.

In human rights, Mr. Daniels was a member of an international coalition of attorneys and human rights groups who won an historical settlement with major U.S. clothing retailers and manufacturers, including The Gap, Target Corporation and J.C. Penney, on behalf of a certified class of over 50,000 predominantly female Chinese garment workers on the island

of Saipan in an action seeking to hold the Saipan garment industry responsible for creating a system of indentured servitude and forced labor in Saipan garment factories. The coalition obtained an agreement for supervision of working conditions in the Saipan factories by an independent NGO, as well as a substantial monetary award for the workers. In July 2003, several members of the coalition of attorneys were collectively honored as the "Trial Lawyers of the Year" by the Trial Lawyers for Public Justice.

Mr. Daniels is also one of the lead attorneys in historic class action litigation on behalf of U.S. POWs and Chinese and Korean civilians against Japanese corporations that used slave and forced labor during WWII.

ANDREW J. BROWN was born in Northern California in 1966. He received his Bachelor of Arts degree from the University of Chicago in 1988 and received his Juris Doctor degree from the University of California, Hastings College of Law in 1992. Upon passing the Bar, Mr. Brown worked as a trial lawyer for the San Diego County Public Defender's Office. In 1997, he opened his own firm in San Diego, representing consumers and insureds in lawsuits against major insurance companies. Prior to joining Lerach Coughlin, Mr. Brown was a partner with and had worked for Milberg Weiss for four years. His current practice focuses on representing consumers and shareholders in class action litigation against companies nationwide.

As a partner at the firm, Mr. Brown continues to change the way corporate America does business. He prosecutes complex securities fraud and shareholder derivative actions, resulting in multi-million dollar recoveries to shareholders and precedent-setting changes in corporate practices. Examples include: *In re Unumprovident Corp. Sec. Litig.*, 396 F. Supp. 2d 858 (E.D. Tenn 2005); *Does I, et al. v. The Gap, Inc., et al.*, Case No. 010031 (D. N.

Mariana Islands); *Arlia v. Blankenship*, 234 F. Supp. 2d 606 (S.D. W.Va. 2002); and *In re FirstEnergy Corp. Sec. Litig.*, 316 F. Supp. 2d 581 (N.D. Ohio 2004).

Mr. Brown is admitted to the Bars of California and the U.S. District Courts for all Districts in California.

CHRISTOPHER BURKE earned his Juris Doctor degree from the University of Wisconsin in 1993 and his Ph.D. in 1996. His practice areas include antitrust and consumer protection. Formerly a partner with Milberg Weiss, he was part of the trial teams that successfully prosecuted the *In re Disposable Contact Lens Antitrust Litig.* (\$89 million) and *Schwartz v. Visa, et al.* (\$170 million).

Prior, he was an Assistant Attorney General at the Wisconsin Department of Justice. He has lectured on law-related topics including constitutional law, law and politics and civil rights at the State University of New York at Buffalo and at the University of Wisconsin. His book, *The Appearance of Equality: The Supreme Court and Racial Gerrymandering* (Greenwood, 1999), examines conflicts over voting rights and political representation within the competing rhetoric of communitarian and liberal strategies of justification.

JONATHAN M. STEIN earned his Bachelor of Science degree in Business Administration from the University of Florida, where he concentrated his studies in Finance. While at Florida, he was selected to join the honor society of Omicron Delta Epsilon, recognizing outstanding achievement in Economics. Mr. Stein earned his Juris Doctor degree from Nova Southeastern University, where he was the recipient of the American Jurisprudence Book Award in Federal Civil Procedure and served as Chief Justice of the Student Honor Court.

Mr. Stein began his practice of law in Fort Lauderdale as a prosecutor in the State

Attorney's Office for the Seventeenth Judicial Circuit of Florida, where he handled numerous jury trials. Before concentrating his practice in class action litigation, he also practiced as a litigator with one of Florida's largest law firms, where he concentrated on fighting insurance fraud. Prior to joining Lerach Coughlin, Mr. Stein was a partner with Geller Rudman, PLLC. Mr. Stein is involved in all aspects of class action litigation, including securities fraud, shareholder class and derivative actions, consumer fraud, products liability and antitrust.

A substantial portion of Mr. Stein's practice is dedicated to the representation of public shareholders of companies whose shares are acquired through management buyouts, leveraged buyouts, mergers, acquisitions, tender offers and other change-of-control transactions. Mr. Stein has represented clients in seeking to protect shareholders by insuring that they receive maximum compensation for their shares and also by insuring that they receive all necessary information and disclosure concerning the transactions. He has been successful in restructuring many transactions and recovering millions of dollars in additional value for shareholders.

Mr. Stein is licensed to practice law in the state courts of Florida, as well as in the United States District Courts for the Southern and Middle Districts of Florida and the District of Colorado. In addition to these courts and jurisdictions, Mr. Stein regularly works on cases with local counsel throughout the country. Mr. Stein has been or is a member of the Association of Trial Lawyers of America, the American Bar Association, the Palm Beach County Bar Association and the South Palm Beach County Bar Association.

ROBERT M. ROTHMAN earned his Bachelor of Arts degree in Economics from the State University of New York at Binghamton. He then earned his Juris Doctor degree, with distinction, from Hofstra University School of

Law. During law school, Mr. Rothman was a member of the *Law Review* and was awarded The Dean's Academic Scholarship for completing his first year in the top one percent of his class.

After law school, Mr. Rothman practiced commercial litigation with an international law firm. Having litigated cases involving many of the nation's largest companies, Mr. Rothman has extensive experience in the areas of consumer protection, antitrust and investment fraud. Mr. Rothman also regularly tries and arbitrates cases. For example, he obtained a multi-million dollar verdict after the trial of a shareholders' derivative case, as well as multi-million dollar judgments on behalf of defrauded investors.

Prior to joining Lerach Coughlin, Mr. Rothman was a partner at Geller Rudman, PLLC, where he concentrated his practice on representing shareholders and consumers in class actions.

Mr. Rothman is admitted to practice before the courts of the State of New York, as well as the United States District Courts for the Southern and Eastern Districts of New York. Mr. Rothman is a member of the American Bar Association's Sections of Litigation and Antitrust Law.

DANIEL DROSMAN is a partner with Lerach Coughlin. He is a former federal prosecutor with extensive litigation experience before trial and appellate courts. His practice focuses on securities fraud litigation and other complex civil litigation. Mr. Drosman is admitted to practice in New York and California and before federal courts throughout those states.

Mr. Drosman is a native San Diegan who received his Bachelor of Arts degree in Political Science from Reed College in 1990, with honors, and was a member of Phi Beta Kappa. He received his Juris Doctor degree from Harvard Law School in 1993. Following

graduation from law school, Mr. Drosman served for three years as an Assistant District Attorney for the Manhattan District Attorney's Office. While there, Mr. Drosman served in both the appellate section, where he briefed and argued over 25 cases to the New York appellate courts, and in the trial section, where he prosecuted a wide variety of street crime.

From 1996-1997, Mr. Drosman was an associate in the New York office of Weil Gotshal & Manges, where he concentrated his practice in civil litigation and white-collar criminal defense.

In 1997, Mr. Drosman returned to San Diego and became an Assistant U.S. Attorney in the Southern District of California. In the Southern District, Mr. Drosman tried cases before the U.S. District Court and briefed and argued numerous appeals before the Ninth Circuit Court of Appeals. He was a member of the border crimes unit, where he was assigned to investigate and prosecute violations of the federal narcotics and immigration laws and official corruption cases. During his tenure as an Assistant U.S. Attorney, Mr. Drosman received the Department of Justice Special Achievement Award in recognition of sustained superior performance of duty.

Mr. Drosman was a partner with Milberg Weiss before joining Lerach Coughlin in 2004. Mr. Drosman's practice involves representing defrauded investors in securities class actions, an area in which he has co-authored a law journal article.

AZRA Z. MEHDI earned her Bachelors of Arts in 1992 from the University of Illinois at Chicago, with high honors in English and German Literature. She was a member of the Honors College and spent a year at the University of Vienna in Austria. She received her Juris Doctor degree from DePaul University College of Law in Chicago in 1995. Upon graduation, Ms. Mehdi did an internship at the Austrian law firm of Ortner Poch & Foramitti. Ms.

Mehdi began her employment at Milberg Weiss in 1997, focusing her practice on antitrust litigation and securities fraud litigation. She was a partner at Milberg Weiss prior to her partnership with Lerach Coughlin.

Ms. Mehdi is admitted to practice in New York (1996), California (2002), before the U.S. District Court for the Southern and the Eastern Districts of New York (1997), and the U.S. District Court for the Northern, Central and Southern Districts of California (2002). She is a member of the American Bar Association, the California Bar Association and the San Francisco Bar Association. Ms. Mehdi is fluent in German and Hindi.

KEVIN K. GREEN is a member of the firm's Appellate Practice Group. He concentrates his practice in appeals and writs in state courts, particularly the California Appellate Courts.

Mr. Green received his Bachelor of Arts degree, with honors and distinction, from the University of California at Berkeley in 1989, and his Juris Doctor degree from Notre Dame Law School in 1995. After law school, he clerked for the Honorable Theodore R. Boehm, Associate Justice, Supreme Court of Indiana, and the Honorable Barry T. Moskowitz, U.S. District Judge, Southern District of California. In 1999, Mr. Green joined Milberg Weiss, where he became a partner. He then joined Lerach Coughlin when the firm was founded in 2004.

Due to the national scope of the practice, Mr. Green has handled appellate matters in numerous states. His appellate decisions include: *Lebrilla v. Farmers Group, Inc.*, 119 Cal. App. 4th 1070 (2004) (reversing denial of class certification and ordering certification of statewide class); *West Corp. v. Superior Court*, 116 Cal. App. 4th 1167 (2004) (upholding personal jurisdiction over telemarketers sued under California law); *Ritt v. Blanks*, 2003 Ohio App. LEXIS 3297 (Ohio Ct. App. July 10, 2003) (reversing denial of class certification); and

Lavie v. Procter & Gamble Co., 105 Cal. App. 4th 496 (2003) (addressing "reasonable consumer" standard under California law).

While in law school, Mr. Green authored a student note titled, *A Vote Properly Cast? The Constitutionality of the National Voter Registration Act of 1993*, 22 Journal of Legislation 45 (1996). He is a member of the San Diego County Bar Association's Appellate Court Committee. He was admitted to the State Bar of California in 1995.

JONAH H. GOLDSTEIN is a partner with Lerach Coughlin. Mr. Goldstein was a partner with Milberg Weiss prior to joining Lerach Coughlin in 2004. Formerly, Mr. Goldstein was an Assistant U.S. Attorney for the Southern District of California, where he tried 13 jury trials (including a seven-defendant 11-week trial), and briefed and argued appeals before the Ninth Circuit Court of Appeals.

In 1991, Mr. Goldstein received his Bachelor of Arts degree in Political Science from Duke University. He received his Juris Doctor degree from the University of Denver College of Law in 1995, where he was the Notes & Comments Editor of the *University of Denver Law Review*. Following graduation from law school, Mr. Goldstein served as a law clerk for the Honorable William H. Erickson on the Colorado Supreme Court.

Mr. Goldstein is admitted to practice in Colorado (1995) and California (1997).

SHAWN A. WILLIAMS earned his Bachelor of Arts degree in English from the State University of New York at Albany in 1991. He earned his Juris Doctor degree from the University of Illinois College of Law in 1995. Upon graduation from law school, he served as an Assistant District Attorney in the Manhattan District Attorney's Office (1995-2000), where he spent four years in the trial division, prosecuting all levels of street crimes, and one

year conducting white-collar fraud investigations.

Mr. Williams worked for Milberg Weiss for four years and was a partner before joining Lerach Coughlin in 2004. Mr. Williams' practice focuses on class action securities fraud matters. He is admitted to practice in all courts of the State of New York, including the U.S. District Courts for the Southern and Eastern Districts of New York. Mr. Williams is also admitted to practice in all courts of the State of California and the United States Court of Appeals for the Ninth Circuit.

JOSEPH D. DALEY received his Bachelor of Arts degree from Jacksonville University and his Juris Doctor degree from the University of San Diego School of Law. He was a member of the USD Appellate Moot Court Board (1995-96) and has received several awards for written and oral advocacy, including: Order of the Barristers, Roger J. Traynor Constitutional Law Moot Court Team (Best Advocate Award); Philip C. Jessup International Law Moot Court Team (United States National Champions, First Place Regional Team); USD Alumni Torts Moot Court Competition (First Place Overall and Best Brief); the USD Jessup International Law Moot Court Competition (First Place Overall and Best Brief); and the American Jurisprudence Award in Professional Responsibility.

Mr. Daley edited the award-winning *Federal Bar Association Newsletter* (San Diego chapter) in the Year 2000, and served as the Year 2000 Chair of San Diego's Co-Operative Federal Appellate Committees ("COFACS"). Mr. Daley co-authored with Susan S. Gonick *The Nonretroactivity of the Private Securities Litigation Reform Act of 1995*, 25 Sec. Regulation L.J. 60 (1997), reprinted in 3 Sec. Reform Act Litig. Rep. 258 (1997) and 25 RICO L. Rep. 819 (1997).

Mr. Daley was admitted to the California Bar in 1996 and is admitted to practice before the U.S. District Courts for the Northern, Southern,

Eastern, and Central Districts of California, as well as before the U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Circuits.

Mr. Daley's practice concentrates on federal appeals. Prior to joining Lerach Coughlin in 2004, Mr. Daley was a partner with Milberg Weiss.

DOUGLAS R. BRITTON was born in Los Angeles, California, in 1968. Mr. Britton received his Bachelor of Business Administration degree from Washburn University in Topeka, Kansas in 1991 and his Juris Doctor degree, *cum laude*, from Pepperdine University Law School in 1996. Mr. Britton was admitted to the Nevada Bar in 1996 and to the California Bar in 1997 and is admitted to practice in all of the state courts in California, as well as the U.S. District Courts for the Northern, Southern, Eastern, and Central Districts of California. Mr. Britton has been litigating securities class action lawsuits since his admission to the Bar in 1996.

ELLEN A. GUSIKOFF STEWART was born in New York, New York in 1964. She received her Bachelor of Arts degree in Economics from Muhlenberg College in 1986 and her Juris Doctor degree from Case Western Reserve University in 1989. Mrs. Stewart was admitted to the California Bar in 1989, and is admitted to practice before all federal courts in California, the Sixth and Ninth Circuit Courts of Appeals and the Western District of Michigan.

Mrs. Stewart currently practices in the firm's settlement department, negotiating and documenting the firm's complex securities, merger and consumer privacy class and derivative actions. Notably, these settlements include: *In re Vesta Ins. Group, Inc. Sec. Litig.*, (N.D. Ala. 2002) (\$78 million recovery, to date); *In re Prison Realty Sec. Litig.*, (M.D. Tenn. 2001) (over \$140 million in cash and stock); *Stanley v. Safeskin Corp.*, (S.D. Ca. 2003) (\$55 million recovery); and *In re Wisconsin Energy*

Derivative Litig., (Milwaukee County Circuit Court).

A. RICK ATWOOD, JR. prosecutes securities class actions, merger-related class actions, and shareholder derivative suits at both the trial and appellate levels. He has successfully represented shareholders in federal and state courts in numerous jurisdictions, including Alabama, California, Colorado, Delaware, Georgia, Hawaii, Illinois, New York, New Jersey, Nevada, North Carolina, Oregon, South Dakota, Texas, Tennessee, Utah, Washington and Washington, D.C.

Mr. Atwood was born in Nashville, Tennessee in 1965. In 1987, he received a Bachelor of Arts degree with honors in Political Science from the University of Tennessee at Knoxville. He received a Bachelor of Arts degree, with great distinction, in Philosophy from the Katholieke Universiteit Leuven in Leuven, Belgium in 1988. He received his Juris Doctor degree in 1991 from Vanderbilt University Law School, where he served as Authorities Editor on the *Vanderbilt Journal of Transnational Law*.

Mr. Atwood was admitted to the California Bar in 1991 and is licensed to practice before the United States District Courts for the Southern, Central and Northern Districts of California. Prior to joining Lerach Coughlin, Mr. Atwood practiced in the San Diego office of Milberg Weiss, and before that was an associate in the Los Angeles office of Brobeck Phleger & Harrison LLP.

JONATHAN E. BEHAR was born in Los Angeles in 1968. In 1991, Mr. Behar received his Bachelor of Arts degree in English Literature from the University of California at Santa Barbara, with high honors, and his Juris Doctor degree from the University of San Diego School of Law in 1994. He is admitted to the State Bar of California (1994) and the Southern and Central Districts of California (1998 and 2000, respectively). Prior to joining Lerach Coughlin,

Mr. Behar practiced law with Milberg Weiss from 1994-2004.

As a partner at Lerach Coughlin, Mr. Behar currently practices in the areas of securities, environmental and consumer litigation. While at Milberg Weiss, Mr. Behar was actively involved in the prosecution of two of California's seminal tobacco cases, *Mangini v. R.J. Reynolds Tobacco Company*, the "Joe Camel" case, as well as *Cordova v. Liggett Group, Inc., et al.*, which alleged a 40-year conspiracy by the United States tobacco manufacturers.

AMBER L. ECK graduated from Pepperdine University, *magna cum laude*, with a Bachelor of Arts degree in 1990. Upon graduation, she worked for two years at a Los Angeles legal newspaper, the *Metropolitan News-Enterprise*. Ms. Eck then attended Boston University School of Law, graduating *magna cum laude* in 1995. At Boston University, Ms. Eck was a member of the Giles Sutherland Rich Intellectual Property Moot Court Team which received honors for Best Brief in the Northeast Region. In addition, she served as Case and Note Editor for the *Boston University International Law Journal*, and Chapter Justice for Phi Alpha Delta.

Ms. Eck practiced law with Milberg Weiss from 1997-2004 before joining Lerach Coughlin. Her practice focuses on the prosecution of securities class actions and shareholder derivative suits. In addition, Ms. Eck received the Wiley W. Manuel *Pro Bono* Service Award in 1999 and the Distinguished Service Award in 2002 from the County of San Diego for pro bono service. Ms. Eck is a member of the California (1995) and Nevada (1996) Bars, and is admitted to practice before the United States District Courts for all districts in both jurisdictions. She served on the Board of Directors for the Barristers Club of San Diego (1996-1997) and is a member of the American Inns of Court, Enright Chapter.

DENNIS J. HERMAN is a 1992 graduate of Stanford Law School, where he received the Order of the Coif and the Urban A. Sontheimer Award for graduating second in his class. Mr. Herman practiced law with Milberg Weiss from 2002-2004, where he concentrated his practice in securities class action litigation on behalf of defrauded investors. Mr. Herman is actively involved in the firm's on going prosecution of securities fraud class actions, including those now pending against VeriSign Corp. and The Coca-Cola Company, Inc. He has also participated in the successful prosecution of numerous other securities fraud claims that have resulted in substantial recoveries for investors, including actions filed against: Northwestern Corp. (recovery in excess of \$40 million); Specialty Laboratories, Inc. (\$12 million recovery); Electro-Scientific Industries, Inc. (\$9 million); and Commtouch Software, Inc. (\$15 million recovery). Mr. Herman also concluded the successful representation of the estate of a bankrupt company in lawsuits against its former officers and outside auditor seeking recovery for actions that deepened the company's insolvency before it went bankrupt.

NANCY M. JUDA concentrates her practice in employee benefits law and works in the firm's Institutional Investors Department. Ms. Juda received her Juris Doctor degree from American University in 1992 and her undergraduate degree from St. Lawrence University in 1988.

Prior to joining Lerach Coughlin, Ms. Juda was employed by the United Mine Workers of America Health & Retirement Funds, where she began her practice in the area of employee benefits law. Ms. Juda was also associated with union-side labor law firms in Washington, D.C., where she represented the trustees of Taft-Hartley pension and welfare funds on qualification, compliance, fiduciary and transactional issues under ERISA and the Internal Revenue Code.

Using her extensive experience representing union pension funds, Ms. Juda advises Taft-Hartley fund trustees regarding their options for seeking redress for losses due to securities fraud. Ms. Juda currently advises trustees of funds providing benefits for members of unions affiliated with the Building and Construction Trades Department of the AFL-CIO, including funds sponsored by the Operative Plasterers and Cement Masons International Association of America and Canada, International Union of Painters and Allied Trades, United Union of Roofers, Waterproofers and Allied Workers and International Union of Elevator Constructors. Ms. Juda also represents workers in ERISA class actions involving breach of fiduciary duty claims against corporate plan sponsors and fiduciaries.

Ms. Juda is licensed to practice in Maryland (1992) and the District of Columbia (1995). She is a member of the National Coordinating Committee for Multi-Employer Plans, the International Foundation of Employee Benefit Plans, the Employee Benefits Committee of the American Bar Association's Section of Labor and Employment Law and the AFL-CIO Lawyers' Coordinating Committee.

Ms. Juda is the Editor of the firm's quarterly newsletter, *Taking Action – Fighting Corporate Corruption*.

JEFFREY D. LIGHT was born in Los Angeles, California in 1964. He received his Bachelor of Science degree from San Diego State University in 1987 and his Juris Doctor degree from the University of San Diego in 1991, *cum laude*. Mr. Light was the recipient of the American Jurisprudence Award in Constitutional Law. He served as law clerk to the Honorable Louise DeCarl Adler, U.S. Bankruptcy Court, and the Honorable James Meyers, Chief Judge, Southern District of California, United States Bankruptcy Court. Mr. Light practiced law with Milberg Weiss from 1994-2004, before joining Lerach Coughlin. He was admitted to

the California Bar in 1992 and is admitted to practice before all federal courts in California.

Mr. Light is also a member of the San Diego County Bar Association and is on the Attorney Fee Arbitration Panel. Mr. Light currently practices in the firm's settlement department, negotiating, documenting and obtaining court approval of the firm's complex securities, merger, consumer and derivative actions. These settlements include: *In re AT&T Corp. Sec. Litig.* (D.N.J. 2005) (\$100 million recovery); *In re Infonet Corp. Sec. Litig.* (C.D. Cal. 2004) (\$18 million recovery); and *In re Ashworth, Inc. Sec. Litig.* (S.D. Cal. 2004) (\$15.25 million recovery).

CHRISTOPHER P. SEEFER received his Bachelor of Arts degree from the University of California, Berkeley in 1984 and his Master of Business Administration degree from the University of California, Berkeley in 1990. He received his Juris Doctor degree from the Golden Gate University School of Law in 1998. Prior to joining Milberg Weiss in March 1999, Mr. Seefer was a Fraud Investigator with the Office of Thrift Supervision, Department of the Treasury (1990-1999) and a field examiner with the Office of Thrift Supervision (1986-1990). Mr. Seefer is a member of the Bar of California, the United States District Court for the Northern District of California and the United States Court of Appeals for the Ninth Circuit.

X. JAY ALVAREZ graduated from the University of California, Berkeley, with a Bachelor of Arts degree in Political Science in 1984. He earned his Juris Doctor degree from the University of California, Berkeley, Boalt Hall, in 1987 and entered private practice in San Diego, California that same year.

Mr. Alvarez served as an Assistant U.S. Attorney for the Southern District of California from 1991-2003, when he joined the San Diego Milberg Weiss Office. As an Assistant U.S. Attorney, Mr. Alvarez obtained extensive trial

experience, including the prosecution of bank fraud, money laundering and complex narcotics conspiracy cases. During his tenure as an Assistant U.S. Attorney, Mr. Alvarez also briefed and argued numerous appeals before the Ninth Circuit Court of Appeals.

At Lerach Coughlin, Mr. Alvarez's practice areas include securities fraud litigation and other complex litigation.

ANNE L. BOX graduated from the University of Tulsa with a Bachelor of Science degree in Economics in 1985 and received a Juris Doctor degree in 1988. While in law school, she was the Articles Editor for the *Energy Law Journal* and won the Scribes Award for her article *Mississippi's Ratable-Take Rule Preempted: Transcontinental Gas Pipeline Corp. v State Oil and Gas Bd.*, 7 Energy L.J. 361 (1986). From 1988-1991, she was an Associate Attorney in the Energy Section of Jenkins & Gilchrist, P.C. in Dallas, Texas. In 1991, she became an Assistant District Attorney in Tarrant County, Texas where she tried over 80 felony cases to verdict. Ms. Box was elevated to Chief Prosecutor in 1998, and along with supervising felony attorneys, her responsibilities included running the day-to-day operations of a felony district court. Ms. Box was admitted to the State Bar of Texas in 1989 and the State Bar of California in 2003. She practiced law with Milberg Weiss from 2003-2004 before joining Lerach Coughlin. Her practice at Lerach Coughlin focuses on securities fraud.

WILLIAM J. DOYLE II earned his Bachelor of Arts degree in 1993 from the University of San Diego, majoring in Business Economics. Mr. Doyle earned his Juris Doctor degree in 1997 from California Western School of Law. Before joining Milberg Weiss in 1998, Mr. Doyle was a civil litigator with the firm of Wingert Grebing Brubaker & Ryan, LLP in San Diego.

Mr. Doyle's practice focuses on securities fraud, antitrust and financial services class actions. Mr. Doyle is admitted to practice before the

U.S. Court of Appeal for the First Circuit, the U.S. District Courts for the Southern, Central and Northern Districts of California, the U.S. District Court for the District of Colorado and all California State courts. He is a member of the American Bar Association, the State Bar of California, the Association of Trial Lawyers of America, and the Association of Business Trial Lawyers.

VALERIE L. McLAUGHLIN was born in Philadelphia, Pennsylvania in 1973. Ms. McLaughlin has litigated numerous cases against public companies in federal and state courts throughout the country that have resulted in hundreds of millions of dollars in recoveries for defrauded investors. Many of these cases also resulted in these companies instituting major corporate governance changes. Ms. McLaughlin is currently litigating several multi-billion dollar accounting fraud cases, including *HealthSouth* and *Oracle*. Prior to joining Lerach Coughlin, Ms. McLaughlin practiced securities class action law at Milberg Weiss for several years. Before practicing in the plaintiffs' bar, Ms. McLaughlin worked at a well-respected San Diego defense firm litigating complex cases.

Ms. McLaughlin received her Bachelor of Arts degree in Political Science from California State University San Marcos in 1994 and her Juris Doctor degree from California Western School of Law in 1997. In 1997, Ms. McLaughlin was admitted to the California Bar and is licensed to practice in all California State Courts as well as all U.S. District Courts in California. She is a member of the California Bar Association, San Diego County Bar Association, American Bar Association, and the San Diego Lawyers Club.

MATTHEW MONTGOMERY was born in Pontiac, Michigan in 1970. Mr. Montgomery received his Bachelor of Arts degree from Stanford University in 1992 and his Juris Doctor degree from the University of California, Berkeley in 1995. Mr. Montgomery was

admitted to the California Bar in 1995 and is licensed to practice in the courts of the Ninth and Sixth Circuits, as well as the Northern, Central and Southern Districts of California. Mr. Montgomery practices in the firm's securities litigation group.

STEPHEN J. ODDO graduated from Santa Clara University with a Bachelor of Arts degree in English with a Spanish minor. He received his Master of Arts degree from the Medill School of Journalism at Northwestern University before receiving his Juris Doctor degree from the University of San Diego. Mr. Oddo was admitted to the California Bar in 1994. He specializes in securities class actions involving mergers and acquisitions.

DAVID A. ROSENFELD earned his Bachelor of Science degree in Accounting from Yeshiva University's Sy Syms School of Business and his Juris Doctor degree from the Benjamin N. Cardozo School of Law.

While in law school, Mr. Rosenfeld interned in the chambers of the Honorable Fredic Block in the United State District Court for the Eastern District of New York and served as a law clerk at the firm of Milberg Weiss.

Upon graduation from law school, Mr. Rosenfeld joined Milberg Weiss as an associate and was responsible for initiating some of the largest and most significant securities and shareholder class action lawsuits since the passage of the Private Securities Litigation Reform Act of 1995. While at Milberg Weiss, Mr. Rosenfeld also developed an expertise in the area of lead plaintiff jurisprudence.

In 2003, Mr. Rosenfeld joined Samuel Rudman in opening the New York office of Geller Rudman, PLLC and assisted Mr. Rudman in raising the firm's profile as one of the nation's "most active" plaintiffs' firms.

At Lerach Coughlin, Mr. Rosenfeld continues to concentrate his practice on the investigation

and initiation of securities and consumer fraud class actions. Mr. Rosenfeld also advises the firm's institutional and individual investor clients on issues related to their involvement in securities class action lawsuits.

Mr. Rosenfeld is admitted to practice in the States of New York and New Jersey and in the United States District Courts for the Southern District of New York, Eastern District of New York, District of New Jersey, District of Colorado, Eastern District of Wisconsin and the Eastern and Western Districts of Arkansas.

SCOTT SAHAM was born in Detroit, Michigan in 1970. Mr. Saham received a Bachelor of Arts degree in 1992 from the University of Michigan. Mr. Saham received a Juris Doctor degree from the University of Michigan Law School in 1995.

Mr. Saham is licensed to practice law in both California and Michigan. Mr. Saham's practice areas include securities and other complex litigation. Prior to join Lerach Coughlin, Mr. Saham served as an Assistant United States Attorney in the Southern District of California.

EX KANO SAMS II was born in Los Angeles in 1971. In 1993, Mr. Sams received his Bachelor of Arts degree in Political Science from the University of California, Los Angeles. In 1996, Mr. Sams received his Juris Doctor degree from the University of California, Los Angeles, where he was a member of the *UCLA Law Review*.

After graduating from UCLA Law School, Mr. Sams represented plaintiffs in complex and class action civil rights litigation, including employment, housing and sexual harassment discrimination. In 1998, Mr. Sams joined Milberg Weiss and was actively involved in a number of actions against the tobacco industry and participated in a trial against numerous tobacco companies. Mr. Sams also participated in California litigation against the tobacco

industry which resulted in billions of dollars in recovery to cities and counties in California.

As a partner of Lerach Coughlin, Mr. Sams continues to represent plaintiffs in securities, consumer and environmental litigation. Mr. Sams is a member of the State Bar of California and has been admitted to the United States Court of Appeals for the Ninth Circuit, the United States District Courts for Northern, Southern, Eastern and Central Districts of California and the District of Colorado.

SUSAN GOSS TAYLOR graduated from Pennsylvania State University in 1994 with a double major in International Politics and Russian. She earned her Juris Doctor degree from The Catholic University of America, Columbus School of Law in 1997. While in law school, she was a member of the Moot Court team, and a student attorney in the D.C. Law Students in Court Program, where she was responsible for defending juveniles and indigent adults in criminal proceedings. Ms. Taylor was admitted to the Bar in California in 1997.

Prior to joining Milberg Weiss in 1999, Ms. Taylor was a Special Assistant United States Attorney for the Southern District of California. Ms. Taylor's work at the U.S. Attorney's Office focused primarily on prosecuting drug smuggling and alien smuggling cases.

Ms. Taylor's practice at Milberg Weiss from 1999 until 2004 focused on antitrust and consumer fraud class actions. Ms. Taylor has served as counsel on the Microsoft antitrust litigation and the DRAM antitrust litigation, as well as a number of consumer actions alleging false and misleading advertising and unfair business practices against major corporations such as General Motors, Saturn, Mercedes-Benz USA, LLC, BMG Direct Marketing, Inc., and Ameriquest Mortgage Company.

As an associate with Lerach Coughlin, Ms. Taylor now primarily prosecutes securities fraud class actions. Ms. Taylor is a member of the California Bar Association, the San Diego County Bar Association, the American Bar Association, Consumer Attorneys of San Diego, and Trial Lawyers for Public Justice.

LESLEY WEAVER focuses on securities and consumer class actions in state and federal court. Her cases have involved companies in high technology, aviation, financial services, and energy industries. Her current caseload includes pending actions against Cisco Systems, Inc., Cardinal Health, and Vicuron Pharmaceuticals (recently acquired by Pfizer, Inc.). Settlements in which Ms. Weaver participated in recent years include: *In re Boeing Sec. Litig.*, (\$92 million); *In re NorthPoint Sec. Litig.* (\$20 million); and *In re Commtouch Sec. Litig.* (\$15 million). In 1998, Ms. Weaver participated in a trial resulting in the largest verdict awarded at that time under the Federal Tort Claims Act against U.S. Customs for the unlawful detention of a Colombia-born U.S. citizen.

Ms. Weaver received her Juris Doctor degree from the University of Virginia School of Law and her Bachelor of Arts degree, *magna cum laude*, in Social Studies from Harvard and Radcliffe College. Ms. Weaver studied Political Science at the University of Bonn and was a Rotary-sponsored student in Haderslev, Denmark.

Ms. Weaver currently co-chairs the LGBT Community Center in San Francisco and sits on the Board of Equality California. Ms. Weaver is also currently the Chair of National Advisory Board of the National Center for Lesbian Rights, as well as past Gala CoChair for the years 2002 and 2003. She previously served as Secretary to the Board of California Young Lawyers Association, a governing body of the California State Bar Association, and in 2003 became a member of the Lawyers' Committee for Civil Rights of San Francisco. Ms. Weaver

also co-chaired the Board of Directors of the Bay Area Lawyers for Individual Freedom (BALIF) from 2002-2004 and served on the board from 2000-2004.

DEBRA J. WYMAN was born in La Mesa, California in 1967. Ms. Wyman specializes in securities litigation and practiced with Milberg Weiss from 1997-2004, prior to joining Lerach Coughlin. Ms. Wyman has litigated numerous cases against public companies in the state and federal courts which resulted in hundreds of millions of dollars in recoveries to investors. In late 2004, Ms. Wyman was a member of the trial team in *In re AT&T Corp. Sec. Litig.*, which was tried in the District Court in New Jersey, and which settled after two weeks of trial for \$100 million. Currently, Ms. Wyman is litigating the complicated accounting fraud matter against HealthSouth Corporation, one of the largest and long-running corporate frauds in history.

Ms. Wyman received her Bachelor of Arts degree from the University of California, Irvine in 1990 and her Juris Doctor degree from the University of San Diego School of Law in 1997. Ms. Wyman was admitted to the California Bar in 1997 and is licensed to practice before all the California State Courts, as well as all the U.S. District Courts in California and the Eleventh Circuit Court of Appeals. She is a member of the California Bar Association and the San Diego County Bar Association.

OF COUNSEL

ALBERT H. MEYERHOFF has concentrated his practice for more than 30 years in labor, civil rights and environmental law. After graduating from Cornell Law School in 1972, he joined California Rural Legal Assistance representing farm workers and the rural poor. These efforts included the landmark case of *CAAP v. Regents of the University of California*, challenging the use of public research funds to promote agricultural mechanization. He also litigated a host of state and federal civil rights

cases involving racial discrimination in employment, voting and public education, including *Maria P. v. Riles*, invalidating a California statute excluding undocumented children from California schools. In 1981, Mr. Meyerhoff joined the Natural Resources Defense Council (NRDC), a national environmental organization, as Director of their Public Health Program. His concentration is in litigation concerning toxic substances and occupational health and has brought successful challenges to the continued use of cancer-causing pesticides (*Les v. Reilly*), the exclusion of women of "child-bearing age" from the workplace (*Love v. Thomas*), and the California Governor's failure to comply with Proposition 65, an anti-toxics law (*AFL-CIO v. Deukmejian*). During his 17 years with NRDC, Mr. Meyerhoff testified more than 50 times before the U.S. Senate and House of Representatives.

Mr. Meyerhoff has authored numerous articles for scholarly and general publications, including the *Stanford Law Review*, *EPA Journal*, *Environmental Law Quarterly*, *The New York Times*, *The Washington Post* and *Los Angeles Times*. He has appeared regularly on such programs as CBS News 60 Minutes, ABC 20/20, NBC Dateline, Good Morning America, The Today Show and The NewsHour with Jim Lehrer, and has been an invited speaker at the Harvard Business School, the National Academy of Sciences, the American Academy of Sciences and the AFL-CIO.

Since 1998, Mr. Meyerhoff has been lead counsel in several labor and environmental cases, including *UNITE v. The Gap*, contesting the sale of garments manufactured under sweatshop conditions in the Commonwealth of the Mariana Islands, and *Public Citizen v. US DOT*, challenging cross-border trucking from Mexico to conform to NAFTA but in violation of U.S. environmental laws.

Mr. Meyerhoff was selected as "Trial Lawyer of the Year" by Trial Lawyers for Public Justice

and for a lifetime achievement award from the ACLU.

LEONARD B. SIMON is admitted to practice in California, New York, and the District of Columbia.

Mr. Simon's practice has been devoted heavily to litigation in the federal courts, including both the prosecution and the defense of major class actions and other complex litigation in the securities and antitrust fields. He has argued more than 20 appeals in the federal and state courts of appeal. He has also represented large, publicly traded corporations.

Mr. Simon served as plaintiffs' co-lead counsel in *In re American Cont'l Corp./Lincoln Sav. & Loan Sec. Litig.*, MDL No. 834 (D. Ariz.) (settled for \$240 million), and *In re NASDAQ Market-Makers Antitrust Litig.*, MDL No. 1023 (S.D.N.Y.) (settled for more than one billion dollars). He is currently in a leadership position in the private *Microsoft Antitrust Litig.*, and in the *California Utilities Antitrust Litig.* He was centrally involved in the prosecution of *In re Wash. Public Power Supply Sys. Sec. Litig.*, MDL No. 551 (D. Ariz.), the largest securities class action ever litigated.

Mr. Simon is an Adjunct Professor of Law at Duke University, the University of San Diego, and the University of Southern California Law Schools. He has lectured extensively on securities, antitrust and complex litigation on programs sponsored by the ABA Section of Litigation, the Practising Law Institute, and ALI-ABA, and at UCLA Law School, University of San Diego Law School and Stanford Business School. He is an Editor of California Federal Court Practice, and has authored a law review article on the Private Securities Litigation Reform Act of 1995.

Mr. Simon received his Bachelor of Arts degree from Union College in 1970 and his Juris Doctor degree from Duke University School of

Law, Order of the Coif and with distinction, in 1973. He served as law clerk to the Honorable Irving Hill, U.S. District Judge for the Central District of California, in 1973-74.

BYRON S. GEORGIU received his Bachelor of Arts degree, with great distinction, with honors in Social Thought and Institutions, in 1970 from Stanford University, attending on an Alfred P. Sloan full academic scholarship. After a year co-founding and teaching 7th and 8th graders at the Mariposa School, which has thrived for 35 years as an alternative primary through middle school in rural Mendocino County, he attended Harvard Law School, graduating *magna cum laude* in 1974. He was admitted to the California Bar in 1974 and served for one year as law clerk to the Honorable Robert F. Peckham, Chief Judge of the U.S. District Court for the Northern District of California. He is a member of the Bar of the U.S. Supreme Court, the U.S. Court of Appeals for the Ninth Circuit and the U.S. District Courts for the Northern, Eastern, Central and Southern Districts of California.

Mr. Georgiou served from 1975-1980 in various capacities with the California Agricultural Labor Relations Board, defending the constitutionality of the law up through the U.S. and California Supreme Courts and prosecuting unfair labor practice cases enforcing the collective bargaining rights of farmworkers, who had been excluded from coverage under the National Labor Relations Act.

From 1980-1983, Mr. Georgiou served as Legal Affairs Secretary to California Governor Edmund G. Brown Jr., responsible for litigation by and against the Governor, judicial appointments, liaison with the Attorney General, Judiciary and State Bar, legal advice to the Governor and members of his Cabinet, and exercise of the Governor's powers of extradition and clemency.

From 1983-1994, he was Managing Partner and co-founder of the San Diego law firm of Georgiou, Tosdal, Levine & Smith, engaged in a general civil practice, with emphasis on litigation, appearances before executive and legislative governmental bodies and representation of labor organizations and their members, including contract negotiations and enforcement for many California public and private sector unions.

In 1994, he co-founded and served as President of American Partners Capital Group, concentrating in serving the needs of institutional investors through capital formation programs in a variety of alternative asset categories.

In 1981 Mr. Georgiou was honored as Public Official of the Year by the California Trial Lawyers Association and served as Chair of the Governor's Task Force on Alcohol, Drugs and Traffic Safety, one of the nation's first vehicles for enacting tough drunk driver legislation sponsored by the Mothers Against Drunk Driving (MADD).

Since affiliating with Milberg Weiss in 2000 and continuing with Lerach Coughlin, Mr. Georgiou serves as the primary liaison with a number of the firm's principal institutional clients and is actively involved in the historic litigations seeking recoveries for defrauded investors in *Enron*, *Dynegy*, *AOL Time Warner* and *WorldCom*.

SANDRA STEIN received her Bachelor of Science degree from the University of Pennsylvania and a Juris Doctor degree from Temple University Law School. She is a member of the Pennsylvania and Washington, D.C. Bars. Ms. Stein concentrates her practice in securities class action litigation, legislative law, and antitrust litigation. She served as counsel to U.S. Senator Arlen Specter and to the U.S. Institute for Law and Economic Policy, a think tank which develops policy positions on selected issues involving the administration of

justice within the American Legal System. In addition, Ms. Stein served on the Board of Advisors of the Annenberg Institute of Public Service at the University of Pennsylvania. Ms. Stein was the recipient of the National Federation of Republican Women's "Best of America" Award and has been honored by the White House, California State Senate, and California State Assembly for civic leadership.

In a unique partnership with her daughter, Attorney Laura Stein, a former associate of Milberg Weiss, the Steins served as two of the top asset recovery attorneys in the firm. The Steins focus on maximizing profits and minimizing losses to shareholders due to corporate fraud and breaches of fiduciary duty. They also seek to deter future violations of federal and state securities laws by reinforcing the standards of good corporate governance.

Ms. Stein has been active in a number of organizations, including the National Association of Shareholder and Consumer Attorneys (NASCAT), National Association of State Treasurers (NAST), the AFL-CIO Lawyers Coordinating Committee, the National Coordinating Committee for multi-employer Plans (NCCMP), and the International Foundation for Employer Benefit Plans (IFEBP), among others.

Ms. Stein has addressed the National Association of Auditors, Controllers and Treasurers on the subject of corporate governance and its role as a positive force in future class action securities settlements. She has also spoken before numerous AFL-CIO conventions and dozens of public and multi-employer pension funds.

ELISABETH A. BOWMAN is part of Lerach Coughlin's in-house graphics group which creates visual and audio aids to help explain complex cases and legal theories in a succinct and understandable way. Ms. Bowman's eight years as a criminal defense trial attorney and

her former experience in the graphic arts combine to make her exceptionally well suited to produce persuasive legal graphics at every stage of litigation and at trial. Before joining Lerach Coughlin, Ms. Bowman practiced law with Milberg Weiss for six years, during which time she assisted in the trials of: *Long v. Wells Fargo Co., et al.*; *Yourish v. California Amplifier, et al.*; *In re Helionetics, Inc. Sec. Litig.*; and *Schwartz v. Visa, et al.*

Since joining the firm in 2004, Ms. Bowman assisted in the trials of: *Douglas Shooker, et. al. v. Gary Winnick, et. al.*, and *In re AT&T Corp. Sec. Litig.*

Ms. Bowman received her Bachelor of Fine Arts degree from the University of Alaska at Anchorage in 1986, where she majored in Fine Arts and Psychology. While a student at the U of A, she received a grant from the Ford Foundation to participate in the artists in residency program at the Visual Arts Center, Alaska. Ms. Bowman received her Juris Doctor degree from the University of San Diego in 1989. During the summer of 1987, she attended USD's Institute on International and Comparative Law in Oxford, England.

Ms. Bowman was in private practice as a criminal defense attorney for eight years, handling both trials and appeals in state and federal courts. Ms. Bowman is a member of Volunteers in Parole ("VIP"), an organization based on the Big Brothers' paradigm, in which attorneys are matched with parolees from the California Youth Authority in an effort to offer positive mentoring. She also served on VIP's local and state-wide boards.

Ms. Bowman is a member of the California Bar (1990), and is admitted to the Supreme Court of the State of California, the U.S. District Court for the Southern District of California, the U.S. Court of Appeals for the Ninth Circuit, and the Supreme Court of the United States.

JAMES CAPUTO has focused his practice on the prosecution of complex litigation involving securities fraud and corporate misfeasance, consumer actions, unfair business practices, contamination and toxic torts, and employment and labor law violations. He has successfully served as lead or co-lead counsel in numerous class and consumer action litigation matters, including, for example: *In re S3 Sec. Litig.*, Case No. CV770003 (Cal. Super. Ct., Santa Clara County); *Santiago v. Kia Motors Am.*, Case No. 01CC01438 (Cal. Super. Ct., Orange County); Case No. 0988 MJJ (N.D. Cal.); *In re Fleming Co. Sec. Litig.*, Case No. 5:02-CV-178 (TJW) (E.D. Tex.); *In re Capstead Mortgage Corp. Sec. Litig.*, Case No. 3:98-CV-1716 (N.D. Tex.); *In re Valence Tech. Sec. Litig.*, Case No. C95-20459 (JW)(EAI) (N.D. Cal.); *In re THQ, Inc. Sec. Litig.*, Master File No. CV-00-01783-JFW (C.D. Cal.); and *In re ICN Pharm. Corp. Sec. Litig.*, Case No. CV-98-02433 (C.D. Cal.).

Mr. Caputo was formerly a partner at Spector Roseman & Kodroff and Milberg Weiss. During the latter tenure, he was one of the trial counsels in the year-long trial of *Newman v. Stringfellow*, a toxic exposure case involving nearly 4,000 plaintiffs. That case ultimately settled for approximately \$110 million. He was co-trial counsel in an employment law class action against Taco Bell, which settled for \$14 million.

Mr. Caputo received a Bachelor of Science degree from the University of Pittsburgh in 1970 and a Masters degree from the University of Iowa in 1975. In 1984, he received his Juris Doctor degree, *magna cum laude*, from California Western School of Law, where he served as Editor-In-Chief of the *International Law Journal*. He also clerked for Presiding Justice Daniel J. Kremer of the California Court of Appeal from 1985-1987 and to Associate Justice Don R. Work of the California Court of Appeal from 1984-1985. He has co-authored *No Single Cause: Juvenile Delinquency and the Search for Effective Treatment* (1985) and authored Comment, *Equal Right of Access in*

Matters of Transboundary Pollution: Its Prospects in Industrial and Developing Countries, 14 Cal. West. Intl. L. J. 192 (1984). Mr. Caputo has also numerous presentations to various legal and professional groups regarding complex and class action litigation.

He is admitted to practice in the State of California and the U.S. District Courts for the Southern, Central and Northern Districts of California as well as numerous other jurisdictions. Mr. Caputo is a member of the San Diego County and American Bar Associations, the Consumer Attorneys of California, and the Association of Trial Lawyers of America.

MITCHELL D. GRAVO concentrates his practice in lobbying and government relations. He represents clients before the Alaska Congressional delegation, the Alaska Legislature, the Alaska State Government and the Municipality of Anchorage.

Mr. Gravo attended Ohio State University as an undergraduate before attending the University of San Diego School of Law. He came to Alaska in 1977, served briefly as an intern with the Municipality of Anchorage and then clerked a year for Superior Court Judge J. Justin Ripley. After his clerkship with Judge Ripley, he went back to the work for the Municipality of Anchorage, where he first served as the executive assistant to the Municipal Manager and then as the first lobbyist for the then Mayor of Anchorage, George M. Sullivan. Mr. Gravo has been described as one of the "top lobbyists in the state" by Alaska's major daily newspaper, *The Anchorage Daily News*.

His legislative clients include the Anchorage Economic Development Corporation, the Anchorage Convention and Visitors Bureau, UST Public Affairs, Inc., the International Brotherhood of Electrical Workers, Alaska Seafood International, Distilled Spirits Council of America, RIM Architects, Anchorage Police

Department Employees Association, Fred Meyer, and the Automobile Manufacturer's Association.

JACQUI E. MOTTEK received her Bachelor of Science degree in Government and Politics, *cum laude*, from the University of Maryland, College Park in 1979. Ms. Mottek obtained her Juris Doctor degree in 1986 from the University of San Francisco School of Law, where she was a recipient of the American Jurisprudence Award in Constitutional Law and a member of the *University of San Francisco's Law Review*.

Ms. Mottek was associated with the law firm Brobeck Phleger & Harrison from 1987-1994. In 1994, Ms. Mottek served as sole chair in a jury trial resulting in a verdict in favor of her clients of \$1 million. In 1994, Ms. Mottek became a partner with the firm Lieff Cabraser Heimann & Bernstein, concentrating her practice in plaintiffs' class actions with an emphasis on consumer fraud litigation and other complex business litigation for plaintiffs. She successfully prosecuted a certified class action on behalf of physicians who provided medical services to Blue Cross of California HMO members. She is the author of *The Impact of Classwide Arbitration on Mandatory Arbitration*, Vol. 1, No. 13, Class Action Litigation Report, (October 27, 2000).

Prior to joining Lerach Coughlin in 2004, Ms. Mottek prosecuted consumer fraud class actions. She serves as co-lead counsel in several consumer class actions, including *Tenet HealthCare Cases II*, JCCP 4285, pending before the Los Angeles Superior Court, and as co-lead counsel and a member of the executive committee of the *Cellphone Termination Fees Litig.*, JCCP 4332, pending before the Superior Court of Alameda County. She is also a senior litigator in *Spielholz v. LA Cellular, Inc.*, Case No. BC186787 (resulting in the published opinion *Spielholz v. Superior Court*, 86 Cal. App. 4th 1866 (2001), granting a petition for a writ of mandamus she drafted in a question of first impression in California); in the matters

coordinated before the federal court in the Northern District of Illinois, styled *In re Owen Federal Bank Mortgage Servicing Litig.*, MDL No. 1604; and as counsel in *Paton v. Cingular Wireless*, Case No. CGC-04-428855, in the Superior Court of San Francisco.

L. THOMAS GALLOWAY received a Bachelor of Arts degree in History/Latin from Florida State University and received his Juris Doctor degree from the University of Virginia Law School in 1972, where he was a member of the Editorial Board of the *University of Virginia Law Review*.

Mr. Galloway is the founding partner of Galloway & Associates, a law firm that concentrates in the representation of institutional investors – namely, public and multi-employer pension funds.

Mr. Galloway has authored several books and articles, including: *The American Response to Revolutionary Change: A Study of Diplomatic Recognition* (AEI Institute 1978); *America's Energy: Reports from the Nation* (Pantheon 1980); Contributor, *Coal Treatise* (Matthew Bender 1981); Contributor, *Mining and the Environment: A Comparative Analysis of Surface Mining in Germany, Great Britain, Australia, and the United States*, 4 Harv. Envtl. L. Rev. 261 (Spring 1980); *A Miner's Bill of Rights*, 80 W. Va. L. Rev. 397 (1978); and Contributor, *Golden Dreams, Poisoned Streams* (Mineral Policy Center Washington D.C. 1997).

Mr. Galloway represents and/or provides consulting services for the following: National Wildlife Federation, Sierra Club, Friends of the Earth, United Mine Workers of America, Trout Unlimited, National Audubon Society, Natural Resources Defense Council, German Marshal Fund, Northern Cheyenne Indian Tribe and Council of Energy Resource Tribes. He is a member of the District of Columbia and Colorado State Bars.

JERRILYN HARDAWAY, in the Houston Enron Trial office, is a seventh-generation Texan who

grew up in Greenville and graduated from Texas A&M with three undergraduate degrees-English, Psychology and Applied Mathematics. She was a Fulbright Scholar, studying Italian architecture and writing a prize-winning article on international trade relations. Despite her primarily liberal arts education, she was really only interested in computers, focusing on software development for vertically integrated markets, which led to an interest in antitrust law. She graduated in 1993 from the University of Houston Law Center, where she was a member of the *Houston Journal of International Law*. She worked alongside renowned class-action attorney Charles Kipple for the next eight years, assisting as lead counsel or co-lead counsel in several complex anti-trust cases through 1999, including *In re Lease Oil Antitrust Litig.*, MDL No. 1206, in the Southern District of Texas, Corpus Christi Division. After traveling and living abroad for three years, she returned to Houston and, in March 2002, was asked to "build a simple database, probably won't take longer than the summer." Now, more than two years later, her Enron databases manage more than 100 million documents and she supervises two teams of litigation support. Mrs. Hardaway is a frequent speaker and author on electronic discovery and developing issues in technology and the law. She speaks several languages, which helps because she very much enjoys traveling.

ERAN RUBINSTEIN practices in the area of securities litigation with a special emphasis on international institutional investor clientele. He is resident in the firm's Manhattan office.

While Mr. Rubinstein acquired his earlier experience defending class action cases, working with some of the largest firms in San Francisco and Philadelphia, he has spent recent years focused exclusively on the prosecution of such cases, including The Relafen Class Action Litigation (following in the footsteps of the Israeli company Teva's Relafen patent

litigation), the Initial Public Offering Securities Litigation, and the AOL Time Warner Merger Litigation.

During college, Mr. Rubinstein studied in London and Kenya. He received his Bachelor of Arts degree in International Relations from California Polytechnic State University, San Luis Obispo in 1998 and his Juris Doctor degree from Widener University School of Law in 2001. During law school, where he achieved Dean's Honors List, Mr. Rubinstein was both a regional finalist and a coach in the ABA Negotiation Competition. He also argued at the Jessup International Law Moot Court Competition.

Mr. Rubinstein holds the following Bar affiliations: Bar of the Supreme Court of Pennsylvania (2001); Bar of the Eastern District of Pennsylvania (2003); American Bar Association; and Pennsylvania Bar Association.

SUSAN BOLTZ RUBINSTEIN practices in the area of securities litigation with a special emphasis on international institutional investor clientele. She is resident in the firm's Manhattan office.

Prior to entering private practice, she was an Assistant District Attorney. She then acquired her initial class action litigation experience, working on the defense side, with some of the largest defense firms. Ms. Boltz Rubinstein then became associated with a preeminent white-collar criminal defense firm. Among other clients, she represented the Delaware Insurance Commissioner in her efforts to recover millions of dollars looted from policy holders. The case represents the nation's largest insolvency due to fraud and involved money laundering through foreign, including Israeli, banks.

Ms. Boltz Rubinstein has spent recent years focused exclusively on the prosecution of class actions. These cases have included the Relafen Class Action Litigation, the Initial Public

Offering Securities Litigation, and the AOL Time Warner Merger Litigation.

Ms. Boltz Rubinstein received her Bachelor of Arts degree in English/Modern European Studies from La Salle University in 1986, where she was a member of the Honors Program. She received her Juris Doctor degree from Dickinson School of Law in 1994. She graduated from college with high distinction and was a Molyneaux Scholarship recipient. During law school she was an Associate Editor/Member of the *Dickinson Journal of International Law*. She successfully completed comparative law courses at the following law schools: University of Florence (Co-Recipient of DiNicola Scholarship; achieved highest grade in International Family Law seminar); University of Strasbourg; and the University of Vienna.

Ms. Boltz Rubinstein holds the following Bar affiliations: Bar of the State of New York (2004); Bar of the Eastern District of Pennsylvania (2003); Bar of the Supreme Court of Pennsylvania (1996); American Bar Association; Pennsylvania Bar Association; and New York Bar Association.

SPECIAL COUNSEL

SUSAN K. ALEXANDER graduated with honors from Stanford University in 1983 and earned her Juris Doctor degree from the University of California, Los Angeles in 1986. Ms. Alexander joined the Appellate Practice Group at Lerach Coughlin in 2004 after working with Milberg Weiss in San Francisco for four years.

Following her admission to the California Bar in 1986, Ms. Alexander joined Bronson, Bronson & McKinnon, where she litigated professional malpractice and product liability cases on behalf of attorneys, doctors and automobile manufacturers, second-chairing two dental malpractice cases to a defense verdict. In 1990, Ms. Alexander joined the California Appellate Project ("CAP"), where she prepared appeals and petitions for writs of

habeas corpus on behalf of individuals sentenced to death, as well as supervising private attorneys in their preparation of appeals and *habeas corpus* petitions. At CAP, and subsequently in private practice, Ms. Alexander litigated and consulted on death penalty direct and collateral appeals for 10 years, including favorable decisions in the California Supreme Court, *In re Brown*, 17 Cal. 4th 873 (1998), and the Ninth Circuit *Odle v. Woodford*, 238 F.3d 1084 (9th Cir. 2001). At Milberg Weiss, Ms. Alexander has argued *Shuster v. Symmetricom, Inc.* and *Wilkes v. Versant Object Tech. Corp.* in the Ninth Circuit, and will argue *Pirraglia v. Novell, Inc.* in the Tenth Circuit.

Ms. Alexander is a member of the Bar of the U.S. Supreme Court, the Ninth Circuit Court of Appeals, the Tenth Circuit Court of Appeals, U.S. District Court, Northern, Central, Eastern and Southern Districts of California, and the California Supreme Court. Ms. Alexander is also a member of the Federal Bar Association, Appellate Division and the Appellate Practice Section of the Bar Association of San Francisco.

FORENSIC ACCOUNTANTS

ANDREW J. RUDOLPH is a Certified Fraud Examiner and a Certified Public Accountant licensed to practice in California. He is an active member of the American Institute of Certified Public Accountants, California's Society of Certified Public Accountants, and the Association of Certified Fraud Examiners. His 20 years of public accounting, consulting and forensic accounting experience includes financial fraud investigation, auditor malpractice, auditing of public and private companies, business litigation consulting, due diligence investigations and taxation. Mr. Rudolph is the National Director of Lerach Coughlin's Forensic Accounting Department, which provides the firm with in-house forensic accounting expertise in connection with securities fraud litigation against national and foreign companies. Prior to joining Lerach

Coughlin in 2004, Mr. Rudolph was the Director of Forensic Accounting for the law firm of Milberg Weiss for 12 years. Mr. Rudolph has given numerous lectures and assisted with articles on forensic investigations and financial statement fraud. Mr. Rudolph has directed hundreds of financial statement fraud investigations which were instrumental in the recovery of billions of dollars for defrauded investors. Prominent cases include *Qwest*, *HealthSouth*, *WorldCom*, *Boeing*, *Honeywell*, *Vivendi*, *Aurora Foods*, *Informix* and *Platinum Software*.

CHRISTOPHER YURCEK is one of the firm's senior forensic accountants and provides in-house forensic accounting and litigation expertise in connection with major securities fraud litigation. Mr. Yurcek is a Certified Public Accountant with 19 years of accounting, forensic examination and consulting experience in areas including financial statement audit, fraud investigation, auditor malpractice, turn-around consulting, business litigation, and business valuation. Mr. Yurcek is currently responsible for overseeing the firm's forensic accounting investigation in *In re Enron Corp. Sec. Litig.* Prior to joining Lerach Coughlin, Mr. Yurcek provided in-house forensic accounting expertise to Milberg Weiss, where he directed accounting investigations in connection with well-publicized securities fraud litigation including cases such as *Enron*, *Vesta*, *Informix*, *Mattel*, *Coca Cola Company* and *Media Vision*. Mr. Yurcek's experience included providing forensic accounting expertise to bankruptcy trustees and audit and accounting services at a national CPA firm. Mr. Yurcek speaks at professional accounting seminars on topics such as financial statement fraud and fraud prevention and has co-authored articles on these subjects. Mr. Yurcek is a member of the American Institute of Certified Public Accountants and the California Society of CPAs.

R. STEVEN ARONICA is a Certified Public Accountant licensed in the States of New York

and Georgia and is a member of the American Institute of Certified Public Accountants, the Institute of Internal Auditors and the Association of Certified Fraud Examiners. He has been employed in the practice of accounting for 25 years, including: (1) public accounting where he was responsible for providing clients with a wide range of accounting and auditing services; (2) private accounting with Drexel Burnham Lambert, Inc., where he held positions with accounting and financial reporting responsibilities as a Vice President; (3) various positions with the United States Securities and Exchange Commission ("SEC"); and (4) the chief forensic accountant in the New York office of Milberg Weiss. Mr. Aronica has extensive experience in securities regulation and litigation. At the SEC, Mr. Aronica reviewed and analyzed financial statements and related financial disclosures contained in public filings for compliance with generally accepted accounting principles, generally accepted auditing standards, and the accounting and auditing rules, regulations and policies of the SEC. Mr. Aronica was also an Enforcement Division Branch Chief, responsible for managing a group of investigators and accountants who initiated, developed and executed numerous investigations involving financial fraud, accounting improprieties and audit failures. Mr. Aronica has been instrumental in the prosecution of numerous financial and accounting fraud civil litigation claims against companies which include Lucent Technologies, Oxford Health Plans, Computer Associates, Aetna, WorldCom, Tyco, Vivendi, AOL Time Warner, Ikon, Thomas & Betts, InaCom and Royal Ahold. In addition, Mr. Aronica helped prosecute numerous claims against each of the major U.S. public accounting firms.

Exhibit 4

BMG AND SUNNCOMM TECHNOLOGIES INK WORLDWIDE LICENSING DEAL TO PROTECT AND ENHANCE AUDIO CDS FOR GLOBAL MUSIC GIANT

The Multi-Year Agreement Licenses BMG to Utilize SunnComm's MediaMax™ Enhancement and Copy Management Technologies Throughout the World

PHOENIX, Ariz., June 30, 2003 - SunnComm Technologies, Inc. (OTC: STEH) announced today it has entered into a strategic worldwide licensing agreement and revenue deal with BMG, the worldwide music division of Bertelsmann AG, to provide copy management technology to reduce piracy and the unauthorized duplication of music. The agreement between the two companies will enable the use of SunnComm's newest proprietary compact disc enhancement and copy-management system known as MediaMax™ CD-3 Technology.

BMG has already successfully deployed SunnComm's MediaMax™ CD-3 Technology on a number of promotional/advance releases in the U.S. SunnComm's solution is a new approach to reducing casual piracy. MediaMax gives consumers a legal path to transfer music from their CDs to their computers while not allowing the unauthorized re-distribution of content via CDRs or P2P services. SunnComm's

MediaMax can introduce music buyers to special enhancements on the discs, including artist information, song lyrics, bonus tracks, music video clips, special offers, prizes and other valuable content. All of these value-adds are accessible via a computer from a data session mastered on the disc.

The MediaMax suite of products will be immediately available for BMG production in the U.S. market through the Sonopress manufacturing plant located in Weaverville, NC. Sonopress is a division of Bertelsmann AG. The technology will also be made available to Sonopress manufacturing plants servicing other markets around the world.

Peter Jacobs, SunnComm's president and chief executive officer said "Extending our existing relationship with BMG is a very important milestone for SunnComm. This is our first step in delivering a product suite that enables the music industry to protect their intellectual property while giving the consumers the flexibility they have come to expect".

MediaMax CD-3 is a collection of technologies that provides copy management for CDs and DVDs while simultaneously enhancing and expanding the consumer's experience. MediaMax CD-3 is tightly integrated with Microsoft's (NASDAQ:MSFT) Windows Media Platform and the Digital Rights Management capabilities associated with the latest Windows Media Platforms. The company licenses and uses Windows Media Audio DRM capabilities from Microsoft as the security feature for these files.

See <http://www.microsoft.com/presspass/press/2003/jan03/01-20SessionToolkitPR.asp>

When a consumer puts a SunnComm MediaMax CD in a computer's CD-ROM drive, the computer can read and play the protected digital audio files through SunnComm's proprietary, multimedia user interface. These digital audio files can be legally copied from the CD and enjoyed on the user's personal computer or shared with friends for a limited period of time using SunnComm's PromoPlay™ technology. However, those same music tracks cannot be sent through standard email or made available to file-sharing services such as KaZaA or Morpheus.

SunnComm's chief operating officer, William H. Whitmore, Jr. said, "Feedback from the music industry on our MediaMax product suite has been overwhelmingly supportive. We are excited that our multi-year collaborative effort with BMG has enabled us to develop a product solution that the industry can embrace."

About BMG

BMG is the global music division of Bertelsmann AG, one of the world's leading media companies. BMG owns more than 200 record labels in 41 countries including Arista Records, J Records, Jive Records, RCA Records and RCA Label Group - Nashville. In addition, BMG's music publishing operations are the third largest in the world.

About SunnComm Technologies, Inc.

SunnComm Technologies, Inc. is a leader in digital content enhancement and security technology for optical media with its MediaMax and CD3 suite of products. SunnComm's copy-constraint technology was commercially released by Music City records in 2001 and became America's first copy-protected audio CD. SunnComm's MediaMax™ CD3™ Suite of Digital Content Enhancement technologies is built upon the Microsoft (NASDAQ:MSFT) Windows Media 9 Series Digital Media Platform.

MediaMax, Digital Content Cloaking Technology, DC2, PromoPlay and SunnComm are registered and/or trademarks of SunnComm Technologies, Inc. in the United States and/or other countries. The names of actual companies and products mentioned herein may be the trademarks of their respective owners.

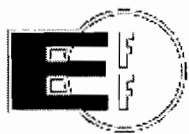
For more detailed information about the company, its vision or philosophy, personnel, partners, and customers, please visit the company's Web site at <http://www.sunncomm.com>.

Notes About Forward-Looking Statements

Statements contained in this release, which are not historical facts, may be considered "forward-looking statements" under the Private Securities Litigation Reform Act of 1995. Forward-looking statements are based on current expectations and the current economic environment.

We caution the reader that such forward-looking statements are not guarantees of future performance. Unknown risk, uncertainties as well as other uncontrollable or unknown factors could cause actual results to materially differ from the results, performance or expectations expressed or implied by such forward-looking statements.

Exhibit 5

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Uproot Sony-BMG's Invasion of Your Privacy and Your Computer

November 03, 2005

For years now, copy-restriction software has been a looming threat to those who purchase music and want to make fair uses such as space-shifting it from one device or computer to another. Fortunately, early versions of the software were so cumbersome and easy to work around that consumers whole-heartedly rejected or bypassed them. Recently, however, at least one record label has stepped up the war for control of digital content by drawing from the playbook of spyware companies and virus-writers.

Using a program called a rootkit, inserting a Sony BMG music CD will now infect your computer with a nefarious program, burying it deeply and obscurely within your operating system. The program will monitor your computer activity in the name of preventing the so-called epidemic of "piracy" that results from people making extra copies of their music CDs or favorite songs. Worse yet, there is no "uninstall" feature on this program. It's like the roach motel -- once Sony BMG's surveillance program checks in, you can't make it check out without completely wiping your entire system clean. Such practices have been widely condemned in the computer world, even by Microsoft's own research division.

Outrage from computer users and music fans has sparked Sony BMG into offering a program on its website that will show you if you have been infected with the rootkit. However, while you can see the program running, you still can't uninstall it, and some security experts believe installing the "update" may even infect your computer with more unwanted files.

While it is debatable whether copy-restriction software can even prevent serious illegal copying to begin with, there should be no question that invading our computers and infecting our systems should be off-limits. Unfortunately, the law is unclear on the exact rights users have to keep programs like Sony's rootkit off your computer when you purchase their CDs or click on a random "I Agree" button that might appear during an installation process. Until the law clarifies that We the Consumer actually hold the rights and keys to our computers, spyware companies, virus-makers, and now even entertainment conglomerates will be the

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ones dictating what we can and cannot do in the privacy of our own homes with the equipment and content we have lawfully purchased. Left unchecked, they will continue using our own computers against us to enforce their will and whims over our personal freedoms and behavior.

Entertainment companies often complain that computer users refuse to respect their intellectual property rights. Yet tools like Sony's rootkit refuse to respect our own personal property and privacy rights. Such hypocrisy should not stand.

Note: According to Princeton University CS Prof. Ed Felten, if you're using a recent version of Windows, you can protect yourself against this type of software, and some other security risks, by disabling autorun.

UPDATE: Calling the rootkit a "security risk," Symantec has just released a [new removal tool](#) that targets the risk. Professor Ed Felten has also posted a [Sony DRM Customer Survival Kit](#) with tools for figuring out whether you've been infected with the rootkit, how to disable it, how to disable the DRM software altogether, etc.

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[March 2004](#)**November 09, 2005**

As we've [mentioned](#) before, Sony-BMG has been using copy-protection technology called XCP in its recent CDs. You insert your CD into your Windows PC, click "agree" in the pop up window, and the CD automatically installs software that uses rootkit techniques to cloak itself from you. Sony-BMG has released a "patch" that supposedly "uncloaks" the XCP software, but it creates [new problems](#).

But how do you know whether you've been infected? It turns out Sony-BMG has deployed XCP on a number of titles, in variety of musical genres, on several of its wholly-owned labels.

EFF has confirmed the presence of XCP on the following titles (each has a data session, easily read on a Macintosh, that includes a file called "VERSION.DAT" that announces what version of XCP it is using). If you have one of these CDs, and you have a Windows PC (Macs are totally immune, as usual), you may have caught the XCP bug.

Trey Anastasio, *Shine* (Columbia)
Celine Dion, *On ne Change Pas* (Epic)
Neil Diamond, *12 Songs* (Columbia)
Our Lady Peace, *Healthy in Paranoid Times* (Columbia)
Chris Botti, *To Love Again* (Columbia)
Van Zant, *Get Right with the Man* (Columbia)
Switchfoot, *Nothing is Sound* (Columbia)
The Coral, *The Invisible Invasion* (Columbia)
Acceptance, *Phantoms* (Columbia)
Susie Suh, *Susie Suh* (Epic)
Amerie, *Touch* (Columbia)
Life of Agony, *Broken Valley* (Epic)
Horace Silver Quintet, *Silver's Blue* (Epic Legacy)
Gerry Mulligan, *Jeru* (Columbia Legacy)
Dexter Gordon, *Manhattan Symphonie* (Columbia Legacy)
The Bad Plus, *Suspicious Activity* (Columbia)
The Dead 60s, *The Dead 60s* (Epic)
Dion, *The Essential Dion* (Columbia Legacy)
Natasha Bedingfield, *Unwritten* (Epic)
Ricky Martin, *Life* (Columbia) (labeled as XCP, but, oddly, our disc

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had no protection)

Several other Sony-BMG CDs are protected with a different copy-protection technology, sourced from SunnComm, including:

My Morning Jacket, *Z*
Santana, *All That I Am*
Sarah McLachlan, *Bloom Remix Album*

This is not a complete list. So how do you recognize other XCP-laden CDs in the wild?

Tip-off #1: on the front of the CD, at the left-most edge, in the transparent "spine", you'll see "CONTENT PROTECTED" along with the IFPI copy-protection logo. A few [photos](#) make this clearer.



Tip-off #2: on the back of the CD, on the bottom or right side, there will be a "Compatible with" disclosure box. Along with compatibility information, the box also includes a URL where you can get help. The URL has a telltale admission buried in it: cp.sonybm.com/xcp. That lets you know that XCP is on this disc (discs protected with SunnComm have a different URL that includes "sunncomm").

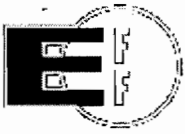


If you haven't been infected yet, to protect yourself from XCP in the future, [disable "autorun"](#) on your Windows PC. Once you have done so, however, these CDs may not be accessible under Windows unless you have specialized ripping software installed; these CDs are encoded in a way that intentionally confuses standard Windows CD drivers. For a smarter audio grabber for Windows, you may want to consider using [Exact Audio Copy](#), which reportedly can read these CDs if you have turned off autorun and avoided infection by XCP.

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Posted by Fred von Lohmann at 12:43 AM | [Permalink](#) | [Technorati](#)

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NOTEWORTHY NEWS FROM AROUND THE INTERNET

« [Are You Infected by Sony-BMG's Rootkit?](#) | [Main](#) | [Anti-Cell Phone Tracking Judicial Revolution Spreads to New York City](#) »

Now the Legalese Rootkit: Sony-BMG's EULA

November 09, 2005

If you thought [XCP "rootkit"](#) copy-protection on Sony-BMG CDs was bad, perhaps you'd better read the 3,000 word (!) [end-user license agreement](#) (aka "EULA") that comes with all these CDs.

First, a baseline. When you buy a regular CD, you own it. You do not "license" it. You own it outright. You're allowed to do anything with it you like, so long as you don't violate one of the exclusive rights reserved to the copyright owner. So you can play the CD at your next dinner party (copyright owners get no rights over private performances), you can loan it to a friend (thanks to the "first sale" doctrine), or make a copy for use on your iPod (thanks to "fair use"). Every use that falls outside the limited exclusive rights of the copyright owner *belongs to you*, the owner of the CD.

Now compare that baseline with the world according to the Sony-BMG EULA, which applies to any digital copies you make of the music on the CD:

1. **If your house gets burgled, you have to delete all your music from your laptop when you get home.** That's because the EULA says that your rights to any copies terminate as soon as you no longer possess the original CD.
2. **You can't keep your music on any computers at work.** The EULA only gives you the right to put copies on a "personal home computer system owned by you."
3. **If you move out of the country, you have to delete all your music.** The EULA specifically forbids "export" outside the country where you reside.
4. **You must install any and all updates, or else lose the music on your computer.** The EULA immediately terminates if you fail to install any update. No more holding out on those hobbledware downgrades masquerading as updates.
5. **Sony-BMG can install and use backdoors in the copy**

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protection software or media player to "enforce their rights" against you, at any time, without notice. And Sony-BMG disclaims any liability if this "self help" crashes your computer, exposes you to security risks, or any other harm.

6. **The EULA says Sony-BMG will never be liable to you for more than \$5.00.** That's right, no matter what happens, you can't even get back what you paid for the CD.
7. **If you file for bankruptcy, you have to delete all the music on your computer.** Seriously.
8. **You have no right to transfer the music on your computer, even along with the original CD.**
9. **Forget about using the music as a soundtrack for your latest family photo slideshow, or mash-ups, or sampling.** The EULA forbids changing, altering, or make derivative works from the music on your computer.

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So this is what Sony-BMG thinks we should be allowed to do with the music on the CDs that we purchase from them? No word yet about whether Sony-BMG will be offering a "[patch](#)" for this legalese rootkit. I'm not holding my breath.

Posted by Fred von Lohmann at 12:24 PM | [Permalink](#) | [Technorati](#)

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Exhibit 8



G R E E N ■ W E L L I N G L L P

November 14, 2005

VIA FACSIMILE & CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Daniel M. Mandil,
Executive Vice President, Global General Counsel, and Secretary
SONY BMG MUSIC ENTERTAINMENT
550 Madison Avenue
New York, NY 10022

Howard Stringer
Chief Executive Officer
Sony Entertainment
c/o Daniel M. Mandil,
Executive Vice President, Global General Counsel, and Secretary
SONY BMG MUSIC ENTERTAINMENT
550 Madison Avenue
New York, NY 10022

Gunter Thielen
Chief Executive Officer
Bertelsmann AG
c/o Daniel M. Mandil,
Executive Vice President, Global General Counsel, and Secretary
SONY BMG MUSIC ENTERTAINMENT
550 Madison Avenue
New York, NY 10022

**Re: Notice Under California Consumers Legal Remedies Act,
Civil Code Sections 1750, et seq. and California's Unfair Competition Law,
Business and Professional Code Section 17200**

Dear Sirs:

The purpose of this letter is to accord Sony BMG Music Entertainment ("Sony BMG"), Sony Entertainment and Bertelsmann AG notice of the claims, pursuant to California Consumers Legal Remedies Act ("CLRA") and California's Unfair Competition Law ("UCL"), of

595 MARKET ST ■ SUITE 2750 ■ SAN FRANCISCO ■ CALIFORNIA 94105
TEL (415) 477-6700 ■ FAX (415) 477-8710 ■ EMAIL GW@CLASSCOUNSEL.COM ■ WWW.CLASSCOUNSEL.COM

Daniel M. Mandil,
Executive Vice President, Global General Counsel, and Secretary
November 14, 2005
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Robert Hull and all persons similarly situated and to propose certain remedies to resolve their claims.

Independent researcher Mark Russinovich and many others documented the fact that Sony BMG is using Digital Rights Management software, Extended Copy Protection (XCP) by First4Internet and MediaMaxx by SunComm. The XCP technology installs itself onto a consumer's computer as a rootkit. The Anti-Spyware Coalition, Computer Associates, and Microsoft Corporation describe rootkits as malware. The End User License Agreement ("EULA") that appears before the installation process of XCP and SunComm software begins, fails to disclose to the consumer the rootkit or the risk that this software creates on the user's computer.

Robert Hull purchased a CD, 12 Songs by Neil Diamond, which was produced and distributed by Sony BMG. The "12 Songs" CD is known to have XCP software. When Mr. Hull played the "12 Songs" CD, the software program presented him with a EULA that fails to disclose the rootkit, the impact of the rootkit on Mr. Hull's computer system, and the harm it could cause to Mr. Hull's computer.

These offices, on behalf of Mr. Hull, assert that Sony BMG, Sony and Bertelsmann AG violated California law including, but not limited to, California's Consumer Legal Remedies Act (Civil Code § 1750, *et seq.*), California's Unfair Competition Law (Business & Professions Code § 17200, *et seq.*), and California's Computer Protection against Computer Spyware Act (Business & Professions Code § 22947, *et seq.*) as to the members of a putative class composed of:

All California residents who purchased an audio compact disc distributed by Sony BMG, which contains XCP or SunComm software.

Moreover, pursuant to California Civil Code Section 1782, you are notified that Sony BMG marketed, advertised and sold CDs that contain XCP software, although the XCP software on such CDs: (1) was written with the intent to conceal its presence and operation from the owner of the computer; (2) causes harm to the consumer's computer; (3) increases the risk of damage to a consumer's computer by malware; (4) installs itself in the consumer's computer without a means to uninstall; and (5) causes a consumer's computer to transmit information without the consumer's knowledge. Despite the existence of the undisclosed nature of the product, Sony BMG continued to market and sell its audio CDs to consumers, including Mr. Hull.

This conduct constitutes violations of Section 1770 of the Civil Code as follows:

- In violation of Section 1770(a)(5) of the Act, Sony BMG represented that its goods have characteristics, uses, benefits which they do not have;
- In violation of Section 1770(a)(9) of the Act, Sony BMG advertised goods or services

Daniel M. Mandil,
Executive Vice President, Global General Counsel, and Secretary
November 14, 2005
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with the intent not to sell them as advertised;

- In violation of Section 1770(a)(14) of the Act, Sony BMG advertised that a transaction confers or involves, rights, remedies, or obligations which it does not have or involve; and/or
- In violation of Section 1770(a)(19) of the Act, Sony BMG inserted an unconscionable provision in the contract.

Mr. Hull, on behalf of himself and all others similarly situated hereby demands that Sony BMG correct, repair, replace or otherwise rectify the violations of Section 1770 listed above, including taking the following steps with regard to the plaintiff Class, by 9:00 a.m. Pacific Time on Friday November 18, 2005:

1. Recall all CDs that contain the XCP and SunnComm Media Max technology. The recall must include removing all infected CDs from store shelves as well as halting all online sales of affected merchandise.
2. Remove from all current and future marketing materials statements like that on <http://cp.sonybmg.com/xcp/english/updates.html> that say the cloaking software "is not malicious and does not compromise safety" and cease from making such statements to the public.
3. Widely publicize the potential security and other risks associated with the XCP and SunnComm MediaMax technology, to allow the 2.1 million consumers who have already purchased the CDs to make informed decisions regarding their use of those CDs. The publicity campaign should include, at a minimum, issuing a public statement describing the risks and listing every Sony CD, DVD or other product that contains XCP or SunnComm MediaMax. The publicity campaign should be advertised in a manner reasonably calculated to reach all consumers who have purchased the products, including in all markets where the CDs have been sold and should include "banner" notifications and hyperlinks displayed within Sony XCP players, as installed on users' personal computers.
4. To the extent that you can communicate with users of the XCP or SunnComm software electronically, provide them with notice of this demand and an opportunity to readily access and down load corrective software.
5. Cooperate fully with any interested manufacturer of anti-virus, anti-spyware, or similar computer security tools to facilitate the identification and complete removal of XCP and SunnComm MediaMax from the computers of those infected. In particular, Sony should publicly waive any claims it may have against for investigation or removal of these tools under the Digital Millennium Copyright Act (DMCA) and any similar laws.

Daniel M. Mandil,
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6. Offer to refund the purchase price of infected CDs or, at the consumer's election, provide a replacement CD that does not contain the XCP or SunnComm technology. For those consumers who choose to retain infected CDs, develop and make widely available a safe and secure software update that will allow consumers to easily uninstall the technology without losing the ability to play the CD on their computer and without revealing any personally identifying information to Sony.
7. Compensate consumers for any damage to their computers caused by the infected products, including the time, effort, and expenditure required to remedy the damage or verify that their computer system or network was or was not altered or damaged by XCP or SunnComm MediaMax products.
8. Prior to releasing any future product containing DRM technology, thoroughly test the software to determine the existence of any security risks or other possible damages the technology might cause to any user's computer.
9. Certify in a statement included in the packaging of every CD containing DRM technology that the product does not contain any concealed software such as the XCP rootkit, does not electronically communicate with Sony-BMG or any other party nor initiate the download of any software update or other data without informed consent of the consumer immediately prior to each communication, can be uninstalled without any need to contact Sony or disclose personally identifying information to anyone, does not present any security risks to any consumer's computer, and will not damage or reduce the performance of the consumer's computer or data in any way.
10. Cease from engaging, or if immediate cessation is impossible or unreasonably expensive under the circumstances, within a reasonable time, cease to engage, in the methods, acts, and practices in violation of 1770 listed above, including without limitation Sony BMG's practice of inserting unconscionable terms in End User License Agreements.

Daniel M. Mandil,
Executive Vice President, Global General Counsel, and Secretary
November 14, 2005
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The ongoing harm and risk to Class Members is such that three days is a reasonable period of time to respond to these issues. Should SonyBMG refuse this demand, Mr. Hull intends to seek monetary or injunctive relief as appropriate in addition to attorneys' fees and such other relief as the Court deems appropriate.

Yours very truly,

ELECTRONIC FRONTIER FOUNDATION
454 Shotwell St.
San Francisco, CA 94110

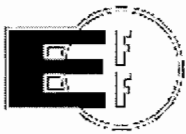
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Robert S. Green

RSG/APS

Writer's Direct E-Mail
rsg@classcounsel.com

Exhibit 9

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An Open Letter to Sony-BMG

To: Andrew Lack, CEO of Sony-BMG

Cc: Rolf Schmidt-Holtz, Chairman of the Board, Sony-BMG

Cc: Howard Stringer, CEO of Sony Entertainment

Cc: Gunter Thielen, CEO of Bertelsmann AG

Dear Mr. Lack,

The Electronic Frontier Foundation (EFF) has viewed with growing concern the revelations regarding the XCP Content Protection Software and the SunnComm MediaMax software that your company has chosen to include on at least two dozen of your music CD releases. We are also concerned by your company's limited response to the concerns of your customers and the computer security community.

As has been documented by independent researcher Mark Russinovich and many others, the XCP software appears to have been designed to have many of the qualities of a "rootkit." It was written with the intent of concealing its presence and operation from the owner of the computer, and once installed, elements of the software run continuously -- even when no Sony-BMG music CD is in use. It provides no clear uninstallation option. Additionally, without notifying users, the software appears to contact a remote machine under your control. The MediaMax software is somewhat different, but similarly has no true uninstall option and an undisclosed ongoing communication from the users' computer to SunnComm.

You must be aware that the discovery of this software has shocked and angered your customers. Software that deceives the owner of the computer it runs upon and opens that computer up to attacks by third parties may be expected to come from malicious cyber-attacks; it is certainly not expected nor acceptable to be distributed and sold to paying customers by a major music company. Accordingly, EFF welcomes your company's decision to temporarily halt manufacturing CDs with XCP and to reexamine "all aspects" of your "content protection initiative."

But if you truly intend to undo the harm you have caused, your company should immediately and publicly commit to the following additional measures:

- Recall all CDs that contain the XCP and SunnComm MediaMax technology. The recall must include removing all infected CDs from store shelves as well as halting all online sales of the affected merchandise. We understand from a recent New York Times article that well over 2 million infected CDs with the XCP technology are in the marketplace and have yet to be sold.
- Remove from all current and future marketing materials statements like that on <http://cp.sonybmg.com/xcp/english/updates.html> that say the cloaking software "is not malicious and does not compromise security."
- Widely publicize the potential security and other risks associated with the XCP and SunnComm MediaMax technology to allow the 2.1 million consumers who have already purchased the CDs to make informed decisions regarding their use of those CDs. The

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publicity campaign should include, at a minimum, issuing a public statement describing the risks and listing every Sony CD, DVD or other product that contains XCP or SunnComm MediaMax. The publicity campaign should be advertised in a manner reasonably calculated to reach all consumers who have purchased the products, in all markets where the CDs have been sold.

- Cooperate fully with any interested manufacturer of anti-virus, anti-spyware, or similar computer security tools to facilitate the identification and complete removal of XCP and SunnComm MediaMax from the computers of those infected. In particular, Sony should publicly waive any claims it may have for investigation or removal of these tools under the Digital Millennium Copyright Act (DMCA) and any similar laws.
- Offer to refund the purchase price of infected CDs or, at the consumer's election, provide a replacement CD that does not contain the XCP or SunnComm technology. For those consumers who choose to retain infected CDs, develop and make widely available a software update that will allow consumers to easily uninstall the technology without losing the ability to play the CD on their computers. In addition, consumers should not be required to reveal any personally identifying information to Sony in order to access the update, as Sony is currently requiring.
- Compensate consumers for any damage to their computers caused by the infected products, including the time, effort, and expenditure required to remedy the damage or verify that their computer systems or networks were or were not altered or damaged by XCP or SunnComm MediaMax products.
- Prior to releasing any future product containing DRM technology, thoroughly test the software to determine the existence of any security risks or other possible damages the technology might cause to any user's computer.
- Certify in a statement included in the packaging of every CD containing DRM technology that the product does not contain any concealed software such as the XCP rootkit, does not electronically communicate with Sony-BMG or any other party, does not initiate the download of any software update or other data without informed consent of the consumer immediately prior to each communication, can be uninstalled without any need to contact Sony or disclose personally identifying information to anyone, does not present any security risks to any consumer's computer, and will not damage or reduce the performance of the consumer's computer or data in any way.

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We look forward to hearing that you are in the process of implementing these measures by 9:00am PST on Friday, November 18, 2005.

Sincerely,

Electronic Frontier Foundation

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REDACTED

> From: Cindy Cohn <cindy@eff.org>
> Date: November 17, 2005 1:12:39 PM PST
> To: Jeff Cunard <jpcunard@debevoise.com>
> Subject: [SonyDRM-priv] Suncomm uninstaller vulnerability
>
> Dear Jeff,
>
> Fred's out giving a speech this morning so I'm pinch hitting.
>
> In light of our discussions yesterday, in which you asked me to inform
> you as soon as possible if we had discovered any security risks due to
> SunComm's technology, I think you and your clients should look at Ed
> Felten's Freedom to Tinker blog post of a few minutes ago entitled:
> "Not Again! Uninstaller for Other Sony DRM Also Opens Huge Security
> Hole"
>
> <http://www.freedom-to-tinker.com/>
>
> As we feared, it seems that SunComm's technology, specifically here
> the
> uninstaller, has created security risks for users. We don't know how
> many people this affects, but SunComm may since it appears that it
> provides the uninstaller to individuals upon specific request. We
> note
> that Professor Felten's blog does provide a patch, but that it is
> not a
> full correction for this problem.
>
> We worry that this is only the first security problem found with the
> SunComm technology and that others may follow. If you haven't already
> seen it, you may want to look at an earlier post on Professor Felten's
> blog discussing the technology generally, entitled: "Sony Shipping
> Spyware from SunComm, Too," of Saturday November 12.
>
> We are working on a comprehensive letter to you laying out what we
> believe remains to be done to avoid litigation and expect to send it
> shortly. It will include discussion of SunComm technology.
>
> Cindy
>
>
>
> *****
> Cindy Cohn
> Legal Director
> Electronic Frontier Foundation

---- Cindy@eff.org
---- www.eff.org

REDACTED

> 454 Shotwell Street
> San Francisco, CA 94110
> (415) 436-9333 x108
> (415) 436-9993 (fax)

>

>

> SonyDRM-priv mailing list
> SonyDRM-priv@eff.org
> <https://falcon.eff.org/mailman/listinfo/sonydrm-priv>
>

Cindy Cohn	---- Cindy@eff.org
Legal Director	---- www.eff.org
Electronic Frontier Foundation	
454 Shotwell Street	
San Francisco, CA 94110	
(415) 436-9333 x108	
(415) 436-9993 (fax)	

Exhibit 11

REDACTED

> From: "Cunard, Jeffrey P." <jpcunard@debevoise.com>
> Date: November 17, 2005 2:39:21 PM PST
> To: "Cindy Cohn" <cindy@eff.org>
> Subject: RE: Suncomm uninstaller vulnerability
>
> Dear Cindy:
>
> Thank you for bringing this to our attention. I am grateful to
> you. We
> are working on trying to remedy the issues previously identified as
> well
> as this one. I have now spoken with Robert Green about the difficulty
> of responding to a second letter on the same timetable as our response
> to the first one.
>
> Jeff
>
> -----Original Message-----
> From: Cindy Cohn [mailto:cindy@eff.org]
> Sent: Thursday, November 17, 2005 4:13 PM
> To: Cunard, Jeffrey P.
> Subject: Suncomm uninstaller vulnerability
>
>
> Dear Jeff,
>
> Fred's out giving a speech this morning so I'm pinch hitting.
>
> In light of our discussions yesterday, in which you asked me to inform
> you as soon as possible if we had discovered any security risks due to
> SunComm's technology, I think you and your clients should look at Ed
> Felten's Freedom to Tinker blog post of a few minutes ago entitled:
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>
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> shortly. It will include discussion of SunComm technology.

>
> Cindy

>

>

>

> *****

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>

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November 17, 2005

VIA FACSIMILE
(202) 383-8118

Jeffrey P. Cunard
DEBEVOISE & PLIMPTON LLP
555 13th Street, N.W.
Suite 1100 East
Washington, D.C. 20004

Re: Sony-BMG

Dear Jeff:

We are pleased that Sony-BMG has taken steps to address the concerns raised in EFF's open letter, our joint letter of November 15, 2005, and our subsequent discussions. We look forward to a resolution that, to the extent possible, adequately addresses the computer security, privacy and other concerns created by Sony BMG's distribution of copy-protected CDs.

We have not yet made a final decision regarding whether the filing of another suit against Sony BMG will be necessary to secure the relief to which we believe consumers are entitled. While we are heartened by the steps your client has taken thus far, we believe that additional steps are necessary in order to vindicate the interests that led us to engage in discussions with you. We believe that if Sony commits to the relief we request, that further litigation would not be best interest of our clients or the potential class. To that end, we would be prepared to coordinate a settlement process with a view toward an amicable resolution of all pending litigation on these issues.

Accordingly, we detail in this letter the additional steps, beyond those that you have represented Sony is already taking, that, if undertaken by your client, would lead us to forgo filing a suit.

- Sony shall use the "banner" functionality included in the XCP-protected CDs, Sony shall provide notice to XCP users that they may be exposed to security risks and direct them to instructions detailing steps they can take to eliminate such risks.
- Sony shall commit to a reasonable claim and compensation plan for consumers who incurred costs and expenses related to the XCP software or their attempt to remove it.
- Sony shall immediately revise its website and other promotional materials to remove any misleading, deceptive or inaccurate statements regarding the XCP or SunnComm technologies.

Jeffrey P. Cunard
Re: Sony BMG
November 17, 2005
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- With respect to any personally identifying information gathered from consumers who previously submitted such information in order to obtain the “patch” or “uninstaller,” and notwithstanding any more permissive provisions contained in the general privacy policy posted on its website, Sony shall commit and take steps to ensure that such information is not used by Sony or its affiliates for any purpose other than to communicate with consumers about remedying the security problems created by XCP. Going forward, the provision of personally identifying information to Sony shall not be a prerequisite for any CD exchange program or access to any uninstaller.
- With respect to consumers who requested the XCP “uninstaller” on or before Nov. 16, 2005, Sony shall provide such consumers by email, and postal mail if such information is known, with notice that the uninstallers may have created additional security risks and instructions for correcting these risks.
- Sony shall revise the End User License Agreement that accompanies any future XCP- or SunnComm-protected CDs to remove any inaccurate, misleading or deceptive statements and to disclose any communication between the software and Sony. Sony shall also publicly commit not to enforce the provisions contained in Articles 2.3 (conditioning rights on physical possession), 3.1 (restricting use and transfer beyond bounds of copyright law), 3.3 (authorizing self-help), 6 (limiting liability to \$5), 7 (indemnity against consumer), 8 (obligation to install all updates), 9.1 (conditioning rights on physical possession), 9.2 (termination for breach, failure to update, or insolvency), 10.1 (choice of law and forum), and 10.2 (waiver of jury) of such End User License Agreements.
- Sony shall provide consumers who have installed XCP with vouchers or coupons that will ensure free access , for a limited time, to anti-virus and anti-spyware tools necessary to ensure that no malicious activity has taken place on their computer.
- Sony shall publicly commit to take prompt corrective steps, equivalent to those it has taken with respect to XCP-protected CDs, in the event that security vulnerabilities are discovered in connection with SunnComm-protected CDs.
- For costs, attorney time, and other expenditures relating to this matter, Sony shall pay counsel’s reasonable attorneys’ fees and costs.

Jeffrey P. Cunard
Re: Sony BMG
November 17, 2005
Page 3

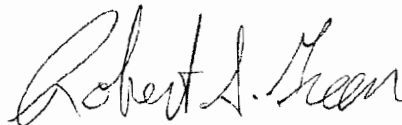
In the event Sony is willing to commit to the steps outlined above by tomorrow morning at 9 am PST, we will forgo litigation in connection with this matter.

Please let us know at your earliest convenience whether your client is prepared to commit to the remedial measures detailed above.

Yours very truly,

ELECTRONIC FRONTIER
FOUNDATION
454 Shotwell St.
San Francisco, CA 94110

GREEN ■ WELLING LLP
A Limited Liability Partnership

A handwritten signature in black ink, appearing to read "Robert S. Green". The signature is fluid and cursive, with the first name "Robert" being more prominent than the last name "Green".

Robert S. Green

RSG/lrc

Exhibit 13

DEBEVOISE & PLIMPTON LLP

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Washington, D.C. 20004
Tel 202 383 8000
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Jeffrey P. Cunard
Partner
Tel 202 383 8043
Fax 202 383 8118
jpcunard@debevoise.com

November 18, 2005

BY ELECTRONIC MAIL AND FACSIMILE

Robert S. Green, Esq.
Green & Welling LLP
235 Pine Street, 15th Fl.
San Francisco, CA 94104

Demand Letter to Sony BMG Music Entertainment

Dear Mr. Green:

Thank you for your letter dated November 15, 2005, enclosing a letter sent by the Electronic Frontier Foundation ("EFF") and you to Messrs. Mandil, Stringer and Thielen. Sony BMG Music Entertainment ("Sony BMG") has asked us to respond to that enclosed letter on its behalf.

As you know and as we explained to you and your colleagues at EFF, Sony BMG takes very seriously the security concerns raised with respect to XCP protected compact discs. As soon as these issues were identified, the company promptly, voluntarily and prior to the receipt of your letter decided to take several proactive steps to mitigate these concerns.

To respond more specifically to the steps identified in your letter, the following summarizes what Sony has done, and is committed to doing:

1. Sony BMG has ceased manufacturing compact discs with XCP software.
2. Sony BMG is taking steps to withdraw compact discs with XCP software from its distribution and retail chains. It has sent a letter to retailers asking them to cease sale of those discs and to return them to Sony BMG. This withdrawal program has been and is being widely publicized.
3. Sony BMG is moving as quickly as the manufacturing process will allow to replace all compact discs with XCP that are present in the chain of distribution with non-copy protected discs.

4. With respect to XCP protected compact discs in consumer hands, Sony BMG has announced an exchange program. Any consumer who has purchased an XCP protected compact disc will be able to receive replacement, non-copy protected discs in exchange. Customers will be able to return those discs to the place of purchase. In addition, consumers will be able to use UPS to mail in the discs at no charge to them. Moreover, Sony BMG will also provide free MP3 downloads of the music to consumers upon their return of XCP protected discs via the UPS mail-in exchange program. Sony BMG is committed to providing notice of the program through retailers and by electronic means (such as via email to purchasers of XCP protected compact discs, where Sony BMG has that information). Information for consumers, including a list of XCP protected titles, is available on the Sony BMG website through FAQs directly accessible from the Sony BMG home page, at <http://cp.sonybm.com/xcp/english/faq.html>, and at <http://www.upsrow.com/sonybm/>.

5. Any consumer who has already purchased an XCP protected compact disc and who does not want to remove the XCP software from his or her computer can download a software update from the Sony BMG website at <http://cp.sonybm.com>. The effect of this update is to "uncloak" the XCP components on the user's hard drive, thereby allowing anti-virus software to detect it and block any viruses from exploiting it.

6. Sony BMG also will make available a software program through its website that will give consumers the option of either applying the software update or altogether uninstalling the XCP components from their computers. As we have explained to you, neither downloading the software update nor entirely removing the XCP components affects the consumer's ability to play and use any music from an XCP protected compact disc already transferred from the disc to the computer. Sony BMG is aware that further security-related concerns have been raised with respect to the means by which the previous version of the uninstaller program had been provided (i.e., the downloading of ActiveX controls). These concerns are not present with respect to the new program, which will also have the effect of removing any ActiveX controls from the user's computer.

7. Sony BMG has been working with outside consultants to test both the software update previously provided and the new program. Both have been found to work without creating any security concerns. Sony BMG encourages legitimate security research into copy protection technologies and, accordingly, Sony BMG will not assert claims under title 17 of the United States Code (or similar statutes in other countries) against legitimate security researchers who have been, are or will be working to identify security problems with copy protection technologies used on Sony BMG compact discs.

8. In addition, Microsoft and all the major anti-virus companies have been made aware of the security issues that have been raised. The anti-virus companies have issued updates to their customers to address any potential vulnerability arising from the installation of XCP software.

9. Through its website, communications with retailers and otherwise (including, where feasible, by electronic means, such as emails to consumers who had previously requested the program to uninstall XCP software), Sony BMG has been publicizing the availability of the software updates and uninstaller and it will continue to do so.

10. Separately from the security-related issues raised above, you have identified concerns with respect to the End User License Agreements ("EULAs") used on copy protected compact discs. Sony BMG is committed to reviewing the EULAs that it uses on all of its discs with copy protection software to ensure that they are clear and disclose information to the consumer.

11. Any present and future copy protection technology used by Sony BMG will be tested, verified and disclosed to consumers.

12. Sony BMG is sensitive to privacy-related concerns that have been raised. Sony BMG and its copy protection vendors remain committed to refrain from disclosing any IP addresses obtained through consumers' use of enhanced compact discs and to refrain from using that information for any purpose other than to provide the enhancements that are available on such discs. Sony BMG does not aggregate any IP addresses with any personally identifiable information. Furthermore, to the extent that Sony BMG has obtained any personally identifying information in the course of providing an uninstaller, consistent with its privacy policies, Sony BMG remains committed to not using that information for any purpose other than to contact individuals with regard to uninstallation and other matters described in this letter.

We believe that these steps go well beyond satisfying any obligation that Sony BMG has under California law. In fact, Sony BMG consumers who take advantage of the exchange program will not only be able to continue to enjoy the music for which they have paid, but also will be able to receive a brand new, non-copy protected compact disc of the same title and, in the case of those using the UPS mail-in program, a free MP3 download of the tracks on the disc. That is certainly the functional equivalent of the refund you requested, if not more.

With respect to the items in your letter not fully addressed by the foregoing, we note the following:

A. Sony BMG is unaware that compact discs with SunnComm MediaMax technology are "infected" and, therefore, does not believe that they need to be withdrawn from the market. Sony BMG, however, will be reviewing its use of copy protection on all of its compact discs. In addition, as noted above, Sony BMG will reexamine *all* of its EULAs, including the EULA associated with MediaMax.

B. Sony BMG is aware that potential security concerns have been raised publicly in the last couple of days with respect to the uninstaller that SunnComm has been providing. In response, this uninstaller has been withdrawn. SunnComm is producing and will be making available to consumers an uninstaller that will address those concerns.

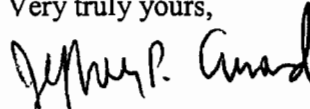
C. Although you have asked that Sony BMG "compensate consumers for any damage to their computers caused by the infected products," Sony BMG is unaware of any computer that has suffered any "damage" due to the use of an XCP protected compact disc. Should Sony BMG be contacted by a consumer claiming such damage, it will respond appropriately.

D. Although you have requested that Sony BMG "cease from engaging" in what your letter characterizes as legal violations, your request assumes a legal conclusion. Sony BMG has taken significant steps to address the concerns that have been addressed and it does not believe that its use of XCP copy protection software or its EULAs violated any laws.

Sony BMG has publicly apologized to its consumers and has moved aggressively and voluntarily to address the issues that have been raised. The company is working hard to mitigate the concerns and do what it can to repair its relationships with its customers. These efforts will continue.

Sony BMG appreciates EFF's role in raising its concerns and, in so doing, affording the company the opportunity to respond. If you have further comments or concerns, please feel free to contact Sony BMG or me at any time.

Very truly yours,



Jeffrey P. Cunard

cc: Fred von Lohmann, Esq.
Electronic Frontier Foundation

Exhibit 14

DEBEVOISE & PLIMPTON LLP

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Jeffrey S. Jacobson
Partner
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Fax 212 521 7479
jjacobson@debevoise.com

January 11, 2006

VIA FEDERAL EXPRESS

The Honorable Bill Lockyer
Attorney General
1300 I Street, Suite 1740
Sacramento, CA 95814

Notice of Proposed Class Action Settlement

IN RE SONY BMG CD TECHNOLOGIES LITIGATION

Dear Attorney General Lockyer:

In compliance with the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, SONY BMG Music Entertainment ("SONY BMG"), a Delaware general partnership headquartered in New York City, by its counsel, Debevoise & Plimpton LLP, hereby advises you of a proposed settlement that it and its two co-defendants — First4Internet Ltd. (a United Kingdom corporation) and SunnComm International Inc. (a Nevada corporation headquartered in Arizona) — have reached in the matter of In Re Sony BMG CD Technologies Litigation, Case No. 05-CV-9575, (the "Action") pending in the United States District Court for the Southern District of New York (the "S.D.N.Y. Court") before the Honorable Naomi Reice Buchwald. The Action concerns SONY BMG's use of First4Internet's "XCP" and SunnComm's "MediaMax" copy protection software on approximately 100 audio compact disc titles released by SONY BMG since August 2003, and damages plaintiffs allege were caused thereby.

Enclosed, as required by CAFA, please find the following materials relating to this proposed settlement:

1. The original complaint in the Action filed by plaintiffs James Michaelson and Ori Edelstein on November 14, 2005;
2. The Case Management Order entered by the S.D.N.Y. Court on December 1, 2005, which consolidated the first-filed Michaelson complaint with other lawsuits alleging identical claims, and appointed co-lead counsel for plaintiffs;

3. The Consolidated Amended Complaint in the Action filed by plaintiffs' co-lead counsel on December 28, 2005;
4. The Motion and Memorandum of Law in Support of Plaintiffs' Application for Preliminary Approval of the Class Action Settlement filed on December 28, 2005;
5. The Affidavit of Elizabeth C. Pritzker in Support of Plaintiffs' Application for Preliminary Approval of Class Action Settlement executed on December 28, 2005 ("Pritzker Affidavit"), and the Exhibits thereto, which include the Settlement Agreement between plaintiffs and defendants, and the various attachments to the Settlement Agreement; and
6. The Hearing Order preliminarily approving the settlement, which was signed by the S.D.N.Y. Court on January 6, 2006. Please note that this Hearing Order is the only written judicial opinion relating to materials described under the Class Action Fairness Act's notice requirements, 28 U.S.C. § 1715(b)(3)-(b)(6).

The Settlement Agreement is Exhibit C to the enclosed Pritzker Affidavit. The proposed full and summary forms of notice to class members of the proposed settlement of the class action are Exhibits F and G to the Settlement Agreement.⁶ Instructions to class members as to how they may request exclusion from the settlement class appear as Question 13 of the notice appended as Exhibit F. The deadline for settlement class members to request exclusion is May 1, 2006. Please note that the damages class, through which all direct relief will be provided to consumers, will be certified for settlement purposes on an opt-out basis under Federal Rule of Civil Procedure 23(b)(3). The settlement also provides for potential injunctive relief, and the settlement class for this injunctive relief would be certified on a non-opt out basis under Rule 23(b)(2).

CAFA requires SONY BMG to provide "a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement." 28 U.S.C. § 1715(b)(7). Because SONY BMG sells the vast majority of audio CDs through retailers, including national chains, rather than directly to consumers, it does not have data respecting the number of affected CDs sold in each state or the identities of the purchasers.

⁶ Paragraph 10(e) of the Hearing Order lists the periodicals in which SONY BMG is required to publish the summary form of notice. SONY BMG has contracted with Kinsella/Novak Communications Ltd. to publish the notice in these publications, as well as several other newspapers around the country, which have a combined circulation of nearly 12 million. Additionally, SONY BMG will publish a Spanish-language version of the summary notice in four leading Spanish-language newspapers, and will post the full notice in Spanish on the settlement website.

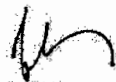
January 11, 2006

As of January 4, 2006, SONY BMG believes that the total number of CDs containing the XCP software sold to consumers in the United States was approximately 3.0 million, that the total number of CDs containing MediaMax Version 5.0 sold to consumers in the United States was approximately 4.2 million, and that the total number of CDs containing MediaMax Version 3.0 sold to consumers in the United States was approximately 9.5 million. Although SONY BMG cannot state this for certain, it believes that the number of CDs sold in each state has been roughly proportionate to the state's share of the overall national population. Because the proposed settlement provides the same benefits to each settlement class member, regardless of location, the proportion of the total benefits received by the residents of each state also would be roughly equal to the state's share of the overall U.S. population.

The next scheduled judicial hearing concerning the proposed settlement is the Fairness Hearing, now slated to occur on May 22, 2006, at 9:15 AM at the Daniel Patrick Moynihan United States Courthouse for the Southern District of New York.

If you have any questions about this notice, please do not hesitate to contact me by phone at (212) 909-6479 or by email at jsjacobson@debevoise.com.

Respectfully submitted,



Jeffrey S. Jacobson

Enclosures

Exhibit 15

Robert S. Green (State Bar No. 136183)
 Jenelle Welling (State Bar No. 209480)
 Avin P. Sharma (State Bar No. 233328)
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Reed R. Kathrein (State Bar No. 139304)
 Shana Scarlett (State Bar No. 217895)
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 Facsimile: (415) 288-4534

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ROBERT HULL, JOSEPH HALPIN and
 EDWIN BONNER, on behalf of themselves
 and all others similarly situated

Plaintiffs,

v.

SONY BMG MUSIC ENTERTAINMENT
 CORP., SONY CORPORATION OF
 AMERICA, and BERTELSMANN, INC.

Defendants.

CONFORMED COPY
 OF ORIGINAL FILED
 Los Angeles Superior Court

NOV 21 2005

John A. Clarke, Executive Officer/Clerk
 By D. GILES Deputy

Case No. **8 C 343385**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, by and through their attorneys, bring this action on behalf of themselves and all
 others similarly situated, and allege against Defendants as follows:

CLASS ACTION COMPLAINT

COPY

1 **INTRODUCTION**

2 1. By including a flawed and overreaching computer program in over 20 million
3 music CDs sold to the general public, including California residents, Sony BMG has created
4 serious security, privacy and consumer protection problems that have damaged Plaintiffs and
5 thousands of other Californians. At issue are two software technologies --MediaMax and
6 Extended Copy Protection, also known as XCP – which defendant Sony BMG claims to have
7 placed on the music CDs to restrict consumer use of the music on the CDs but which in truth do
8 much more, including monitoring customer listening of the CDs and installing undisclosed and
9 in some cases hidden files on users' computers that can expose users to malicious attacks by
10 third parties, all without appropriate notice and consent from purchasers. The CDs also
11 condition use of the music on unconscionable licensing terms. These, plus other problems
12 caused by Sony BMG's inclusion of this software, are in violation of California law and public
13 policy. After a series of embarrassing public revelations about security risks associated with the
14 XCP software, including warnings issued by the United States Government, Microsoft and
15 leading anti-virus companies, defendant Sony BMG has taken some steps to respond to the
16 security risks created by the XCP technology. It has failed, however, to address security concerns
17 raised by the MediaMax software or the consumer privacy and consumer fairness problems
18 created by both technologies.

19 **JURISDICTION AND VENUE**

20 2. The jurisdiction of this Court arises under Code of Civil Procedure § 410.10
21 because Defendants conduct business in and sell a substantial number of audio compact discs in
22 the State of California. This Court has subject matter jurisdiction over this Class and the
23 representative action pursuant to Bus. & Prof. Code, § 17200, et seq. ("UCL"); Bus. & Prof.
24 Code § 17500, et seq.; Civ. Code § 1750, et. seq.; Code of Civil Procedure § 382; and other
25 provisions of the California Codes.

26 3. Venue is proper in this County pursuant to Code of Civil Procedure, § 395.5,
27 Civil Code, § 1780(c), Bus. & Prof. Codes, §§ 17202 and 17203, because Sony BMG conducts
28 substantial business within this County.

1 **PARTIES**

2 4. At all times mentioned herein, Plaintiff Robert Hull was, and still is, an individual
3 and resident of Chatsworth, California.

4 5. At all times mentioned herein, Plaintiff Joseph Halpin was, and still is, an
5 individual and resident of Sebastopol, California.

6 6. At all times mentioned herein, Plaintiff Edwin Bonner was, and still is, an
7 individual and resident of La Jolla, California.

8 7. At all times mentioned herein, Defendant Sony BMG Music Entertainment
9 ("Sony BMG"), is and at all relevant times was, a Delaware General Partnership, with its
10 principal place of business in New York, New York. Sony BMG maintains an office in
11 California.

12 8. Defendant Sony Corporation of America is the U.S. subsidiary of Sony
13 Corporation, a multinational corporation based in Japan. At all times mentioned herein,
14 Defendant Sony Corporation of America, is and at all relevant times was, a New York
15 corporation, with its principal place of business in New York, New York.

16 9. Defendant Bertelsmann, Inc. is the U.S. subsidiary of Bertelsmann AG, a
17 multinational corporation based in Germany. At all times mentioned herein, Defendant
18 Bertelsmann, Inc., is a Delaware Corporation with its principal place of business in New York,
19 New York.

20 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

21 10. In August 2004, Sony Corporation merged its Sony Music Entertainment, Inc.
22 with Bertelsmann AG's BMG to create a joint venture, Sony BMG. Sony Corporation of
23 America and Bertelsmann AG are the parent companies, respectively, of Sony Music
24 Entertainment and BMG.

25 11. Sony BMG is the world's second largest music company. Its labels include Arista
26 Records, Columbia Records, Epic Records, J Records, Jive Records, LaFace Records, Legacy
27 Recordings, Provident Music Group, RCA Records, RCA Victor Group, RLG – Nashville,
28 SONY BMG Masterworks, Sony Music Nashville, Sony Urban Music, Sony Wonder, So So Def

1 Records, and Verity Records. Sony BMG manufactures, distributes, markets, and sells audio
2 compact discs ("CDs").

3 12. In 2003, Sony BMG began to distribute CDs that contain software that Sony
4 BMG refers to as Digital Rights Management ("DRM") to the public. This DRM software on
5 the Sony BMG CDs includes MediaMax created by SunnComm ("MediaMax CDs") and
6 Extended Copy Protection ("XCP") created by First4Internet ("XCP CDs"). On information and
7 belief, Sony BMG intended that most of its CDs sold in the United States would incorporate one
8 of these technologies.

9 13. Sony BMG is the first company to commercially deploy XCP.

10 14. On information and belief, Sony BMG has been using versions of XCP since
11 2002 on prerelease CDs sent to radio stations and internal employees.

12 15. On information and belief, Sony BMG and BMG have been using MediaMax on
13 some CDs since at least 2003. On information and belief, Sony BMG currently uses MediaMax
14 5 on its MediaMax CDs.

15 16. Since March 2005, Sony BMG has distributed at least 52 music titles with XCP
16 software. On information and belief, Sony BMG has shipped at least 4.7 million CD's
17 containing the XCP software, of which 2.1 million have been sold.

18 17. Sony BMG has also distributed many more music titles with MediaMax
19 software—including a number one hit CD last year by Velvet Revolver, entitled *Contraband*.
20 On information and belief, Sony BMG has distributed at least 20 million CDs with MediaMax
21 software.

22 18. In a November 11, 2005, MSNBC.com article, by Bob Sullivan, Sunncomm CEO
23 Peter Jacobs states that MediaMax is "now on about 20 million Sony BMG music discs."

24 **THE SUNNCOMM SOFTWARE IS UNDISCLOSED SPYWARE**
25 **AND COMPROMISES SECURITY**

26 19. The Anti-Spyware Coalition ("ASC") describes spyware as technologies deployed
27 without appropriate user consent and/or implemented in ways that impair user control over:
28 (1) material changes that affect a user's experience, privacy, or system security; (2) use of the

1 user's system resources, including what programs are installed on the user's computer; and/or
2 (3) collection, use, and distribution of a user's personal or other sensitive information. Computer
3 Associates defines spyware as "Any product that employs a user's Internet connection in the
4 background without their knowledge, and gathers/transmits info on the user or their behavior."
5 As discussed below, the MediaMax software used by Sony BMG on many of its CDs meets the
6 ASC's definition of spyware.

7 20. MediaMax installs without meaningful consent or notification. When a
8 MediaMax CD is inserted into a computer running Windows, MediaMax installs, prior to the
9 appearance of the End User License Agreement ("EULA"), approximately eighteen files that
10 consume approximately 15 MB on the user's hard drive. These files remain installed even if the
11 user declines the EULA presented later. One of them, a kernel-level driver with the cryptic name
12 "sbcpid," is both installed and launched. The "kernel" is the core of a computer operating
13 system, which controls and secures access to the computer's basic operations.

14 21. This kernel-level driver is the heart of the MediaMax copy protection system.
15 When it is running, it attempts to block CD ripping and copying applications from reading the
16 audio tracks on MediaMax CDs. The software refrains from making one final change until after
17 users accept the license—it does not set the driver to automatically run again every time
18 Windows starts. Nevertheless, the code keeps running until the computer is restarted and
19 remains on the hard disk indefinitely, even if the agreement is declined.

20 22. Only after these files are installed and at least one has launched does the software
21 display a EULA, which the user may accept or decline, making it a contract of adhesion. Even if
22 the EULA is declined, however, the software already installed prior to presentation of the EULA
23 remains on the user's computer.

24 23. The MediaMax CDs' EULA states: "As soon as you have agreed to be bound by
25 the terms and conditions of the EULA, this CD will automatically install a small proprietary
26 software program (the "SOFTWARE") onto YOUR COMPUTER. The SOFTWARE is
27 intended to protect the audio files embodied on the CD, and it may also facilitate your use of the
28 DIGITAL CONTENT. Once installed, the SOFTWARE will reside on YOUR COMPUTER

1 until removed or deleted.” This statement is not true, since by the time this message is displayed,
2 over eighteen files are already installed and, as noted above, those files remain on the hard disk
3 indefinitely, even if the agreement is declined. Attached hereto as Exhibit A and incorporated
4 herein by reference is a true and correct copy of the MediaMax EULA.

5 24. Sony BMG’s MediaMax CD EULA states that “[T]he SOFTWARE will not be
6 used at any time to collect any personal information from you, whether stored on YOUR
7 COMPUTER or otherwise.”

8 25. If purchasers seek more information about the software that has been installed on
9 their computer, they are directed to the SunnComm Sony BMG customer care website, which
10 falsely tells users that “No information is ever collected about you or your computer without you
11 consenting” and also states: “Is any personal information collected from my computer during the
12 digital key delivery process? No, during the digital key delivery process, no information is ever
13 collected about you or your computer.”

14 26. Despite the representations to the contrary in the EULA and the SunnComm
15 website, and without notification or consent of the user, the MediaMax software “phones home”
16 to SunnComm every time a user plays a protected CD. The software causes the computer to
17 connect to a Sony BMG and/or SunnComm server via the internet. The MediaMax software
18 conveys a unique code that identifies the album to which the user is listening. The request also
19 contains standard HTTP headers from which can be used to determine what operating system the
20 user is running and what version of the Internet Explorer web browser the user has.

21 27. On information and belief, prior versions of the MediaMax software still used on
22 some Sony BMG CDs contact Sony BMG and/or SunnComm to obtain “digital keys” that
23 permitted the CDs to be copied.

24 28. The SunnComm Sony BMG customer care website also does not have a visible
25 privacy policy.

26 29. The Media Max software connects to an online service at
27 <http://license.sunncomm2.com/>, which does not have a visible privacy policy.

28 30. The MediaMax software opens a web page from a Sony BMG and/or SunnComm

1 server and sends a 32-character identifier through an HTTP request. On information and belief,
2 this is a unique code that tells Sony BMG and/or SunnComm to which album the user is
3 listening. The request also contains standard HTTP headers that can be used to determine the
4 user's operating system.

5 31. The server to which the MediaMax software connects returns an HTTP response
6 to the MediaMax software. On information and belief, this response is intended to facilitate the
7 placement of dynamic, interactive advertisements that can be changed at any time by Sony BMG
8 and/or SunnComm.

9 32. The MediaMax software also transmits the user's computer's Internet Protocol or
10 "IP" address to servers controlled by Sony BMG or its agents, without receiving permission from
11 the computer user. No two IP addresses are alike and IP addresses provide the means to
12 determine information about the person who used the particular IP address. Users are assigned
13 an IP address by their Internet service provider or system administrator. Many users are issued
14 frequently changing "dynamic" IP addresses that make it difficult to track them individually, but
15 others have fixed, "static" addresses that can permit Sony BMG to ascertain their identities and
16 associate listening habits with particular individuals across many different CDs containing the
17 Sunncomm software.

18 33. The Sunncomm MediaMax support website
19 (<http://tickets.sunncomm.com/selfhelp/>), also misleadingly states, "Please note that MediaMax
20 was designed to manage and safeguard the copyrights of specified artists' CDs while giving you
21 an enhanced visual and listening experience. It does not interfere with or impact any of the
22 normal operations and/or functions of your computer." (emphasis in the original). As described
23 above, this statement is false.

24 34. Sony BMG fails to disclose, prior to purchase, that users running the MediaMax
25 CDs on Windows-based computers could have filed downloaded and stored on their computers
26 without their consent, and failed to disclose that the software would transmit information about
27 user, including monitoring whenever users listen to the CDs, without notification to or consent of
28 the users.

**SUNNCOMM'S MEDIAMAX UNINSTALLER CREATED A GREATER SECURITY
RISK AND VIOLATED USER'S PRIVACY**

35. On information and belief, none of the MediaMax CDs from Sony BMG contains an uninstaller.

36. Upon request, SunnComm will provide an internet-based uninstaller for the MediaMax software. On information and belief, SunnComm provides this uninstaller only after repeated requests that require the disclosure of personally identifying information.

37. The uninstaller suffers from a design flaw. When a user visits the SunnComm uninstaller web page, the user is prompted to accept a small software component—an ActiveX control called "AxWebRemoveCtrl" created by SunnComm.

38. This ActiveX control is designed so that any web page can ask it to download and executing code from an arbitrary website location or URL.

39. If a user visits a malicious website, the site can use the flawed ActiveX control to download, install, and run malicious or dangerous software code on the user's computer without the user's knowledge or consent. Such code could severely damage a user's computer, including but not limited to erasing a user's hard disk.

40. The uninstaller fails to remove the vulnerable ActiveX control from the user's computer following completion of the uninstallation process.

41. Sony BMG fails to disclose the security risks created by the MediaMax software and the MediaMax uninstaller, and their potential harm to a user's computer.

42. Therefore, users who hope to prevent and/or limit security and privacy risks must rely on the research and publication efforts of independent security experts and consumer advocates.

43. On information and belief, the MediaMax software causes additional damage to users' computers.

**THE XCP SOFTWARE IS UNDISCLOSED SPYWARE
AND COMPROMISES SECURITY**

44. Sony BMG's actions and omissions with respect to the MediaMax software are part of a pattern of corporate failure to investigate, address, and disclose the security and privacy risks associated with its inclusion of so-called DRM software on music CDs.

45. Similar and, in some respects, more serious risks have been identified in CDs loaded with another Sony BMG technology, Extended Copy Protection, or XCP. As with the MediaMax software, these risks have been disclosed by independent researchers and consumer advocates, rather than Sony BMG.

46. The software on a Sony BMG XCP CD is designed to operate only on Windows-based computers that run Windows 98SE/NT/2000/XP.

47. When a computer user places the Sony BMG XCP CD in a Windows based computer, the software is designed such that the user is first required to agree to a EULA. According to the EULA, a user cannot utilize the audio files or the digital content of the CD on the computer unless the user agrees to the EULA making it a contract of adhesion. Attached hereto as Exhibit B and incorporated herein by reference is a true and correct copy of the XCP EULA.

48. The user is then told that the XCP software automatically installs player software into the user's computer that will allow the user to play, save and copy the audio files on the CD.

49. According to the EULA, the software automatically installed by the XCP CD is intended to protect the "digital content" embodied on the XCP CD. Digital content appears to include audio files converted into digital music files as well as unspecified other "already existing digital content."

50. While the user is led to believe that Sony BMG's XCP software is installing the player software into the user's computer, it is actually installing software as a "rootkit" into the user's hard drive. The Sony BMG XCP software also installs a CD drive filter driver that intercepts calls to the computer's CD drive.

1 51. A rootkit is used to hide login, processes, files, and logs and may include software
2 to intercept data from terminals, network connections, CD drives, and keyboards. A rootkit is
3 invisible to the operating system and antivirus and security software, and is frequently used by
4 unauthorized third-parties, after gaining access to a computer system, to hide their activities.

5 52. Specifically, the Sony BMG rootkit is a system filter driver which intercepts all
6 calls for process, directory or registry listings, and then modifies what information is visible to
7 the operating system in order to hide every file, process, or registry key beginning with the
8 characters "\$sys\$."

9 53. Unbeknownst to users, once the rootkit is installed by the software on a Sony
10 BMG CD, the rootkit degrades the performance of the user's computer.

11 54. In a November 1, 2005, eweek.com article by Paul Roberts, computer security
12 analyst Mark Russinovich states that the rootkit files interact with the Windows operating system
13 at a very low level and fail to account for certain conditions that could cause the files to
14 overwrite areas of memory, crashing applications that use that memory, or even crashing the
15 entire Windows operating system. On information and belief, this article correctly illustrates
16 some of the damage the rootkit could do.

17 55. The rootkit causes significant and cumulative injury to a user's computer.
18 Specifically, the rootkit can interfere with the computer's CD drive, file copying software, and
19 media players. The rootkit also uses up system memory that would otherwise be available.

20 56. On or around November 4, 2005, on National Public Radio's "Morning Edition"
21 program, Thomas Hesse, President of Sony BMG's global digital business division, when asked
22 about the XCP controversy, responded "Most people, I think, don't even know what a rootkit is,
23 so why should they care about it?" In the same program, Mr. Hesse also denied that Sony
24 BMG's software communicated with Sony BMG, saying "No information ever gets gathered
25 about the users' behavior, no information ever gets communicated back to the user, this is purely
26 about restricting the ability to burn MP3 files in an unprotected manner."

27 57. Sony BMG failed to disclose that the XCP software, in the rootkit, automatically
28 connects the user's computer via the internet to a server owned or operated by Sony BMG or its

1 affiliates, without the user's consent. Once a user's computer is connected to the Sony BMG
2 website, the software sends an identification code associated with each XCP CD that is played on
3 that computer to the Sony BMG website. The Sony BMG server then automatically checks for
4 updates to the album art and lyrics for that album. This process uses the bandwidth that would
5 otherwise be available to the user's computer for other tasks.

6 58. As with the MediaMax software, this network connection provides Sony BMG
7 with the ability to record each time a CD with XCP software is played and the IP address of the
8 computer playing it, without receiving permission from the computer user. As discussed above,
9 no two IP addresses are alike and IP addresses provide the means to determine information about
10 the person who used the particular IP address. Sony BMG does not disclose the possibility of
11 this use of DRM software in its packaging, the installation process, or its EULA. Instead the
12 EULA states, "the SOFTWARE will not be used at any time to collect any personal information
13 from you, whether stored on YOUR COMPUTER or otherwise."

14 59. The Anti-Spyware Coalition and computer security firm Computer Associates
15 identify Sony BMG's XCP software as "Spyware."

16 60. Sony BMG's XCP software meets the ASC standards for spyware because the
17 rootkit is placed on the computer without the user's consent and it changes the user's system
18 security because the rootkit makes the user's computer more vulnerable to other types of
19 malware.

20 61. Computer Associates has classified the Sony BMG XCP rootkit as a form of
21 spyware known as a "Trojan," noting that the "XCP.Sony.Rootkit modifies you[r] operating
22 system at a low level, represents a large threat to both corporate and consumer users system
23 integrity." Computer Associates also has noted that "[t]he Rootkit functionality hides files and
24 enables hackers and other spyware to hide files with impunity."

25 62. Computer Associates has categorized Sony BMG's "Media Player" as spyware,
26 noting that "When launched from the CD, Music Player sends information back to Sony BMG,
27 indicating which album is being played."

28 63. Once the rootkit is on a user's computer, it creates an undisclosed risk of security

1 breach to that computer because other malicious software, such as computer viruses, worms, and
2 spyware that enter the computer could exploit the software concealed by the rootkit.

3 64. Malicious software coders have discovered that they can effectively render their
4 programs invisible by using names for computer files similar to ones cloaked by the Sony BMG
5 technology. On information and belief, several malicious programs that exploit the XCP
6 technology's ability to avoid detection have already been distributed over the internet. Further,
7 as stated above, XCP software transmits information about the user's computer, IP address, and
8 listening habits.

9 65. On or around November 12, 2005, Microsoft, Inc., the maker of the Windows
10 operating system stated that "Rootkits have a clearly negative impact on not only the security,
11 but also the reliability and performance of their systems" and Microsoft's Anti-Malware
12 Engineering Team informed consumers that "in order to help protect our customers we will add a
13 detection and removal signature for the rootkit component of the XCP software."

14 66. The nature of a rootkit makes it extremely difficult for a computer user to remove,
15 often leaving reformatting the entire hard drive as the only solution. Reformatting a hard drive
16 requires backing up all data on the hard drive, as reformatting a hard drive deletes all data on the
17 hard drive. The user is then required to re-install the operating system and all applicable
18 programs and drivers. This process can take many hours and is beyond the technical capabilities
19 of many users. Sony BMG's XCP CD EULA and install process do not disclose nor does the
20 CDs' software prompt users with information about the rootkit or the need to reformat the hard
21 drive in order to remove it.

22 67. In response to the public outcry about the deceptive nature of Sony BMG XCP
23 CDs, Sony BMG made available a software patch. The patch was only available on the Sony
24 BMG support site (<http://cp.sonybmg.com/xcp/english/home.html>). The patch does not remove
25 the software or allow the user to remove the software. The software patch merely makes the
26 software visible to system tools and antivirus software while installing an additional 3.5 MB of
27 updated versions of the software into the user's computer. Additionally, the patch contains a
28 design flaw that could cause a computer to crash as it is installed.

1 68. Sony BMG failed to disclose that if a user attempts to disable the software it will
2 likely disable the audio CD driver on the computer, rendering the user's CD drive inoperable. If
3 the rootkit is removed manually, the Sony BMG software's changes to the user's system will
4 render the user's CD drive non-functional. According to computer security firm Computer
5 Associates, "[r]econfiguring the CD-ROM driver to a functioning state will be beyond the ability
6 of the average home user."

7 69. Computer Associates categorized Sony BMG's patch as a "Trojan" and noted that
8 the Sony BMG software, even when patched with Sony BMG's update, continues to "represent a
9 threat to the user's control over their system"

10 70. The United States Computer Emergency Readiness Team (US-CERT), part of the
11 Department of Homeland Security that is charged with the task of "protecting the nation's
12 Internet infrastructure" by coordinating "defense against and responses to cyber attacks across
13 the nation" has stated that the XCP rootkit "can pose a security threat" and that "one of the
14 uninstallation options provided by Sony BMG also introduces vulnerabilities to a system."

15 71. Installation of a rootkit on a computer undermines the security of that computer.

16 72. Installation of a rootkit on a computer causes impairment to the integrity or
17 availability of data, a program, a system or information.

18 73. The software installed by Sony BMG includes a set of computer instructions that
19 are designed to modify, damage, destroy, record, and/or transmit information within a computer,
20 computer system, or computer network without the intent or permission of the owner of the
21 information.

22 74. On information and belief, the XCP software causes additional damage to users'
23 computers.

24 **SONY BMG'S FIRST XCP UNINSTALLER CREATED A GREATER**
25 **SECURITY RISK AND VIOLATED USER'S PRIVACY**

26 75. On information and belief, the only way for typical users to safely uninstall the
27 software is to obtain an uninstaller from Sony BMG. Until approximately November 15, 2005,
28

1 in order to obtain an uninstaller from Sony BMG, a user was required to navigate an extensive
2 request process and disclose more personal information to Sony BMG. First, the user was
3 required to go to the Sony BMG support website and fill out a form stating: a country where the
4 CD was purchased; the artist's name; the album title; the store name; and the user's e-mail
5 address. After submitting the form, the user was directed to a website which states that the user
6 that the user will receive an e-mail with a "Case ID." Next, the user received an e-mail that
7 directed the user to install the patch and then visit another website if the user still wanted to
8 uninstall the DRM software.

9 76. This further website, available until November 15, 2005, required the user to
10 install ActiveX control software. The user was then required to enter the Case ID and fill in the
11 reasons for the request. Once the user submitted this information, the user receives an email that
12 notifies the user that a customer service representative would email the uninstall instructions to
13 the user within a business day. The user then received an e-mail with a link to a confidentiality
14 notice, which had to be accepted before software could be uninstalled.

15 77. Sony BMG states that the information collected by Sony BMG before providing
16 the uninstaller is subject to its Privacy Policy, <http://www.sonybmg.com/privacypolicy.html>.
17 The Sony BMG Privacy Policy states, *inter alia*, that Sony BMG "may share the information we
18 collect from you with our affiliates or send you e-mail promotions and special offers from
19 reputable third parties in whose products and services we think you may have an interest. We
20 may also share your information with reputable third-parties who may contact you directly."

21 78. On information and belief, if the Sony BMG software was uninstalled using the
22 uninstaller available until November 15, 2005, the user was no longer able to receive the full use
23 and value of the XCP CD on his or her computer. Therefore, Sony BMG required the user to
24 either accept the malicious software or lose the full use and value of the XCP CD. Sony BMG
25 did not disclose this fact to users prior to purchase.

26 79. The Sony BMG software could not be uninstalled if the user proceeded to the
27 link from a different computer than the one on which the user installed the ActiveX control
28 software. If the user is not at that same computer he or she will receive an error message. The

1 uninstall link contains the Case ID in the address, so when the user proceeds to the uninstall link,
2 the ActiveX control software sends the sends a Sony BMG website an encrypted block of data.
3 This encrypted data is a signature that is tied to the hardware configuration of the user's
4 computer.

5 80. On information and belief, the ActiveX uninstaller leaves behind numerous
6 software methods that can be exploited by others.

7 81. The ActiveX uninstaller also exposes a user's computer to additional risks by
8 enabling malicious third parties to download and install over the internet because but the
9 ActiveX uninstaller fails to restrict such access only to Sony BMG or First4Internet. Such
10 malicious code could severely damage a user's computer, including but not limited to erasing a
11 user's hard disk.

12 82. Sony BMG does not cause the ActiveX control to be removed from user's
13 computers following completion of the installation process.

14 83. On information and belief, the uninstallation can cause further damage to users'
15 computers, including but not limited to, causing a user's Windows operating system to crash.

16 84. On or around November 15, 2005, Sony BMG posted the following message on
17 its website: "We currently are working on a new tool to uninstall First4Internet XCP software.
18 In the meantime, we have temporarily suspended distribution of the existing uninstall tool for
19 this software. We encourage you to return to this site over the next few days. Thank you for your
20 patience and understanding." Sony BMG failed to disclose the problems associated with the old
21 uninstaller. As of the filing of this complaint, no new uninstaller has been made available.

22 85. On information and belief, the software released by Sony BMG to resolve the
23 flaws in the XCP software can cause further damage to users' computers.

24 **SONY BMG HAS MADE MATERIAL MISREPRESENTATIONS AND**
25 **OMISSIONS REGARDING THE SOFTWARE IT HAS INCLUDED ON MUSIC CDS**

26 86. In addition to the material misrepresentations and omissions set forth above, Sony
27 BMG has made numerous additional misrepresentations and omissions of material facts.

28 87. On information and belief, the XCP and MediaMax CDs are disseminated with

1 identical EULAs.

2 88. Sony BMG's EULAs state that the MediaMax and XCP software installed on a
3 user's computer will not be used to collect any personal information. As set forth above, this is
4 untrue.

5 89. Sony BMG's EULAs state that the MediaMax and XCP software will remain on
6 the user's computer until it is removed or deleted. Neither the MediaMax nor the XCP software
7 allows a user to use the standard "add/remove program" function on the Windows operating
8 system to remove the program. Sony BMG's MediaMax and XCP CDs and its software fail to
9 provide information about how to remove the program or even how to contact Sony BMG to
10 resolve any problems with the program.

11 90. The EULAs disclose that the MediaMax and XCP drivers try to "protect the audio
12 files embodied on the CD." However, the drivers also attempt to restrict access to any other CD
13 that uses MediaMax or XCP technology. Therefore, users need only agree to installation on one
14 album for the software to affect users' ability to use many other titles.

15 91. Sony BMG uses its website to advertise and promote the sale of its CDs. On its
16 website, until November 15, 2005, Sony BMG falsely denied that its software is spyware and
17 that it posed a security risk. Sony BMG also made the false claim that the software does not
18 collect any personal information nor is it designed to be intrusive to the user's computer system.

19 92. On or around November 8, 2005, Sony BMG publicly and falsely stated, on the
20 <http://cp.sonybmg.com/xcp> website, that the XCP software's rootkit "component is not malicious
21 and does not compromise security."

22 93. The above website directs users to another site, <http://updates.xcp-aurora.com/>,
23 where users can obtain a software update to remove the rootkit component of the XCP
24 technology. As of the filing of this complaint, the website states that the cloaking component "is
25 not malicious and does not compromise security."

26 94. On its support website (<http://cp.sonybmg.com/xcp/english/home.html>), Sony
27 BMG stated, until approximately November 16, 2005, that its XCP software simply acts to
28 prevent unlimited copying and ripping from discs featuring the technology. Sony BMG created

1 the false impression that the only effect of software included on CDs would be to restrict the
2 ability to create copies of CDs or the quantity of CDs that a user can copy.

3 95. On or around November 16, 2005, Sony BMG announced, on the
4 <http://cp.sonybm.com/xcp> website, that it shared the security concerns of consumers regarding
5 the XCP discs, and offered to exchange new CDs for CDs with XCP software. Sony BMG did
6 not indicate the nature or extent of the security risks associated with the XCP software. Sony
7 BMG also affirmed that the XCP software was not a “monitoring technology.”

8 96. Sony BMG uses its website to advertise and promote the sale of its CDs. On its
9 website, until November 15, 2005, Sony BMG falsely denied that its software is spyware and
10 that it posed a security risk. Sony BMG also made the false claim that the software does not
11 collect any personal information nor is it designed to be intrusive to the user’s computer system.
12 Sony BMG has failed to make efforts to publicize the flaws in its XCP software and uninstaller,
13 apart from statements on its websites and statements to the press. Therefore, many XCP CD
14 purchasers are unaware of the security and other risks caused by the software.

15 97. Sony BMG has failed to publicly disclose or address the risks associated with
16 MediaMax software and its uninstaller. Therefore, many MediaMax CD purchasers are unaware
17 of the security and other risks caused by the software.

18 98. As set forth above, the MediaMax CD EULA and the SunnComm Sony BMG
19 support website misleadingly represent that the software will not be used to collect personal
20 information about the user without his or her permission.

21 99. As set forth above, the MediaMax CD EULA and the SunnComm Sony BMG
22 support website falsely represent that MediaMax software will not be installed if the user
23 declines the EULA.

24 100. The MediaMax EULA fails to disclose other important details about what the
25 uninstaller does, including but not limited to the security risks it poses to users’ computers.

26 101. According to Sony BMG, the purpose of the software is to restrict the ability to
27 create copies of CDs or the quantity of CDs that a user can copy. The MediaMax and XCP
28 software goes far beyond copyright protection, however. For example, the software makes it

1 extremely difficult for a consumer with a PC to transfer their music to an Apple Corporation-
2 manufactured iPod but easy to transfer to other portable digital music players, such as those sold
3 by Sony. Sony BMG asks iPod owners who have XCP CDs to complain to Apple about the
4 inability to play Sony BMG protected music on an iPod. The MediaMax support website also
5 asks iPod owners who have MediaMax CDs to complain to Apple about the inability to play
6 Sony BMG protected music on an iPod. To the extent that this is intended to advantage Sony
7 BMG or its partners in the portable digital music player market, this advantage comes at the
8 expense of consumers.

9 **SONY BMG'S EULAS CONTAIN NUMEROUS UNCONSCIONABLE AND**
10 **UNREASONABLE PROVISIONS**

11 102. Plaintiffs incorporate the allegations set forth above by references, as if set forth
12 fully herein.

13 103. On information and belief, the XCP and MediaMax CDs are disseminated with
14 identical EULAs.

15 104. Sony BMG has inserted several unconscionable provisions EULA that
16 accompanies the XCP and MediaMax CDs. These provisions include:

- 17 a. Restrictions on the user's ability to use the digital content on the CD in the
18 event that that consumer chose to leave the United States;
- 19 b. Restrictions on resale and transfer of the digital content on the CDs;
- 20 c. Restrictions on user's ability to use the digital content on the CDs at work;
- 21 d. Restrictions on user's ability to use and retain lawfully-made copies of the
22 digital content on the CDs in the event that the original CD is stolen or lost;
- 23 e. Restrictions on user's ability to use the digital content on the CDs following a
24 bankruptcy;
- 25 f. Conditioning the user's continued use of the digital content on the CDs on
26 acceptance of all Sony BMG software updates;
- 27 g. A purported \$5.00 limit on Sony BMG's entire liability to the purchaser of the
28 CDs;

- 1 h. Restrictions on user's ability to examine and test his or her computer to
2 understand and attempt to prevent the damage cause by the rootkit;
- 3 i. A reservation of rights by Sony BMG to use "technological "self-help"
4 measures against the computers of users who desire to make use of the digital
5 content on the CDs "at any time, without notice to [the user]."
- 6 j. Restrictions on the user's ability to seek redress in California courts, under
7 California law, and the purchaser's ability to seek a trial by jury;
- 8 k. A disclaimer of all warranties, including implied warranties of
9 merchantability, satisfactory quality, noninfringement, and fitness for any
10 particular purpose.

11 **SONY BMG'S SOFTWARE IS A COMPUTER CONTAMINANT**

12 105. Sony BMG has introduced a computer contaminant, in violation of California
13 Penal Code Section 502, into the Plaintiffs' and the Class' computers, computer systems or
14 computer networks.

15 106. Sony BMG software includes a set of computer instructions that are designed to
16 modify, damage, destroy, record, or transmit information within a computer, computer system, or
17 computer network.

18 107. Sony BMG software transmits information about which CDs the user is playing
19 through the Internet.

20 108. Sony BMG knowingly introduced the software into a computer, computer system,
21 or computer network.

22 109. The Plaintiffs and the Class do not intend for the Sony BMG software to transmit
23 information about which CDs the user is playing through the Internet.

24 110. The Plaintiffs and the Class did not give permission for the Sony BMG software
25 to transmit information about which CDs the user is playing through the Internet.

26 111. Sony BMG has intentionally accessed a computer without authorization or
27 exceeded authorized access, and thereby obtained information from computers owned by
28 Plaintiffs and the Class; and accessed such computers without authorization, and as a result of

1 such conduct, recklessly caused damage.

2 112. Sony BMG knowingly caused the transmission of a program, information, code,
3 or command, and as a result of such conduct, intentionally caused damage without authorization,
4 to computers owned by Plaintiffs and the Class.

5 113. Sony BMG intentionally accessed computers owned by Plaintiffs and the Class
6 without authorization.

7 114. Sony BMG knowingly and with intent to defraud, accessed computers owned by
8 Plaintiffs and the Class without authorization, or exceeded authorized access. Sony BMG's
9 conduct furthered the fraud and allowed Sony BMG to obtain information of value.

10 115. By engaging in the above-described acts, Sony BMG knowingly, intentionally
11 and/or recklessly caused damage.

12 116. By engaging in the above-described acts, Sony BMG caused damage.

13 117. By engaging the above described acts, Sony BMG has caused or attempted to
14 cause a threat to public health or safety,

15 118. It is important to public safety not to defeat or undermine the security measures
16 on computers.

17 119. Keeping the Internet infrastructure functioning is important to public safety.

18 **SONY BMG HAS CAUSED DAMAGE TO CONSUMERS AND THE PUBLIC**

19 120. On or around November 16, 2005, Sony BMG issued a public statement
20 announcing that it would recall XCP CDs and allow customers to exchange the XCP CDs for
21 CDs that would not contain any DRM.

22 121. As of the filing of this Complaint, Sony BMG has not offered to refund the
23 purchase price of the XCP CDs.

24 122. As of the filing of this complaint, Sony BMG has not offered to recall, replace, or
25 refund the purchase price of MediaMax CDs.

26 123. As of the filing of this complaint, Sony BMG has not compensated or offered to
27 compensate consumers for the damage it has caused to their computers.

28 124. Through the actions set forth above, Sony BMG has damaged its customers,

1 including Plaintiffs and Class members, to an extent to be determined at trial, caused them actual
2 injury, and caused them to lose money and property.

3 125. Investigation into the scope and extent of the effects and damage caused by Sony
4 BMG's software is ongoing. Plaintiffs, on behalf of themselves and the Class, reserve the right
5 to amend these allegations as new information is discovered.

6 **CLASS ACTION ALLEGATIONS**

7 126. Plaintiffs bring this action on behalf of themselves and all others similarly
8 situated, in both a representative capacity and as a class action pursuant to California Code of
9 Civil Procedure section 382 and California Civil Code section 1781. Plaintiffs seek to represent
10 the following class:

11 All California residents who purchased an audio compact disc distributed by Sony
12 BMG, which contains XCP or MediaMax software.

13 Not included within the class definition are Defendants and its affiliates. Additionally, solely for
14 the purposes of the Consumer Legal Remedies Act, California Civil Code Section 1750, *et seq.*,
15 the class does not include business entities. In the alternative, to the grounds for class
16 certification set forth below, Plaintiffs may seek an injunctive relief class based on the fact that
17 Sony BMG has acted or refused to act on grounds generally applicable to the class and California
18 consumers, thereby making appropriate final injunctive relief and declaratory relief with respect
19 to the Class and California consumers as a whole.

20 127. This action has been brought and may properly be maintained as a class action,
21 pursuant to the provisions of the California Code of Civil Procedure Section 382 and California
22 Civil Code Section 1781.

23 128. Numerosity of the Class - - Code Civ. Proc., § 382; Civ. Code, § 1781 (b)(1):
24 Members of the Class are so numerous that their individual joinder is impracticable. The precise
25 numbers of members of the Class and their addresses are unknown to the Plaintiffs. Plaintiffs
26 estimate the Class to consist of hundreds of thousands of members. The precise number of
27 persons in the Class and their identities and addresses may be ascertained from Defendants'
28 records. Members of the Class may be notified of the pendency of this action by mail,

1 supplemented (if deemed necessary or appropriate by the Court) by published notice.

2 129. Existence and Predominance of Common Questions of Fact and Law - - Code
3 Civ. Proc. § 382; Civ. Code, § 1781(b)(2): Common questions of law and fact exist as to all
4 members of the Class. These questions predominate over the questions affecting only individual
5 members of the Class. These common legal and factual questions include whether:

- 6 a. Sony BMG engaged in deceptive business practice in connection with the sale and
7 advertising of the XCP and MediaMax CDs;
- 8 b. Sony BMG, directly or by implication, advertises or represents that the XCP and
9 MediaMax CDs have characteristics they do not have;
- 10 c. Whether Sony BMG attempts to cause consumers to waive provisions of the
11 CLRA in violation of the express terms of the statute;
- 12 d. Whether some or all of the terms of the EULA are unconscionable;
- 13 e. Whether the MediaMax software installs on consumers' computers without
14 authorization;
- 15 f. Whether the MediaMax and XCP software exceed the authorizations given by
16 consumers;
- 17 g. Whether the communications by the MediaMax and XCP software over the
18 internet are disclosed and necessary uses of the copy protection software.

19 130. Typicality - - Code Civ. Proc., § 382; Civ. Code § 1781(b)(3): Plaintiffs' claims
20 are typical of the claims of the members of the Class because Plaintiffs purchased a CD
21 distributed by Defendants, and Plaintiffs were required to agree to the EULA, which did notify
22 Plaintiffs of the true nature of the software that the CD was to install on Plaintiffs' computer.

23 131. Adequacy - - Code Civ. Proc., § 382; Civ. Code § 1781(b)(4): Plaintiffs are
24 adequate representatives of the Class because their interests do not conflict with the interests of
25 the members of the Class they seek to represent. Plaintiffs have retained counsel competent and
26 experienced in complex class action litigation and Plaintiffs intend to prosecute this action
27 vigorously. The interests of members of the Class will be fairly and adequately protected by
28 Plaintiffs and their counsel.

132. Superiority - - Code Civ. Proc., § 382: A class action is superior to other available means for the fair and efficient adjudication of the claims of Plaintiffs and members of the Class. The damages suffered by each individual Class member may be relatively small, especially given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. Furthermore, it would be virtually impossible for the Class members, on an individual basis, to obtain effective redress for the wrongs done to them. Moreover, even if Class members themselves could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the complex legal issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court.

FIRST CLAIM FOR RELIEF

(Violation of Consumer Legal Remedies Act)

133. Plaintiffs incorporate the allegations set forth above by references, as if set forth fully herein.

134. The Consumer Legal Remedies Act (CLRA), California Civil Code sections 1750 *et seq*, applies to Sony BMG's actions and conduct because such actions and conduct pertain to transactions that were intended to result and/or resulted in the sale or lease of goods or services to consumers.

135. Plaintiffs and each member of the class are “consumers” within the meaning of Civil Code Section 1761(d).

136. The Sony BMG products that are the subject of this litigation are “goods” within the meaning of Civil Code section 1761(a).

137. Sony BMG has engaged in deceptive practices, unlawful methods of competition and/or unfair acts as defined by Civ. Code §1770, to the detriment of Plaintiffs and the Class. Plaintiffs and members of the Class have suffered harm as a proximate result of the violations of law and wrongful conduct of Defendant alleged herein.

1 138. Sony BMG intentionally and unlawfully perpetrated harm upon Plaintiffs and the
2 Class by the above described acts.

3 139. In violation of Civil Code section 1770(5), Sony BMG has represented that its
4 CDs have characteristics, uses or benefits which they do not have.

5 140. In violation of Civil Code section 1770(a)(9), Sony BMG has advertised its CDs
6 with intent not to sell them as advertised.

7 141. In violation of Civil Code section 1770(a)(14), Sony BMG has represented that
8 the purchase and/or use of its XCP and MediaMax CDs confers or involves rights, remedies, or
9 obligations which it does not have or involve, or which are prohibited by law.

10 142. In violation of Civil Code section 1770(a)(19), Sony BMG has inserted several
11 unconscionable provisions into the end-user license agreement (EULA) that accompanies the
12 XCP and MediaMax CDs.

13 143. Sony BMG concealed material information regarding the XCP and MediaMax
14 CDs from Plaintiffs and other class members, including but not limited to the existence of the
15 rootkit program and its effects on users' computers and the lack of a reasonable way to uninstall
16 the software in the event of security or privacy violations.

17 144. Users, including Plaintiffs and class members, routinely rely on this type of
18 information in making music purchase decisions. Had Sony BMG disclosed this material
19 information, Plaintiffs and other class members would not have purchased the XCP and
20 MediaMax CDs.

21 145. Plaintiffs and other class members relied on this material information to their
22 detriment.

23 146. Sony BMG's deceptive acts and omissions and unfair business practices occurred
24 in the course of selling a consumer product and violate Civil Code section 1770(a).

25 147. As a direct and proximate result of Sony BMG's violations of the CLRA,
26 Plaintiffs and other class members have suffered harm.

27 148. Sony BMG's policies and practices are unlawful, unethical, oppressive, fraudulent
28 and malicious. The gravity of the harm to all consumers from Sony BMG's policies and

1 practices far outweighs any purported utility those policies and practices have.

2 149. Pursuant to Civil Code section 1780(a), Plaintiffs seek an order enjoining
3 Defendant from engaging in the methods, acts or practices alleged herein, including an order
4 enjoining the defendant from continuing to sell and market XCP and MediaMax CDs and
5 continuing to disclaim the risks of using such CDs.

6 150. Pursuant to Civil Code section 1782, on November 14, 2005, Plaintiffs notified
7 Sony BMG of its commission of unlawful acts under Civil Code section 1770, specifying the
8 particular violations, and demanded that Sony BMG rectify its illegal acts within 30 days. The
9 demand letter requested that Sony BMG compensate consumers for computer problems related
10 to the XCP and MediaMax software.

11 151. On November 18, 2005, Sony BMG responded. In its response, Sony BMG did
12 not agree to provide compensation or to discuss a process for assessing claims. Therefore,
13 Plaintiffs and the Class also request (a) actual damages; (b) restitution of money to Plaintiffs and
14 Class members; (c) punitive damages; (d) attorneys' fees and costs; and (e) other relief that this
15 Court deems proper.

16 **SECOND CLAIM FOR RELIEF**

17 **(Violation of California Business and Professions Code Section 17200)**

18
19 152. Plaintiffs incorporate the allegations set forth above by references, as if set forth
20 fully herein.

21 153. Plaintiffs and the Class have suffered injury in fact and lost money or property as
22 a result of such unfair competition. Such injuries and losses include, but are not limited to,
23 computer damage, time and effort spent identifying and attempting to remove the damaging
24 software, loss of use of the ability to listen to the music on the CDs, and the purchase price of the
25 CDs.

26 154. Sony BMG has engaged in unfair, unlawful and fraudulent business practices as
27 set forth above.

28 155. By engaging in the above-described acts and practices, Sony BMG has committed

1 one or more unfair business practices within the meaning of Bus. & Prof. Code §17200, et seq.
2 Specifically, Sony BMG's business practices offend the public policies set forth in California
3 Constitution Art. 1, section 1; Civil Code sections 1750 et seq (Consumer Legal Remedies Act);
4 Business and Professions Code section 22947 (Consumer Protection Against Computer Spyware
5 Act); Business and Professions Code section 17500 et seq.; Business and Professions Code
6 sections 22575-579 (Online Privacy Protection Act); and California Penal Code section 502.

7 156. Sony BMG's above-described deceptive and misleading acts and practices have
8 and/or are likely to deceive Plaintiffs and other Class members.

9 157. Sony BMG's acts and practices are also unlawful because they violate Civil Code
10 sections 1750 et seq (Consumer Legal Remedies Act); Business and Professions Code section
11 22947 (Consumer Protection Against Computer Spyware Act); and California Penal Code
12 section 502.

13 158. Specifically, Sony BMG marketed and sold the XCP and MediaMax CDs in
14 defective condition and deceptively failed to disclose their defects as described above; advertised
15 its XCP and MediaMax CDs with intent not to sell them as advertised; represented that the
16 purchase and/or use of its XCP and MediaMax CDs confers or involves rights, remedies, or
17 obligations which it does not have or involve, or which are prohibited by law; inserted several
18 unconscionable provisions into the EULA that accompanies the XCP and MediaMax CDs
19 infected with the XCP and MediaMax software; took control and modified the settings of user's
20 computers, collected personally identifiable information about users, tracked users as they listen
21 to the CDs and attempted to prevent users from blocking or disabling the XCP and MediaMax
22 software; violated the implied covenant of good faith and fair dealing; and failed to comply with
23 the implied warranty of merchantability.

24 159. Plaintiffs and the Class have suffered injury in fact and have lost money or
25 property as a result of such unfair competition.

26 160. Plaintiffs, on behalf of themselves and on behalf of the Class, seek an order of this
27 Court awarding restitution, disgorgement, injunctive relief and all other relief allowed under
28 §17200, et seq.

1 **THIRD CLAIM FOR RELIEF**

2 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

3
4 161. Plaintiffs incorporate the allegations set forth above by references, as if set forth
5 fully herein.

6 162. California law implies a covenant of good faith and fair dealing in all contracts
7 between parties entered into in the State of California.

8 163. By engaging in above-described acts and practices, Sony BMG has violated the
9 implied covenant of good faith and fair dealing in the consumer's purchase of the XCP and
10 MediaMax CDs.

11 164. By engaging in the above-described acts and practices, Sony BMG has caused
12 Plaintiffs and the Class to suffer damages in an amount to be determined at trial.

13 **FOURTH CLAIM FOR RELIEF**

14 **(False or Misleading Statements)**

15 165. Plaintiffs incorporate the allegations set forth above by references, as if set forth
16 fully herein.

17 166. Through its advertising practices, promotional materials, packaging, EULA,
18 public statements, and other acts and practices described herein, Sony BMG has made untrue and
19 misleading statements and omitted material facts in violation of California Business and
20 Professions Code §§17500, et seq.

21 167. The misrepresentations, omissions and other misleading conduct described herein
22 concerning the XCP and MediaMax CDs were "likely to deceive." These misrepresentations and
23 omissions continue to this date.

24 168. Sony BMG knows or should know that these misrepresentations and omissions
25 concerning the XCP and MediaMax CDs are false and misleading.

26 169. Plaintiffs and the Class were actually deceived by the misrepresentations and
27 omissions.

28 170. Plaintiffs and the Class relied on these misrepresentations and omissions to their

1 detriment.

2 171. Plaintiffs and the Class have been harmed. Plaintiffs, on behalf of themselves and
3 on behalf of the Class seek restitution, disgorgement, injunctive relief and all other relief
4 allowable under §17500, et seq.

5 **PRAYER FOR RELIEF**

6 172. For compensatory damages in an amount to be proven at trial.

7 173. For restitution and disgorgement of profits realized as a result of the unlawful
8 conduct of defendants.

9 174. For any treble and/or punitive damages to the extent permitted by law.

10 175. For equitable relief, including but not limited to, requiring Sony BMG to:

11 a) Notify consumers, through widespread publicity, of the potential
12 security and other risks associated with the XCP and MediaMax
13 technology, to allow consumers to make informed decisions
14 regarding their use of those CDs. The notification process should
15 include issuing a public statement describing the risks associated
16 with *both* XCP and MediaMax software and listing every Sony
17 BMG CD, DVD or other product that contains MediaMax software.
18 In addition, Sony BMG must use the banner communication system
19 incorporated in its software to advise consumers that refunds and
20 uninstall software is available. The notifications must be
21 reasonably calculated to reach all consumers who have purchased the
22 products.

23 b) Cooperate fully with any interested manufacturer of anti-virus, anti-
24 spyware, or similar computer security tools, and with security
25 researchers, to facilitate the identification and complete removal of
26 both XCP and MediaMax software from the computers of those
27 infected. Among other actions, Sony BMG should publicly waive
28 any claims it may have against such vendors or researchers under the

1 EULA, the Digital Millennium Copyright Act (DMCA) and any
2 similar laws.

- 3 c) Refund the purchase price of the CDs containing XCP technology
4 for those consumers who prefer a refund to a replacement CD.
- 5 d) Refund the purchase price of the CDs containing MediaMax
6 technology or, *at the consumer's election*, provide a replacement CD
7 that does not contain the MediaMax technology. For those
8 consumers who choose to retain CDs containing the MediaMax
9 technology, develop and make widely available a software update
10 that will allow consumers to easily uninstall the technology without
11 losing the ability to play the CD on their computers, without causing
12 further damage to their computers, and without revealing any
13 personally identifying information.
- 14 e) To avoid future abuses, prior to releasing any future product
15 containing technology with similar functions, thoroughly test the
16 software to determine the existence of any security risks or other
17 possible damages the technology might cause to any user's computer
18 AND certify in a statement included in the packaging of every CD
19 containing the technology that the product does not contain any
20 concealed software such as the XCP rootkit, does not electronically
21 communicate with Sony BMG or any other party nor initiate the
22 download of any software update or other data without informed
23 consent of the consumer immediately prior to each communication,
24 can be uninstalled without any need to contact and/or disclose
25 personal information to Sony BMG or its affiliates and agents, does
26 not present any security risks to any consumer's computer, and will
27 not damage or reduce the functionality of the consumer's computer
28 in any way.

1 176. For the award to Plaintiffs of their attorneys' fees and other costs of suit.

2 177. For such other and further relief as the Court deems just and equitable.

3
4 DATED: November 21, 2005

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EXHIBIT A

IMPORTANT-READ CAREFULLY: This compact disc ("CD") product contains standard so-called "Red Book" compliant audio files that can be played on any standard CD player, including those contained in many personal home computer systems. As an added feature, this compact disc ("CD") product also enables you to convert these audio files into digital music files and/or may also contain other already existing digital content (such files and content, collectively, the "DIGITAL CONTENT"), any of which may be stored on the hard drive of a personal home computer system owned by you ("YOUR COMPUTER") and accessed via YOUR COMPUTER or certain approved, compatible portable devices owned by you (each, an "APPROVED PORTABLE DEVICE").

Before you can play the audio files on YOUR COMPUTER or create and/or transfer the DIGITAL CONTENT to YOUR COMPUTER, you will need to review and agree to be bound by an end user license agreement or "EULA", the terms and conditions of which are set forth below. Once you have read these terms and conditions, you will be asked whether or not you agree to be bound by them. Click "AGREE" if you agree to be bound. Click "DISAGREE" if you do not agree to be bound. Please keep in mind, however, that if you do not agree to be bound by these terms and conditions, you will not be able to utilize the audio files or the DIGITAL CONTENT on YOUR COMPUTER.

As soon as you have agreed to be bound by the terms and conditions of the EULA, this CD will automatically install a small proprietary software program (the "SOFTWARE") onto YOUR COMPUTER. The SOFTWARE is intended to protect the audio files embodied on the CD, and it may also facilitate your use of the DIGITAL CONTENT. Once installed, the SOFTWARE will reside on YOUR COMPUTER until removed or deleted. However, the SOFTWARE will not be used at any time to collect any personal information from you, whether stored on YOUR COMPUTER or otherwise.

Once the SOFTWARE has been installed on YOUR COMPUTER, a menu will then appear on the screen of YOUR COMPUTER, giving you the option of playing the audio files on YOUR COMPUTER, creating a copy of the DIGITAL CONTENT directly onto the hard drive of YOUR COMPUTER, or making a limited number of back-up copies of the CD onto other, recordable CDs. If you choose to create a copy of the DIGITAL CONTENT, the menu will then prompt you to select a file format for the DIGITAL CONTENT. Once you have selected a file format, a copy of the DIGITAL CONTENT will automatically be created in that file format and transferred onto the hard drive of YOUR COMPUTER, where you will be able to access it using an APPROVED MEDIA PLAYER (see below) or, at your election, transfer it from YOUR COMPUTER onto an APPROVED PORTABLE DEVICE.

In order to access the DIGITAL CONTENT on YOUR COMPUTER, you will need to have a copy of an approved media player software program that is capable of playing the DIGITAL CONTENT in the file format you selected (each such approved media player, an "APPROVED MEDIA PLAYER") on YOUR COMPUTER. You may already have a copy of an APPROVED MEDIA PLAYER on YOUR COMPUTER. If you do, you will be able to play the DIGITAL CONTENT on YOUR COMPUTER without doing anything further. This CD may also contain an APPROVED MEDIA PLAYER for the file format you selected. If it does, the menu that appears on the screen of YOUR COMPUTER will prompt you on how to transfer a copy of that APPROVED MEDIA PLAYER onto YOUR COMPUTER. To the extent you utilize an APPROVED MEDIA PLAYER

contained on this CD, your use of such APPROVED MEDIA PLAYER may be subject, in each instance, to separate terms and conditions provided by the owner of the APPROVED MEDIA PLAYER concerned. If you do not already have a copy of an APPROVED MEDIA PLAYER on YOUR COMPUTER, and if this CD does not contain a compatible APPROVED MEDIA PLAYER, then you will then need to secure a compatible APPROVED MEDIA PLAYER elsewhere (e.g., on an Internet website, where you can download one).

END-USER LICENSE AGREEMENT

This End-User License Agreement ("EULA") is a legal agreement between you and SONY BMG MUSIC ENTERTAINMENT ("SONY BMG"), a general partnership established under Delaware law. By clicking on the "AGREE" button below, you will indicate your acceptance of these terms and conditions, at which point this EULA will become a legally binding agreement between you and SONY BMG.

Article 1. GRANT OF LICENSE

1. Subject to your agreement to the terms and conditions set forth in this EULA, SONY BMG grants to you a personal, non-exclusive and non-transferable license, with no right to grant sublicenses, to:

- (a) install one (1) copy of SOFTWARE onto the hard drive of YOUR COMPUTER, solely in machine-executable form;
- (b) install one (1) copy of any APPROVED MEDIA PLAYER(S) contained on this CD onto the hard drive of YOUR COMPUTER, solely in machine-executable form;
- (c) use the SOFTWARE and any APPROVED MEDIA PLAYER(S) contained on this CD to access the DIGITAL CONTENT on YOUR COMPUTER or on an APPROVED PORTABLE DEVICE;

in each instance, solely for your own personal and private use and not for any other purpose (including, without limitation, any act of electronic or physical distribution, making available, performance or broadcast, or any act for profit or other commercial purpose) and in accordance with the terms and conditions set forth in this EULA.

2. The DIGITAL CONTENT and the SOFTWARE contained on this CD are sometimes referred to herein, collectively, as the "LICENSED MATERIALS".

Article 2. PRODUCT FEATURES

1. This CD contains technology that is designed to prevent users from making certain, unauthorized uses of the DIGITAL CONTENT, including, without limitation, the following:

- (1) making and storing more than one (1) copy of the DIGITAL CONTENT in each available file format on the hard drive of YOUR COMPUTER;
- (2) accessing the DIGITAL CONTENT on YOUR COMPUTER (once you have installed a copy of it on the hard drive of YOUR COMPUTER) using a media player that is not an APPROVED MEDIA PLAYER;
- (3) transferring copies of the DIGITAL CONTENT that reside on the hard drive of YOUR COMPUTER on to portable devices that are not APPROVED PORTABLE DEVICES;
- (4) burning more than three (3) copies of the DIGITAL CONTENT stored on YOUR COMPUTER (ATRAC OpenMG file format only) onto AtracCDs;
- (5) burning more than three (3) copies of the DIGITAL CONTENT onto recordable compact discs in the so-called "Red Book"-compliant audio file format; and
- (6) burning more than three (3) backup copies of this CD (using the

burning application provided on the CD) onto recordable CDs and burning or otherwise making additional copies from the resulting backup copies.

2. PLEASE NOTE: Your use of the DIGITAL CONTENT and the other LICENSED MATERIALS may be subject to additional restrictions, under applicable copyright and other laws, that are not enforced or prescribed by any technology contained on this CD. The absence of any such technology designed to enforce these additional restrictions should in no way be viewed or interpreted as a waiver, on the part of SONY BMG or any other person or entity owning any rights in any of the LICENSED MATERIALS, of their respective rights to enforce any such additional restrictions regarding your use of the LICENSED MATERIALS. Your use of the DIGITAL CONTENT and the other LICENSED MATERIALS shall, at all times, remain subject to any and all applicable laws governing the use of such materials, including, without limitation, any restrictions on your use prescribed therein.

3. All of your rights to enjoy the DIGITAL CONTENT, as described herein, shall be subject to your continued ownership of all rights in and to the physical CD on which such DIGITAL CONTENT is embodied; should you transfer your ownership rights in the physical CD on which such DIGITAL CONTENT is embodied (in whole or in part) to any other person (whether by sale, gift or otherwise), your rights in both the physical CD and such DIGITAL CONTENT shall terminate.

Article 3. RESTRICTIONS ON USE OF LICENSED MATERIALS

1. Except to the extent otherwise expressly permitted hereunder or otherwise by the owner of the relevant rights in or to the LICENSED MATERIALS concerned, and without limitation, the following restrictions shall apply to your use of the LICENSED MATERIALS:

(a) You may not copy or reproduce any portion of the LICENSED MATERIALS.

(b) You may not distribute, share through any information network, transfer, sell, lease or rent any of the LICENSED MATERIALS to any other person, in whole or in part.

(c) You may not change, alter, modify or create derivative works, enhancements, extensions or add-ons to any of the LICENSED MATERIALS.

(d) You may not decompile, reverse engineer or disassemble any of the LICENSED MATERIALS, in whole or in part.

(e) You may not export the LICENSED MATERIALS outside of the country where you reside. (This clause 1(e) of Article 3 shall not be applicable within the European Economic Area (EEA).)

(f) You will at all times comply with, and will not circumvent or attempt to circumvent, any of the restrictions on use set forth in this Article 3 or elsewhere in this EULA.

2. In the event that the owner of the LICENSED MATERIALS is a party other than SONY BMG (each, a "LICENSOR"), you agree that such LICENSOR shall be a third party beneficiary under this EULA and, as such, shall have the right to enforce the terms and conditions of this EULA that pertain directly to such LICENSOR'S rights in and to the LICENSED MATERIALS concerned as if such LICENSOR was a party to this EULA. The rights granted to a Licensor under this Article shall not be revoked.

3. SONY BMG and each LICENSOR reserve the right to use the SOFTWARE and/or any APPROVED MEDIA PLAYER to enforce their respective rights in and to the DIGITAL CONTENT, including any and all of the restrictions on use set forth in this Article 3, at any time, without notice to you.

Article 4. INTELLECTUAL PROPERTY RIGHTS

All title to, and intellectual property rights in, the LICENSED

MATERIALS and any related documents are and shall remain owned and/or controlled solely and exclusively by SONY BMG and/or its LICENSORS. SONY BMG and/or all respective LICENSORS reserve all rights in the LICENSED MATERIALS not specifically granted to you under this EULA.

Article 5. EXCLUSION OF WARRANTIES

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOU ARE INSTALLING AND USING THE LICENSED MATERIALS AT YOUR OWN SOLE RISK. THE LICENSED MATERIALS ARE PROVIDED "AS IS" AND WITHOUT WARRANTY, TERM OR CONDITION OF ANY KIND, AND SONY BMG, ITS LICENSORS AND EACH OF THEIR LICENSEES, AFFILIATES AND AUTHORIZED REPRESENTATIVES (EACH, A "SONY BMG PARTY") EXPRESSLY DISCLAIM ALL WARRANTIES, TERMS OR CONDITIONS. EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT AND FITNESS FOR A GENERAL OR PARTICULAR PURPOSE. NO ORAL, WRITTEN OR ELECTRONIC INFORMATION OR ADVICE GIVEN BY ANY SONY BMG PARTY SHALL CREATE ANY WARRANTY, TERM OR CONDITION WITH RESPECT TO THE LICENSED MATERIALS OR OTHERWISE. SHOULD THE LICENSED MATERIALS PROVE TO BE DEFECTIVE, YOU (AND NOT THE SONY BMG PARTY CONCERNED) AGREE TO ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIRS OR CORRECTIONS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, TERMS OR CONDITIONS IN CERTAIN INSTANCES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS ARTICLE WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY MANDATES LIABILITY, DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.

Article 6. LIMITATION OF LIABILITY

NO SONY BMG PARTY SHALL BE LIABLE FOR ANY LOSS OR DAMAGE, EITHER DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHERWISE, ARISING OUT OF THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, TERM OR CONDITION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY MISREPRESENTATION, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE OR ANY OTHER LEGAL THEORY ARISING OUT OF, OR RELATED TO, THIS EULA OR YOUR USE OF ANY OF THE LICENSED MATERIALS (SUCH DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT, DOWN TIME AND USER'S TIME), EVEN IF THE SONY BMG PARTY CONCERNED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE ENTIRE LIABILITY OF THE SONY BMG PARTIES, COLLECTIVELY, UNDER THE PROVISIONS OF THIS EULA SHALL BE LIMITED TO FIVE US DOLLARS (US \$5.00). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CERTAIN INSTANCES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS ARTICLE WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.

Article 7. DAMAGES ARISING OUT OF YOUR ACTIONS

You shall defend and hold the SONY BMG PARTIES harmless from and against any and all liabilities, damages, costs, expenses or losses arising out of your use of the LICENSED MATERIALS, your negligent or wrongful acts, your violation of any applicable laws or regulations, and/or your breach of any provision of this EULA.

Article 8. UPDATES TO THE LICENSED MATERIALS

The SONY BMG PARTIES may from time to time provide you with updates of the SOFTWARE in a manner that the SONY BMG PARTIES deem to be appropriate. All such updates shall be deemed to be part of the

SOFTWARE for all purposes hereunder. In the event that you fail to install an update, the SONY BMG PARTIES reserve the right to terminate the term of this EULA, along with your rights to use the LICENSED MATERIALS, immediately, without additional notice to you. The SONY BMG PARTIES shall not be liable for any loss or damage caused by reason of your failure to install any such update or your failure to do so in the manner instructed.

Article 9. EXPIRATION AND TERMINATION

1. The rights granted to you hereunder to use the DIGITAL CONTENT are conditioned upon your continued possession of, and your continued right under a license from SONY BMG to use, the original CD product that you purchased. In the event that you no longer possess or have the right under such license to use the original CD product, your rights hereunder to use the DIGITAL CONTENT shall expire immediately, without notice from SONY BMG.

2. Without prejudice to any other rights SONY BMG or any SONY BMG PARTY may have hereunder, the term of this EULA shall terminate immediately, without notice from SONY BMG, and all rights you may have hereunder to use the LICENSED MATERIALS shall be immediately revoked, in the event that you: (i) fail to comply with any provision of this EULA(ii) fail to install an update of the SOFTWARE that was previously provided to you by the SONY BMG PARTIES within the time specified, or (iii) file a voluntary petition or are subject to an involuntary petition under applicable bankruptcy laws, are declared insolvent, make an assignment for the benefit of creditors, or are served with a writ of attachment, writ of execution, garnishment or other legal process pertaining to any of your assets or property.

3. Upon the expiration or termination of this EULA, you shall immediately remove all of the LICENSED MATERIALS from your personal computer system and delete or destroy them, along with any related documentation (and any copies thereof) that you may have received or otherwise may possess.

4. Articles 4 (Intellectual Property Rights), 6 (Limitation of Liability), 7 (Damages Arising Out Of Your Actions), 9 (Expiration and Termination), 10 (Governing Law and Waiver of Trial By Jury), and 11 (General) shall survive and remain in full force and effect following the expiration or termination of this EULA.

5. To the extent relevant under applicable law, you and SONY BMG each agree, for the effectiveness of the termination clauses under this EULA, to waive any provisions, procedures and operation of any applicable law that might otherwise require judicial approval or a court order in order to effect the termination of this EULA.

Article 10. GOVERNING LAW AND WAIVER OF TRIAL BY JURY

1. THE VALIDITY, INTERPRETATION AND LEGAL EFFECT OF THIS EULA SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES UNDER NEW YORK LAW). THE NEW YORK COURTS (STATE AND FEDERAL), SHALL HAVE SOLE JURISDICTION OF ANY CONTROVERSIES REGARDING THIS AGREEMENT; ANY ACTION OR OTHER PROCEEDING WHICH INVOLVES SUCH A CONTROVERSY SHALL BE BROUGHT IN THOSE COURTS IN NEW YORK COUNTY AND NOT ELSEWHERE. THE PARTIES WAIVE ANY AND ALL OBJECTIONS TO VENUE IN THOSE COURTS AND HEREBY SUBMIT TO THE JURISDICTION OF THOSE COURTS.

2. YOU HEREBY WAIVE ALL RIGHTS AND/OR ENTITLEMENT TO TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE THAT ARISES OUT OF OR RELATES IN ANY WAY

TO THIS EULA OR THE SOFTWARE.

Article 11. GENERAL

If any provision of this EULA is subsequently held to be invalid or unenforceable by any court or other authority, such invalidity or unenforceability shall in no way affect the validity or enforceability of any other provision of this EULA. This EULA shall be binding upon the parties' authorized successors and assignees. Neither party's waiver of any breach or failure to enforce any of the provision of this EULA at any time shall in any way affect, limit or waive such party's right there after to enforce and compel strict compliance with every other provision. No modification of this EULA shall be effective unless it is set forth in a writing signed by SONY BMG.

EXHIBIT B

IMPORTANT-READ CAREFULLY: This compact disc ("CD") product contains standard so-called "Red Book"-compliant audio files that can be played on any standard CD player, including those contained in many personal home computer systems. As an added feature, this compact disc ("CD") product also enables you to convert these audio files into digital music files and/or may also contain other already existing digital content (such files and content, collectively, the "DIGITAL CONTENT"), any of which may be stored on the hard drive of a personal home computer system owned by you ("YOUR COMPUTER") and accessed via YOUR COMPUTER or certain approved, compatible portable devices owned by you (each, an "APPROVED PORTABLE DEVICE").

Before you can play the audio files on YOUR COMPUTER or create and/or transfer the DIGITAL CONTENT to YOUR COMPUTER, you will need to review and agree to be bound by an end user license agreement or "EULA", the terms and conditions of which are set forth below. Once you have read these terms and conditions, you will be asked whether or not you agree to be bound by them. Click "AGREE" if you agree to be bound. Click "DISAGREE" if you do not agree to be bound. Please keep in mind, however, that if you do not agree to be bound by these terms and conditions, you will not be able to utilize the audio files or the DIGITAL CONTENT on YOUR COMPUTER.

As soon as you have agreed to be bound by the terms and conditions of the EULA, this CD will automatically install a small proprietary software program (the "SOFTWARE") onto YOUR COMPUTER. The SOFTWARE is intended to protect the audio files embodied on the CD, and it may also facilitate your use of the DIGITAL CONTENT. Once installed, the SOFTWARE will reside on YOUR COMPUTER until removed or deleted. However, the SOFTWARE will not be used at any time to collect any personal information from you, whether stored on YOUR COMPUTER or otherwise.

Once the SOFTWARE has been installed on YOUR COMPUTER, a menu will then appear on the screen of YOUR COMPUTER, giving you the option of playing the audio files on YOUR COMPUTER, creating a copy of the DIGITAL CONTENT directly onto the hard drive of YOUR COMPUTER, or making a limited number of back-up copies of the CD onto other, recordable CDs. If you choose to create a copy of the DIGITAL CONTENT, the menu will then prompt you to select a file format for the DIGITAL CONTENT. Once you have selected a file format, a copy of the DIGITAL CONTENT will automatically be created in that file format and transferred onto the hard drive of YOUR COMPUTER, where you will be able to access it using an APPROVED MEDIA PLAYER (see below) or, at your election, transfer it from YOUR COMPUTER onto an APPROVED PORTABLE DEVICE.

In order to access the DIGITAL CONTENT on YOUR COMPUTER, you will need to have a copy of an approved media player software program that is capable of playing the DIGITAL CONTENT in the file format you selected (each such approved media player, an "APPROVED MEDIA PLAYER") on YOUR COMPUTER. You may already have a copy of an APPROVED MEDIA PLAYER on YOUR COMPUTER. If you do, you will be able to play the DIGITAL CONTENT on YOUR COMPUTER without doing anything further. This CD may also contain an APPROVED MEDIA PLAYER for the file format you selected. If it does, the menu that appears on the screen of YOUR COMPUTER will prompt you on how to transfer a copy of that APPROVED MEDIA PLAYER onto YOUR COMPUTER. To the extent you utilize an APPROVED MEDIA PLAYER contained on this CD, your use of such APPROVED MEDIA PLAYER may be subject, in each instance, to separate terms and conditions provided by the owner of the APPROVED MEDIA PLAYER concerned. If you do not already have a copy of an APPROVED MEDIA PLAYER on YOUR COMPUTER, and if this CD does not contain a compatible APPROVED MEDIA PLAYER, then you will then need to secure a compatible APPROVED MEDIA PLAYER elsewhere (e.g., on an Internet website, where you can download one).

END-USER LICENSE AGREEMENT

This End-User License Agreement ("EULA") is a legal agreement between you and SONY BMG MUSIC ENTERTAINMENT ("SONY BMG"), a general partnership established under Delaware law. By clicking on the "AGREE" button below, you will indicate your acceptance of these terms and conditions, at which point this EULA will become a legally binding agreement between you and SONY BMG.

Article 1. GRANT OF LICENSE

1. Subject to your agreement to the terms and conditions set forth in this EULA, SONY BMG grants to you a personal, non-exclusive and non-transferable license, with no right to grant sublicenses, to:
 - (a) install one (1) copy of SOFTWARE onto the hard drive of YOUR COMPUTER, solely in machine-executable form;
 - (b) install one (1) copy of any APPROVED MEDIA PLAYER(S) contained on this CD onto the hard drive of YOUR COMPUTER, solely in machine-executable form;
 - (c) use the SOFTWARE and any APPROVED MEDIA PLAYER(S) contained on this CD to access the DIGITAL CONTENT on YOUR COMPUTER or on an APPROVED PORTABLE DEVICE;

- in each instance, solely for your own personal and private use and not for any other purpose (including, without limitation, any act of electronic or physical distribution, making available, performance or broadcast, or any act for profit or other commercial purpose) and in accordance with the terms and conditions set forth in this EULA.
2. The DIGITAL CONTENT and the SOFTWARE contained on this CD are sometimes referred to herein, collectively, as the "LICENSED MATERIALS".

Article 2. PRODUCT FEATURES

1. This CD contains technology that is designed to prevent users from making certain, unauthorized uses of the DIGITAL CONTENT, including, without limitation, the following:
- (1) making and storing more than one (1) copy of the DIGITAL CONTENT in each available file format on the hard drive of YOUR COMPUTER;
 - (2) accessing the DIGITAL CONTENT on YOUR COMPUTER (once you have installed a copy of it on the hard drive of YOUR COMPUTER) using a media player that is not an APPROVED MEDIA PLAYER;
 - (3) transferring copies of the DIGITAL CONTENT that reside on the hard drive of YOUR COMPUTER on to portable devices that are not APPROVED PORTABLE DEVICES;
 - (4) burning more than three (3) copies of the DIGITAL CONTENT stored on YOUR COMPUTER (ATRAC OpenMG file format only) onto AtracCDs;
 - (5) burning more than three (3) copies of the DIGITAL CONTENT onto recordable compact discs in the so-called "Red Book"-compliant audio file format; and
 - (6) burning more than three (3) backup copies of this CD (using the burning application provided on the CD) onto recordable CDs and burning or otherwise making additional copies from the resulting backup copies.
2. PLEASE NOTE: Your use of the DIGITAL CONTENT and the other LICENSED MATERIALS may be subject to additional restrictions, under applicable copyright and other laws, that are not enforced or prescribed by any technology contained on this CD. The absence of any such technology designed to enforce these additional restrictions should in no way be viewed or interpreted as a waiver, on the part of SONY BMG or any other person or entity owning any rights in any of the LICENSED MATERIALS, of their respective rights to enforce any such additional restrictions regarding your use of the LICENSED MATERIALS. Your use of the DIGITAL CONTENT and the other LICENSED MATERIALS shall, at all times, remain subject to any and all applicable laws governing the use of such materials, including, without limitation, any restrictions on your use prescribed therein.
3. All of your rights to enjoy the DIGITAL CONTENT, as described herein, shall be subject to your continued ownership of all rights in and to the physical CD on which such DIGITAL CONTENT is embodied; should you transfer your ownership rights in the physical CD on which such DIGITAL CONTENT is embodied (in whole or in part) to any other person (whether by sale, gift or otherwise), your rights in both the physical CD and such DIGITAL CONTENT shall terminate.

Article 3. RESTRICTIONS ON USE OF LICENSED MATERIALS

1. Except to the extent otherwise expressly permitted hereunder or otherwise by the owner of the relevant rights in or to the LICENSED MATERIALS concerned, and without limitation, the following restrictions shall apply to your use of the LICENSED MATERIALS:
- (a) You may not copy or reproduce any portion of the LICENSED MATERIALS.
 - (b) You may not distribute, share through any information network, transfer, sell, lease or rent any of the LICENSED MATERIALS to any other person, in whole or in part.
 - (c) You may not change, alter, modify or create derivative works, enhancements, extensions or add-ons to any of the LICENSED MATERIALS.
 - (d) You may not decompile, reverse engineer or disassemble any of the LICENSED MATERIALS, in whole or in part.
 - (e) You may not export the LICENSED MATERIALS outside of the country where you reside. (This clause 1(e) of Article 3 shall not be applicable within the European Economic Area (EEA).)
 - (f) You will at all times comply with, and will not circumvent or attempt to circumvent, any of the restrictions on use set forth in this Article 3 or elsewhere in this EULA.
2. In the event that the owner of the LICENSED MATERIALS is a party other than SONY BMG (each, a "LICENSOR"), you agree that such LICENSOR shall be a third party beneficiary under this EULA and, as such, shall have the right to enforce the terms and conditions of this EULA that pertain directly to such LICENSOR'S rights in and to the LICENSED MATERIALS concerned as if such LICENSOR was a party to this EULA. The rights granted to a Licensor under this Article shall not be revoked.
3. SONY BMG and each LICENSOR reserve the right to use the SOFTWARE and/or any APPROVED MEDIA PLAYER to enforce their respective rights in and to the DIGITAL CONTENT, including any and all of the restrictions on use set forth in this Article 3, at any time, without notice to you.

Article 4. INTELLECTUAL PROPERTY RIGHTS

All title to, and intellectual property rights in, the LICENSED MATERIALS and any related documents are and shall remain owned and/or controlled solely and exclusively by SONY BMG and/or its LICENSORS. SONY BMG and/or all respective LICENSORS reserve all rights in the LICENSED MATERIALS not specifically granted to you under this EULA.

Article 5. EXCLUSION OF WARRANTIES

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOU ARE INSTALLING AND USING THE LICENSED MATERIALS AT YOUR OWN SOLE RISK. THE LICENSED MATERIALS ARE PROVIDED "AS IS" AND WITHOUT WARRANTY, TERM OR CONDITION OF ANY KIND, AND SONY BMG, ITS LICENSORS AND EACH OF THEIR LICENSEES, AFFILIATES AND AUTHORIZED REPRESENTATIVES (EACH, A "SONY BMG PARTY") EXPRESSLY DISCLAIM ALL WARRANTIES, TERMS OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT AND FITNESS FOR A GENERAL OR PARTICULAR PURPOSE. NO ORAL, WRITTEN OR ELECTRONIC INFORMATION OR ADVICE GIVEN BY ANY SONY BMG PARTY SHALL CREATE ANY WARRANTY, TERM OR CONDITION WITH RESPECT TO THE LICENSED MATERIALS OR OTHERWISE. SHOULD THE LICENSED MATERIALS PROVE TO BE DEFECTIVE, YOU (AND NOT THE SONY BMG PARTY CONCERNED) AGREE TO ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIRS OR CORRECTIONS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, TERMS OR CONDITIONS IN CERTAIN INSTANCES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS ARTICLE WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY MANDATES LIABILITY, DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.

Article 6. LIMITATION OF LIABILITY

NO SONY BMG PARTY SHALL BE LIABLE FOR ANY LOSS OR DAMAGE, EITHER DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHERWISE, ARISING OUT OF THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, TERM OR CONDITION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY MISREPRESENTATION, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE OR ANY OTHER LEGAL THEORY ARISING OUT OF, OR RELATED TO, THIS EULA OR YOUR USE OF ANY OF THE LICENSED MATERIALS (SUCH DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT, DOWNTIME AND USER'S TIME), EVEN IF THE SONY BMG PARTY CONCERNED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE ENTIRE LIABILITY OF THE SONY BMG PARTIES, COLLECTIVELY, UNDER THE PROVISIONS OF THIS EULA SHALL BE LIMITED TO FIVE US DOLLARS (US \$5.00). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CERTAIN INSTANCES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS ARTICLE WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.

Article 7. DAMAGES ARISING OUT OF YOUR ACTIONS

You shall defend and hold the SONY BMG PARTIES harmless from and against any and all liabilities, damages, costs, expenses or losses arising out of your use of the LICENSED MATERIALS, your negligent or wrongful acts, your violation of any applicable laws or regulations, and/or your breach of any provision of this EULA.

Article 8. UPDATES TO THE LICENSED MATERIALS

The SONY BMG PARTIES may from time to time provide you with updates of the SOFTWARE in a manner that the SONY BMG PARTIES deem to be appropriate. All such updates shall be deemed to be part of the SOFTWARE for all purposes hereunder. In the event that you fail to install an update, the SONY BMG PARTIES reserve the right to terminate the term of this EULA, along with your rights to use the LICENSED MATERIALS, immediately, without additional notice to you. The SONY BMG PARTIES shall not be liable for any loss or damage caused by reason of your failure to install any such update or your failure to do so in the manner instructed.

Article 9. EXPIRATION AND TERMINATION

1. The rights granted to you hereunder to use the DIGITAL CONTENT are conditioned upon your continued possession of, and your continued right under a license from SONY BMG to use, the original CD product that you purchased. In the event that you no longer possess or have the right under such license to use the original CD product, your rights hereunder to use the DIGITAL CONTENT shall expire immediately, without notice from SONY BMG.
2. Without prejudice to any other rights SONY BMG or any SONY BMG PARTY may have hereunder, the term of this EULA shall terminate immediately, without notice from SONY BMG, and all rights you may have hereunder to use the LICENSED MATERIALS shall be immediately revoked, in the event that you: (i) fail to comply with any provision of this EULA, (ii) fail to install an update of the SOFTWARE that was previously provided to you by the SONY BMG PARTIES within the time specified, or (iii) file a voluntary petition or are subject to an involuntary petition under applicable bankruptcy laws, are declared insolvent, make an assignment for the benefit of creditors, or are served with a writ of attachment, writ of execution, garnishment or other legal process pertaining to any of your assets or property.
3. Upon the expiration or termination of this EULA, you shall immediately remove all of the LICENSED MATERIALS from your personal computer system and delete or destroy them, along with any related documentation (and any copies thereof) that you may have received or otherwise may possess.
4. Articles 4 (Intellectual Property Rights), 6 (Limitation of Liability), 7 (Damages Arising Out Of Your Actions), 9 (Expiration and Termination), 10 (Governing Law and Waiver of Trial By Jury), and 11 (General) shall survive and remain in full force and effect following the expiration or termination of this EULA.
5. To the extent relevant under applicable law, you and SONY BMG each agree, for the effectiveness of the termination clauses under this EULA, to waive any provisions, procedures and operation of any applicable law that might otherwise require judicial approval or a court order in order to effect the termination of this EULA.

Article 10. GOVERNING LAW AND WAIVER OF TRIAL BY JURY

1. THE VALIDITY, INTERPRETATION AND LEGAL EFFECT OF THIS EULA SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES UNDER NEW YORK LAW). THE NEW YORK COURTS (STATE AND FEDERAL), SHALL HAVE SOLE JURISDICTION OF ANY CONTROVERSIES REGARDING THIS AGREEMENT; ANY ACTION OR OTHER PROCEEDING WHICH INVOLVES SUCH A CONTROVERSY SHALL BE BROUGHT IN THOSE COURTS IN NEW YORK COUNTY AND NOT ELSEWHERE. THE PARTIES WAIVE ANY AND ALL OBJECTIONS TO VENUE IN THOSE COURTS AND HEREBY SUBMIT TO THE JURISDICTION OF THOSE COURTS.
2. YOU HEREBY WAIVE ALL RIGHTS AND/OR ENTITLEMENT TO TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE THAT ARISES OUT OF OR RELATES IN ANY WAY TO THIS EULA OR THE SOFTWARE.

Article 11. GENERAL

If any provision of this EULA is subsequently held to be invalid or unenforceable by any court or other authority, such invalidity or unenforceability shall in no way affect the validity or enforceability of any other provision of this EULA. This EULA shall be binding upon the parties' authorized successors and assignees. Neither party's waiver of any breach or failure to enforce any of the provision of this EULA at any time shall in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with every other provision. No modification of this EULA shall be effective unless it is set forth in a writing signed by SONY BMG.

Exhibit 16



Electronic Frontier Foundation

November 30, 2005

Jeffrey P. Cunard, Esq.
Debevoise & Plimpton LLP
555 13th Street, N.W.
Suite 1100 East
Washington, D.C. 20004

RE: MediaMax Security Vulnerability

Dear Jeff:

Previously, you asked EFF to inform you as soon as possible if we had discovered any security risks due to SunComm's technology.

We are writing to inform you that installation of the SunnComm MediaMax software, version 5, creates a serious risk of a "privilege escalation attack." The problem may also exist for other versions of the software as well.

A privilege escalation attack is the act of exploiting a security weakness in an application to gain access to resources that normally would have been protected from an application or user. This means that low rights users can add files to a directory and overwrite the binaries installed therein, which will be executed by a later user with higher level of rights. The result is that the application performs actions with a higher security context than intended. As an analogy, consider an office worker who has keys to her office and to the front door of the building, but not to other offices or to the supply closet. By stealing the janitor's master key, the office worker can escalate her privileges. In essence, the MediaMax provides that master key.

The MediaMax software makes such an attack possible by leaving a crucial folder "unlocked." This folder contains an executable program (MMX.EXE, the MediaMax program), which is necessarily run by a user account with high ("Administrator") privileges. Because the folder is unlocked, an attacker can overwrite MMX.EXE with code of her choice, and the next time a MediaMax disc is played, her attack code will be executed.

Specifically, the directory that the SunnComm MediaMax software creates, located in "c:\Program Files\Common Files\SunnComm Shared\", overrides the default Access Control List (also known as the file system permissions). The SunnComm Shared directory uses an ACL that doesn't protect against low rights users (i.e. "Everyone" in Windows parlance) overwriting the contents including the installed binaries. In addition,

**454 Shotwell Street, San Francisco, CA 94110 USA
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one component of MediaMax, a system service called sbcphid, is loaded into memory and ready to run at all times, even when there is no disc in the CD drive and no music is being played. And it runs as a kernel process, meaning that it has access to all aspects of the system.

These flaws in the SunnComm MediaMax software distributed by Sony BMG could expose the computers of millions of users to attacks by malicious hacker and virus writers. They undermine significant security protections otherwise present on computers running Windows.

We would like to provide Sony BMG with a detailed report about this security flaw and potential exploits in a secure manner. Please advise us on how best to communicate further information about this security concern to the appropriate people on your technical team. Please also advise SunnComm of this security risk as soon as possible or let us know how to best contact them directly.

In addition, we believe it necessary to public safety to immediately publicize and address this security risk. Therefore, we plan to take the following steps:

- 1) We will be advising the public of the existence of a security risk tomorrow, but will delay public disclosure of the details of how the software can be exploited for the time being.
- 2) We will be providing detailed information to prominent anti-virus and anti-spyware computer security companies to allow them to start addressing the flaw.
- 3) If necessary, we will also seek a temporary restraining order prohibiting further sales of the MediaMax CDs and mandating an extensive recall notice campaign.

Before we publish a detailed description of the nature of the risk and seek the Court's assistance, we are willing to give Sony BMG a window in which to take significant steps to rectify the problem, so those steps may be announced along with the publication of further details about the risk and, hopefully, there will be no need for judicial intervention. At a minimum, these steps must include an immediate recall of the MediaMax CDs now in circulation, an extensive publicity campaign to notify consumers of the recall and the security problems associated with both the XCP and MediaMax discs, including use of the banner-ad technology that is a feature of both the XCP and MediaMax software.

As you consider your response, we remind you that we have previously identified severe problems with MediaMax discs, including: undisclosed communications with servers Sony controls whenever a consumer plays a MediaMax CD; undisclosed installation of over 12 MB of software regardless of whether the user agrees to the EULA; and failure to include an uninstaller with the CD. Nevertheless, Sony BMG has refused to take

Jeffrey P. Cunard, Esq
November 30, 2005
Page 3

appropriate action to address these concerns. In light of the security problems identified herein, we urge Sony BMG to reconsider its position.

Please let us know by **10 AM Tuesday, December 6**, whether Sony BMG intends to recall the MediaMaxCDs and take necessary measures to notify consumers of the existence of and reasons for the recall. Please also take notice that if Sony fails to take these steps, EFF and its co-counsel will have no choice but to apply for a temporary restraining order seeking the aforementioned relief at 8:30 a.m. on Wednesday, December 7, before Judge Victoria Chaney in Los Angeles Superior Court. Please let us know whether Sony will appear to oppose such an application. Please consider this notice of our intent to seek such relief.

This letter is without prejudice to any legal rights our clients may have.

If you have any questions, please contact my colleague Kurt Opsahl or me as soon as possible.

Yours sincerely,

Cindy Cohn
Electronic Frontier Foundation



Robert Green
Green Welling, LLP

cc: Reed Kathrein, Esq.
Lerach Coughlin Stoia Geller Rudman & Robbins LLP

Exhibit 17

REDACTED

From: Cindy Cohn <cindy@eff.org>
To: Jeffrey P. Cunard <jpcunard@debevoise.com>
Date: 11/30/2005 5:27:25 PM
Subject: [SonyDRM-priv] Fwd: Security Vulnerability: Delay on public release

Dear Jeff,

I've checked with my co-counsel and we are willing to wait until the close of business EST tomorrow (Thu, December 1) before releasing information to the public about the existence of the security vulnerability in the MediaMax software that we wrote you about earlier today. As I confirmed on the phone, the initial public notification we have agreed to delay is not intended to provide the details of the vulnerability to the public, but rather to notify the public that a vulnerability exists without giving sufficient information to allow a malicious person to create an exploit to take advantage of it.

We will, however, immediately notify the major antivirus companies. We understand that as a matter of practice they do not publicize such information. We believe that this will give them a chance to start considering possible remedial steps immediately, something we believe is in the public interest.

Note that this agreement only pertains to the publicity about the fact of the security flaw and does not change our position about seeking the TRO next week in the event that SonyBMG fails to take the steps outlined in my letter of earlier today.

Cindy

Cindy Cohn
Legal Director
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110
(415) 436-9333 x108
(415) 436-9993 (fax)

--- Cindy@eff.org
--- www.eff.org

SonyDRM-priv mailing list
SonyDRM-priv@eff.org
<https://falcon.eff.org/mailman/listinfo/sonydrm-priv>

Exhibit 18

REDACTED

> From: "Cunard, Jeffrey P." <jpcunard@debevoise.com>
> Date: November 30, 2005 5:38:47 PM PST
> To: "Cindy Cohn" <cindy@eff.org>
> Subject: RE: Security Vulnerability: Delay on public release
>
> Thank you, Cindy. I appreciate the opportunity to talk with my client
> about the issues that you have raised before you go public with the
> information.
>
> Jeff
>
> -----Original Message-----
> From: Cindy Cohn [mailto:cindy@eff.org]
> Sent: Wednesday, November 30, 2005 8:27 PM
> To: Cunard, Jeffrey P.
> Subject: Fwd: Security Vulnerability: Delay on public release
>
>
> Dear Jeff,
>
> I've checked with my co-counsel and we are willing to wait until the
> close of business EST tomorrow (Thu, December 1) before releasing
> information to the public about the existence of the security
> vulnerability in the MediaMax software that we wrote you about earlier
> today. As I confirmed on the phone, the initial public notification we
> have agreed to delay is not intended to provide the details of the
> vulnerability to the public, but rather to notify the public that a
> vulnerability exists without giving sufficient information to allow a
> malicious person to create an exploit to take advantage of it.
>
> We will, however, immediately notify the major antivirus companies. We
> understand that as a matter of practice they do not publicize such
> information. We believe that this will give them a chance to start
> considering possible remedial steps immediately, something we believe
> is in the public interest.
>
> Note that this agreement only pertains to the publicity about the fact
> of the security flaw and does not change our position about seeking the
> TRO next week in the event that SonyBMG fails to take the steps
> outlined in my letter of earlier today.
>
> Cindy
>
>
> *****
> Cindy Cohn
> Legal Director

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REDACTED

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— www.eff.org

SonyDRM-priv mailing list
SonyDRM-priv@eff.org
<https://falcon.eff.org/mailman/listinfo/sonydrm-priv>

Exhibit 19

REDACTED

> From: "Cunard, Jeffrey P." <jpcunard@debevoise.com>
> Date: November 30, 2005 8:44:37 PM PST
> To: "Cindy Cohn" <cindy@eff.org>
> Subject: RE: MediaMax Access Control Vulnerability report
>
> Cindy:
> Thank you for sending this along. We would like to take you up on offer
> to make your technical people available. 10 a.m. PST works fine for
> us.
> We will have on the telephone at least some folks from Sony BMG and
> SunComm and myself.
>
> We will circulate a call-in number.
>
> Jeff
>
>
>

> -----Original Message-----
> From: Cindy Cohn [mailto:cindy@eff.org]
> Sent: Wednesday, November 30, 2005 10:09 PM
> To: Cunard, Jeffrey P.
> Subject: MediaMax Access Control Vulnerability report
>
>
>
>
>

Cindy Cohn	--- Cindy@eff.org
Legal Director	--- www.eff.org
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(415) 436-9333 x108	
(415) 436-9993 (fax)	

SonyDRM-priv mailing list
SonyDRM-priv@eff.org
<https://falcon.eff.org/mailman/listinfo/sonydrm-priv>

CC: Chris Palmer <chris@eff.org>

Media Max Access Control Vulnerability

November 29th, 2005

Version 1.0

Confidential

Prepared by:

Jesse Burns and Alex Stamos of Information Security Partners LLC

Tested Product Version:

SunnComm Media Max 5.0.21.0 as installed from
My Morning Jacket: Z, and Sara McLachlan Bloom Remix Album
Other versions of Media Max have not been tested.

Platform verified on:

Complete verification on Microsoft Windows XP Service Pack 2
Weak ACL creation behavior also verified on Windows 2000

Description:

SunnComm Media Max version 5.0.21.0 (hereafter called Media Max), partially installs itself automatically the first time an affected CD is inserted into a Windows machine¹. The automated installation includes the creation of a "SunnComm Shared" directory. Media Max creates this directory with a custom access control list² (ACL) that contains an access control entry (ACE) granting the Windows principal Everyone "Full Control" rights to the directory. This allows any process, user, or network client the ability to read, modify, and delete the contents of this directory, including low rights accounts which are not even members of the "Users" group. Granting untrusted users "Full Control" rights to executables that will be automatically run by high rights users creates a simple but serious security vulnerability³.

¹ The automated installation is only partial as the user is eventually prompted with a EULA dialog box, at which point they can terminate the remainder of the installation. The partial installation remains however, including the weak ACL on the SunnComm Shared directory.

² An introduction to proper Windows Access Control Lists is available in Chapter 6 of *Writing Secure Code, 2nd Edition*, by Michael Howard and David LeBlanc, Microsoft Press

³ This issue is also outlined in the Microsoft TechNet Security Management Column – "How to Shoot Yourself in the Foot with Security, Part 2: To ACL or Not to ACL"

<http://www.microsoft.com/technet/community/columns/secmgmt/default.mspix>

Here are some screen captures showing the file permissions of Media Max's main installation directory and the directory above it. The "Common Files" directory was created by Microsoft to be securely shared by multiple applications.

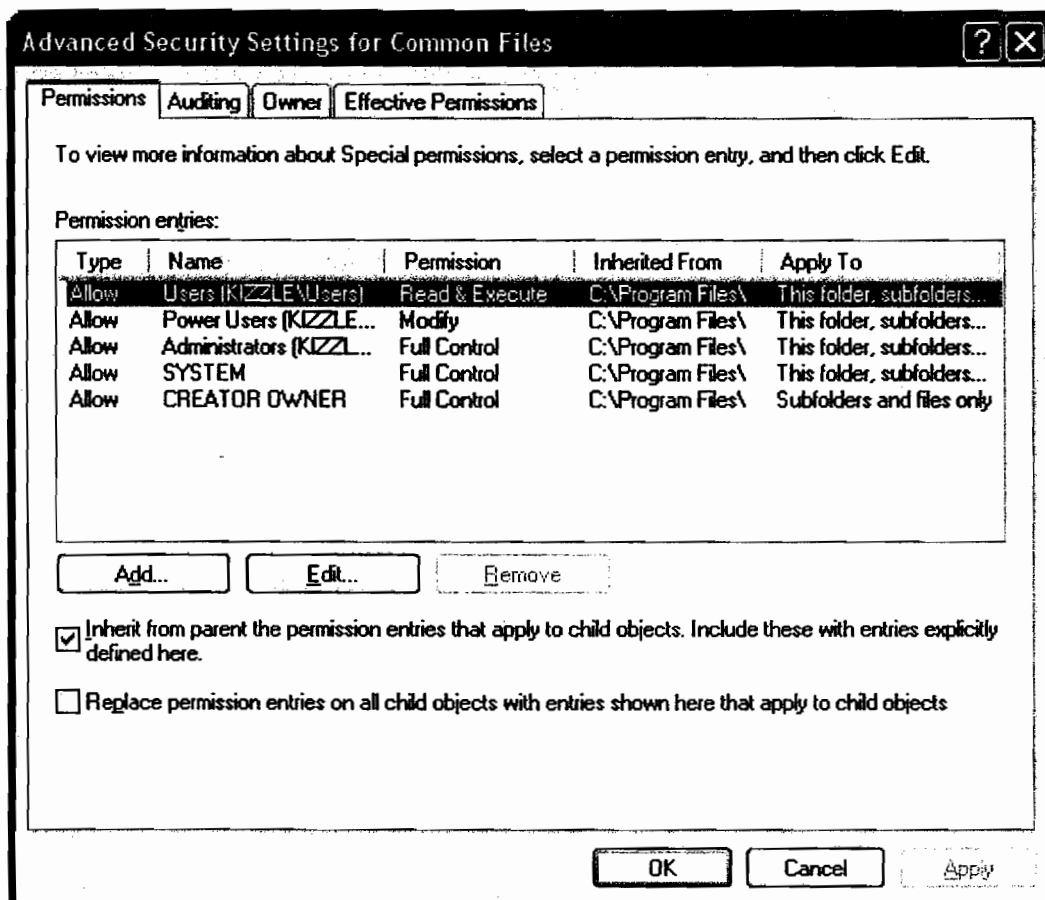


Figure 1: The security settings tab for C:\Program Files\Common Files\

Note that the default "Common Files" ACL grants no rights to the Everyone principal and grants only read and execute rights to "Users" of the system. This allows for low rights users to access the software in this directory without granting them the ability to change or delete it.

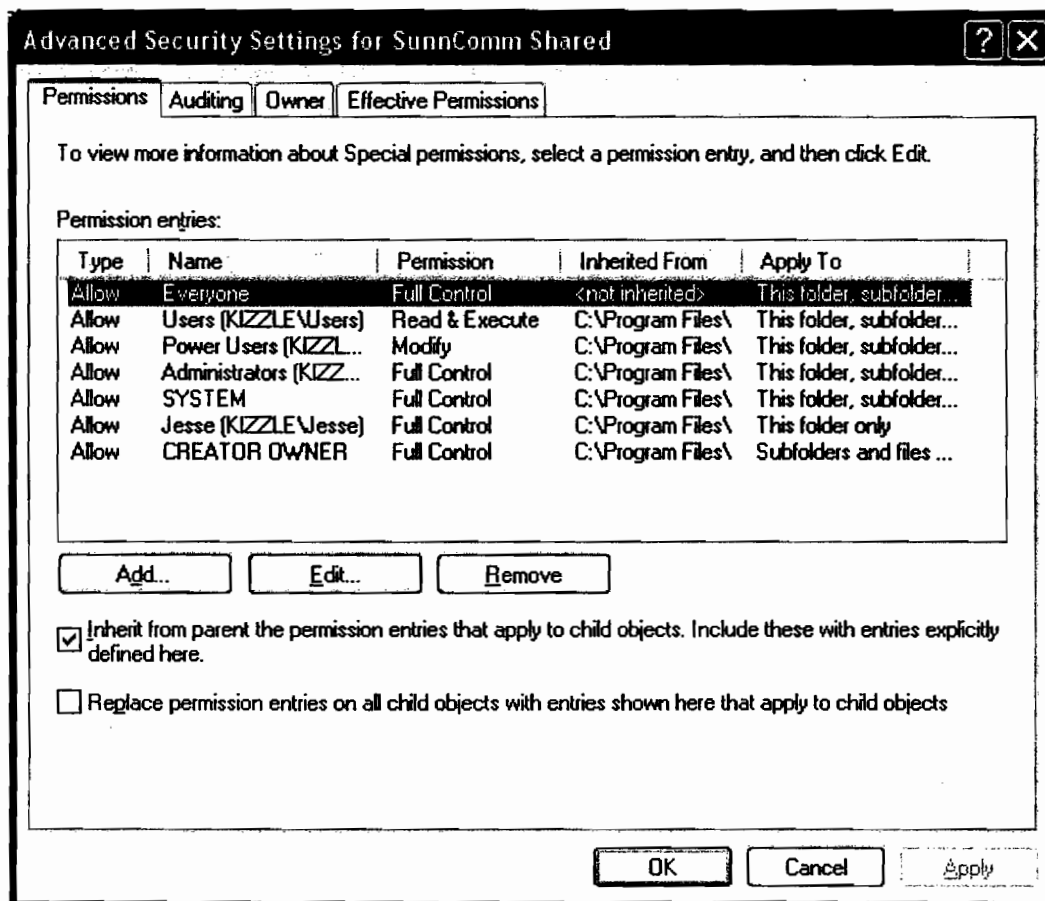


Figure 2: The security settings tab for C:\Program Files\Common Files\SunnComm Shared\

Note the addition of the Everyone, Full Control, Access Control Entry.

After installation completes the "SunnComm Common" directory contains executable content like MMX.EXE, which runs automatically when a Media Max CD is inserted. The MMX.EXE program inherits the weak security protections configured by Media Max on the SunnComm Shared directory.

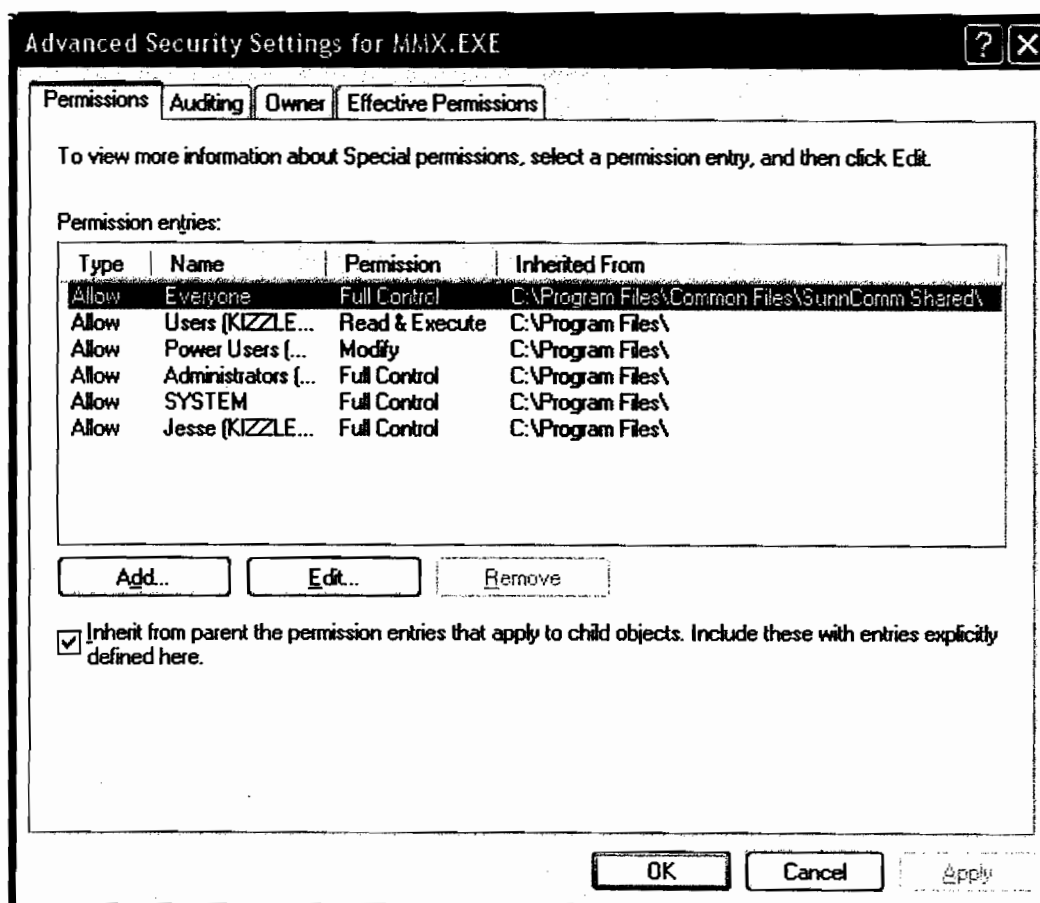


Figure 3: The security settings for MMX.exe showing it inheriting from SunnComm Shared

This ACE allows a low rights user to overwrite the file with hostile code. Other files in the directory share this same weakness which is inherited from the "SunnComm Shared" directory.

Correcting the file permissions using the Microsoft tools shown in figures 1, 2 and 3 is not effective as the next time a Media Max CD is played Media Max re-inserts the Everyone Full Control ACE into the ACL, thereby re-opening the vulnerability.

Exploit Scenario:

A machine with Media Max installed upon it is being used by a user with low rights. This access could be remote, through Windows file sharing, or local by use of the "guest" or another low rights account. The user either decides to attack the vulnerable system themselves or exposes the machine to malicious code inadvertently (for example by running an email virus). The attacker replaces the MMX.exe program that is installed by Media Max with hostile software; such as a trojan version of MMX.exe which installs a back door, or grants Everyone "Full Control" rights to other portions of the system when run.

The attacker then waits for a high rights user, such as an Administrator or a member of Power Users group to spring the trap by logging into the computer and inserting a Media Max CD. When the victim inserts the Media Max CD, the Media Max software automatically launches the attacker subverted "MMX.exe" program with the rights of the current user.

If the attacker is a virus this allows the virus to run as a high rights user. If the attacker is a malicious user, this allows the malicious user to install their back door, or to grant Everyone "Full Control" rights to other portions of the system.

Reproduction:

To avoid exposure to dangerous code, a safe substitute like cmd.exe can be used for testing in place of a back door, virus, or other hostile code. The test system is demonstrated to be vulnerable if a command window (cmd.exe) appears without prompting. Attackers could have substituted any hostile code they pleased.

1. Install a test system running Microsoft Windows 2000 Service Pack 4 or Microsoft Windows XP make sure to patch the machine if you are running on a network.
2. Create a high rights test user account that is in the local Administrators group
3. Create a low rights test user account who is not an administrator.
4. Log in as the high rights test user account
5. Play a Media Max CD (i.e. Sara McLachlan Remix Album Bloom) which should result in Media Max being installed. You should be able to hear the music and see the message "Original CD" in addition to the cover of the Bloom album.
6. Close the application and log out of the computer
7. Log into the computer as the low rights user
8. Replace the MMX.exe program at "c:\Program Files\Common Files\SunnComm Shared\MMX.exe" with the simulated hostile code "cmd.exe" by opening a command shell and typing (all on one line):

```
copy %WINDIR%\system32\cmd.exe "c:\Program Files\Common Files\SunnComm Shared\MMX.exe"
```

9. Log out of the computer
10. Log into the computer as the high rights test user account
11. Insert the Media Max CD that was played in Step 5 (i.e. Sara McLachlan's Bloom album)

12. Note that a command shell (cmd.exe) appears, that is our simulated attacker controlled hostile code. It is running as the interactive user – not the low rights user, which can be verified with Windows Task manager.

Prepared for the Electronic Frontier Foundation on November 29, 2005

Exhibit 20

REDACTED

> From: "Cunard, Jeffrey P." <jpcunard@debevoise.com>
> Date: December 1, 2005 11:24:46 AM PST
> To: "Cindy Cohn" <cindy@eff.org>
> Subject: RE: Security Vulnerability: Delay on public release
>
> Cindy:
>
> Really, thanks for the call. This was very, very helpful to the
> client.
> Please extend our gratitude to iSEC as well. You know that I was
> serious when I asked for you to tell us about security issues.
>
> My cell is: 202-415-5783. I will be in class, but will step out to
> take
> the call.
>
> Thanks again, and also for the exceptionally kind words at the end of
> the call about Bruce and myself. You know we feel likewise about our
> relationship with EFF.
>
> Jeff
>
> -----Original Message-----
> From: Cindy Cohn [mailto:cindy@eff.org]
> Sent: Wednesday, November 30, 2005 8:27 PM
> To: Cunard, Jeffrey P.
> Subject: Fwd: Security Vulnerability: Delay on public release
>
>
> Dear Jeff,
>
> I've checked with my co-counsel and we are willing to wait until the
> close of business EST tomorrow (Thu, December 1) before releasing
> information to the public about the existence of the security
> vulnerability in the MediaMax software that we wrote you about earlier
> today. As I confirmed on the phone, the initial public
> notification we
> have agreed to delay is not intended to provide the details of the
> vulnerability to the public, but rather to notify the public that a
> vulnerability exists without giving sufficient information to allow a
> malicious person to create an exploit to take advantage of it.
>
> We will, however, immediately notify the major antivirus
> companies. We
> understand that as a matter of practice they do not publicize such
> information. We believe that this will give them a chance to start

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> considering possible remedial steps immediately, something we believe
> is in the public interest.

>

> Note that this agreement only pertains to the publicity about the fact
> of the security flaw and does not change our position about seeking
> the

> TRO next week in the event that SonyBMG fails to take the steps
> outlined in my letter of earlier today.

>

> Cindy

>

>

> *****

> Cindy Cohn

— Cindy@eff.org

> Legal Director

— www.eff.org

> Electronic Frontier Foundation

> 454 Shotwell Street

> San Francisco, CA 94110

> (415) 436-9333 x108

> (415) 436-9993 (fax)

>

>

Cindy Cohn

— Cindy@eff.org

Legal Director

— www.eff.org

Electronic Frontier Foundation

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San Francisco, CA 94110

(415) 436-9333 x108

(415) 436-9993 (fax)

Exhibit 21

REDACTED

> From: "Cunard, Jeffrey P." <jpcunard@debevoise.com>
> Date: December 2, 2005 4:44:27 PM PST
> To: "Kurt Opsahl" <kurt@eff.org>, "Corynne McSherry" <corynne@eff.org>
> Cc: "Cindy Cohn" <cindy@eff.org>
> Subject: RE: sony security question
>
> Kurt:
>
> Thanks for the email. I was traveling this afternoon, back from
> Cambridge.
>
> I'm sorry that the iSEC people were not available to talk to the Sony
> BMG consultants today and won't be able to talk over the weekend.
> As I
> explained to Corynne earlier today, the Sony BMG consultants didn't
> have
> any "questions," as such, for iSEC. Rather, with EFF having
> identified
> the problem, the consultants wanted to talk with iSEC about the
> solution
> - a patch - including whether it adequately addressed the scenario
> that
> iSEC described. They had been eager for the iSEC views.
>
> The good news is that a patch has now been developed and is undergoing
> final testing. If iSEC would like to talk with the consultants about
> the patch (and any related issues), we will work to make that
> happen at
> once. In the meantime, Sony BMG and SunnComm propose to release the
> patch as soon as they are satisfied it does the trick.
>
> Finally, yes, the Sony BMG consultants are NSG.
>
> Jeff
> -----Original Message-----
> From: Kurt Opsahl [mailto:kurt@eff.org]
> Sent: Friday, December 02, 2005 6:12 PM
> To: Corynne McSherry
> Cc: Cunard, Jeffrey P.; Cindy Cohn
> Subject: Re: sony security question
>
>
> Jeff --
>
> Just wanted to check in to see when we might expect the emailed
> list of

> questions. The London-based security firm wouldn't happen to be NGS
> (Next Generation Security)?

>
> Looking forward to hearing from you,

>
> Kurt

>
> -----

> Kurt Opsahl, kurt@eff.org
> Staff Attorney, Electronic Frontier Foundation <http://www.eff.org/>
> ph: 415.436.9333 x 106 \ fax: 415.436.9993

>
> On Dec 2, 2005, at 11:46 AM, Corynne McSherry wrote:

>
> Hi again Jeff,

>
> Thanks for your call. It looks like Isec Partners' schedule is very
> tight today and this weekend, so a call will be a challenge. Let me
> suggest that we proceed this way: Please ask your client's security
> consultant to put together a list of questions they have and send
> it by
> email. If it turns out email won't suffice, we'll see if we can
> coordinate a phone call.

>
> Please have your consultant forward the email questions to Kurt
> Opsahl--he'll be coordinating from here.

>
> Regards,
> Corynne

>
> --

> Corynne McSherry
> Staff Attorney
> Electronic Frontier Foundation
> 454 Shotwell Street, San Francisco, CA 94110
> corynne@eff.org
> tel: 415-436-9333 x 122 // fax: 415-436-9993

>
> On Dec 2, 2005, at 10:51 AM, Corynne McSherry wrote:

>
>> Dear Jeff-

>>
>> Regarding Sony's request to have Isec Partners confer directly with
>> Sony's outside security folks in London--Can you give me a better
>> sense of what Sony's security folks would like to know? It's not
>> clear to us what questions they might have that aren't answered in
>> the

>
>> write up Isec prepared. Based on that writeup, they should have no
>> difficulty replicating the problem described.

>>
>> Thanks,
>> Corynne

>>
>>
>> --

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>> Corynne McSherry
>> Staff Attorney
>> Electronic Frontier Foundation
>> 454 Shotwell Street, San Francisco, CA 94110
>> corynne@eff.org
>> tel: 415-436-9333 x 122 // fax: 415-436-9993
>>
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----- Cindy@eff.org
----- www.eff.org

Exhibit 22

REDACTED

> From: "Cunard, Jeffrey P." <jpcunard@debevoise.com>
> Date: December 3, 2005 10:44:33 AM PST
> To: "Kurt Opsahl" <kurt@eff.org>
> Cc: "Corynne McSherry" <corynne@eff.org>, "Cindy Cohn" <cindy@eff.org>
> Subject: RE: sony security question

>
> Thank you Kurt.

>
> Sony BMG is indeed happy to make the patch available to iSEC for
> review
> and testing. Please let us know to where it should be sent (it is a 5
> MB zip file). In the meantime, we will check NGS' availability for a
> follow up call with iSEC.

>
> It should be understood that Sony BMG is providing iSEC and EFF with
> this patch in advance of public release on the basis of the following:
> 1) the patch is being made available for the purpose of review and
> testing; 2) the patch may not be distributed or used for any other
> purpose; 3) neither iSEC nor EFF will make public the results of the
> testing and review of the patch prior to its public release by Sony
> BMG
> and/or SunnComm; and 4) iSEC will provide its comments on the patch,
> based on its testing and review, to Sony BMG and its consultants.
> Please confirm that these conditions are agreeable to iSEC and EFF.

>
> We look forward to hearing from you.

>
> Jeff

>
> -----Original Message-----

> From: Kurt Opsahl [mailto:kurt@eff.org]
> Sent: Saturday, December 03, 2005 5:40 AM
> To: Cunard, Jeffrey P.
> Cc: Corynne McSherry; Cindy Cohn
> Subject: Re: sony security question

>
>
> Jeff --

>
> After checking with iSec, we'd be happy to arrange a conversation with
> NGS, but believe it would be most fruitful to do so after iSec has had
> the opportunity to review and test the patch. That way, everyone
> could
> best understand how the patch is intended to resolve the security
> vulnerability. Please let me know if that can be arranged, and what
> NGS' availability is.

REDACTED

>
> best regards,
>
> Kurt
>
> On Dec 2, 2005, at 4:44 PM, Cunard, Jeffrey P. wrote:
>
> Kurt:
>
> Thanks for the email. I was traveling this afternoon, back from
> Cambridge.
>
> I'm sorry that the iSEC people were not available to talk to the Sony
> BMG consultants today and won't be able to talk over the weekend.
> As I
> explained to Corynne earlier today, the Sony BMG consultants didn't
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> any "questions," as such, for iSEC. Rather, with EFF having
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> - a patch - including whether it adequately addressed the scenario
> that
> iSEC described. They had been eager for the iSEC views.
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> The good news is that a patch has now been developed and is undergoing
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> once. In the meantime, Sony BMG and SunnComm propose to release the
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>
> Finally, yes, the Sony BMG consultants are NSG.
>
> Jeff
> -----Original Message-----
> From: Kurt Opsahl [mailto:kurt@eff.org]
> Sent: Friday, December 02, 2005 6:12 PM
> To: Corynne McSherry
> Cc: Cunard, Jeffrey P.; Cindy Cohn
> Subject: Re: sony security question
>
>
> Jeff --
>
> Just wanted to check in to see when we might expect the emailed
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> questions. The London-based security firm wouldn't happen to be NGS
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> Looking forward to hearing from you,
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> Kurt
>
> -----
> Kurt Opsahl, kurt@eff.org

> Staff Attorney, Electronic Frontier Foundation <http://www.eff.org/>
> ph: 415.436.9333 x 106 \ fax: 415.436.9993
>
> On Dec 2, 2005, at 11:46 AM, Corynne McSherry wrote:
>
> Hi again Jeff,
>
> Thanks for your call. It looks like Isec Partners' schedule is very
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>
> Regards,
> Corynne
>
> --
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>>
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>
>> write up Isec prepared. Based on that writeup, they should have no
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>> Thanks,
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>>
>
>

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>

Cindy Cohn
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(415) 436-9993 (fax)

---- Cindy@eff.org
---- www.eff.org

REDACTED

Exhibit 23



G R E E N ■ W E L L I N G L L P

CONFIDENTIAL SETTLEMENT COMMUNICATION

December 6, 2005

VIA ELECTRONIC MAIL
AND FACSIMILE (202) 383 8118

Jeffrey P. Cunard
DEBEVOISE & PLIMPTON LLP
555 13th St., N.W.
Suite 1100 East
Washington, D.C. 20004

Re: Sony BMG

Dear Jeff,

We write in response to your letter of December 5, 2005. As we discussed by telephone, we are willing to continue discussions with a view to resolving the concerns of our clients and EFF on the issues asserted in our complaints and previous correspondence with you and your clients. We appreciate the spirit in which your client is addressing the issues we raised and we are prepared to continue our good faith discussions. This letter responds to the items in the bullet points on the third page of your letter as they relate to the demands we previously made.

We have previously agreed to forego filing a motion for a temporary restraining order, due to the parties' substantial efforts in reducing the scope of potential harm to consumers. Notwithstanding, we remain concerned that serious potential irreparable harm presently exists for the over 2 million consumers who have purchased CDs containing MediaMax software version 5, or will purchase the over 2 million CDs that are presently in the distribution chain.

Accordingly, we are in the process of preparing a motion for preliminary injunction addressing these specific vulnerable consumers. However, we are willing to agree to delay any such filing, provided we can reach agreement in principle on the first, second and fifth bullet points in your letter by Friday, December 9, 2005.

Following the structure of your letter, we raise several additional issues that must be addressed to reach a global settlement:

1. A moratorium on the manufacture of CDs containing MediaMax software pending a complete re-examination of that software.

Response: Sony BMG will also need to provide protection and relief to customers who have already purchased or may purchase those CDs that are in the pipeline. While Sony BMG has made substantial progress in this regard with its current patch, undoubtedly there are other, yet to be identified, security risks that will arise from these or other Sony BMG CDs with DRM software. As such, the parties must reach agreement on a protocol that will provide these consumers sufficient protection.

Plaintiffs propose that defendants be required to release updated patches to the market within a set period of time from any discovery of security breaches – for example, within 15 days of such a breach being made public. Plaintiffs also propose that Sony BMG release all patches, updates and uninstall programs to a third-party, to be agreed upon by Sony BMG and EFF, prior to their release to the public. The third-party would audit the software code, and certify the safety of the patch or update to the public. This type of third-party certification can only benefit Sony BMG, as it allows for independent review and confirmation to the public of Sony BMG's good faith, much as iSec and NGS did recently.

Of course, plaintiffs' first preference is that Sony BMG agrees to recall all MediaMax CDs already in the distribution channel and offer to exchange MediaMax CDs already purchased by consumers for CDs without DRM software. This program is similar to that already embarked upon by Sony BMG as to the XCP CDs. Plaintiffs, however, are open to considering whether a solution exists that is less than a total recall of the CDs already in the market.

2. An Internet-based advertising and notice program with regard to the security issues and the availability of the updates and uninstallers that would supplement the banners, as discussed above, as well as the other efforts that are being made to reach users of XCP- and/or MediaMax-protected CDs.

Response: We will need to receive more detail on the Internet-based advertising and notice program you propose in order to assess its effectiveness. As we've discussed, we believe that the notice program is a key element in our consideration of whether a recall of both CDs in the pipeline and CDs already sold to users is still needed. Plaintiffs propose providing notice to consumers at the point-of-sale such as an external sticker on the CD package, in addition to an Internet-based advertising campaign. As well, we look forward to receiving further information regarding hard-copy notice given to class members, such as leaflets provided in stores.

3. Further relief, whether economic and/or in the form of free downloads of music, for purchasers of XCP-protected CDs.

Response: We believe it very important that Sony BMG provide a reasonable level of compensation to all injured class members. We appreciate Sony BMG's willingness to discuss this issue. We propose that Sony BMG agree to a monetary claim process for consumers who suffered verifiable computer problems associated with either XCP or MediaMax software and that a reasonable program of objective value be provided to all others.

4. Waiver of Sony BMG's rights to enforce certain provisions of the End User License Agreements for both XCP- and MediaMax-protected CDs.

Response: Any such waiver should include the following EULA provisions:

- a. Restrictions on the user's ability to use the digital content on the CD in the event that that consumer chose to leave the United States;
 - b. Restrictions on resale and transfer of the digital content on the CDs;
 - c. Restrictions on user's ability to use the digital content on the CDs at work;
 - d. Restrictions on user's ability to use and retain lawfully-made copies of the digital content on the CDs in the event that the original CD is stolen or lost;
 - e. Restrictions on user's ability to use the digital content on the CDs following a bankruptcy;
 - f. Conditioning the user's continued use of the digital content on the CDs on acceptance of all Sony BMG software updates;
 - g. A purported \$5.00 limit on Sony BMG's entire liability to the purchaser of the CDs;
 - h. Restrictions on user's ability to examine and test his or her computer to understand and attempt to prevent the damage cause by the rootkit or to do any other sort of reverse engineering consistent with the limits of applicable law;
 - i. A reservation of rights by Sony BMG to use "technological "self-help" measures against the computers of users who desire to make use of the digital content on the CDs "at any time, without notice to [the user]."
 - j. Restrictions on the user's ability to seek redress in California courts, under California law, and the purchaser's ability to seek a trial by jury;
 - k. A disclaimer of all warranties, including implied warranties of merchantability, satisfactory quality, noninfringement, and fitness for any particular purpose.
5. A commitment to continue the Sony BMG practice of not aggregating the IP addresses logged through enhanced/connected CDs (if that information is at all retained) with any personally identifiable data, to refrain from using that information

to identify individual consumers or for any purpose other than providing the enhancements and to make appropriate disclosures with respect to the privacy-related concerns you have identified.

Response: In order to remedy the problem caused by the fact that the software does not disclose that it communicates with Sony BMG or its contractors, users should be offered a patch that should either completely disable the communication function or clearly and conspicuously notify purchasers of their right to disable any communication after full disclosure of the risks and benefits to them of this function. The disclosures should be in plain language, inform the user what sort of logging/reporting the software does, and should do so at the time of purchase rather than after installation (when return of the disk becomes difficult, if not impossible). To the extent that the software does this, the disclosure should state that every time the CD is played on a computer with Internet access, the software will report back to MediaMax that fact, including the specific CD played and the IP address of the user, and that this information is correlated so that MediaMax is able to know all of the MediaMax CDs that a purchaser plays and when he or she plays them, even if it is not correlated with personally identifying information (again, if this is done). Finally, of course, the disclosures must match the actual behavior of the software. This means that no software is installed on a user's computer until after the EULA is presented and agreed to.

6. Finally, and we trust that Fred, you and others at EFF will appreciate the significance of this, Sony BMG is willing to enter into a discussion with EFF with regard to future use it might make of DRM on CDs. (I personally am looking forward to that exchange.)

Response: We are encouraged by this point and look forward to this conversation. As you know, EFF is skeptical of DRM for many reasons, including that it is ineffective in preventing piracy, casual or otherwise, and because of the burdens it places on consumers, technology researchers and others. We also believe that that security and privacy problems will continue, even as to MediaMax and XCP. We appreciate Sony BMG's willingness to discuss future use of DRM software and hope that this discussion can include discontinuing the use of this software altogether. If Sony BMG does ultimately choose to continue use of DRM software, however, we believe that there is much that can be done in the design of the software to avoid operating system-level control over the computer, in the disclosures to be made at the time of purchase and thereafter, and in the availability to actually decline to have the software installed and to uninstall, as examples, that may reduce our concerns.

In the context of settling the above issues, we are willing to discuss the appropriate class definition, notice, venue, claims administration process, and scope of any potential releases. Finally, in the event we are able to reach agreement on the issues outlined above, we believe it appropriate thereafter to discuss your client's payment of attorneys' fees and costs.


Again, we appreciate your prompt response and the constructive discussions and commitments Sony BMG has been willing to undertake to date. We believe that the next steps should be a call Wednesday before you leave for Europe. In particular, plaintiffs

seek prompt resolution concerning the appropriate notice to consumers for CDs that are already in the supply chain, as the Christmas season is rapidly approaching.

Thank you for considering these points. We look forward to discussing these matters with you further at your convenience, tomorrow.

Yours very truly,

ELECTRONIC FRONTIER
FOUNDATION

Handwritten signature of Cindy Cohn in cursive, followed by the initials "/APS".

Cindy Cohn

GREEN ■ WELLING LLP
A Limited Liability Partnership

Handwritten signature of Robert S. Green in cursive, followed by the initials "/APS".

Robert S. Green

cc: Reed R. Kathrein
Larry Feldman

Exhibit 24

From: EFF Press <press@eff.org>
Subject: [E-S] EFF: SunnComm Makes Security Update Available To Address Recently Discovered Vulnerability On Its MediaMax Version 5 Content Protection Software
Date: December 6, 2005 3:31:16 PM PST
To: presslist@eff.org
Reply-To: press@eff.org

Electronic Frontier Foundation Media Release

For Immediate Release: Tuesday, December 06, 2005

Contact:

Kurt Opsahl
Staff Attorney
Electronic Frontier Foundation
kurt@eff.org
+1 415 436 9333 x106

Cory Shields
Sony BMG
+1 212-833-4647

John McKay
Sony BMG
+1 212-833-5520

SunnComm Makes Security Update Available To Address
Recently Discovered Vulnerability On Its MediaMax Version 5
Content Protection Software, Which Is Included On Certain
SONY BMG CDs

San Francisco, CA and New York, NY - The Electronic Frontier Foundation (EFF) and SONY BMG Music Entertainment (SONY BMG) said today that SunnComm is making available a software update to address a security vulnerability with its MediaMax Version 5 content protection software on certain SONY BMG compact discs (CDs). The vulnerability was discovered by the security firm iSEC Partners after EFF requested an examination of the SunnComm software.

"We're pleased that SONY BMG responded quickly and responsibly when we drew their attention to this security problem," said EFF staff attorney Kurt Opsahl. "Consumers should take immediate steps to protect their computers."

"We're grateful to EFF and iSEC for bringing this to our attention," said Thomas Hesse, president, Global Digital Business, SONY BMG. "We believe that the availability of the update coupled with our campaign to notify customers will appropriately address the CDs with MediaMax Version 5 in the market."

SunnComm as well as independent software security firm NGS Software have determined that the security vulnerability is fully addressed by the update. NGS Director Robert Horton said, "After carefully researching the security vulnerability presented to us by SONY BMG, we have determined that it is not uncommon and, importantly, it is easily fixed by applying a software update."

The security vulnerability on SunnComm MediaMax Version 5 software differs from that reported in early November on

First4Internet XCP software contained on certain SONY BMG CDs. A full list of the 27 SunnComm MediaMax Version 5 titles is included in the link below. Consumers can download the software update that is designed to address this security vulnerability from SunnComm's and Sony BMG's websites at:

<http://www.sunncomm.com/support/updates/update.asp> and
<http://www.sonybmg.com/mediamax>.

The security issue involves a file folder installed on users' computers by the MediaMax software that could allow malicious third parties who have localized, lower-privilege access to gain control over a consumer's computer running the Windows operating system.

SONY BMG will notify consumers about this vulnerability and the update through the banner functionality included on the player, as well as through an internet-based advertising campaign. The update is also being provided to major software and Internet security companies. EFF and SONY BMG urge all consumers who receive notice to download and install the patch immediately.

In accordance with standard information security practices, EFF and iSEC delayed public disclosure of the details of the exploit to provide SunnComm the opportunity to develop an update.

Full list of titles affected:

<http://www.sonybmg.com/mediamax/titles.html>

Links to patch:

<http://www.sunncomm.com/support/updates/update.asp>
<http://www.sonybmg.com/mediamax>

iSEC Partners report on the vulnerability:

<http://www.eff.org/IP/DRM/Sony-BMG/MediaMaxVulnerabilityReport.pdf>

iSEC Partners:

<http://www.isecpartners.com/>

NGS:

<http://www.ngssoftware.com>

For this release:

http://www.eff.org/news/archives/2005_12.php#004234

About EFF

The Electronic Frontier Foundation is the leading civil liberties organization working to protect rights in the digital world. Founded in 1990, EFF actively encourages and challenges industry and government to support free expression and privacy online. EFF is a member-supported organization and maintains one of the most linked-to websites in the world at <http://www.eff.org/>

About SONY BMG MUSIC ENTERTAINMENT

SONY BMG MUSIC ENTERTAINMENT is a global recorded music joint venture with a roster of current artists that includes a broad array of both local artists and international superstars, as well as a vast catalog

that comprises some of the most important recordings in history. SONY
BMG is 50% owned by Bertelsmann A.G. and 50% owned by Sony Corporation
of America.

-end-

presslist mailing list

<https://falcon.eff.org/mailman/listinfo/presslist>

Exhibit 25

REDACTED

> From: "Paul Singer" <paul.singer@oag.state.tx.us>
> Date: December 21, 2005 11:48:17 AM PST
> To: <cindy@eff.org>
> Cc: <kurt@eff.org>
> Subject: Re: EFF: SunnComm Makes Security Update Available To
> Address Recently Discovered Vulnerability On Its Me

REDACTED

>
> Hi Cindy - sorry for the delay in getting back to you, but thought
> you'd be interested in the fact that we amended our lawsuit today.
> Information on the amended suit, as well as a copy, can be found on
> our website:

>
> <http://www.oag.state.tx.us/oagNews/release.php?id=1370>

>
> Hope you're doing well. I'd be interested in touching base with
> you to hear how your discussions with Sony BMG are going.

>
>
> Paul Singer
> Assistant Attorney General
> Consumer Protection and Public Health Division
> Office of the Texas Attorney General
> P.O. Box 12548
> Austin, Texas 78711
> (512) 936-1791 (telephone)
> (512) 473-8301 (facsimile)
> paul.singer@oag.state.tx.us (e-mail)

>
>>>> Cindy Cohn <cindy@eff.org> 12/7/2005 8:31 PM >>>

> Hi Paul,

>
> I wanted to make sure that you saw this. We believe that this flaw in
> the SunnComm CDs is likely to be the tip of the iceberg. Already some
> researchers have discovered a variant of this flaw that will force
> Sony
> to issue yet another patch, likely tomorrow.

>
> When you get a moment, we'd love to hear where you are with your
> action. We've been in pretty significant discussions with Sony BMG.

>
> Cindy

>
> Begin forwarded message:

>
>> From: EFF Press <press@eff.org>

>> Date: December 6, 2005 3:31:16 PM PST
>> To: presslist@eff.org
>> Subject: [E-S] EFF: SunnComm Makes Security Update Available To
>> Address Recently Discovered Vulnerability On Its MediaMax Version 5
>> Content Protection Software
>> Reply-To: press@eff.org
>>
>> Electronic Frontier Foundation Media Release
>>
>> For Immediate Release: Tuesday, December 06, 2005
>>
>> Contact:
>>
>> Kurt Opsahl
>> Staff Attorney
>> Electronic Frontier Foundation
>> kurt@eff.org
>> +1 415 436 9333 x106
>>
>> Cory Shields
>> Sony BMG
>> +1 212-833-4647
>>
>> John McKay
>> Sony BMG
>> +1 212-833-5520
>>
>> SunnComm Makes Security Update Available To Address
>> Recently Discovered Vulnerability On Its MediaMax Version 5
>> Content Protection Software, Which Is Included On Certain
>> SONY BMG CDs
>>
>> San Francisco, CA and New York, NY - The Electronic
>> Frontier Foundation (EFF) and SONY BMG Music Entertainment
>> (SONY BMG) said today that SunnComm is making available a
>> software update to address a security vulnerability with
>> its MediaMax Version 5 content protection software on
>> certain SONY BMG compact discs (CDs). The vulnerability
>> was discovered by the security firm iSEC Partners after EFF
>> requested an examination of the SunnComm software.
>>
>> "We're pleased that SONY BMG responded quickly and
>> responsibly when we drew their attention to this security
>> problem," said EFF staff attorney Kurt Opsahl. "Consumers
>> should take immediate steps to protect their computers."
>>
>> "We're grateful to EFF and iSEC for bringing this to our
>> attention," said Thomas Hesse, president, Global Digital
>> Business, SONY BMG. "We believe that the availability of
>> the update coupled with our campaign to notify customers
>> will appropriately address the CDs with MediaMax Version 5
>> in the market."
>>
>> SunnComm as well as independent software security firm NGS
>> Software have determined that the security vulnerability is
>> fully addressed by the update. NGS Director Robert Horton

REDACTED

>> said, "After carefully researching the security
>> vulnerability presented to us by SONY BMG, we have
>> determined that it is not uncommon and, importantly, it is
>> easily fixed by applying a software update."
>>
>> The security vulnerability on SunnComm MediaMax Version 5
>> software differs from that reported in early November on
>> First4Internet XCP software contained on certain SONY BMG
>> CDs. A full list of the 27 SunnComm MediaMax Version 5
>> titles is included in the link below. Consumers can
>> download the software update that is designed to address
>> this security vulnerability from SunnComm's and Sony BMG's
>> websites at:
>> <http://www.sunncomm.com/support/updates/update.asp> and
>> <http://www.sonybm.com/mediamax>.
>>
>> The security issue involves a file folder installed on
>> users' computers by the MediaMax software that could allow
>> malicious third parties who have localized, lower-privilege
>> access to gain control over a consumer's computer running
>> the Windows operating system.
>>
>> SONY BMG will notify consumers about this vulnerability and
>> the update through the banner functionality included on the
>> player, as well as through an internet-based advertising
>> campaign. The update is also being provided to major
>> software and Internet security companies. EFF and SONY BMG
>> urge all consumers who receive notice to download and
>> install the patch immediately.
>>
>> In accordance with standard information security practices,
>> EFF and iSEC delayed public disclosure of the details of
>> the exploit to provide SunnComm the opportunity to develop
>> an update.
>>
>> Full list of titles affected:
>> <http://www.sonybm.com/mediamax/titles.html>
>>
>> Links to patch:
>> <http://www.sunncomm.com/support/updates/update.asp>
>> <http://www.sonybm.com/mediamax>
>>
>> iSEC Partners report on the vulnerability:
>> <http://www.eff.org/IP/DRM/Sony-BMG/MediaMaxVulnerabilityReport.pdf>
>>
>> iSEC Partners:
>> <http://www.isecpartners.com/>
>>
>> NGS:
>> <http://www.ngssoftware.com>
>>
>> For this release:
>> http://www.eff.org/news/archives/2005_12.php#004234
>>
>> About EFF
>>

REDACTED

>> The Electronic Frontier Foundation is the leading civil
>> liberties organization working to protect rights in the
>> digital world. Founded in 1990, EFF actively encourages and
>> challenges industry and government to support free
>> expression and privacy online. EFF is a member-supported
>> organization and maintains one of the most linked-to
>> websites in the world at <http://www.eff.org/>

REDACTED

>>

>>

>> About SONY BMG MUSIC ENTERTAINMENT

>>

>> SONY BMG MUSIC ENTERTAINMENT is a global recorded music joint venture
>> with a roster of current artists that includes a broad array of both
>> local artists and international superstars, as well as a vast catalog
>> that comprises some of the most important recordings in history. SONY
>> BMG is 50% owned by Bertelsmann A.G. and 50% owned by Sony
>> Corporation
>> of America.

>>

>>

>> -end-

>>

>>

>> presslist mailing list

>> <https://falcon.eff.org/mailman/listinfo/presslist>

>>

>>

> *****

> Cindy Cohn

— Cindy@eff.org

> Legal Director

— www.eff.org

> Electronic Frontier Foundation

> 454 Shotwell Street

> San Francisco, CA 94110

> (415) 436-9333 x108

> (415) 436-9993 (fax)

>

Cindy Cohn

— Cindy@eff.org

Legal Director

— www.eff.org

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San Francisco, CA 94110

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(415) 436-9993 (fax)

Exhibit 26

REDACTED

> From: Cindy Cohn <cindy@eff.org>
> Date: December 30, 2005 8:00:43 AM PST
> To: Paul Singer <paul.singer@oag.state.tx.us>
> Subject: [SonyDRM-priv] Final version of the class action settlement
>
> Hi Paul,
>
> Here's the final version of the settlement agreement. Now that this
> is public, we'd love to talk with you about what more we think should
> be done. We'll all be back in the office starting on Tuesday, Jan 3,
> but I can arrange to talk earlier if that would help you.
>
> <http://www.girardgibbs.com/sonysettlementagreement.pdf>
>
> By the way, below is EFF's public statement. We have limitations on
> what we can say in the press under the agreement, but we made sure
> that the agreement does not hinder our ability to freely consult with
> you or any other governmental regulatory authorities.
>
> Cindy
>
>> EFF and Sony BMG Reach Preliminary Settlement over Flawed DRM
>>
>> "The proposed settlement will provide significant benefits for
>> consumers who bought the flawed CDs," said EFF Legal Director Cindy
>> Cohn. "Under the terms, those consumers will get what they thought
>> they were buying--music that will play on their computers without
>> restriction or security risk. EFF is continuing discussions with
>> Sony BMG, however, and believes that there is more they can do to
>> protect music lovers in the future."
>>
>> "Sony agreed to stop production of these flawed and ineffective DRM
>> technologies," noted EFF Staff Attorney Kurt Opsahl. "We hope that
>> other record labels will learn from Sony's hard experience and
>> focus more on the carrot of quality music and less on the stick of
>> copy protection."
>>
>> Electronic Frontier Foundation (EFF) joined in this preliminary
>> settlement agreement with Sony BMG this week to settle several
>> class action lawsuits filed due to Sony's use of flawed and
>> overreaching computer program in millions of music CDs sold to the
>> public. The proposed terms of settlement have been presented to
>> the court for preliminary approval and will likely be considered in
>> a hearing set for January 6, 2005 in federal court in New York City.
>>
>

> *****
> Cindy Cohn ----- Cindy@eff.org
> Legal Director ----- www.eff.org
> Electronic Frontier Foundation
> 454 Shotwell Street
> San Francisco, CA 94110
> (415) 436-9333 x108
> (415) 436-9993 (fax)
>
>
>

> SonyDRM-priv mailing list
> SonyDRM-priv@eff.org
> <https://falcon.eff.org/mailman/listinfo/sonydrm-priv>

Cindy Cohn ----- Cindy@eff.org
Legal Director ----- www.eff.org
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110
(415) 436-9333 x108
(415) 436-9993 (fax)

REDACTED

Exhibit 27

REDACTED

> From: Cindy Cohn <cindy@eff.org>
> Date: January 4, 2006 9:57:25 AM PST
> To: Paul Singer <paul.singer@oag.state.tx.us>
> Subject: [SonyDRM-priv] Sony BMG

> Hi Paul,

> I hope you had a chance to look at the class action settlement. We'd
> love to talk to you about what we are hoping the AGs can add to the
> mix for consumers.

> Cindy

> *****

> Cindy Cohn ----- Cindy@eff.org
> Legal Director ----- www.eff.org
> Electronic Frontier Foundation
> 454 Shotwell Street
> San Francisco, CA 94110
> (415) 436-9333 x108
> (415) 436-9993 (fax)

> _____
> SonyDRM-priv mailing list
> SonyDRM-priv@eff.org
> <https://falcon.eff.org/mailman/listinfo/sonydrm-priv>

> *****

Cindy Cohn ----- Cindy@eff.org
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(415) 436-9993 (fax)

Exhibit 28

From: Cindy Cohn <cindy@eff.org>
To: "Elizabeth C. Pritzker" <ecp@girardgibbs.com>
Date: 12/9/2005 11:10:43 AM
Subject: Re: [SonyDRM-priv] settlement draft?

REDACTED

Sony has given permission. If you really contend that they haven't, please show me where or have one of their attorneys call me and tell me that themselves.

You said you wanted our comments and support. Even on your own terms (which of course we disagree with), refusing to show us the documents doesn't make any sense.

Making us come down to your offices? On what possible basis? As you know, we have a big team of attorneys as well, also spread across the country. We all need to see the documents in order to reasonably discuss them.

Cindy

On Dec 9, 2005, at 11:03 AM, Elizabeth C. Pritzker wrote:

>
> Currently, we do not have permission, from Sony or the members of
> Plaintiffs' Executive Committee, to release or circulate working
> settlement documents to the broader plaintiffs' group. We would be
> happy to have you come to our offices to review the documents and to
> go over the settlement terms with us. Dan and I are available for
> that purpose until about 3:30 today, if that works for you.
>
> Elizabeth C. Pritzker
> Girard Gibbs & De Bartolomeo LLP
> 601 California Street, Suite 1400
> San Francisco, CA 94108
> Phone: (415) 981-4800
> Fax: (415) 981-4846
> ecp@girardgibbs.com
> www.girardgibbs.com
>
> This message is intended only for the addressee, and may contain
> information that is privileged or confidential, and exempt from
> disclosure under applicable law. If you are not the intended recipient
> or agent of the intended recipient, you are hereby notified that any
> dissemination, distribution or copying of this communication is
> strictly prohibited; and you are asked to notify us immediately by
> return email, or by telephone at (415) 981-4800. Thank you.
>
> -----Original Message-----
> From: Cindy Cohn [mailto:cindy@eff.org]
> Sent: Friday, December 09, 2005 9:05 AM
> To: Elizabeth C. Pritzker
> Cc: 'Kamber Esq. Kamber'; 'Robert S. Green'; 'Kurt Opsahl'
> Subject: Re: settlement draft?
>
> Can you just please send us the draft? I don't think we need a call
> for this. We will obviously need to read it before we can say

REDACTED

> anything.
>
> I really thought the problem here was Sony's approval. We had that by
> mid-afternoon yesterday.
>
> Cindy
>
> On Dec 9, 2005, at 8:24 AM, Elizabeth C. Pritzker wrote:
>
> > Cindy-
> >
> > Of course I hold you in the highest regard, and did not mean or
> intend
> > to suggest that you would jeopardize your fiduciary duties to class.
> > My email was to address a concern with what was discussed in our call
> > of EFF's public interest desire to advocate its positions in a public
> > way. As long as we agree to proceed on a confidential basis, there
> is
> > no issue here.
> >
> > Elizabeth Pritzker
> > Girard Gibbs & De Bartolomeo LLP
> > 601 California Street, Suite 1400
> > San Francisco, CA 94108
> > Phone: (415) 981-4800
> > Fax: (415) 981-4846
> > ecp@girardgibbs.com
> > www.girardgibbs.com
> >
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> > or agent of the intended recipient, you are hereby notified that any
> > dissemination, distribution or copying of this communication is
> > strictly prohibited; and you are asked to notify us immediately by
> > return email, or by telephone at (415) 981-4800. Thank you.
> >
> > - Sent from Blackberry Handheld -
> >
> > -----Original Message-----
> > From: Cindy Cohn <cindy@eff.org>
> > Date: Fri, 9 Dec 2005 15:48:00
> > To: "Elizabeth C. Pritzker" <ecp@girardgibbs.com>
> > Cc: "Robert S. Green" <rsg@classcounsel.com>, "Kamber Esq. Kamber"
> > <skamber@kolaw.com>, Kurt Opsahl <kurt@eff.org>
> > Subject: Re: settlement draft?
> >
> > I think your assertion of EFF's "stated intent" does not correctly
> > reflect what I said.
> >
> > But in any event, you have represented to us that you are
> negotiating a
> > settlement, including of our case, in which we have fiduciary duties
> as
> > well. We will follow the rules concerning the protection of the

REDACTED

> > confidentiality of settlement negotiations.
> >
> > I don't think that you've ever known me to act any differently and I
> > have to say, I'm surprised by that implication.
> >
> > Cindy
> >
> > On Dec 8, 2005, at 11:05 PM, Elizabeth C. Pritzker wrote:
> >
> > > Hi Cindy -
> > >
> > > I am happy to go over the settlement terms and settlement documents
> > > with you and/or your team tomorrow or a convenient time over the
> > > weekend. We do have some concerns regarding EFF's stated intent to
> > > take matters of settlement to the press. Our fiduciary duties to
> > the
> > > class require your team's assurance that all terms of settlement
> > and
> > > the contents of these documents will remain confidential, before we
> > > can share these matters with you. Please let me know if that is
> > > acceptable at your end.
> > >
> > > Best,
> > >
> > > Elizabeth
> > >
> > > Elizabeth Pritzker
> > > Girard Gibbs & De Bartolomeo LLP
> > > 601 California Street, Suite 1400
> > > San Francisco, CA 94108
> > > Phone: (415) 981-4800
> > > Fax: (415) 981-4846
> > > ecp@girardgibbs.com
> > > www.girardgibbs.com
> > >
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> > > or agent of the intended recipient, you are hereby notified that
> > any
> > > dissemination, distribution or copying of this communication is
> > > strictly prohibited; and you are asked to notify us immediately by
> > > return email, or by telephone at (415) 981-4800. Thank you.
> > >
> > > - Sent from Blackberry Handheld -
> > >
> > > -----Original Message-----
> > > From: Cindy Cohn
> > > Date: Fri, 9 Dec 2005 02:38:00
> > > To: "Kamber Esq. Kamber" , Elizabeth Pritzker ,
> > > "Elizabeth C. Pritzker"
> > > Cc: "Robert S. Green" , Kurt Opsahl
> > > Subject: settlement draft?
> > >
> > > Hi there,

> > >
> > > We were expecting the draft settlement papers, since SonyBMG gave
> > it's
> > > approval. Did you send them and we missed them?
> > >

> > > Cindy

> > >

> > > *****

> > > Cindy Cohn ---- Cindy@eff.org

> > > Legal Director ---- www.eff.org

> > > Electronic Frontier Foundation

> > > 454 Shotwell Street

> > > San Francisco, CA 94110

> > > (415) 436-9333 x108

> > > (415) 436-9993 (fax)

> > >

> > > *****

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> > >

> > > *****

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SonyDRM-priv mailing list

SonyDRM-priv@eff.org

<https://falcon.eff.org/mailman/listinfo/sonydrm-priv>

CC: Daniel Girard <DCG@girardgibbs.com>, "Kamber Esq. Kamber"
<skamber@kolaw.com>

Exhibit 29



G R E E N ■ W E L L I N G L L P

December 9, 2005

VIA FACSIMILE

Elizabeth C. Pritzker
GIRARD GIBBS & DE BARTOLOMEO LLP
601 California Street, Suite 1400
San Francisco, CA 94108
Facsimile: (415) 981-4846

Scott A. Kamber
KAMBER & ASSOCIATES, LLC
19 Fulton Street, Suite 400
New York, NY 10038
Facsimile: (212) 202-6364

Re: Sony BMG

Dear Elizabeth and Scott:

I write in the hope of advancing our goal of working together with your firms in connection with litigating and potentially settling the Sony BMG litigation. As we discussed in our telephone call, yesterday, it recently became clear to us that Sony BMG has been negotiating with plaintiffs' counsel in these actions on two separate tracks. One track of discussions is led by your firms and the other track of discussions is led by our two firms. In our separate conversations with Sony BMG and its counsel yesterday and with your two firms, we expressed our desire that negotiations toward settling these actions continue on a single track that involve all four of our firms. After considering the matter, Sony BMG indicated to us that it would be acceptable to them to continue negotiations in that manner. When we suggested this to you and Scott, however, our impression was that you rejected that suggestion out of hand. It was not clear to us why you made that choice.

After you rejected proceeding on a coordinated track, Sony BMG's counsel confirmed to us in an email that they had communicated to Scott Kamber that, "Sony BMG has no objection to EFF's seeing the draft of the settlement agreement that has been discussed with Scott and his group." Rather than produce a copy of the document for EFF and our co-counsel to consider in reaching a settlement that addresses all the issues raised in these actions, you offered only to allow EFF to travel to your office during a limited window of time this afternoon to "present" the settlement to them. Again, you appear to have rejected all reasonable entreaties to allow meaningful participation of EFF, its co-counsel and our clients in the settlement process by the restrictions you are putting on the handling of the documentation.

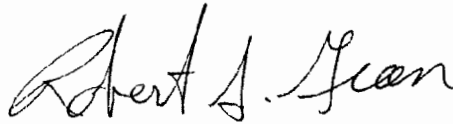
As you know, more national cases continue to be filed. It is in the interest of our clients, the Court, and the public to resolve these matters in a cooperative fashion. Accordingly, I reiterate our request that you reconsider your opposition to including our firms in the settlement

Elizabeth C. Pritzker
Scott A. Kamber
Re: Sony BMG
December 9, 2005
Page 2

negotiations and the leadership structure of this case, as well as to request copies of the current settlement documentation drafts. Thank you for your courtesies in this matter.

Yours very truly,

GREEN • WELLING LLP
A Limited Liability Partnership

A handwritten signature in black ink, appearing to read "Robert S. Green". The signature is fluid and cursive, with the first name "Robert" and last name "Green" clearly distinguishable.

Robert S. Green

RSG/lrc
cc: Cindy Cohn
Bruce P. Keller
Jeff P. Cunard
Jeffrey S. Jacobson

Writer's Direct E-Mail
rsg@classcounsel.com

Exhibit 30

From: Cindy Cohn <cindy@eff.org>
To: "Elizabeth C. Pritzker" <ecp@girardgibbs.com>
Date: 12/11/2005 12:05:24 PM
Subject: Re: [SonyDRM-priv] A Monday meeting

REDACTED

I disagree. I never agreed that we would only view the documents with you looking over our shoulder. I agreed that a meeting was a good idea (I still think it is) but not on your ridiculous terms.

Look, I've been polite here because that is how I believe law should be practiced even in the face of the insults that you have been hurling at us. We remain willing to work with you because it only serves Sony BMG to have us fighting each other and that is not in the best interest of the class. But do not interpret my politeness and willingness to try to figure out how to make this work as some sort of concession that we accept your view of the world as solely determined by the fact that you and Mr. Kamber ran to court 9 days after filing your complaint, got an order signed without telling the court the whole story and rushed into settlement discussions with SonyBMG before the facts were developed. We do not.

Again, I would like to invite you to join us in negotiations with Sony about how to provide appropriate relief for the entire class, both XCP and MediaMax and on all of the appropriate legal claims. We're willing to let you sit beside us at the table as equals. You are the ones insisting on an unreasonable structure. That must change.

Cindy

On Dec 11, 2005, at 9:09 AM, Elizabeth C. Pritzker wrote:

> This is not what we discussed. Robert's earlier fax, which conditions
> EFF's cooperation upon a change in the court-ordered litigation
> structure, does not advance the ball.
>
> Elizabeth C. Pritzker
> Girard Gibbs & De Bartolomeo LLP
> 601 California Street, Suite 1400
> San Francisco, CA 94108
> Phone: (415) 981-4800
> Fax: (415) 981-4846
> ecp@girardgibbs.com
> www.girardgibbs.com
>
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> strictly prohibited; and you are asked to notify us immediately by
> return email, or by telephone at (415) 981-4800. Thank you.
>
>
>
> -----Original Message-----
> From: Cindy Cohn [mailto:cindy@eff.org]

REDACTED

> Sent: Friday, December 09, 2005 3:58 PM
> To: Elizabeth Pritzker
> Subject: Re: A Monday meeting
>
>
> Thanks Elizabeth. If you can send us the settlement papers over the
> weekend, we'd be happy to meet on Monday. But we haven't changed from
> our position that we need to see the papers before we can have a
> meaningful discussion.
>
> Begin forwarded message:
>
> From: "Elizabeth C. Pritzker" <ecp@girardgibbs.com>
> Date: December 9, 2005 3:15:53 PM PST
> To: 'Cindy Cohn' <cindy@eff.org>
> Subject: A Monday meeting
>
> Cindy:
>
> Please let me know as soon as you can if your team wants to have a
> Monday meeting in our offices, as we discussed by phone today. We
> can
> provide the refreshments: just let me know if it's going to be
> breakfast or lunch -- or both. We have a hearing in federal court in
> the afternoon, so our strong preference is for a morning meeting,
> perhaps starting at 9:30 or 10:00. We have to conclude by 2:00 in
> any
> event.
>
> I need to be out of the office as of 3:30 pm today. I think you have
> my cell phone number if you need to reach me, directly, before
> Monday. Otherwise, I will look for an email reply. Thanks.
>
> <unknown.gif>
> Elizabeth C. Pritzker
> Girard Gibbs & De Bartolomeo LLP
> 601 California Street, Suite 1400
> San Francisco, CA 94108
> Phone: (415) 981-4800
> Fax: (415) 981-4846
> ecp@girardgibbs.com
> www.girardgibbs.com
>
> This message is intended only for the addressee, and may contain
> information that is privileged or confidential, and exempt from
> disclosure under applicable law. If you are not the intended
> recipient
> or agent of the intended recipient, you are hereby notified that any
> dissemination, distribution or copying of this communication is
> strictly prohibited; and you are asked to notify us immediately by
> return email, or by telephone at (415) 981-4800. Thank you.
>
> <image001.gif>
> *****
> Cindy Cohn ---- Cindy@eff.org
> Legal Director ---- www.eff.org

> Electronic Frontier Foundation
> 454 Shotwell Street
> San Francisco, CA 94110
> (415) 436-9333 x108
> (415) 436-9993 (fax)
>

> SonyDRM-priv mailing list
> SonyDRM-priv@eff.org
> <https://falcon.eff.org/mailman/listinfo/sonydrm-priv>
>

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> Cindy Cohn ---- Cindy@eff.org
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Exhibit 31

November 21, 2005

SECTION: NEWS & ANALYSIS; Pg. 28

LENGTH: 791 words

HEADLINE: Sony Plays The Blues As Bloggers Turn Up The Volume -- Company halts sales of CDs with content-protection software after complaints

BYLINE: Thomas Claburn with Gregg Keizer

HIGHLIGHT:

After two weeks of withering criticism from bloggers and others, Sony BMG Music Entertainment last week found itself forced to stop selling some 50 CD titles with its Extended Copy Protection content-protection software, remove the discs from stores, and offer replacements without copy protection to customers.

BODY:

Sony issued an apology on its Web site, citing security concerns raised by installation of the XCP software, provided-as Sony was quick to point out-by digital-rights-management vendor First4Internet Ltd.

"We share the concerns of consumers regarding these discs," the company said in a statement. Sony instructed retailers to remove unsold CDs with XCP software from their store shelves and inventory. But the trouble isn't over: The company faces charges of deceptive advertising, illegal spyware distribution, and computer crimes in three lawsuits.

Since Oct. 31, when security researcher Mark Russinovich first posted on his blog that Sony's music CDs surreptitiously installed digital-rights-management software based on a rootkit-software often synonymous with spyware-bloggers of all stripes, from seasoned security experts to aggrieved consumers, fumed about the record company's unethical and possibly illegal behavior.

Thomas Hesse, president of Sony BMG's Global Digital Business, attempted at first to downplay the controversy. "Most people, I think, don't even know what a rootkit is, so why should they care about it?" he said, in a Nov. 4 interview with National Public Radio. The software, Hesse explained, was designed to protect Sony's CDs from unauthorized copying and ripping.

Two days earlier, Sony tried to mollify critics by offering an update that removed what it called "the cloaking technology component" of XCP. The notes to that update state the component was "not malicious and does not compromise security." That may be true, but another component, the uninstaller provided by Sony to remove the XCP software, did compromise security, and bloggers were quick to jump on that, too.

Defensive Stance

The music industry has been torn between protecting its assets and not alienating the public. At a music industry conference in San Diego last summer, Recording Industry Association of America CEO Mitch Bainwol presented findings by market-research firm NPD Group that suggested ripping songs-copying them to a computer from a CD-has come to represent a revenue threat that's at least as significant as illegal peer-to-peer file trading.

Security-software companies and Microsoft are responding to the Sony problem with tools to detect and remove the rootkit, which might be found in business environments if employees played the Sony CDs on office PCs. Microsoft plans to update its Windows AntiSpyware software and Windows Live Safety Center, a free, online antivirus service, to dig out the rootkit. Next month, Microsoft also will add the Sony rootkit to the worms, Trojans, and viruses detected and deleted by Windows Malicious Software Removal Tool, which is updated the second Tuesday of each month.

Sony Plays The Blues As Bloggers Turn Up The Volume -- Company halts sal

The incident isn't comparable to a virus attack in terms of impact, according to Graham Cluley, senior technology consultant with security company Sophos plc. "Sony's code wasn't intentionally malicious, but did open up a security hole on users' computers which could be exploited by malware," Cluley says via E-mail.

But the rootkit is by no means benign. It can be used by attackers to hide malicious code, and at least two Trojan horses for that purpose already have been spotted. "Rather than malware," says Cluley, "I would term this as 'ineptware.'" -THOMAS CLABURN (tclaburn @cmp.com), with GREGG KEIZER

From The Blogosphere

"Not only had Sony put software on my system that uses techniques commonly used by malware to mask its presence, the software is poorly written and provides no means for uninstall. Worse, most users ... will cripple their computer if they attempt the obvious step of deleting the cloaked files." -Mark Russinovich's Oct. 31 posting on Mark's Sysinternals Blog, <http://www.sysinternals.com/Blog>

"The First4Internet XCP copy protection software. ... allows any web page you visit to download, install, and run any code it likes on your computer. ... That's about as serious as a security flaw can get." -J. Alex Halderman and Ed Felten's Nov. 15 posting on Freedom To Tinker, <http://www.freedom-to-tinker.com>

Sony is "getting away with the whole incident, with only some PR damage that they've turned around to look like as if the whole problem was just a security flaw." -Matti Nikki's Nov. 18 posting at hack.fi/muzzy/sony-drm/rant-and-whine.html

<http://informationweek.com/>

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LOAD-DATE: November 21, 2005

Exhibit 32

REDACTED

> From: "Elizabeth C. Pritzker" <ecp@girardgibbs.com>
> Date: December 20, 2005 9:10:21 AM PST
> To: 'Cindy Cohn' <cindy@eff.org>
> Cc: "Scott A. Kamber, Esq." <skamber@kolaw.com>, Aaron Sheanin
> <AMS@girardgibbs.com>
> Subject: RE: CMC and notice and other docs
>
> Hi Cindy:
>
> As you know, I was traveling from NYC to SF yesterday and did not have
> an opportunity to communicate with you or Scott via email or phone.
>
> As we discussed, my office spent yesterday redrafting the long and
> short form of settlement notice, and proposed claim form. As I am
> just back in the office this morning, I have not had an opportunity to
> review those revisions. I will review them this morning and provide
> copies of those documents to your team this morning, as we agreed.
> Also as we discussed, it is important that you transmit your
> collective comments/revisions to us as quickly as possible, so that we
> continue to work from a single document and finalize things at our
> end.
>
> As discussed on Sunday, our team is very interested in including EFF
> in an ongoing monitoring role. For the reasons we discussed at our
> joint session, we do not think it is appropriate for EFF to be listed
> in the settlement document itself. We are willing to modify the
> settlement agreement to include the phrase "Plaintiffs' Class Counsel
> and/or its designee," where appropriate, in order to accomplish our
> joint desire to include EFF in future monitoring efforts. Also, as
> discussed, we will enter into a separate agreement that empowers EFF
> to perform future monitoring functions as our designee. This is not
> really Sony's issue, but we understand from our joint session on
> Sunday that Sony has no objection to this approach.
>
> Please forward any suggestions and/or drafts of a banner ad notice to
> us as quickly as possible, if you have that in hand. As we discussed
> yesterday, our team has not yet focused on this task.
>
> Finally, as discussed, we are willing to grant you an additional
> extension of time to challenge the CMO. The prior stipulation that we
> signed came to us from Robert's office. If he could transmit another
> one, we can execute it and get it back to you as quickly as possible.
>
> Elizabeth C. Pritzker

REDACTED

> Girard Gibbs & De Bartolomeo LLP
> 601 California Street, Suite 1400
> San Francisco, CA 94108
> Phone: (415) 981-4800
> Fax: (415) 981-4846
> ecp@girardgibbs.com
> www.girardgibbs.com

>
> This message is intended only for the addressee, and may contain
> information that is privileged or confidential, and exempt from
> disclosure under applicable law. If you are not the intended recipient
> or agent of the intended recipient, you are hereby notified that any
> dissemination, distribution or copying of this communication is
> strictly prohibited; and you are asked to notify us immediately by
> return email, or by telephone at (415) 981-4800. Thank you.

>
> -----Original Message-----

> From: Cindy Cohn [<mailto:cindy@eff.org>]
> Sent: Tuesday, December 20, 2005 7:56 AM
> To: Elizabeth Pritzker; 'Kamber Esq. Kamber'
> Subject: CMC and notice and other docs

>
> Dear Elizabeth and Scott,

>
> I called Jeff Jacobsen this morning and he told me that the CMC had
> been put over until Friday January 6 at 2:30pm. He said he thought
> that you were going to tell me.

>
> I am also waiting for the draft notice and other documents that we
> discussed yesterday. It looks like I will be flying home this
> afternoon, so please be sure to send those documents to Corynne and
> Robert Green in addition to me, so that we may promptly circulate them
> to our team.

>
> I am hoping we can continue working in the cooperative spirit that
> emerged on Sunday.

>
> Thanks,

>
> Cindy

>
> *****

> Cindy Cohn --- Cindy@eff.org
> Legal Director --- www.eff.org
> Electronic Frontier Foundation
> 454 Shotwell Street
> San Francisco, CA 94110
> (415) 436-9333 x108
> (415) 436-9993 (fax)

>
> *****

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REDACTED

SonyDRM-priv mailing list
SonyDRM-priv@eff.org
<https://falcon.eff.org/mailman/listinfo/sonydrm-priv>

Exhibit 33

REDACTED

> From: "Elizabeth C. Pritzker" <ecp@girardgibbs.com>
> Date: December 28, 2005 4:46:48 PM PST
> To: "cindy@eff.org" <cindy@eff.org>
> Cc: "Jenelle Welling (jww@classcounsel.com)" <jww@classcounsel.com>
> Subject: FW: Unfinished Settlement Matters
>
> Cindy:
>
> Your email of yesterday came in just as we were finalizing the
> motion for preliminary approval of settlement and the attendant
> supporting documents. Those items were filed in the Southern
> District of New York this afternoon. You should receive service
> copies of everything we filed shortly.
>
> I regret to say that I am distressed by both the tone and content
> of your email for several reasons.
>
> First, although you have told me that my word is "gold" in our
> informal discussions about designation of future monitoring
> functions to EFF, the fact that you included these matters in
> formal correspondence to opposing counsel suggests otherwise. I'm
> not certain why this is: I do feel that I have done my best, both
> professionally and personally, to honor my commitments to you
> throughout the litigation.
>
> Second, and more disconcerting, is the fact that you sought to
> bring each of these matters to SONY's attention, personally, via
> correspondence to defense counsel instead of to and through
> Plaintiffs' Co-Lead Counsel. This is not an issue of position or
> credit. As I have noted before, all correspondence that you send
> to SONY is nonprivileged and, hence, discoverable by any one who
> may wish to object to the settlement. The CMO allows for
> communications between Co-Lead Counsel and defense counsel and, as
> long as communications occur in that structure, they are protected
> against any potential claim of conclusion by objectors and
> strangers to the settlement. Direct e-mail and correspondence from
> EFF, on the other hand, can be used as evidence of collusion by
> objectors. It is in our collective best interests to protect the
> settlement against even the suggestion of collusiveness by
> objectors and others. [For these reasons, I am not cc'ing Sony
> counsel here, but I am cc'ing EFF's class counsel instead].
>
> Third, you write in your concluding paragraph that "Sony BMG's
> failure to ensure that [each of your] specified items are done in

> good faith . . . will turn our current endorsement of the
 > settlement into an objection by us and calls for objections by
 > others." As I am sure you know, EFF's execution of the parties'
 > Settlement Agreement obligates EFF, on behalf of its clients, "to
 > use all reasonable efforts to achieve approval of the Settlement."
 > Settlement Agreement, para. XI.A. EFF cannot fulfill that
 > obligation and simultaneously reserve the right to object to the
 > settlement, or encourage others to do so.
 >
 > I highlight these issues, again, in the hope that the Plaintiffs'
 > side of the litigation can continue to work cooperatively on
 > resolving settlement and related issues -- without the risk of
 > forfeiting the progress that we have made, or undermining in any
 > way the excellent settlement that we have achieved on behalf of the
 > class. We all strengthen our collective hand by doing what we can
 > to ensure that the Court, and any potential objectors, view all of
 > our communications with opposing counsel as non-collusive and free
 > of conflict.
 >
 > With that preface, let me address the individual issues in your email:
 >
 > 1. As previously noted, we have some modest edits to the banner ad
 > notice that you have proposed: all of our edits are intended to
 > shorten the notice and frame it in "easy to understand" language
 > (Sony's long-hand for "plain English"). We will send our proposed
 > edits to you, by separate email, shortly. Ultimately, what we say
 > may be limited by the amount of space to be devoted to the banner
 > ad (usually, these things are pretty small).
 >
 > 2. The landing page issue is an excellent issue for the
 > technological folks on the EFF team. Let's confer in the next
 > several days -- we may have some expertise to offer in this area as
 > well.
 >
 > 3. I am pretty sure all of the various electronic and other forms
 > of notice are either laid out in the current Settlement Agreement
 > or will engender no real objection from opposing counsel assuming
 > that they all can be done at no or little additional cost to
 > Sony). We can confer on specifics, perhaps early next week, and
 > offer a good, collective proposal on how to best get notice to the
 > class beyond the means specified in the Settlement Agreement.
 >
 > 4. At the meeting in NYC on December 19th, we proposed language
 > for the CD jewel case that closely tracks your suggested language
 > -- excluding the last sentence that you propose in your email,
 > which allows consumers to return the CD for a full refund if they
 > do not agree to the conditions in the EULA. I expect that Sony
 > will not wish to include this last sentence for business reasons.
 > Perhaps we can find a way to soften the language in such a way as
 > to get a similar message to consumers, without unnecessarily
 > offending Sony's sales channel. Again, let's confer on specifics.
 > I can resend the CD label that we originally drafted and shared at
 > the 12/19 meeting, and we can go from there.
 >
 > I hope you are enjoying your stay in NYC (are you still in NYC?).
 > I look forward to working with your team on these issues.

REDACTED

REDACTED

>
>
> Elizabeth C. Pritzker
> Girard Gibbs & De Bartolomeo LLP
> 601 California Street, Suite 1400
> San Francisco, CA 94108
> Phone: (415) 981-4800
> Fax: (415) 981-4846
> ecp@girardgibbs.com
> www.girardgibbs.com
>
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> information that is privileged or confidential, and exempt from
> disclosure under applicable law. If you are not the intended
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> notified that any dissemination, distribution or copying of this
> communication is strictly prohibited; and you are asked to notify
> us immediately by return email, or by telephone at (415) 981-4800.
> Thank you.
>
> -----Original Message-----
> From: Cindy Cohn [<mailto:cindy@eff.org>]
> Sent: Tuesday, December 27, 2005 4:00 PM
> To: Jeffrey P. Cunard; Jeffrey S. Jacobson; Bruce P. Keller
> Cc: Elizabeth Pritzker; Kamber Esq. Kamber
> Subject: Unfinished Settlement Matters
>
> Jeff, Jeff and Bruce, (with cc: to Elizabeth and Scott)
>
> Now that it seems that the documents necessary for the formal filing
> with the court have been completed, we wanted to make sure that we
> are all on the same page about what needs to happen in the next few
> weeks, if not sooner, to ensure that class members receive robust,
> easy-to-understand notice of the settlement. Several of these items
> are referenced generally in the settlement documents, and, as you
> know EFF has been informally designated and will shortly be formally
> designated to perform many, if not all, of the review and comment of
> these items as set out in the Settlement Agreement.
>
> Specifically, we should discuss:
>
> 1. Banner notice format: We have not received a response to our
> email of December 22, 2005, with suggestions for the banner ad
> notice. We believe that this should have the highest priority.
>
> The urgency of the need for banner ad notice of the security flaw and
> exchange program is especially true for XCP, since Sony BMG has
> removed XCP from the technologies that are subject to the ongoing
> security vulnerability process. It is therefore imperative that
> those who have purchased the XCP CDs receive clear, unequivocal
> notice that they need to uninstall the XCP software from their
> machines before the viruses that have already been identified reach
> consumers and before any other security flaws in XCP are uncovered.
> It is also true for MediaMax 5.0, however, since the current banners
> do not give sufficient notice of the urgency of the need to patch or
> uninstall the software.

REDACTED

- >
- > 2. Structured interview or other easy-to-use format for the landing
- > page of the website. We were pleased to learn from you at our
- > December 19, 2005 meeting that Sony BMG has already been consulting
- > with web design firms about how to turn the current landing page,
- > which is inadequate, into something that can be easily understood and
- > used. We expect to receive a draft for comment within the next week,
- > since the sooner consumers have easy access to the uninstallers and
- > patches, and links to antivirus software, as well as the other relief
- > agreed upon, the less likely they are to suffer virus or other
- > malicious attacks as a result of the security problems in the XCP and
- > MediaMax CDs.
- >
- > As we pointed out in our December 22 email, the current landing page
- > for those seeing the MediaMax 5.0 banner, which is to a question in
- > the FAQ on the website that does not put a person on clear notice of
- > the need to patch their system or provide any information about the
- > uninstaller, is inadequate.
- >
- > Again, we look forward to moving this discussion forward and
- > implementing a more robust, easy-to-understand landing page for
- > consumers for both XCP and MediaMax technologies.
- >
- > 3. Notice on Artists websites and artists email lists, along with
- > Google and other adwords, the SonyBMG website, banners and agreed
- > upon newspapers and magazines. My understanding based upon our
- > discussions on September 19, is that all of these channels will be
- > used to give notice to all XCP and MediaMax class members of the
- > settlement, sending them to the landing pages. Please confirm both
- > the fact of this and the timetable.
- >
- > 4. Notice form for any future Sony BMG CDs that contain DRM. We
- > believe that the notice should say:
- >
- > Notice: This CD will install software on your computer.
- > The software will:
- > * limit what you can do with the music on this CD, including limiting
- > the number of copies you can make to XX.
- > * communicate over the Internet with Sony BMG or its agents when you
- > play the CD on your computer.
- > * subject you to other terms and conditions contained in the license
- > agreement that will be presented to you at the time that you play the
- > CD on your computer. If you do not agree to those terms, you may
- > return this CD for a full refund.
- >
- > Please be sure that you have up-to-date antivirus software running on
- > your computer at all times.
- >
- > ***
- >
- > While we were willing to, and did, wait to discuss these items until
- > after the filed documents were complete, we want to be clear: Sony
- > BMG's failure to ensure that these items are done in good faith will
- > be viewed by us as a failure of Sony to meet the terms of the
- > settlement agreement and will turn our current endorsement of the
- > settlement into an objection by us and calls for objections by others.

>
> Please let us know when we can expect to continue this discussion.
>
> Cindy
>

Cindy Cohn ----- Cindy@eff.org
Legal Director ----- www.eff.org
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110
(415) 436-9333 x108
(415) 436-9993 (fax)

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SonyDRM-priv mailing list
SonyDRM-priv@eff.org
<https://falcon.eff.org/mailman/listinfo/sonydrm-priv>

Exhibit 34

From: Cindy Cohn <cindy@eff.org>
To: "Jeffrey S. Jacobson" <jsjacobson@debevoise.com>, "Jeffrey P. Cunard" <jpcunard@debevoise.com>
Date: 2/3/2006 7:02:49 PM
Subject: [SonyDRM-priv] Delegation agreement discussions

Hi Jeff and Jeff,

As Jeff J and I discussed on the phone, here is some of the correspondence between the Elizabeth Pritzker and me about the delegation. This is on top of, and supports, several telephone conversations where Elizabeth gave me her word that EFF was the delegated entity for purposes of the provisions in the settlement agreement where plaintiffs are to do ongoing monitoring. As you can see at no time does she indicate that she does not believe that EFF is the delegatee and in the January 12 message she affirmatively promises a "letter agreement."

REDACTED

As you know, our position is that Class Counsel delegated EFF for these purposes at the meeting on December 12, in your presence, or at least in one of the subsequent telephone calls where Elizabeth gave me her word about this, and that these emails represent our attempts to reduce that delegation to a writing. There has never been any indication that further negotiation is necessary, or that the delegation is anything less than complete and final. I will also note that we relied on the delegation in signing the Settlement Agreement in the first place, and in continuing our discussions with Sony, including the trip Kurt and I took to New York to meet with you and Jeff Cunard. Elizabeth was well aware of this, as you can see below, and took no steps to prevent us from relying on the delegation. I also note that the Settlement Agreement at II.I. does not require that the delegation be done in writing.

I've tried to give you the key portions of the correspondence as I can without implicating things that are not appropriately shared with opposing counsel. The messages are in chronological order, and there are some later ones by me to Elizabeth and Aaron, to which I received no reply, that I have not included, and possibly some others as well that I've missed in my quick review, but nothing that contradicts our position.

I understand the concern that Jeff Cunard raised with me that the parties need to get clarity about the delegation going forward. Given that there are both immediate issues, such as the various items to be launched on February 15, as well as ongoing issues where delegation is important, I do think we do need to address this issue right away. We may have to resort to the court, but I hope not, and I would appreciate your assistance here. I don't think it will serve any of us in the long run for the court to be drawn in to additional problems with this case and the settlement agreement, even if those problems do not directly implicate Sony.

I hope you are able to have a good weekend sans Blackberry.

Cindy

Begin forwarded message:

> From: "Elizabeth C. Pritzker" <ecp@girardgibbs.com>
> Date: December 28, 2005 4:46:48 PM PST
> To: "cindy@eff.org" <cindy@eff.org>
> Cc: "Jenelle Welling (jww@classcounsel.com)" <jww@classcounsel.com>
> Subject: FW: Unfinished Settlement Matters
>
> Cindy:

Redacted.

> First, although you have told me that my word is "gold" in our
> informal discussions about designation of future monitoring
> functions to EFF, . [redacted]. . : I do feel that I have done my
> best, both professionally and personally, to honor my commitments
> to you throughout the litigation.

January 3:

Begin forwarded message:

> From: Cindy Cohn <cindy@eff.org>
> Date: January 3, 2006 7:28:10 PM PST
> To: Elizabeth Pritzker <ecp@girardgibbs.com>
> Subject: [SonyDRM-priv] Fwd: delegation agreement
>
> Hi Elizabeth,
>
> I hope you had a happy new year and got at least a little rest. I
> managed to, but not until the very end of the holiday week.
>
> I know things have been hectic for you, so I drafted a delegation
> agreement from Class Counsel to EFF that I think is consistent with
> our discussions.
>
> We're hoping to have significant discussions with Sony this week
> about the notice,
[redacted]
> so I think that getting the formal delegation to EFF done will help
> avoid confusion in the discussions and hopefully make things move
> more quickly.
>
>
> *****
> Cindy Cohn ----- Cindy@eff.org
> Legal Director ----- www.eff.org
> Electronic Frontier Foundation
> 454 Shotwell Street
> San Francisco, CA 94110
> (415) 436-9333 x108
> (415) 436-9993 (fax)

Another reminder:

>
> -----Original Message-----
> From: Cindy Cohn [mailto:cindy@eff.org]
> Sent: Wednesday, January 04, 2006 1:31 PM

REDACTED

REDACTED

> To: Elizabeth Pritzker
> Subject: talking with Sony about notice on Friday
>
>
> Hi Elizabeth,
>
> We'll be sitting down with Sony BMG on Friday morning in New York
> before the hearing to discuss what the banners, landing page, non-
> legal notices should look like.

[redacted]

>
>
> Are you coming to the hearing? Do you want to join us? I think we
> should have the designation agreement in place before then.
>

[redacted]

> Cindy
> *****
> Cindy Cohn ---- Cindy@eff.org
> Legal Director ---- www.eff.org
> Electronic Frontier Foundation
> 454 Shotwell Street
> San Francisco, CA 94110
> (415) 436-9333 x108
> (415) 436-9993 (fax)
>
>

Response:

Begin forwarded message:

> From: "Elizabeth C. Pritzker" <ecp@girardgibbs.com>
> Date: January 4, 2006 5:40:17 PM PST
> To: 'Cindy Cohn' <cindy@eff.org>
> Subject: RE: talking with Sony about notice on Friday
>
> Cindy -- Have been focusing on preliminary approval and my other
> filing.
>
> I will get you something on the designation agreement early next
> week (better that this occurs after preliminary approval: if for
> some reason the court does not grant preliminary approval of the
> settlement, there won't be much use for a designation agreement).
>

> [redacted]
>

> Elizabeth C. Pritzker
> Girard Gibbs & De Bartolomeo LLP
> 601 California Street, Suite 1400
> San Francisco, CA 94108
> Phone: (415) 981-4800
> Fax: (415) 981-4846
> ecp@girardgibbs.com
> www.girardgibbs.com
>

> This message is intended only for the addressee, and may contain
> information that is privileged or confidential, and exempt from

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> disclosure under applicable law. If you are not the intended
> recipient or agent of the intended recipient, you are hereby
> notified that any dissemination, distribution or copying of this
> communication is strictly prohibited; and you are asked to notify
> us immediately by return email, or by telephone at (415) 981-4800.
> Thank you.

Another attempt:

> -----Original Message-----

> From: Cindy Cohn [mailto:cindy@eff.org]

> Sent: Thursday, January 12, 2006 11:38 AM

> To: Elizabeth Pritzker

> Subject: delegation agreement

>

> Hi Elizabeth,

>

> Can we get this finalized now?

>

> Thanks,

>

> Cindy

>

>

>

>

>

>

> *****
> Cindy Cohn ----- Cindy@eff.org

> Legal Director ----- www.eff.org

> Electronic Frontier Foundation

> 454 Shotwell Street

> San Francisco, CA 94110

> (415) 436-9333 x108

> (415) 436-9993 (fax)

Begin forwarded message:

> From: "Elizabeth C. Pritzker" <ecp@girardgibbs.com>

> Date: January 12, 2006 5:17:26 PM PST

> To: 'Cindy Cohn' <cindy@eff.org>

> Cc: "Elizabeth C. Pritzker" <ecp@girardgibbs.com>

> Subject: RE: delegation agreement

>

> Just back in town from a trip/oral argument in Tennessee. I have a
> day-long partnership meeting tomorrow, but will get you a letter
> agreement over the weekend, or by Monday at the latest. Thanks for
> your patience.

>

> Best,

>

> Elizabeth C. Pritzker

> Girard Gibbs & De Bartolomeo LLP

> 601 California Street, Suite 1400

> San Francisco, CA 94108

> Phone: (415) 981-4800

> Fax: (415) 981-4846

> ecp@girardgibbs.com

> www.girardgibbs.com

>

> This message is intended only for the addressee, and may contain
> information that is privileged or confidential, and exempt from
> disclosure under applicable law. If you are not the intended
> recipient or agent of the intended recipient, you are hereby
> notified that any dissemination, distribution or copying of this
> communication is strictly prohibited; and you are asked to notify
> us immediately by return email, or by telephone at (415) 981-4800.
> Thank you.

REDACTED

SonyDRM-priv mailing list

SonyDRM-priv@eff.org

<https://falcon.eff.org/mailman/listinfo/sonydrm-priv>

Exhibit 35

Robert M. Rothman
rrothman@lerachlaw.com

February 3, 2006

BY FACSIMILE

Hon. Naomi Reice Buchwald
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 2270
New York, New York 10007-1312

Re: *In re Sony BMG CD Technologies Litigation*
Case no. 1:05-cv-09575-NRB

Dear Judge Buchwald:

We write to reply to the letters from Kamber/Girard and Sony BMG ("Sony") dated February 2, 2006. As noted in our letter of February 2, the Ricciuti Group is a signatory to the settlement agreement, which expressly provides that no modifications will be made without the signature of all parties. In direct contravention of this negotiated term, Kamber/Girard and Sony entered into substantive modification of the settlement agreement without seeking, much less obtaining, the signatures of the Ricciuti Group. This failure not only violates the settlement agreement on its face, but it also violates the basic provision that clients, not attorneys, have the final say over whether a case should be settled and on what terms.

As also noted in our letter of February 2, the changes are substantive and important. The goal of the provisions is to require Sony to provide class members what they thought they were purchasing in the first place -- the music they chose in the form of ordinary CDs or music files that create no risk to their computers.

The modification then is significant and dramatic and indeed "strips the teeth" from one of the key provisions of the settlement agreement. It allows Sony to avoid providing non-DRM'd versions of the music chosen by the consumer and substitute an "alternate benefit of equivalent or greater value," and do so with only the approval of Kamber/Girard and "in consultation with the affected class member(s)." Determining what "equivalent value" is in the context of specific music CDs is not an easy matter. A class representative who purchased, for example, a specific Celine Dion CD does not have an exact substitute. He or she purchased one album of music and it is not sufficient just to substitute another. By failing to specify what is "equivalent," the modification gives the class no certainty about what relief they will actually receive. In addition, there is no dispute resolution process if Sony, Class Counsel and the affected class member cannot agree. Moreover, the process for negotiating this relief should include all signatories to the agreement, not merely Kamber/Girard, especially since this portion of the relief was negotiated by the Ricciuti Group.

Page 2

Additionally, the suggestion by Kamber/Girard that the Ricciuti Group was given the opportunity to review the modification before it was submitted to the Court is simply untrue. The Ricciuti Group was sent the modification agreement, by Sony and not Class Counsel, only *after* it was filed on January 31, and immediately responded by email to all counsel, including Sony and Class Counsel, that their action was improper and should be stopped. The Ricciuti Group's counsel also called Class Counsel and left a message to which they received no reply. Our protests were apparently ignored because the agreement was refiled on February 1, apparently to correct a technical error, after they were on notice that the Ricciuti Group objected.

Our previous letter to the Court raised two points about the form of notice attached to the January 31 motion. First, the amount of fees that counsel intends to seek is information that is beneficial to class members and should be included in the form of notice. Second, the paragraph in the notice about attorneys fees was changed in a way that misstates the underlying agreement and, like the issues addressed above, this change was made without providing Ricciuti Group the opportunity to address the modification before it was filed with the Court. Specifically, the Settlement Agreement separately defines "Class Counsel" and "Plaintiffs' Counsel". See Pritzker Decl., Exh. C. The Settlement Agreement then provides that "Plaintiffs' Counsel will apply for an award of attorneys' fees and reimburseable expenses.....: Id. at 36. The new form of proposed notice incorrectly states that "Class Counsel will submit a motion for an award of Attorneys' fees....." Motion, Ex. 2 at 6. This subtle shift from "Plaintiffs' Counsel" to "Class Counsel" is an attempt by Class Counsel to arrogate solely to themselves control over attorneys fees for all counsel. Indeed, Mr. Girard admits as much in his February 2 letter. However, this directly conflicts with the executed and preliminarily approved Agreement. Accordingly, the notice should be revised to accurately reflect this term of the Agreement.

Finally, Class Counsel's February 2 letter relies on the terms of CMO No. 1, apparently to give credence to their claim of unfettered power to override or contravene the express terms of the Agreement. In addition to misstating the scope and effect of CMO No.1, the Ricciuti Group elected not to object to CMO No. 1 only after negotiating the specific terms in the Agreement, including the Ricciuti Group's right to both enforce those terms and assent to or refuse any modification thereof.

For these reasons, the Ricciuti Group respectfully request that the Court vacate its February 1, 2006 Order.

Respectfully submitted,



Robert M. Rothman

cc: All counsel (by facsimile)



Exhibit 36

REDACTED

-----Original Message-----

From: Jacobson, Jeffrey S. [mailto:jsjacobson@debevoise.com]
Sent: Friday, February 03, 2006 12:39 PM
To: Scott A. Kamber, Esq.; Daniel Girard; ecp@girardgibbs.com; Aaron Sheanin; Cindy Cohn; Kurt Opsahl; Robert S. Green; Jenelle W. Welling; Jeff Friedman; Keller, Bruce P.; Cunard, Jeffrey P.
Subject: Judge Buchwald request

Judge Buchwald's clerk just called me to relay the following message:

"Judge Buchwald requests that, if we have not resolved the issues raised in Lerach Coughlin's letter before Monday, all interested parties should be available for a telephone conference with the Court on Monday at noon [eastern time]."

I would propose that we have a group call this afternoon - perhaps at 5PM eastern - to see whether we can resolve EFF's concerns, or whether EFF continues to insist that the issues must be resolved by the Court. We can use my dial-in, which is:

866-365-4406
Passcode 9096479#

We can use the same dial-in for the Monday call with the Court, if one is necessary (and I already have provided the number to Judge Buchwald's clerk.)

Please let me know if you will be free at 5:00 today to have this call.

Thank you.

JJ

SonyDRM-priv mailing list
SonyDRM-priv@eff.org
<https://falcon.eff.org/mailman/listinfo/sonydrm-priv>

Exhibit 37


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Spyware Information Center

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[Spyware Information Center](#)

XCP.Sony.Rootkit



Remove Spyware Now!

Remove Spyware from your PC with CA's eTrust® PestPatrol® Anti-Spyware. The same technology used to protect Fortune 500® companies is now available for your PC!

[> Learn More](#)

Overview

Summary

XCP.Sony.Rootkit Extended Copy Protection(XCP) is Digital Rights Management (DRM) software manufactured by [First4Internet](#), a UK company. This particular variant of XCP is licensed and bundled by [Sony BMG](#), and is reportedly distributed on more than 2 million Sony BMG Audio CDs. This software is intended to stop casual CD piracy. Toward this end, the software is designed to prevent protected CDs being played with anything other than an included Media Player, Music Player.

See Also

[XCP.Sony.Rootkit.Patch](#) · [Music Player](#) ·

Category

Trojan : Any program with a hidden intent. Trojans are one of the leading causes of breaking into machines. If you pull down a program from a chat room, new group, or even from unsolicited e-mail, then the program is likely trojaned with some subversive purpose. The word Trojan can be used as a verb: To trojan a program is to add subversive functionality to an existing program. For example, a trojaned login program might be programmed to accept a certain password for any user's account that the hacker can use to log back into the system at any time. Rootkits often contain a suite of such trojaned programs.

Variants

[XCP.Sony.SP2](#) ·

Reasons For Retention

Installs without user permission, presenting only a vague and misleading EULA
 Changes system configuration without user permission at time of change.
 Defends against removal of, or changes to, its components
 Silently modifies other programs' information or website content as displayed.
 Includes mechanisms to thwart removal by security or anti-spyware products.
 Cannot be uninstalled by Windows Add/Remove Programs and no uninstaller is provided with application.

Origins

Author

[First4Internet](#)

Others By This Author

[XCP.Sony.SP2](#) · [XCP.Sony.Rootkit.Patch](#) · [XCP.Sony.SP2](#) · [XCP.Sony.Rootkit.Patch](#) ·

Vendor

[Sony BMG](#)

Date of Origin

June, 2005

Distribution**Distribution**

When the CD is inserted, a EULA is displayed. This document contains reference to the installation of software on the machine, but does not give specific details, and in fact implies that the software can be uninstalled. If the user rejects the EULA, the CD is ejected and cannot be played. If the user accepts, XCP.Sony.Rootkit is installed on the user's machine. If autorun is not enabled, the cd still will not be playable except by Music Player.

Operation**General**

XCP.Sony.Rootkit installs a DRM executable as a Windows service, but misleadingly names this service "Plug and Play Device Manager", employing a technique commonly used by malware authors to fool everyday users into believing this is a part of Windows. Approximately every 1.5 seconds this service queries the primary executables associated with all processes running on the machine, resulting in nearly continuous read attempts on the hard drive. This has been shown to shorten the drive's lifespan.

Furthermore, XCP.Sony.Rootkit installs a device driver, specifically a CD-ROM filter driver, which intercepts calls to the CD-ROM drive. If any process other than the included Music Player (player.exe) attempts to read the audio section of the CD, the filter driver inserts seemingly random noise into the returned data making the music unlistenable.

XCP.Sony.Rootkit loads a system filter driver which intercepts all calls for process, directory or registry listings, even those unrelated to the Sony BMG application. This rootkit driver modifies what information is visible to the operating system in order to cloak the Sony BMG software. This is commonly referred to as rootkit technology. Furthermore, the rootkit does not only affect XCP.Sony.Rootkit's files. This rootkit hides every file, process, or registry key beginning with \$sys\$. This represents a vulnerability, which has already been exploited to hide World of Warcraft RINGO hacks as of the time of this writing, and could potentially hide an attacker's files and processes once access to an infected system had been gained.

Sony BMG has released a patch which removes the rootkit and eliminates the above vulnerability. The patch fails the eTrust PestPatrol scorecard in its own right and its security advisor page can be found [here](#). After the patch is run this variant of the XCP.Sony.Rootkit program still violates the eTrust PestPatrol Scorecard. The Patched program XCP.Sony.SP2's encyclopedia page can be found [here](#).

Storage Required**Security Issues**

XCP.Sony.Rootkit modifies your operating system at a low level, represents a large threat to both corporate and consumer users system integrity.

The Rootkit functionality hides files and enables hackers and other spyware to hide files with impunity.

Recommendations**Caution**

Access to the user's CD-ROM will be disabled if XCP.Sony.Rootkit is removed manually, due to the missing filter driver. Reconfiguring the CD-ROM driver to a functioning state will be beyond the ability of the average home user. No uninstaller is included with XCP.Sony.Rootkit. Sony BMG has indicated that an uninstaller is available [here](#). Analysis of the uninstaller has shown that it leaves significant vulnerabilities open after running. These vulnerabilities would allow hostile web sites to remotely execute code on a user's machine, among other things.

Detections:

List of Objects Present:

PestPatrol detects the following files and registry entries for this software..

Executable Files:

systemroot+system32\sys\$upgtool.exe
 systemroot+system32\sys\$filesystem\sys\$drmsrvr.exe
 systemroot+cdproxysrv.exe
 autorun.exe
 go.exe

DLL Files:

systemroot+system32\sys\$filesystem\unicows.dll
 systemroot+system32\sys\$filesystem\dbghelp.dll
 systemroot+system32\sys\$caj.dll
 systemroot+system32\tmpx\wnaspi32.dll
 systemroot+system32\tmpx\wnaspi.dll

Registry Items:

HKEY_CLASSES_ROOT\clsid\{78037074-0beb-496e-9e4c-92d92d562168}
 HKEY_CLASSES_ROOT\clsid\{78037074-0beb-496e-9e4c-92d92d562168}\inprocserver32
 HKEY_CLASSES_ROOT\clsid\{c62a2089-4eb1-4ebb-8635-0d1fcdd6bf25}
 HKEY_CLASSES_ROOT\clsid\{c62a2089-4eb1-4ebb-8635-0d1fcdd6bf25}\control
 HKEY_CLASSES_ROOT\clsid\{c62a2089-4eb1-4ebb-8635-0d1fcdd6bf25}\inprocserver32

Files:

systemroot+system32\tmpx\wnaspi32.dll
 systemroot+system32\sys\$upgtool.exe
 systemroot+system32\drivers\sys\$cor.sys
 systemroot+system32\tmpx\apix.vxd
 systemroot+system32\tmpx\asplenum.vxd

Directories:

systemroot+system32\sys\$filesystem

Research**File Analysis**

- XCP.Sony.Rootkit

More Info

- Mark Russinovich of Sysinternals was the first (to our knowledge) to discover this rootkit. His blog entry is at <http://www.sysinternals.com/blog/2005/10/sony-rootkits-and-digital-rights.html>.

- AllTheWeb
- AltaVista
- AOL Search
- Ask Jeeves
- Google
- HotBot
- Lycos
- LookSmart
- MSN
- Yahoo!

Research By

- Stefan Berteau
- Computer Associates eTrust PestPatrol

How valuable was this information?

Not at all



Extremely

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Exhibit 38



US-CERT

UNITED STATES COMPUTER EMERGENCY RESPONSE TEAM

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US-CERT Current Activity

FSS ATOM

The US-CERT Current Activity web page is a regularly updated summary of the most frequent, high-impact types of security incidents currently being reported to the US-CERT.

Last reviewed: December 1, 2005 16:49:16 EST

new Reports of IRS Phishing Emails

updated Exploit for Vulnerability in Microsoft Internet Explorer window() object
Vulnerability in Cisco PIX
W32/Sober Revisited
First 4 Internet XCP (Sony DRM) Vulnerabilities
Vulnerability in Macromedia Flash Player
Oracle Worm Proof-of-Concept Code
Exploit for Snort Back Orifice Preprocessor Buffer Overflow Vulnerability
Multiple Vulnerabilities in Skype
Vulnerabilities in Oracle Products
Vulnerability in Snort Back Orifice Preprocessor
Hurricane Tragedies Spawn Phishing Sites
Vulnerability in Cisco IOS Firewall Authentication Proxy

Additional Information

- Ports Associated with Known Vulnerabilities and Exploits
- Current Activity Archive

National Cyber Alert System

Technical Cyber Security Alerts
Cyber Security Alerts
Cyber Security Bulletins
Cyber Security Tips

- Report an incident
- Report a vulnerability

General Tips

- Apply vendor-supplied software patches in a timely manner
- Disable features/services that are not explicitly required
- Install anti-virus software and keep it up to date
- Use caution when opening email attachments and following URLs

Reports of IRS Phishing Emails

added November 30, 2005

US-CERT has received reports of a phishing email scam that attempts to convince the user that it is from the Internal Revenue Service (IRS) by using a spoofed "From" address of "tax-refunds@irs.gov".

Upon clicking on the link provided in the email, the user is taken to a fraudulent site that looks like a legitimate U.S. government site. The user is then asked to provide personal information, such as their social security, credit card and bank pin numbers.

Users are encouraged to take the following measures to protect themselves from this type of phishing attack:

1. Do not follow unsolicited web links received in email messages.
2. Contact your financial institution immediately if you believe your account/and or financial information has been compromised.

For additional information on ways to avoid phishing email attacks, US-CERT recommends that all users reference the following:

- Avoiding Social Engineering and Phishing Attacks
- Spoofed/Forged Email

Exploit for Vulnerability in Microsoft Internet Explorer window() object

added November 21, 2005 | updated November 30, 2005

US-CERT is aware of a vulnerability in the way Microsoft Internet Explorer handles requests to the window() object. If exploited, the vulnerability could allow a remote attacker to execute arbitrary code with the privileges of the user. Additionally, the attacker could also cause IE (or the program using the WebBrowser control) to crash.

According to Microsoft, malicious software is targeting this vulnerability. We have confirmed that the proof-of-concept code is successful on Windows 2000 and Windows XP systems that are fully patched as of November 30, 2005.

More information about this vulnerability can be found in the following US-CERT Vulnerability Note:

- VU#887861 - Microsoft Internet Explorer vulnerable to code execution via scripting "window()" object

Until a patch is available to address this vulnerability, US-CERT strongly encourages Windows users to disable Active Scripting.

Additionally, Microsoft has updated its Security Advisory about this issue and is continuing to investigate the problem.

Vulnerability in Cisco PIX

added November 23, 2005 | updated November 28, 2005

US-CERT is aware of a publicly-reported vulnerability in the way Cisco PIX firewalls process legitimate TCP connection attempts. A remote attacker may be able to send spoofed, malformed TCP packets with incorrect checksum values through affected PIX firewalls. As a result, legitimate network traffic to the destination may be blocked until the invalid PIX connection-attempt entry times out (around two minutes by default).

Public exploit code for this reported vulnerability may be useful for automating a sustained attack. More information about the reported vulnerability can be found in the following US-CERT Vulnerability Note:

- VU#853540 - Cisco PIX TCP checksum verification failure report

Until a patch or more information becomes available, US-CERT recommends that system administrators who may be affected consider reconfiguring certain connection timers on Cisco PIX systems. More workaround information is also available in the solution section of VU#853540.

W32/Sober Revisited

added November 22, 2005 | updated November 22, 2005

US-CERT is aware of several new variants of the W32/Sober virus that propagate via email. As with many viruses, these variants rely on social engineering to propagate. Specifically, the user must click on a link or open an attached file.

A recent variant sends messages that appear to be from the CIA or FBI, while a German version appears to be coming from the Bundeskriminalamt (BKA), the

German Federal police service. US-CERT encourages users to review the appropriate alert below:

- FBI ALERTS PUBLIC TO RECENT E-MAIL SCHEME
- BKA warnt vor gefälschten E-Mails mit BKA-Absender - Variante des Sober-Wurms

These new variants of the W32/Sober virus identified above share common characteristics listed below. Once infected, the malicious code may:

- Attempt to harvest email addresses from a configurable list of file extensions
- Utilize its own SMTP engine to send itself to the harvested email addresses

Although each variant has different functionality, the list below contains a subset of the common characteristics found in previous variants. Once a system is infected, the malicious code may:

- Modify the system registry to prevent Windows XP's built-in firewall from starting
- Attempt to harvest email addresses from a configurable list of file extensions
- Utilize its own SMTP engine to send itself to the harvested email addresses
- Modify the HOSTS file to prevent the computer from accessing certain security and commercial web sites
- Attempt to terminate a number of running processes, some of which are security related
- Open a backdoor on the system that allows the attacker to communicate remotely with the system via IRC. This may allow the attacker to upload and execute arbitrary code on the infected machine.

US-CERT strongly encourages users to install anti-virus software, and keep its virus signature files up-to-date.

Additionally, US-CERT strongly encourages users not to follow unknown links, even if sent by a known and trusted source. You may also wish to visit the US-CERT Computer Virus Resources.

First 4 Internet XCP (Sony DRM) Vulnerabilities

added November 15, 2005 | updated November 18, 2005

US-CERT is aware of several vulnerabilities regarding the XCP Digital Rights Management (DRM) software by First 4 Internet, which is distributed by some Sony BMG audio CDs. The XCP copy protection software uses "rootkit" technology to hide certain files from the user. This technique can pose a security threat, as malware can take advantage of the ability to hide files. We are aware of malware that is currently using this technique to hide.

One of the uninstallation options provided by Sony also introduces vulnerabilities to a system. Upon submitting a request to uninstall the DRM software, the user will receive via email a link to a Sony BMG web page. This page will attempt to install an ActiveX control when it is displayed in Internet Explorer. This ActiveX control is marked "Safe for scripting," which means that any web page can utilize the control and its methods. Some of the methods provided by this control are dangerous, as they may allow an attacker to download and execute arbitrary code.

More information about this vulnerability can be found in the following US-CERT Vulnerability Note:

- VU#312073 - First 4 Internet XCP "Software Updater Control" ActiveX control incorrectly marked "safe for scripting"

US-CERT recommends the following ways to help prevent the installation of this type of rootkit:

- Do not run your system with administrative privileges. Without administrative privileges, the XCP DRM software will not install.
- Use caution when installing software. Do not install software from sources that you do not expect to contain software, such as an audio CD.
- Read the EULA (End User License Agreement) if you do decide to install software. This document can contain information about what the software may do.
- Disable automatically running CD-ROMs by editing the registry to change the Autorun value to 0 (zero) as described in Microsoft Article 155217.

Vulnerability in Macromedia Flash Player

added November 14, 2005 | updated November 17, 2005

US-CERT is aware of a buffer overflow vulnerability in Macromedia Flash Player versions 7.0.53.0 and earlier. If exploited, the vulnerability could allow a remote attacker to execute arbitrary code with privileges of the user on the affected system. We are not aware of any public exploits at this time.

More information about this vulnerability can be found in the following US-CERT Vulnerability Note:

- VU#146284 - Macromedia Flash Player fails to properly validate the frame type identifier read from a "SWF" file

US-CERT encourages users to upgrade to the appropriate software version as described in the Macromedia Security Bulletin MPSB05-07.

Oracle Worm Proof-of-Concept Code

added November 1, 2005 | updated November 7, 2005

US-CERT is aware of publicly available proof-of-concept code for an Oracle worm. Currently, US-CERT cannot confirm if this code works. We are working with Oracle to determine the threat posed by this code.

Although there is limited information concerning this potential threat, US-CERT strongly encourages Oracle system administrators to implement the following workarounds:

- Change default user credentials for Oracle installations
- Change the default port for the TNS listener
- Restrict Oracle network access to trusted hosts only
- Revoke CREATE DATABASE LINK privileges from the CONNECT role

For additional information on Oracle Database Security, please refer to the following webpage:

- http://www.oracle.com/technology/deploy/security/db_security/index.html

US-CERT will continue to investigate the issue and provide updates as they become available.

Exploit for Snort Back Orifice Preprocessor Buffer Overflow Vulnerability

added October 27, 2005

US-CERT is aware of publicly available exploit code for a buffer overflow vulnerability in the Snort Back Orifice preprocessor. This vulnerability may allow a remote, unauthenticated attacker to execute arbitrary code, possibly with root or SYSTEM privileges.

More information about this vulnerability can be found in the following:

- US-CERT Vulnerability Note: VU#175500 - Buffer overflow in Snort Back Orifice preprocessor
- Technical Cyber Security Alert: TA05-291A - Snort Back Orifice Preprocessor Buffer Overflow

US-CERT encourages Snort users to upgrade to version 2.4.3 as soon as possible. Until a fixed version of Snort can be deployed, disabling the Back Orifice preprocessor will mitigate this vulnerability.

Multiple Vulnerabilities in Skype

added October 26, 2005

US-CERT is aware of several buffer overflow vulnerabilities in Skype that may allow a remote attacker to execute arbitrary code.

The most critical of these issues can be exploited by sending a specially crafted packet to a vulnerable Skype installation. More information about this vulnerability can be found in the following US-CERT Vulnerability Note:

- VU#905177 - Skype vulnerable to heap-based buffer overflow

The other two vulnerabilities can be exploited by accessing a specially crafted VCARD or Skype URI. More information about these vulnerabilities can be found in the following US-CERT Vulnerability Notes:

- VU#668193 - Skype VCARD handling routine contains a buffer overflow
- VU#930345 - Skype URI handling routine contains a buffer overflow

Skype has released the following Security Bulletins to address these vulnerabilities:

- SKYPE-SB/2005-003 to address VU#905177
- SKYPE-SB/2005-002 to address VU#668193 and VU#930345

US-CERT encourages Skype users to upgrade to the latest fixed version of Skype as soon as possible.

Vulnerabilities in Oracle Products

added October 19, 2005

US-CERT is aware of multiple vulnerabilities in Oracle products. The impact of these vulnerabilities varies depending on the product, component, and configuration of the system. Potential consequences include remote execution of arbitrary code or commands, access to sensitive information, and denial of service.

Many of these vulnerabilities are corrected by the Oracle Critical Patch Update (CPU) for October 2005. According to public reports, the patches included in this update, as well as previous updates, may not adequately correct all security vulnerabilities.

More information about this vulnerability can be found in the following:

- US-CERT Vulnerability Note: VU#210524 - Oracle products contain multiple vulnerabilities
- Technical Cyber Security Alert: TA05-292A - Oracle products contain multiple vulnerabilities
- Oracle Critical Patch Update - October 2005

US-CERT is continuing to investigate these reports and will provide further information as it becomes available.

Vulnerability in Snort Back Orifice Preprocessor

added October 18, 2005

US-CERT is aware of a buffer overflow vulnerability in the Snort Back Orifice preprocessor. If exploited, the vulnerability could allow a remote, unauthenticated attacker to execute arbitrary code with possibly root or SYSTEM privileges on the affected system. We are not aware of any public exploits at this time.

More information about this vulnerability can be found in the following:

- US-CERT Vulnerability Note: VU#175500 - Buffer overflow in Snort Back Orifice preprocessor
- Technical Cyber Security Alert: TA05-291A - Snort Back Orifice Preprocessor Buffer Overflow

US-CERT encourages Snort users to upgrade to version 2.4.3 as soon as possible.

Hurricane Tragedies Spawn Phishing Sites

added August 31, 2005 | updated September 23, 2005

US-CERT warns users to expect an increase in targeted phishing emails due to recent events such as Hurricane Katrina and Hurricane Rita. US-CERT has received reports of multiple phishing sites that attempt to trick users into

donating funds to fraudulent foundations in the aftermath of Hurricane Katrina. US-CERT expects to see the same type of malicious activity during the aftermath of Hurricane Rita.

Phishing emails may appear as requests from a charitable organization asking the users to click on a link that will then take them to a fraudulent site that appears to be a legitimate charity. The users are then asked to provide personal information that can further expose them to future compromises.

Users are encouraged to take the following measures to protect themselves from this type of phishing attack:

1. Do not follow unsolicited web links received in email messages
2. Contact your financial institution immediately if you believe your account/and or financial information has been compromised

US-CERT strongly recommends that all users reference the Federal Emergency Management Agency (FEMA) web site for a list of legitimate charities to donate to their charity of choice.

Vulnerability in Cisco IOS Firewall Authentication Proxy

added September 8, 2005

US-CERT is aware of a buffer overflow vulnerability in Cisco IOS Firewall Authentication Proxy for FTP and Telnet Sessions. If exploited, the vulnerability could allow a remote unauthenticated attacker to execute arbitrary code or cause a denial-of-service condition on the affected system. We are not aware of any public exploits at this time.

More information about this vulnerability can be found in the following US-CERT Vulnerability Note:

- VU#236045 - Cisco IOS Firewall Authentication Proxy vulnerable to buffer overflow via specially crafted user authentication credentials

US-CERT urges users to review the fixes, updates, and workarounds described in the Cisco Security Advisory.

Last updated December 01, 2005

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US-CERT is part of the Department of Homeland Security

Exhibit 39

National Cyber-Alert System

Vulnerability Summary CVE-2005-4069

Original release date: 12/7/2005

Last revised: 12/7/2005

Source: US-CERT/NIST

Overview

SunnComm MediaMax DRM 5.0.21.0 assigns insecure permissions to the "SunnComm Shared" directory, which allows local users to gain privileges by modifying programs installed in that directory, such as MMX.exe.

Impact

CVSS Severity: 4.9 (Medium)

Range: Locally exploitable

Authentication: Not required to exploit

Impact Type: Provides user account access

References to Advisories, Solutions, and Tools

External Source: FRSIRT ([disclaimer](#))

Name: ADV-2005-2783

Type: Advisory , Patch Information

Hyperlink: <http://www.frsirt.com/english/advisories/2005/2783>

External Source: SECUNIA ([disclaimer](#))

Name: 17933

Type: Advisory , Patch Information

Hyperlink: <http://secunia.com/advisories/17933>

External Source: ([disclaimer](#))

Hyperlink: http://www.eff.org/news/archives/2005_12.php#004234

External Source: ([disclaimer](#))

Type: Advisory

Hyperlink: <http://www.eff.org/IP/DRM/Sony-BMG/MediaMaxVulnerabilityReport.pdf>

External Source: BID ([disclaimer](#))

Name: 15754

Hyperlink: <http://www.securityfocus.com/bid/15754>

External Source: SECTRACK ([disclaimer](#))

Name: 1015327

Hyperlink: <http://securitytracker.com/id?1015327>

Vulnerable software and versions

SunnComm, MediaMax DRM, 5.0.21.0

Technical Details

CVSS Base Score Vector: (AV:L/AC:L/Au:NR/C:P/I:P/A:P/B:N) (legend)

Vulnerability Type: Design Error

CVE Standard Vulnerability Entry:

<http://cve.mitre.org/cgi-bin/cvename.cgi?name=CVE-2005-4069>

Exhibit 40

National Cyber-Alert System

Vulnerability Summary CVE-2005-3474

Original release date: 11/2/2005

Last revised: 11/3/2005

Source: US-CERT/NIST

Overview

The aries.sys driver in Sony First4Internet XCP DRM software hides any file, registry key, or process with a name that starts with "\$sys\$", which allows attackers to hide activities on a system that uses XCP.

Impact

CVSS Severity: 5.6 (Medium) Approximated

Range: Locally exploitable

Impact Type: Provides unauthorized access

References to Advisories, Solutions, and Tools

External Source: [\(disclaimer\)](#)

Hyperlink: <http://www.sysinternals.com/blog/2005/10/sony-rootkits-and-digital-rights.html>

External Source: SECUNIA [\(disclaimer\)](#)

Name: 17408

Type: Advisory

Hyperlink: <http://secunia.com/advisories/17408>

External Source: OSVDB [\(disclaimer\)](#)

Name: 20435

Hyperlink: <http://www.osvdb.org/20435>

External Source: SECTRACK [\(disclaimer\)](#)

Name: 1015145

Hyperlink: <http://securitytracker.com/id?1015145>

Vulnerable software and versions

Sony, First4Internet XCP Content Management

Technical Details

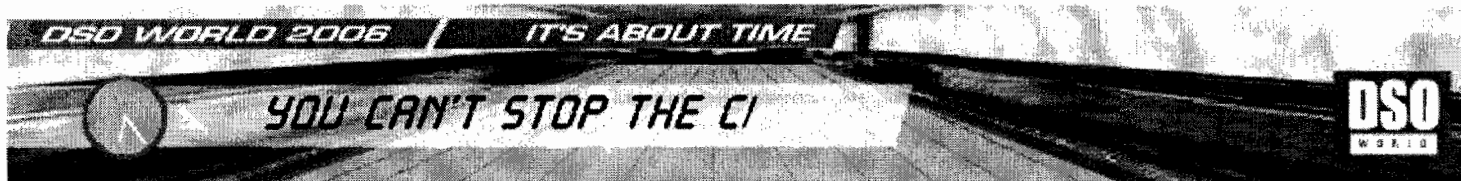
CVSS Base Score Vector: (AV:L/AC:L/Au:NR/C:P/I:C/A:P/B:N) Approximated (legend)

Vulnerability Type: Design Error

CVE Standard Vulnerability Entry:

<http://cve.mitre.org/cgi-bin/cvename.cgi?name=CVE-2005-3474>

Exhibit 41



EE Times: Latest News

Music mavens change tune

Rick Merritt

(08/15/2005 9:00 AM EDT)

URL: <http://www.eetimes.com/showArticle.jhtml?articleID=168601279>

FOSTER CITY, Calif. — Struggling with a decline in its core business, the music industry is sending out mixed messages about future plans for digital content.

On the one hand, studios led by Sony BMG (New York) are moving aggressively to lock down their CD content with new copy-protection schemes in the face of widespread piracy that shows no sign of abating. On the other hand, they are embracing new services, especially in mobile, enabling a market where cell phones may soon surpass MP3 players as the dominant digital-music receiver.

"Respecting copyright and embracing technology is where we need to go," said Thomas Hesse, president of Sony BMG's digital group, at a keynote address to the Music 2.0 conference here last week. "Striking the right balance between making digital music available and getting adequately compensated for it is key."

In the end, bread-and-butter CD sales are expected to remain roughly flat while digital-music sales, an estimated \$350 million annual drop in today's sales bucket, could triple in the next five years, according to market research estimates.

Digital sales are "chump change compared to \$11 billion in annual CD sales, but that's where all the growth is," said David Card, senior analyst with Jupiter Media (New York). Annual CD sales have fallen by \$2.5 billion since their peak seven years ago, he added.

"We don't see the music business coming back to where it was in 1998. We have a long way to go to replace physical sales with digital sales," Card said.

Stop the rippers

Keynoter Hesse promised that all Sony CDs sold in the United States would sport copy protection by the end of March; Europe and Asia will follow sometime later. The company has already conducted in-depth focus groups on at least two major CD releases that let users burn three backup copies and transfer songs to five other devices.

"The conclusion was [that] consumers accepted copyright protection," said Mathew Gilliat-Smith, managing director of First 4 Internet Ltd. (Oxon, England), whose copy-protection software is currently used on more than 30 Sony CDs.

The EMI Group is expected to announce similar plans soon, using Macrovision software. The other two major music studios — Universal Music and Warner Brothers — are evaluating technologies and waiting to see how Sony's moves play out.

"I'd be surprised if they don't follow suit," said Gilliat-Smith, whose company makes something less than 10 cents per disk for its copy-protection software.

Sony executives met privately with Apple Computer Inc. here last week in an effort to make it easier for users to transfer music from copy-protected Sony CDs to iPod players. It's unclear whether Apple would be willing to make the necessary tweaks to its iTunes software to streamline the file transfer process, given Apple's desire to distance itself from the music industry's efforts at copy protection.

Indeed, analyst Card said one early study showed that sales of copy-protected CDs might slump as much as 75 percent vs. today's unprotected disks. But "that has not been borne out" by the initial Sony market tests, he said.

Nevertheless, Card said he does not believe copy-protected CDs will have any significant impact on growing piracy and sluggish

CD sales. Although the percentage of adults who admit to illegally copying digital-music files has fallen from 15 to 8 percent in the last two years, the number of younger people who say they make illegal copies has held steady, at about 31 percent, Card said.

One widely cited report said the number of simultaneous peer-to-peer downloads at any moment over the Internet hit 8.5 million in July, an all-time record. Sony's Hesse pointed to one report saying that in 2004, ripping illegal copies was up 38 percent and burning them to a CD was up 13 percent over 2003 levels.

Young people see illegal copying as a legitimate reaction to the major studios, which they perceive as overpaid purveyors of poor-quality music, according to an informal panel of six anonymous men and women ranging from 19 to 28 at last week's conference. All six panelists said they get illegal songs from peer-to-peer services. Only two said they sometimes pay for digital music.

"You would be the odd one out if you didn't" share illegal music, said one panelist, who added that a friend who works for the FBI shares illegal copies with her. "The music industry is garbage right now," she said.

If members of Generations X and Y may be unafraid of sharing illegal songs, technology companies are operating in a climate of fear over legal liability, said Fred von Lohmann, a senior attorney with the Electronic Frontier Foundation (San Francisco). The recent Supreme Court case of *Grokster vs. MGM Studios* only increased the anxiety because it did not define the scope of existing legal liabilities for so-called vicarious and contributory copyright infringement. Instead, it added a third possible liability: inducement.

"If you are in the tech space concerned about the scope of liability, the upshot is you have continued legal uncertainty," von Lohmann said. "We need more clarity for consumer uses" of digital media.

In this environment, progress in digital media will be slow, von Lohmann said. Most established companies will move cautiously, striking partnerships with traditional studios and seeking their permission and licenses before embarking on new products and services that generally stay within existing guidelines. Echoing that view, executives from many companies noted with frustration the rise in complex legal contracts for every new use of digital-music files.

According to analyst Card, cultural shifts are more to blame than piracy for the music industry's slump. Traditionally, music accounted for less than 2 percent of all entertainment spending, but it has risen to 3 to 4 percent over the last 20 years. He attributed that fact to the rise of baby boomers, a large music-hungry demographic for whom rock is a cultural phenomenon. This group has bought several record collections in LP, cassette and CD versions, Card said. "Some of the industry's decline is about the end of the CD-upgrade cycle," he said.

New avenues

Whatever the cause, the music industry is scrambling for new avenues for growth, many of them in the digital domain.

Sony's Hesse sketched plans for multiple product-release "windows" for premium, mainstream and budget versions of music on CD, Web and mobile platforms. The products include digital mixes of songs with videos and PDF artwork, ring tones, ringback tones and remixes, along with a broader variety of live-music versions, subscription services and more.

"We haven't figured out what all the new digital products will be yet. We are still inventing new ones," said Dan Weiner, vice president of strategy for the Sony BMG digital group.

Three new products are an effort to break out of today's monolithic model of 99-cent song downloads popularized by Apple's iTunes. "We've been selling everything for the same price. There's no market in the world like that," said Hesse.

One of the most significant new digital offerings will be over-the-air downloaded and streaming songs on cellular nets. Europe's O2 plans to launch such a service "in the next few months," said a representative of LoudEye Corp. (Seattle), which is developing the infrastructure for the service. Similar services are starting up now in Canada and Spain, and another is set to come online in India within a month.

A representative of Universal Music said the company set up a dedicated mobile group nearly two years ago. It has negotiated dozens of licenses of its content for ring tones and is now negotiating its first licenses for over-the-air music services, the representative said.

"All the major carriers have decided to do this and are evaluating different platforms for launches that could come late this year or early next year," commented Bill Valenti, president of startup Melodeo, a Seattle-based company that has its own software platform for hosting mobile music services.

Nokia has already launched three phones geared for mobile music and will roll out four more by the end of the year, according to an executive for a content aggregator involved in the launch of mobile music services in India.

"The big question in 2006 is to what extent carriers will keep these new mobile music services closed-walled gardens or open them up," said Sony's Hesse.

"The [music-ready] mobile phone will dwarf sales of portable audio players this year," predicted Brad Duea, president of the new, legitimate online-music service Napster.

Look out at the low end

Analyst Card took a more conservative view. "In 2010, there will be more music-capable cell phones than MP3 players. That said, MP3 players will still be a large, robust and exciting business," he said. "We don't think cell phones will be the dominant way people listen to music."

However, Card said that music-ready phones could cannibalize low-end, flash-based MP3 players, even as camera phones have eaten into the low-end digital-camera market.

"I think the next sweet spot is an MP3 player with a couple gigs' storage and a display, at \$50. You will see that coming in a year or two — and it could be built into a phone," Card said.

Only one of the six young people in the Music 2.0 conference's focus group expressed interest in buying or listening to music via a cell phone — because it would eliminate the need to carry both a phone and an iPod. Others were skeptical.

"The battery on my phone doesn't last long enough to download songs, let alone play them," said one woman.

Indeed, the limits of handsets and cellular networks remain issues for mobile media. Even voice conversations can be iffy on today's cell phones, so MP3-quality audio is no easy task.

Basic Java-enabled phones can find, sample and purchase songs in the service run by Telefonica in Spain today. For less than \$2, a 32-kbit/second clip is sent to the phone and a 128-kbit/s clip to the buyer's personal computer.

A 32-kbit/s audio rate is adequate for MP3-like quality on the phone, said Melodeo's Valenti, whose platform uses the AAC-Plus codec to compress a three-minute song down to about 700 kbytes. Secure Digital flash cards provide adequate storage for music and are becoming popular on camera phones, he said.

"We've done a lot of tests, and people consider it as good as the iTunes experience," Valenti said of his company's platform, which includes a search capability optimized for a handset's small display.

While some services are using the AAC-Plus codec and OMA-2 digital rights management (DRM) technology, others use Microsoft Corp.'s Windows media codec and DRM. "There is a real battle on that front," said Valenti. He would not disclose the royalty rates Melodeo seeks for use of its proprietary platform and DRM.

One audience member at the conference said he has worked on mobile music trials with cell phone maker Ericsson and that he had found 32-kbit/s audio too poor in quality and Bluetooth downloads too slow. Valenti countered that cell phones can download a three-minute song in 20 seconds over Bluetooth using Melodeo's software.

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Exhibit 42

William R. Brasseur

From: NewsBank – service provider for NPR Transcripts [npr@newsbank.com]
Sent: Tuesday, November 29, 2005 10:28 AM
To: William R. Brasseur
Subject: NPR Transcripts Document

National Public Radio

**National Public Radio
Morning Edition**

November 4, 2005

Analysis: Sony music CDs under fire from privacy advocates

Edition: 10:00-11:00 AM

Index Terms:
4989260

Estimated printed pages: 3

Article Text:

STEVE INSKEEP, host:

Sony BMG has been criticized for adding potentially invasive software to some of its CDs. Sony says the software is only intended to protect copyrighted songs, which is not stopping privacy advocates from demanding a deeper investigation. NPR's Neda Ulaby reports.

NEDA ULABY reporting:

Here's your vocabulary word for the morning. Ready? It's 'Rootkit.'

Mr. ARI SCHWARTZ (Associate Director, Center for Democracy & Technology): It's at the root of the computer. That's where the term Rootkit comes from.

ULABY: Ari Schwartz is associate director at the Center for Democracy & Technology in Washington, DC. If you're already stretching for the snooze button, stop. Schwartz believes you might care to know that Rootkit codes create secret spaces within your computer where all kinds of things might happen.

Mr. SCHWARTZ: They could potentially be used to mine for information. They could ! potentially be used to take over your computer, take all the information on your computer.

ULABY: Traditionally Rootkits were used by hackers to hide viruses. That's why Mark Russinovich was surprised when he discovered a Rootkit-like program on his computer not long after popping a CD by the group the Van Zants into his hard drive.

11/29/2005

Mr. MARK RUSSINOVICH: And was presented with a user license agreement dialogue box telling me that it--in order to play the content on the CD, I needed to install the proprietary player software that was on the CD.

ULABY: Now most of us would just hit OK. When Russinovich hits OK, he thinks he knows what he's doing. He's co-written a book about Windows operating systems and he co-founded his own software company. Russinovich traced the mystery software back to the songs he'd put on his computer. And when he tried to get rid of the software, he said the effort disabled his CD drive. He described his travails on his blog. Russinovich says only certain systems are at risk.

Mr. RUSSINOVICH: Windows NT-based line of operating systems, so Windows 2000, Windows XP, Windows Server 2003.

ULABY: The software and the CD it rode in on was distributed by Sony BMG. Executives there say nothing sinister is going on and they object to such terms as spyware, malware and Rootkits.

Mr. THOMAS HESSE (President, Sony BMG Global Digital Business): Most people, I think, don't even know what a Rootkit is, so why should they care about it?

ULABY: Thomas Hesse is president of Sony BMG's Global Digital Business. He says only about 20 CDs have the software.

Mr. HESSE: The software is designed to protect our CDs from unauthorized copying and ripping.

ULABY: The software is cloaked, Hesse says, so would-be pirates can't find it and remove it. But technocrats were infuriated over the software's covert nature, enough of them that this week Sony BMG offered a new fix on its Web site to rid computers of the software. Ed Felten teaches computer science and public affairs at Princeton. He says even the fix is problematic and the legality of Sony's actions is confusing.

Mr. ED FELTEN (Princeton University): The lawyers that I've talked to say that it boils down to whether Sony's license agreement gave enough notice to users about what they were doing.

ULABY: Nico Cuponin(ph) says it doesn't. He works at a Finnish computer security firm and he tested some of the Van Zant CDs himself. Cuponin says that little pop-up box does not provide users with enough information.

Mr. NICO CUPONIN: And it doesn't warn you that it's going to be installing programs which will actively hide themselves and can be used by malicious programs to hide themselves too.

ULABY: Cuponin fears the software could be used to collect information. Sony BMG's Thomas Hesse says it won't.

Mr. HESSE: No information ever gets gathered about the user's behavior. No information ever gets communicated back to the user. This is purely about restricting the ability to burn MP3 files in an unprotected manner.

ULABY: Still, every single computer expert interviewed said they would no longer copy such protected CDs from any company to their computers and they warned about intrusive copy protection software that may soon be attached to games and DVDs.

Neda Ulaby, NPR News.

INSKEEP: This is NPR News.

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Record Number: 200511041005

Exhibit 43

Time Detail Report for Sony NY 050236-00001 and Sony CA 050222-00001								
Proforma numbers 6032 and 6033								
From: Inception to 03/27/2006								
Timekeeper Name	ID	Work Date	Time Description	Hours	Amount	Time Stat	Batch Date	Timecard Index No.
FRIEDMAN, JEFFREY D.	1467	11/3/2005	Fact investigation; mtg re same	4.75	2,018.75	B	1/10/2006	3276604
KATHREIN, REED R.	518	11/4/2005	Review case w/JDF; conf potential client; fact investigation.	4.00	2,300.00	B	11/22/2005	3225132
FRIEDMAN, JEFFREY D.	1467	11/4/2005	Fact investigation; mtg re same w/RRK	2.25	956.25	B	1/10/2006	3276608
FRIEDMAN, JEFFREY D.	1467	11/7/2005	Fact investigation; research re experts.	2.50	1,062.50	B	1/10/2006	3276614
FRIEDMAN, JEFFREY D.	1467	11/9/2005	Legal research re applicable statutes, causes of action.	3.50	1,487.50	B	1/10/2006	3276619
KATHREIN, REED R.	518	11/11/2005	Factual investigation re complaint.	1.50	862.50	B	11/22/2005	3225193
STEIN, JONATHAN	1204	11/11/2005	Review press releases and news articles regarding new consumer case. Emails with co-counsel.	0.75	356.25	B	12/6/2005	3235820
FRIEDMAN, JEFFREY D.	1467	11/11/2005	Fact investigation and legal research re complaint.	4.50	1,912.50	B	1/10/2006	3276625
KATHREIN, REED R.	518	11/14/2005	Review articles and technology reports; email to partners re case status.	2.50	1,437.50	B	11/22/2005	3225194
KATHREIN, REED R.	518	11/15/2005	TC client re case	2.00	1,150.00	B	11/22/2005	3225195
KATHREIN, REED R.	518	11/15/2005	Review facts; disc case w/partners; TC Mautner re case status	3.00	1,725.00	B	11/22/2005	3225197
FRIEDMAN, JEFFREY D.	1467	11/15/2005	Client mtg; fact research; legal research re filing complaint.	4.25	1,806.25	B	1/10/2006	3276630
KATHREIN, REED R.	518	11/16/2005	Factual investigation; review cpts; Confer w/JDF.	2.00	1,150.00	B	11/22/2005	3225198
FRIEDMAN, JEFFREY D.	1467	11/16/2005	Review cpts; litig search results re factual research; confer w/RRK.	1.75	743.75	B	1/10/2006	3276635
KATHREIN, REED R.	518	11/17/2005	TC Mautner, conf client; attn facts and investigation; TC Robert Green; review cpts; TC JJS	6.00	3,450.00	B	11/22/2005	3225189
ROTHMAN, ROBERT	1205	11/17/2005	E-mail and t/c with R. Kathrein; e-mail with R. Green re filing of complaint, case status.	0.75	318.75	B	12/5/2005	3228842
FRIEDMAN, JEFFREY D.	1467	11/17/2005	Review/comment on cpt	1.25	531.25	B	1/10/2006	3276740
KATHREIN, REED R.	518	11/18/2005	Review cpt; TC Rothman, JDF; corres Green re filing strategy.	4.00	2,300.00	B	11/22/2005	3225204
ROTHMAN, ROBERT	1205	11/18/2005	T/c with RRK, JDE; review e-mail re: status.	0.25	106.25	B	12/5/2005	3228914
FRIEDMAN, JEFFREY D.	1467	11/18/2005	Review cpt; mtg re case strategy w/Rothman, RRK.	2.75	1,168.75	B	1/10/2006	3276744
KATHREIN, REED R.	518	11/20/2005	Review cpt; corres team re edits/strategy.	2.00	1,150.00	B	12/2/2005	3229491
KATHREIN, REED R.	518	11/21/2005	Attn cpt; corres w/team re edits/strategy.	3.00	1,725.00	B	12/2/2005	3229494
KATHREIN, REED R.	518	11/22/2005	Attn issues and fed cpt; TC plff.	4.00	2,300.00	B	12/2/2005	3229495
FRIEDMAN, JEFFREY D.	1467	11/24/2005	Review corres re case strategy	1.25	531.25	B	1/10/2006	3276748
KATHREIN, REED R.	518	11/28/2005	Attn strategy and review comm'n; confer w/JDF re strategy.	2.00	1,150.00	B	12/2/2005	3229501
FRIEDMAN, JEFFREY D.	1467	11/28/2005	Mtg re strategy w/RRK; attn strategy and emails re same.	2.00	850.00	B	1/10/2006	3276750
FRIEDMAN, JEFFREY D.	1467	11/29/2005	factual investigation; corres re strategy; confer w/co-counsel re same.	1.75	743.75	B	1/10/2006	3276753
KATHREIN, REED R.	518	11/30/2005	Provide inserts for NY cpt on class and CFAA issues	6.00	3,450.00	B	12/2/2005	3229508
FRIEDMAN, JEFFREY D.	1467	11/30/2005	Mtg re case strategy; factual investigation; legal research re comp.	3.25	1,381.25	B	1/10/2006	3276756
SCARLETT, SHANA E.	1465	12/1/2005	Review cpt and prelim inj; CC w/C. McSherry re same	1.00	325.00	B	12/6/2005	3235218
FRIEDMAN, JEFFREY D.	1467	12/1/2005	Mtg re MDL; review and edit pldgs	1.75	743.75	B	1/25/2006	3281110
SCARLETT, SHANA E.	1465	12/2/2005	Research prelim inj; TC w/A. Sharma and C. McSherry re same	5.00	1,625.00	B	12/7/2005	3236688
ROTHMAN, ROBERT	1205	12/2/2005	Review complaint; revise complaint; arrange for filing.	3.50	1,487.50	B	1/11/2006	3277373
STADELMANN, KELLY	30786	12/2/2005	Prepare new complaint for filing in SDNY	4.00	980.00	B	1/13/2006	3278638
SCARLETT, SHANA E.	1465	12/3/2005	Edit/research mtn for preliminary inj., RJN and plffs' decls	4.00	1,300.00	B	12/7/2005	3236691
SCARLETT, SHANA E.	1465	12/4/2005	Draft/research/edit mtn for prelim inj, RJN, plffs' decls	9.00	2,925.00	B	12/7/2005	3236692
SCARLETT, SHANA E.	1465	12/5/2005	TC w/R. Green, RRK re settlmt; CC w/litig team re same; conf w/JDF and RRK re same; edit resp to settlmt proposal	6.25	2,031.25	B	12/7/2005	3236694
SCARLETT, SHANA E.	1465	12/5/2005	Draft/edit RJN ISO prelim inj	0.50	162.50	B	12/7/2005	3236696
KATHREIN, REED R.	518	12/5/2005	Conf call w/EFF and def counsel; TC JJS; OC SES and JDF; review proposal	5.00	2,875.00	B	12/22/2005	3245565
ROTHMAN, ROBERT	1205	12/5/2005	Review e-mail re case investigation	0.25	106.25	B	1/11/2006	3277384
FRIEDMAN, JEFFREY D.	1467	12/5/2005	Review corres; mtg re same	1.75	743.75	B	1/25/2006	3281112
SCARLETT, SHANA E.	1465	12/6/2005	t/c counsel re Sony strategy; revise ltr to defs	3.00	975.00	B	12/22/2005	3245276
KATHREIN, REED R.	518	12/6/2005	TC counsel; attn strategy; review options re settlmt; TC Cal and New Mexico counsel	6.00	3,450.00	B	12/22/2005	3245571
ROTHMAN, ROBERT	1205	12/6/2005	Review e-mail from Jacobson; review ECF filings.	0.50	212.50	B	1/11/2006	3277392
FRIEDMAN, JEFFREY D.	1467	12/6/2005	Mtg re settlmt investigations, MDL; review corres, pldgs	3.25	1,381.25	B	1/25/2006	3281118
WOO, JACKIE	30798	12/7/2005	Download and print documents on docket of Michaelson v. Sony (S.D.N.Y. Case No. 05-09575) and deliver copies to attorneys; organize case file	2.00	430.00	B	12/21/2005	3244891
SCARLETT, SHANA E.	1465	12/7/2005	CC w/co-counsel re strategy; review prelim inj; edit/review cpt	5.00	1,625.00	B	12/22/2005	3245280
KATHREIN, REED R.	518	12/7/2005	Attn MDL papers; strategy; conf all attys; attn Buchhold's rules	6.00	3,450.00	B	12/22/2005	3245575
ROTHMAN, ROBERT	1205	12/7/2005	Review letter from Jacobson; review e-mails; participate in conference call; review e-mail re case investigation.	2.75	1,168.75	B	1/11/2006	3277401
FRIEDMAN, JEFFREY D.	1467	12/7/2005	Conf call re litig status; review corres; coord counsel; legal research	2.25	956.25	B	1/25/2006	3281939
WOO, JACKIE	30798	12/8/2005	Check PACER for other cases filed against Sony BMG and check docket in Michaelson v. Sony for new documents filed; print class action complaint filed by the New York office; organize case file; read complaint	3.00	645.00	B	12/21/2005	3244893

Timekeeper Name	ID	Work Date	Time Description	Hours	Amount	Time Stat	Batch Date	Timecard Index No.
SCARLETT, SHANA E.	1465	12/8/2005	Draft MDL petition	4.00	1,300.00	B	12/22/2005	3245281
SCARLETT, SHANA E.	1465	12/8/2005	CC re strategy w/pliffs' counsel	2.00	650.00	B	12/22/2005	3245282
KATHREIN, REED R.	518	12/8/2005	Attn strategy issues; conf counsel re legal strategy; attn cpt filed; attn Buchwald's rules	4.00	2,300.00	B	12/22/2005	3245578
ROTHMAN, ROBERT	1205	12/8/2005	Prepare for and participate in telephone conference with plaintiffs' counsel.	2.25	956.25	B	1/11/2006	3277411
FRIEDMAN, JEFFREY D.	1467	12/8/2005	Prep for conf call; conf call re legal strategy.	2.25	956.25	B	1/25/2006	3281945
ROELEN, SCOTT R.	60035	12/9/2005	New case work-up.	3.00	645.00	B	12/14/2005	3241875
SCARLETT, SHANA E.	1465	12/9/2005	Draft petition for MDL	1.00	325.00	B	12/22/2005	3245284
KATHREIN, REED R.	518	12/9/2005	Attn strategy; conf attys; re same.	4.00	2,300.00	B	12/22/2005	3245581
ROTHMAN, ROBERT	1205	12/9/2005	Review e-mail; conference re: service; T/C with Jacobson; conference call; draft and revise letter.	2.75	1,168.75	B	1/11/2006	3277415
FRIEDMAN, JEFFREY D.	1467	12/9/2005	Review corres; conf call re legal strategy, settlement.	1.75	743.75	B	1/25/2006	3281949
ROTHMAN, ROBERT	1205	12/10/2005	Revise letter; review e-mail re case investigation/legal strategy.	1.25	531.25	B	1/11/2006	3277422
SCARLETT, SHANA E.	1465	12/11/2005	Edit MDL petition	0.75	243.75	B	12/22/2005	3245286
ROTHMAN, ROBERT	1205	12/11/2005	E-mail re: MDL papers; review revised letter.	1.25	531.25	B	1/11/2006	3277424
WOO, JACKIE	30798	12/12/2005	Check PACER for other cases filed against Sony BMG and check docket in Michaelson v. Sony for new documents filed; organize case file	0.50	107.50	B	12/21/2005	3244899
BELFRY, ALLANA	30795	12/12/2005	MDL petition	2.00	430.00	B	12/22/2005	3245268
SCARLETT, SHANA E.	1465	12/12/2005	Prep petition for MDL	2.00	650.00	B	12/22/2005	3245288
KATHREIN, REED R.	518	12/12/2005	TC Nick Kolunich re related case; conf counsel re settlement and related cases; attn settlement terms	3.00	1,725.00	B	12/22/2005	3245583
ROTHMAN, ROBERT	1205	12/12/2005	Revise letter to court; numerous e-mails to counsel re strategy and filing of complaint.	3.25	1,381.25	B	1/11/2006	3277437
FRIEDMAN, JEFFREY D.	1467	12/12/2005	Review corres; mtg re legal strategy, settlement.	1.25	531.25	B	1/25/2006	3281954
WOO, JACKIE	30798	12/13/2005	Check PACER for other cases filed against Sony BMG and check docket in Michaelson v. Sony for new documents filed; organize case file	0.25	53.75	B	12/21/2005	3244905
KATHREIN, REED R.	518	12/13/2005	Attn MDL papers, TC court in Washington, conf call, Sony TRO issues	5.00	2,875.00	B	12/22/2005	3245736
ROTHMAN, ROBERT	1205	12/13/2005	Participate in conference call; review and revise letter to court; review draft agreement; T/C with Jacobson.	2.50	1,062.50	B	1/11/2006	3277443
WOO, JACKIE	30798	12/14/2005	Check PACER for other cases filed against Sony BMG and check docket in Michaelson v. Sony for new documents filed	0.25	53.75	B	12/21/2005	3244906
SCARLETT, SHANA E.	1465	12/14/2005	CC w/co-counsel re legal strategy.	0.50	162.50	B	12/22/2005	3245294
ROTHMAN, ROBERT	1205	12/14/2005	E-mail re: settlement negotiations.	0.25	106.25	B	1/11/2006	3277454
FRIEDMAN, JEFFREY D.	1467	12/14/2005	Review/edit settlement agt; conf call	4.75	2,018.75	B	1/25/2006	3281962
WOO, JACKIE	30798	12/15/2005	Check PACER for other cases filed against Sony BMG and check docket in Michaelson v. Sony for new documents filed; print and route documents from another case filed against Sony BMG	0.50	107.50	B	12/21/2005	3244911
SCARLETT, SHANA E.	1465	12/15/2005	Draft notice of tag-along action	3.00	975.00	B	12/22/2005	3245296
FRIEDMAN, JEFFREY D.	1467	12/15/2005	Review corres; draft settlement agt; mtg re same.	2.00	850.00	B	1/25/2006	3281967
WOO, JACKIE	30798	12/16/2005	Check PACER for other cases filed against Sony BMG and check docket in Michaelson v. Sony for new documents filed; organize case file	1.50	322.50	B	12/21/2005	3244915
KATHREIN, REED R.	518	12/16/2005	TC counsel re Sony negotiations; attn settlement terms	2.00	1,150.00	B	12/22/2005	3245744
ROTHMAN, ROBERT	1205	12/16/2005	Review e-mail re litigation strategy, settlement.	0.50	212.50	B	1/11/2006	3277479
FRIEDMAN, JEFFREY D.	1467	12/16/2005	Review corres and settlement terms	2.00	850.00	B	1/25/2006	3281972
ROTHMAN, ROBERT	1205	12/17/2005	Review e-mail re settlement and litigation strategy.	0.25	106.25	B	1/11/2006	3277481
FRIEDMAN, JEFFREY D.	1467	12/17/2005	Review settlement materials; outline issues; prep for mtg	4.25	1,806.25	B	1/25/2006	3281975
KATHREIN, REED R.	518	12/18/2005	Review pldgs other courts	2.00	1,150.00	B	12/22/2005	3245747
ROTHMAN, ROBERT	1205	12/18/2005	Review e-mail re litigation strategy.	0.25	106.25	B	1/11/2006	3277482
FRIEDMAN, JEFFREY D.	1467	12/18/2005	Attend settlement negotiations	8.25	3,506.25	B	1/25/2006	3281977
KATHREIN, REED R.	518	12/19/2005	TC JDF re settlement negotiations; review email corres	2.00	1,150.00	B	12/22/2005	3245749
WOO, JACKIE	30798	12/19/2005	Check PACER for other cases filed against Sony BMG and check docket in Michaelson v. Sony for new documents filed; search for cases against Sony BMG in L.A. Superior Court	3.50	752.50	B	12/23/2005	3246077
ROTHMAN, ROBERT	1205	12/19/2005	Review e-mail; conference re: settlement discussions; review agreements.	1.50	637.50	B	1/11/2006	3277485
FRIEDMAN, JEFFREY D.	1467	12/19/2005	Review corres; conf call w/co-counsel re settlement negotiations.	2.00	850.00	B	1/25/2006	3281981
KATHREIN, REED R.	518	12/20/2005	Review settlement terms; strategy; c/c re settlement w/co-counsel.	3.00	1,725.00	B	12/22/2005	3245750
WOO, JACKIE	30798	12/20/2005	Check PACER for other cases filed against Sony BMG and check docket in Michaelson v. Sony for new documents filed; print complaints of cases filed in the LA superior court against Sony and deliver copies to Jeff Friedman; e-mail contact information of attorneys for plaintiffs in Ponting v. Sony BMG (C.D. Cal.); call and e-mail First Legal Support to request copy of complaint in Burke v. Sony BMG; e-mail Burke v. Sony complaint to Jeff Friedman	2.00	430.00	B	12/23/2005	3246082
ROTHMAN, ROBERT	1205	12/20/2005	Review e-mail; review settlement; review stipulation.	0.75	318.75	B	1/11/2006	3277493
FRIEDMAN, JEFFREY D.	1467	12/20/2005	Review pldgs; conf call re settlement w/co-counsel.	3.00	1,275.00	B	1/25/2006	3281985

Timekeeper Name	ID	Work Date	Time Description	Hours	Amount	Time Stat	Batch Date	Timecard Index No.
WOO, JACKIE	30798	12/21/2005	Check PACER for other cases filed against Sony BMG and check docket in Michaelson v. Sony for new documents filed; e-mail First Legal Support to request copy of complaint in Ponting v. Sony BMG (C.D. Cal.)	0.50	107.50	B	12/23/2005	3246087
ROTHMAN, ROBERT	1205	12/21/2005	Review drafts and documents filed in court; review e-mail re litigation strategy.	0.75	318.75	B	1/11/2006	3277496
FRIEDMAN, JEFFREY D.	1467	12/21/2005	Review settlement mat'ls; notice; mtg re same	3.25	1,381.25	B	1/25/2006	3281987
WOO, JACKIE	30798	12/22/2005	Check PACER for other cases filed against Sony BMG and check docket in Michaelson v. Sony for new documents filed; speak to Jeff Friedman and Kristen Weiland about adding Lauren Klem to amended certificate of service for MDL filing; print dockets and documents relating to other cases against Sony BMG and route documents	1.00	215.00	B	12/23/2005	3246092
ROTHMAN, ROBERT	1205	12/22/2005	Review e-mail re settlement participation, draft settlement agreements.	0.50	212.50	B	1/11/2006	3277505
FRIEDMAN, JEFFREY D.	1467	12/22/2005	Review settlement matters and mtg-related thereto	2.75	1,168.75	B	1/25/2006	3281993
WOO, JACKIE	30798	12/23/2005	Check PACER for other cases filed against Sony BMG and check docket in Michaelson v. Sony for new documents filed; print and route docket of another case filed against Sony BMG	0.50	107.50	B	12/23/2005	3246096
ROTHMAN, ROBERT	1205	12/23/2005	Review e-mail re litigation strategy.	0.50	212.50	B	1/11/2006	3277513
FRIEDMAN, JEFFREY D.	1467	12/23/2005	Conf call re settlement and MDL	2.00	850.00	B	1/25/2006	3281996
ROTHMAN, ROBERT	1205	12/24/2005	Review e-mail re legal strategy and settlement negotiations.	0.50	212.50	B	1/11/2006	3277517
FRIEDMAN, JEFFREY D.	1467	12/24/2005	Attend to settlement terms	1.50	637.50	B	1/25/2006	3281999
ROTHMAN, ROBERT	1205	12/26/2005	Review e-mail re: settlement.	1.25	531.25	B	1/11/2006	3277518
WOO, JACKIE	30798	12/27/2005	Check PACER for other cases filed against Sony BMG and check docket in Michaelson v. Sony for new documents filed; print and route docket of another case filed against Sony BMG	0.50	107.50	B	1/3/2006	3247759
ROTHMAN, ROBERT	1205	12/27/2005	Review settlement e-mail.	0.75	318.75	B	1/11/2006	3277522
FRIEDMAN, JEFFREY D.	1467	12/27/2005	Attend to settlement terms	1.25	531.25	B	1/25/2006	3282000
WOO, JACKIE	30798	12/28/2005	Check PACER for other cases filed against Sony BMG and check docket in Michaelson v. Sony for new documents filed; print and route docket of another case filed against Sony BMG	0.50	107.50	B	1/3/2006	3247761
ROTHMAN, ROBERT	1205	12/28/2005	Review e-mails from co-counsel re litigation strategy.	0.50	212.50	B	1/11/2006	3277532
FRIEDMAN, JEFFREY D.	1467	12/28/2005	Attend to settlement terms	2.00	850.00	B	1/25/2006	3282002
WOOD, GREG A.	60135	12/29/2005	Call & e-mail class members re case status.	2.00	430.00	B	12/30/2005	3247745
WOOD, GREG A.	60135	12/29/2005	Call & e-mail class members	2.00	430.00	B	12/30/2005	3247746
ROTHMAN, ROBERT	1205	12/29/2005	Review e-mail re: negotiation.	0.75	318.75	B	1/11/2006	3277535
WOO, JACKIE	30798	12/30/2005	Print and route new documents filed in Michaelson v. Sony BMG; check PACER for other cases filed against Sony BMG and route dockets and complaints of such cases found	3.00	645.00	B	1/3/2006	3247766
ROTHMAN, ROBERT	1205	12/30/2005	Review e-mail from co-counsel re negotiations and litigation strategy.	0.50	212.50	B	1/11/2006	3277544
FRIEDMAN, JEFFREY D.	1467	12/30/2005	Attend to settlement terms	2.00	850.00	B	1/25/2006	3282004
KATHREIN, REED R.	518	1/2/2006	Attn status, review corres	1.00	575.00	B	1/12/2006	3277930
ROTHMAN, ROBERT	1205	1/2/2006	Review e-mail re negotiations and litigation strategy.	0.50	212.50	B	1/26/2006	3281930
KATHREIN, REED R.	518	1/3/2006	C/c w/litigation team. confer w/OC SES re status and strategy re further relief and AGs	2.00	1,150.00	B	1/12/2006	3277939
WOO, JACKIE	30798	1/3/2006	Search PACER for other cases against Sony BMG; print and route docket of case against Sony BMG; check docket of Michaelson v. Sony for new documents filed; organize case file	2.50	537.50	B	1/12/2006	3277979
SCARLETT, SHANA E.	1465	1/3/2006	CC w/litig team re MDL, strategy, settlement; confer w/RRK re strategy.	1.50	487.50	B	1/17/2006	3279152
ROTHMAN, ROBERT	1205	1/3/2006	E-mail re: settlement; participate in telephone conference re strategy.	2.00	850.00	B	1/26/2006	3281956
KATHREIN, REED R.	518	1/4/2006	Attn prelim approval plan	1.00	575.00	B	1/12/2006	3277948
WOO, JACKIE	30798	1/4/2006	Search PACER for other cases against Sony BMG; check docket of Michaelson v. Sony for new documents filed; organize case file	1.00	215.00	B	1/12/2006	3277984
RIVA, GABRIELA H.	30675	1/4/2006	Answer emails and help locate secy help for filing	0.25	61.25	B	1/12/2006	3278035
SCARLETT, SHANA E.	1465	1/4/2006	Draft/edit MDL filing	1.00	325.00	B	1/17/2006	3279160
ROTHMAN, ROBERT	1205	1/4/2006	E-mail with co-counsel.	0.50	212.50	B	1/26/2006	3282006
FRIEDMAN, JEFFREY D.	1467	1/4/2006	c/c w/co-counsel to provide info re settlement terms; review settlement agreement; disc issue re hrg and notice provision.	1.25	531.25	B	3/23/2006	3315161
WOO, JACKIE	30798	1/5/2006	Search PACER for other cases against Sony BMG; check docket of Michaelson v. Sony for new documents filed	1.00	215.00	B	1/12/2006	3277986
ROTHMAN, ROBERT	1205	1/5/2006	Review e-mail.	0.50	212.50	B	1/26/2006	3282013
WOO, JACKIE	30798	1/6/2006	Search PACER for other cases against Sony BMG; check docket of Michaelson v. Sony for new documents filed	0.50	107.50	B	1/12/2006	3277991
ROTHMAN, ROBERT	1205	1/6/2006	Prepare for and attend preliminary approval hearing; e-mail re: hearing.	7.75	3,293.75	B	1/26/2006	3282022
ROTHMAN, ROBERT	1205	1/7/2006	E-mail re: preliminary approval.	0.25	106.25	B	1/26/2006	3282025

Timekeeper Name	ID	Work Date	Time Description	Hours	Amount	Time Stat	Batch Date	Timecard Index No.
ROTHMAN, ROBERT	1205	1/8/2006	E-mail re: preliminary approval.	0.25	106.25	B	1/26/2006	3282026
WOO, JACKIE	30798	1/9/2006	Search PACER for other cases against Sony BMG; check docket of Michaelson v. Sony for new documents filed	1.00	215.00	B	1/17/2006	3278785
ROTHMAN, ROBERT	1205	1/9/2006	Review transcript; e-mail to co-counsel; review e-mail.	0.50	212.50	B	1/26/2006	3282030
WOO, JACKIE	30798	1/10/2006	Search PACER for other cases against Sony BMG; check docket of Michaelson v. Sony for new documents filed and route new documents; e-mail articles about Sony BMG settlement to attorneys	2.00	430.00	B	1/17/2006	3278794
WOO, JACKIE	30798	1/11/2006	Check PACER for new cases filed against Sony BMG; check docket of Michaelson v. Sony in the S.D.N.Y. for new documents filed	0.25	53.75	B	1/17/2006	3278798
WOO, JACKIE	30798	1/12/2006	E-mail Shana Scarlett about need for checking PACER and docket for Michaelson v. Sony	0.25	53.75	B	1/17/2006	3278800
ROTHMAN, ROBERT	1205	1/12/2006	Review e-mail; T/C with J. Friedman re approval hearing.	0.50	212.50	B	1/26/2006	3282047
FRIEDMAN, JEFFREY D.	1467	1/12/2006	Review/comment on issues re FAQ disc w/defs; t/c w/R. Rothman re approval hearing.	1.25	531.25	B	3/23/2006	3315174
FRIEDMAN, JEFFREY D.	1467	1/16/2006	Review Suncomm info re Mediamax; security article and info	1.50	637.50	B	3/23/2006	3315178
FRIEDMAN, JEFFREY D.	1467	1/17/2006	Review class notice; email re mtg w/defs; disc notices w/co-counsel	1.25	531.25	B	3/23/2006	3315180
WOO, JACKIE	30798	1/18/2006	Org pldgs file	0.25	53.75	B	1/27/2006	3283015
FRIEDMAN, JEFFREY D.	1467	1/18/2006	Review CAFA provisions.	2.25	956.25	B	3/23/2006	3315183
FRIEDMAN, JEFFREY D.	1467	1/19/2006	Review banners; comment renote; analyze CAFA	1.75	743.75	B	3/23/2006	3315187
KATHREIN, REED R.	518	1/23/2006	Attn Sony settlemt issues.	2.00	1,150.00	B	2/8/2006	3291623
FRIEDMAN, JEFFREY D.	1467	1/25/2006	Review cases re fee app	2.50	1,062.50	B	3/23/2006	3315195
FRIEDMAN, JEFFREY D.	1467	1/26/2006	Meet w/def counsel re fees	1.25	531.25	B	3/23/2006	3315198
KATHREIN, REED R.	518	1/30/2006	OC JDF re fee issues and final approval; claim process	1.00	575.00	B	2/8/2006	3291641
ROTHMAN, ROBERT	1205	1/30/2006	T/C with J. Friedman; conference call with co-counsel re fees, final approval notice and claims.	1.75	743.75	B	2/9/2006	3292777
FRIEDMAN, JEFFREY D.	1467	1/30/2006	Conf w/co-counsel and RRK re case update fees; notice issues	1.25	531.25	B	3/23/2006	3315202
KATHREIN, REED R.	518	1/31/2006	c/c with JDF, co-counsel re amendmts to settlemt; call Don	2.00	1,150.00	B	2/8/2006	3291648
ROTHMAN, ROBERT	1205	1/31/2006	Review e-mail; T/C with Friedman, Kathrein, et al.	0.75	318.75	B	2/9/2006	3292784
FRIEDMAN, JEFFREY D.	1467	1/31/2006	Disc w/co-counsel unauth amendmt by defs and class counsel; analyze settlemt agt	2.25	956.25	B	3/23/2006	3315205
SCARLETT, SHANA E.	1465	2/1/2006	CC w/co-counsel re amendmts to settlement; conf w/JDF re same; edit ltr to court same; review motion and original agreement.	5.25	1,706.25	B	2/8/2006	3291518
KATHREIN, REED R.	518	2/1/2006	Conf re ltr by defs and Girard Group; call Girard; conf call EFF; review ltr to court	4.00	2,300.00	B	2/8/2006	3291654
ROTHMAN, ROBERT	1205	2/1/2006	T/C re: motion to amend agreement; draft response; review motion and original agreement.	3.75	1,593.75	B	3/1/2006	3300797
FRIEDMAN, JEFFREY D.	1467	2/1/2006	Review settlemt agt; legal research; review modif; draft ltr; disc same w/co-counsel & SES.	3.75	1,593.75	B	3/23/2006	3315206
WOO, JACKIE	30798	2/2/2006	Discuss notice of stay with Shana Scarlett; e-mail Wheels of Justice copy of notice of stay and submit request for delivery of document to judge and for filing of document	1.00	215.00	B	2/6/2006	3290392
WOO, JACKIE	30798	2/2/2006	E-mail paralegals in New York office about preparing pro hac applications; draft pro hac motions for Shana Scarlett, Jeff Friedman and Reed Kathrein; request new caption from Cori Sweat; prepare request for certificates of good standing from the California State Bar for SES, JDF and RRK	4.25	913.75	B	2/6/2006	3290394
SCARLETT, SHANA E.	1465	2/2/2006	TC w/Judge Kuhl's clerk; email to co-counsel; ltr to all counsel re same: confer w/RRK and co-counsel re same.	1.00	325.00	B	2/8/2006	3291521
KATHREIN, REED R.	518	2/2/2006	Attn ltr to court; conf SES	2.00	1,150.00	B	2/8/2006	3291660
ROTHMAN, ROBERT	1205	2/2/2006	Review and revise letter to court for pre-motion conference; T/C with J. Jacobson; participate in telephone conferences; review responsive letter from Sony.	5.50	2,337.50	B	3/1/2006	3300836
STADELMANN, KELLY	30786	2/2/2006	File pro hac vice motions	1.50	367.50	B	3/15/2006	3310153
WOO, JACKIE	30798	2/3/2006	Draft notices of motion, motions, and declarations for pro hac vice applications for Reed Kathrein, Shana Scarlett, and Jeff Friedman	2.50	537.50	B	2/6/2006	3290398
ROTHMAN, ROBERT	1205	2/3/2006	T/C with chambers; review letter from Girard; draft and revise response re unauthorized amendments to settlement agreement.	5.00	2,125.00	B	3/1/2006	3300858
FRIEDMAN, JEFFREY D.	1467	2/3/2006	Review def's and class counsel resp; review/draft resp; disc same re unauth modif; conf call w/defs re same	3.25	1,381.25	B	3/23/2006	3315213
ROTHMAN, ROBERT	1205	2/4/2006	Review e-mail; review proposed language re modifications to settlement.	0.75	318.75	B	3/1/2006	3300871
ROTHMAN, ROBERT	1205	2/5/2006	E-mail re: conference call to court re modifications to settlement agreement.	0.25	106.25	B	3/1/2006	3300875
ROTHMAN, ROBERT	1205	2/6/2006	Review e-mail; prepare for and participate in telephone conference with Court; review e-mail and draft letter re: designation agreement.	3.25	1,381.25	B	3/1/2006	3300886

Timekeeper Name	ID	Work Date	Time Description	Hours	Amount	Time Stat	Batch Date	Timecard Index No.
WOO, JACKIE	30798	2/7/2006	Prepare package containing requests for certificates of good standing for Reed Kathrein, Jeff Friedman, and Shana Scarlett, checks, and pre-paid FedEx envelope to the State Bar of California; call Wheels of Justice to request delivery of package to the State Bar of California	0.75	161.25	B	2/13/2006	3293933
SCARLETT, SHANA E.	1465	2/7/2006	Call to ct re hrg; draft ltr to all counsel	0.25	81.25	B	2/23/2006	3298264
ROTHMAN, ROBERT	1205	2/7/2006	Numerous e-mails re: language for agreement; conduct legal research re: list price; e-mail with defense counsel.	1.75	743.75	B	3/1/2006	3300969
FRIEDMAN, JEFFREY D.	1467	2/7/2006	Review modified settlement terms; conf call re same	1.50	637.50	B	3/23/2006	3315217
ROTHMAN, ROBERT	1205	2/8/2006	E-mail re: settlement administration.	0.25	106.25	B	3/1/2006	3300996
FRIEDMAN, JEFFREY D.	1467	2/8/2006	Review draft settlement terms; comment re same.	0.50	212.50	B	3/23/2006	3315224
WOO, JACKIE	30798	2/9/2006	E-mail Kelly Stadelman about pro hac applications; review pro hac application documents	3.00	645.00	B	2/13/2006	3293940
ROTHMAN, ROBERT	1205	2/9/2006	Review letter from Pritzker; e-mail with co-counsel re strategy.	0.50	212.50	B	3/1/2006	3301017
FRIEDMAN, JEFFREY D.	1467	2/9/2006	Review corres re mtn to amend settlement	0.25	106.25	B	3/23/2006	3315227
WOO, JACKIE	30798	2/10/2006	Call State Bar of California to follow up on requests for certificates of good standing	0.75	161.25	B	2/13/2006	3293945
ROTHMAN, ROBERT	1205	2/11/2006	Review notice and e-mail re: same	0.50	212.50	B	3/1/2006	3301074
FRIEDMAN, JEFFREY D.	1467	2/13/2006	Conf w/co-counsel re case update and strategy.	1.00	425.00	B	3/23/2006	3315235
ROTHMAN, ROBERT	1205	2/14/2006	Review letter from Pritzker; e-mail with co-counsel; conference call.	1.00	425.00	B	3/1/2006	3301095
ROTHMAN, ROBERT	1205	2/15/2006	Review e-mail.	0.50	212.50	B	3/1/2006	3301121
KATHREIN, REED R.	518	2/16/2006	ATTN issues re delegation of monitoring; conf call Rothman and JDF	2.00	1,150.00	B	2/23/2006	3298368
ROTHMAN, ROBERT	1205	2/16/2006	Numerous telephone conferences and e-mails re delegation agreement.	1.50	637.50	B	3/22/2006	3314269
FRIEDMAN, JEFFREY D.	1467	2/16/2006	Conf re class counsel improper w/holding of design agt	0.50	212.50	B	3/23/2006	3315241
ROTHMAN, ROBERT	1205	2/20/2006	E-mail re: designation agreement; review settlement notice issues	0.75	318.75	B	3/22/2006	3314294
FRIEDMAN, JEFFREY D.	1467	2/20/2006	Review/corres re delegatoin agreement; issues re notice	0.50	212.50	B	3/23/2006	3315247
SCARLETT, SHANA E.	1465	2/21/2006	Research fiduciary duty of class counsel; TC w/C. McSherry re same	3.75	1,218.75	B	2/23/2006	3298299
KATHREIN, REED R.	518	2/21/2006	Conf w/EFF re strategy on settlement issues	2.00	1,150.00	B	3/7/2006	3306220
SCARLETT, SHANA E.	1465	2/22/2006	TC w/all counsel re strategy and settlement; conf w/RRK, JDF re same	1.50	487.50	B	2/23/2006	3298300
ROTHMAN, ROBERT	1205	2/22/2006	Review draft letter to Sony	0.50	212.50	B	3/22/2006	3314309
FRIEDMAN, JEFFREY D.	1467	2/22/2006	Corres re notice issues	0.75	318.75	B	3/23/2006	3315251
FRIEDMAN, JEFFREY D.	1467	2/23/2006	Corres re notice issues	0.75	318.75	B	3/23/2006	3315254
KATHREIN, REED R.	518	2/27/2006	Mtg w/Girard and Pritzger and EFF over delegation; notice issues	6.00	3,450.00	B	3/7/2006	3306231
STADELMANN, KELLY	30786	2/28/2006	Draft Pro Hac Vice motions for Green Welling LLP, coordinate filing and service of motions	2.00	490.00	B	3/15/2006	3310229
ROTHMAN, ROBERT	1205	2/28/2006	Review letter from Jacobson.	0.50	212.50	B	3/22/2006	3314391
WOO, JACKIE	30798	3/1/2006	Org case file	0.25	53.75	B	3/8/2006	3306414
ROTHMAN, ROBERT	1205	3/1/2006	Review notes of meeting; review notices.	0.75	318.75	B	3/22/2006	3314487
FRIEDMAN, JEFFREY D.	1467	3/1/2006	Review CAFA notices; review notice issues; corres re same	0.75	318.75	B	3/23/2006	3315262
WOO, JACKIE	30798	3/2/2006	E-mail attorneys about pro hac applications; proofread and edit pro hac application documents; prepare notice of presentation or oral argument	2.00	430.00	B	3/8/2006	3306419
WOO, JACKIE	30798	3/3/2006	Proofread documents for pro hac vice applications; complete notice of presentation or waiver of oral argument for MDL panel	2.00	430.00	B	3/8/2006	3306423
ROTHMAN, ROBERT	1205	3/3/2006	Review issues re: banner functionality; review banner notices.	0.50	212.50	B	3/22/2006	3314557
WOO, JACKIE	30798	3/6/2006	Send via FedEx attorneys' declarations in support of their pro hac vice applications to Kelly Stadelmann; e-mail documents in support of pro hac vice applications to Kelly Stadelmann; send via FedEx Notice of Presentation or Waiver of Oral Argument to the MDL judicial panel	2.00	430.00	B	3/8/2006	3306432
KATHREIN, REED R.	518	3/6/2006	Attn notice issues; call Girard re same.	0.50	287.50	B	3/10/2006	3307937
WOO, JACKIE	30798	3/7/2006	Prepare MDL form for filing and service; e-mail Cori Sweat about adding parties and phone and fax numbers to service list	4.00	860.00	B	3/8/2006	3306440
KATHREIN, REED R.	518	3/7/2006	Review email corres re status of Girard comm'n's and notice issues	1.00	575.00	B	3/10/2006	3307942
ROTHMAN, ROBERT	1205	3/7/2006	Review e-mail.	0.25	106.25	B	3/22/2006	3314602
RUDMAN, SAMUEL H.	1202	3/8/2006	Review of notice of presentment	0.25	137.50	B	3/27/2006	3315849
ROTHMAN, ROBERT	1205	3/9/2006	Review e-mail re: draft agreement.	0.25	106.25	B	3/22/2006	3314626
KATHREIN, REED R.	518	3/13/2006	TC Cohen re notice issues; corres Girard re settlement.	1.00	575.00	B	3/20/2006	3312227
ROTHMAN, ROBERT	1205	3/13/2006	Review e-mails re: banner: notice.	0.50	212.50	B	3/22/2006	3314651
KATHREIN, REED R.	518	3/14/2006	Review corres re notice issues	1.00	575.00	B	3/23/2006	3315297
FRIEDMAN, JEFFREY D.	1467	3/15/2006	Call w/class counsel re fees	1.50	637.50	B	3/23/2006	3315276
KATHREIN, REED R.	518	3/15/2006	Conf Dan Girard, Scott Kamber, JDF re settlement	2.00	1,150.00	B	3/23/2006	3315302
FRIEDMAN, JEFFREY D.	1467	3/16/2006	Review legal research re fee app	2.50	1,062.50	B	3/23/2006	3315280
FRIEDMAN, JEFFREY D.	1467	3/17/2006	Review legal research re fee app; fact-gathering for app	4.25	1,806.25	B	3/23/2006	3315282
WOO, JACKIE	30798	3/20/2006	Org case file	0.25	53.75	B	3/27/2006	3315924

Timekeeper Name	ID	Work Date	Time Description	Hours	Amount	Time Stat	Batch Date	Timecard Index No.
FRIEDMAN, JEFFREY D.	1467	3/21/2006	Prep fee app; legal research; fact gathering for fee application.	3.25	1,381.25	B	3/23/2006	3315287
KATHREIN, REED R.	518	3/21/2006	Conf Dan Girard re settlemt issues	2.00	1,150.00	B	3/23/2006	3315315
WOO, JACKIE	30798	3/22/2006	Org case file	0.25	53.75	B	3/27/2006	3315947
WOO, JACKIE	30798	3/24/2006	Search for 10/26/01 order in Newman v. Carbiner; email WOJ to req copy of order from SDNY	0.50	107.50	B	3/27/2006	3315957
			Total	454.25	\$ 190,322.50			

Exhibit 44

Cost Detail Report for Sony NY 050236-00001 and Sony CA 050222-00001

Performance numbers 6032 and 6033

From Inception to 03/27/2006

Code	Description	Date	Narrative	Name	Amount	Status	Index
L0111	Local Meals	12/2/2005	Local Meals - Payment to: WAITERS ON WHEELS INC	SCARLETT, SHANA E.	9.67	B	3029093
L0111	Local Meals	12/5/2005	Local Meals - Payment to: WAITERS ON WHEELS INC	SCARLETT, SHANA E.	11.28	B	3029135
L0111	Local Meals	12/7/2005	Local Meals - Payment to: WAITERS ON WHEELS INC	KATHREIN, REED R.	10.96	B	3029178
L0111	Local Meals	12/7/2005	Local Meals - Payment to: WAITERS ON WHEELS INC	SCARLETT, SHANA E.	10.96	B	3029180
L0111	Local Meals	12/8/2005	Local Meals - Payment to: WAITERS ON WHEELS INC	SCARLETT, SHANA E.	13.43	B	3029219
L0111	Local Meals	12/8/2005	(SONY CA) Local Meals - Payment to: WAITERS ON WHEELS INC	KATHREIN, REED R.	18.05	B	3029226
L0111	Local Meals	12/12/2005	Local Meals - Payment to: WAITERS ON WHEELS INC	SHEPPARD, CYNTHIA	13.80	B	3029247
L0111	Local Meals	12/12/2005	Local Meals - Payment to: WAITERS ON WHEELS INC	KATHREIN, REED R.	14.01	B	3029262
L0111	Local Meals	12/12/2005	Local Meals - Payment to: WAITERS ON WHEELS INC	HEINZ, KAREN R.	20.59	B	3029271
L0111	Local Meals	12/15/2005	Local Meals - Payment to: WAITERS ON WHEELS INC	COKER, AMY M.	12.72	B	3029308
L0111	Local Meals	1/18/2006	Local Meals - Payment to: BISTRO BURGER 2	COKER, AMY M.	8.87	B	3049385
L0111	Local Meals	1/18/2006	Local Meals - Payment to: WAITERS ON WHEELS INC	SCHNEIDER, DIANA	12.12	B	3049479
L0111	Local Meals	1/18/2006	Local Meals - Payment to: PANDA INN	CAMERON, SARAH M.	10.93	B	3049745
L0111	Local Meals	2/2/2006	Local Meals - Payment to: PETTY CASH CUSTODIAN	PONIATOWSKA, MARZENA	7.90	B	3091530
L0111	Local Meals	2/7/2006	Local Meals - Payment to: WAITERS ON WHEELS INC	FRIEDMAN, JEFFREY D.	13.17	B	3078161
L0111	Local Meals	2/14/2006	Local Meals - Payment to: PANDA INN	CAMERON, SARAH M.	9.76	B	3076299
L0111	Local Meals	2/27/2006	Local Meals - Payment to: PLAZA DELI	CAMERON, SARAH M.	7.25	B	3081392
L0111	Local Meals	3/2/2006	Local Meals - Payment to: WAITERS ON WHEELS INC	HEINZ, KAREN R.	16.65	B	3104010
L0112	Out of Town Meals	1/12/2006	12/17-18/05 SETTLEMENT NEGOTIATIONS WITH DEFENDANTS NEW YORK , NY Out of Town Meals - Payment to: JEFFREY D FRIEDMAN	FRIEDMAN, JEFFREY D.	155.99	B	3046250
L0112	Out of Town Meals	2/27/2006	02/27/06 CONFERENCE WITH CLASS COUNSEL LUNCHEON SAN FRANCISCO ,CA Out of Town Meals - Payment to: REED R. KATHREIN	KATHREIN, REED R.	70.00	B	3081267
L0113	Local Transportation	12/31/2005	Local Transportation - Payment to: SPECK CAB CO INC CAB SERVS SF FOR DEC 05	COKER, AMY M.	15.75	B	3055046
L0113	Local Transportation	12/31/2005	Local Transportation - Payment to: SPECK CAB CO INC CAB SERVS SF FOR DEC 05	PRYOR, DAMON	37.55	B	3055047
L0114	Out of Town Transportation	12/16/2005	(JEFFERY FRIEDMAN) CONTINENTAL AIRLINES FROM SAN FRANCISCO TO NEWARK TO SAN FRANCISCO 12/17/05 TO 12/18/05 FIRST CLASS/BUSINESS Out of Town Transportation - Payment to: AMERICAN EXPRESS	FRIEDMAN, JEFFREY D.	1,406.90	B	3070123
L0114	Out of Town Transportation	12/21/2005	(JEFFERY FRIEDMAN) CAR SERVICE NEW YORK 12/17/05 Out of Town Transportation - Payment to: AMERICAN EXPRESS	FRIEDMAN, JEFFREY D.	157.16	B	3070127
L0114	Out of Town Transportation	12/22/2005	(JEFFERY FRIEDMAN) CAR SERVICE NEW YORK 12/18/05 Out of Town Transportation - Payment to: AMERICAN EXPRESS	KATHREIN, REED R.	157.52	B	3070128
L0114	Out of Town Transportation	1/7/2006	LIRR - HEARING Out of Town Transportation - Payment to: AMERICAN EXPRESS	ROTHMAN, ROBERT	16.00	B	3060179
L0114	Out of Town Transportation	1/12/2006	12/17-18/05 SETTLEMENT NEGOTIATIONS W/ DEFENDANTS NEW YORK , NY . Out of Town Transportation - Payment to: JEFFREY D FRIEDMAN	FRIEDMAN, JEFFREY D.	601.39	B	3046249
L0114	Out of Town Transportation	1/18/2006	(JEFFREY LAWRENCE) CONTINENTAL AIRLINES FROM SAN FRANCISCO TO NEWARK 1/25/06 BUSINESS CLASS Out of Town Transportation - Payment to: AMERICAN EXPRESS	FRIEDMAN, JEFFREY D.	609.30	B	3091703
L0114	Out of Town Transportation	1/25/2006	12/17/05 AIR HTL LIMOS Out of Town Transportation - Payment to: AMBASSADOR TRAVEL	FRIEDMAN, JEFFREY D.	15.00	B	3054330
L0114	Out of Town Transportation	1/31/2006	01/01/06 AIR HTL . Out of Town Transportation - Payment to: AMBASSADOR TRAVEL	VISITOR	15.00	B	3059682
L0114	Out of Town Transportation	1/31/2006	(JEFFREY FRIEDMAN) CAR SERVICE NEW YORK 1/25/06 Out of Town Transportation - Payment to: AMERICAN EXPRESS	FRIEDMAN, JEFFREY D.	159.10	B	3091716
L0211	In-House Photocopy	12/5/2005	In-House Photocopy	NIELSEN, LEE A.	32.00	B	3027441
L0211	In-House Photocopy	12/7/2005	In-House Photocopy	NIELSEN, LEE A.	27.75	B	3027456
L0211	In-House Photocopy	12/7/2005	In-House Photocopy	NIELSEN, LEE A.	7.00	B	3027457
L0211	In-House Photocopy	12/8/2005	In-House Photocopy	WOOD, GREG A.	8.25	B	3019286
L0211	In-House Photocopy	12/8/2005	In-House Photocopy	WOOD, GREG A.	0.50	B	3019287
L0211	In-House Photocopy	12/15/2005	In-House Photocopy	COLINA, PILAR	20.25	B	3024419
L0211	In-House Photocopy	12/15/2005	In-House Photocopy	MINOR, JONATHAN	3.00	B	3024420
L0211	In-House Photocopy	12/15/2005	In-House Photocopy	COLINA, PILAR	26.75	B	3024430

Code	Description	Date	Narrative	Name	Amount	Status	Index
L0211	In-House Photocopy	12/19/2005	In-House Photocopy	COLINA, PILAR	0.50	B	3026484
L0211	In-House Photocopy	12/21/2005	In-House Photocopy	MINOR, JONATHAN	2.00	B	3028812
L0211	In-House Photocopy	12/29/2005	In-House Photocopy	MINOR, JONATHAN	59.00	B	3037321
L0211	In-House Photocopy	12/30/2005	In-House Photocopy	MINOR, JONATHAN	3.00	B	3042228
L0211	In-House Photocopy	1/4/2006	In-House Photocopy	MEDEIROS, MARCY	0.25	B	3042273
L0211	In-House Photocopy	1/4/2006	In-House Photocopy	MEDEIROS, MARCY	9.25	B	3042274
L0211	In-House Photocopy	1/4/2006	In-House Photocopy	MEDEIROS, MARCY	314.75	B	3042277
L0211	In-House Photocopy	1/5/2006	In-House Photocopy	MEDEIROS, MARCY	0.50	B	3042276
L0211	In-House Photocopy	1/10/2006	In-House Photocopy	WOO, JACKIE	1.25	B	3045077
L0211	In-House Photocopy	2/2/2006	In-House Photocopy	WOO, JACKIE	8.00	B	3068062
L0211	In-House Photocopy	2/7/2006	In-House Photocopy	WOO, JACKIE	0.75	B	3068267
L0211	In-House Photocopy	2/7/2006	In-House Photocopy	WOO, JACKIE	3.75	B	3068268
L0211	In-House Photocopy	2/7/2006	In-House Photocopy	WOO, JACKIE	1.00	B	3068269
L0211	In-House Photocopy	3/6/2006	In-House Photocopy	CULLEN, TRACY	16.00	B	3089215
L0211	In-House Photocopy	3/7/2006	In-House Photocopy	WOO, JACKIE	0.75	B	3089216
L0211	In-House Photocopy	3/7/2006	In-House Photocopy	WOO, JACKIE	45.00	B	3089217
L0211	In-House Photocopy	3/7/2006	In-House Photocopy	WOO, JACKIE	0.50	B	3089219
L0211	In-House Photocopy	3/7/2006	In-House Photocopy	WOO, JACKIE	0.25	B	3089220
L0211	In-House Photocopy	3/7/2006	In-House Photocopy	WOO, JACKIE	0.25	B	3089221
L0211	In-House Photocopy	3/13/2006	In-House Photocopy	SCARLETT, SHANA E.	58.50	B	3094089
L0211	In-House Photocopy	3/21/2006	In-House Photocopy	MINOR, JONATHAN	2.00	B	3102714
L0211	In-House Photocopy	3/23/2006	In-House Photocopy	MINOR, JONATHAN	12.50	B	3105141
L0211	In-House Photocopy	3/29/2006	In-House Photocopy	MINOR, JONATHAN	7.00	B	3112833
L0211	In-House Photocopy	3/30/2006	In-House Photocopy	SCARLETT, SHANA E.	7.50	B	3113834
L0215	Outside Photocopy	1/10/2006	Outside Photocopy - Payment to: IRMA HERRON COMPLAINT COPY COST	STADELMANN, KELLY	45.75	B	3057639
L0215	Outside Photocopy	1/11/2006	Outside Photocopy - Payment to: SOUTHERN DISTRICT REPORTER PC (040241 TRICO MARINE) Class Action/Legal Notices - Payment to: GILARDI & CO LLC PROF SERVS FROM 8/30/05-1/2/06 COPIES OF ORIGINAL TRANSCRIPT	ROTHMAN, ROBERT	117.15	B	3057005
L0215	Outside Photocopy	1/11/2006	Reversal from Void Check Number: 29203 Bank ID: AP1 Voucher ID: 1046240 Vendor: SOUTHERN DISTRICT REPORTER PC	ROTHMAN, ROBERT	(117.15)	B	3072725
L0411	In House Telephone	11/20/2005	11/20/05 CINGULAR MONTHLY BILLING. In House Telephone	KATHREIN, REED R.	19.23	B	3037590
L0411	In House Telephone	12/19/2005	Cingular Wireless Date: 12/19/05 In House Telephone	KATHREIN, REED R.	37.75	B	3096155
L0411	In House Telephone	1/19/2006	Cingular Wireless Date: 01/19/06 In House Telephone	KATHREIN, REED R.	36.56	B	3096161
L0414	In House Fax	12/11/2005	In House Fax	SCARLETT, SHANA E.	2.00	B	3019986
L0414	In House Fax	12/15/2005	In House Fax SF Incoming faxes December 2005	MINOR, JONATHAN	3.00	B	3037653
L0414	In House Fax	12/15/2005	In House Fax SF Incoming faxes December 2005	MINOR, JONATHAN	37.00	B	3037660
L0414	In House Fax	12/20/2005	In House Fax SF Incoming Faxes December 2005	MINOR, JONATHAN	1.00	B	3037733
L0414	In House Fax	12/27/2005	In House Fax SF Incoming faxes December 2005	MINOR, JONATHAN	59.00	B	3037979
L0414	In House Fax	12/27/2005	In House Fax SF Incoming faxes December 2005	MINOR, JONATHAN	3.00	B	3037984
L0414	In House Fax	1/11/2006	In House Fax	WOOD, GREG A.	16.00	B	3046075
L0414	In House Fax	2/2/2006	In House Fax	MINOR, JONATHAN	3.00	B	3068068
L0414	In House Fax	2/2/2006	In House Fax	MINOR, JONATHAN	3.00	B	3068069
L0414	In House Fax	2/2/2006	In House Fax	MINOR, JONATHAN	3.00	B	3068070
L0414	In House Fax	2/2/2006	In House Fax	MINOR, JONATHAN	3.00	B	3068071
L0414	In House Fax	2/2/2006	In House Fax	MINOR, JONATHAN	3.00	B	3068072
L0414	In House Fax	2/7/2006	In House Fax	MINOR, JONATHAN	3.00	B	3068063
L0414	In House Fax	2/7/2006	In House Fax	MINOR, JONATHAN	3.00	B	3068064
L0414	In House Fax	2/7/2006	In House Fax	MINOR, JONATHAN	3.00	B	3068065
L0414	In House Fax	2/7/2006	In House Fax	MINOR, JONATHAN	3.00	B	3068066
L0414	In House Fax	2/7/2006	In House Fax	MINOR, JONATHAN	3.00	B	3068067
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089197
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089198
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089199
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089200
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089201
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089202
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089203
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089204
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089205
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089206
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089207
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089208
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089209
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089210
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089211
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089212
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089213
L0414	In House Fax	3/7/2006	In House Fax	MINOR, JONATHAN	7.00	B	3089214
L0414	In House Fax	3/20/2006	In House Fax San Francisco Incoming Faxes March 2006	MINOR, JONATHAN	2.00	B	3112295
L0414	In House Fax	3/20/2006	In House Fax San Francisco Incoming Faxes March 2006	MINOR, JONATHAN	5.00	B	3112319
L0414	In House Fax	3/30/2006	In House Fax	MINOR, JONATHAN	2.00	B	3113835
L0511	Messenger/Fed-Ex/UPS	12/12/2005	Messenger/Fed-Ex/UPS	BROCKMAN, NICHOLAS	20.14	B	3030835
L0511	Messenger/Fed-Ex/UPS	12/16/2005	Messenger/Fed-Ex/UPS	SCARLETT, SHANA E.	17.50	B	3042275

Code	Description	Date	Narrative	Name	Amount	Status	Index
L0511	Messenger/Fed-Ex/UPS	12/19/2005	Messenger/Fed-Ex/UPS	WEILAND, KRISTEN	11.41	B	3046097
L0511	Messenger/Fed-Ex/UPS	2/28/2006	Messenger/Fed-Ex/UPS	STADELMANN, KELLY	12.29	B	3089218
L0511	Messenger/Fed-Ex/UPS	3/1/2006	Messenger/Fed-Ex/UPS COURIER SHIPMENT #852768560184 TO JACKIE WOO, LE RACH COUGHLIN ET AL, SAN FRANCISCO, CA, US , INV OICE #: 338517090 , FEDEX USER: JACKIE WOO	WOO, JACKIE	7.48	B	3098535
L0511	Messenger/Fed-Ex/UPS	3/6/2006	Messenger/Fed-Ex/UPS COURIER SHIPMENT #852768559927 TO JUDICIAL PANEL ON MULTIDISTRICT, WASHINGTON, DC, US , INVOICE #: 338517090 , FEDEX USER: JACKIE WOOD	WOO, JACKIE	11.44	B	3098537
L0511	Messenger/Fed-Ex/UPS	3/6/2006	Messenger/Fed-Ex/UPS COURIER SHIPMENT #852768559949 TO KELLY STADELMANN, LERACH COUGHLIN ET AL, MELVILLE, NY, US , IN VOICE #: 338517090 , FEDEX USER: JACKIE WOO	WOO, JACKIE	11.44	B	3098538
L0511	Messenger/Fed-Ex/UPS	3/7/2006	Messenger/Fed-Ex/UPS COURIER SHIPMENT #852768559905 TO CLERK OF THE P ANEL, JUDICIAL PANEL ON MULTIDISTRICT, WASHINGTON , DC, US , INVOICE #: 338517090 , FEDEX USER: JACKIE WOO	WOO, JACKIE	11.44	B	3098536
L0511	Messenger/Fed-Ex/UPS	3/8/2006	Messenger/Fed-Ex/UPS COURIER SHIPMENT #1ZA6533A0191490709 TO Lerach C oughlin Stoi, Jamey light, NEW YORK, NY, US, INV OICE #00000A6533A106	STADELMANN, KELLY	8.90	B	3094907
L0511	Messenger/Fed-Ex/UPS	3/10/2006	Messenger/Fed-Ex/UPS COURIER SHIPMENT #790352119232 TO Mike Keating, Keating & Walker, NEW YORK CITY, NY, US , INVOICE #: 339796118 , FEDEX USER: Janis Dingman	CONTRERAS, La REINA	22.38	B	3105140
L0611	Filing Fees	12/2/2005	Filing Fees - Payment to: CLERK OF THE COURT FILING FEES	GONZALES, DAWN	250.00	B	3053259
L0611	Filing Fees	2/2/2006	Filing Fees - Payment to: STATE BAR OF CALIFORNIA CERT OF GOOD STANDING FOR SHANA SCARLETT	SCARLETT, SHANA E.	25.00	B	3060518
L0611	Filing Fees	2/2/2006	Filing Fees - Payment to: STATE BAR OF CALIFORNIA CERT OF GOOD STANDING FOR JEFF FRIEDMAN	FRIEDMAN, JEFFREY D.	25.00	B	3060519
L0611	Filing Fees	2/2/2006	Filing Fees - Payment to: STATE BAR OF CALIFORNIA CERT OF GOOD STANDING FOR REED KATHREIN	KATHREIN, REED R.	25.00	B	3060520
L0613	Attorney Service Fee	12/13/2005	Attorney Service Fee - Payment to: WHEELS OF JUSTICE INC 12/13/05 44 PGS. @ \$.50/PG.	WEILAND, KRISTEN	57.00	B	3071578
L0613	Attorney Service Fee	12/13/2005	Attorney Service Fee - Payment to: WHEELS OF JUSTICE INC 12/13/05 35 PGS. @ \$.50/PG.	WEILAND, KRISTEN	52.50	B	3071579
L0613	Attorney Service Fee	12/15/2005	Attorney Service Fee - Payment to: WHEELS OF JUSTICE INC 12/27/05 11 PAGES WERE OBTAINED AND E-MAILED	WEILAND, KRISTEN	121.00	B	3071577
L0613	Attorney Service Fee	12/31/2005	Attorney Service Fee - Payment to: U S LEGAL MANAGEMENT SERVICES INC. COURT SERVS	WOO, JACKIE	95.00	B	3060380
L0613	Attorney Service Fee	1/31/2006	Attorney Service Fee - Payment to: ACCURINT - ACCOUNT # 1260894 ACCT#1260894 JAN 06	BRANDON, KELLEY T.	29.05	B	3078520
L0814	In-House Legal Research	12/1/2005	12/01/05 - 12/31/05 PACER SERVICE CENTER . In-House Legal Research	HANEY, CARLA	0.16	B	3061590
L0814	In-House Legal Research	12/1/2005	12/01/05 - 12/31/05 PACER SERVICE CENTER . In-House Legal Research	BULL, MARGARITA A.	1.68	B	3061594
L0814	In-House Legal Research	12/1/2005	12/01/05 - 12/31/05 PACER SERVICE CENTER . In-House Legal Research	BULL, MARGARITA A.	2.08	B	3061595
L0814	In-House Legal Research	12/1/2005	12/01/05 - 12/31/05 PACER SERVICE CENTER . In-House Legal Research	BULL, MARGARITA A.	64.88	B	3061789
L0814	In-House Legal Research	12/1/2005	12/01/05 - 12/31/05 PACER SERVICE CENTER . In-House Legal Research	BULL, MARGARITA A.	2.48	B	3061790
L0814	In-House Legal Research	12/8/2005	In-House Legal Research	CONTRERAS, La REINA	2.97	B	3047079
L0814	In-House Legal Research	12/8/2005	12/01/05 FACTIVA (LEXIS NEXIS) In-House Legal Research	WILHELMY, DAVID E.	2,670.76	B	3057699
L0814	In-House Legal Research	12/8/2005	12/01/05 FACTIVE (FACTIVA) In-House Legal Research	WILHELMY, DAVID E.	7.07	B	3057700
L0814	In-House Legal Research	12/8/2005	In-House Legal Research	SCARLETT, SHANA E.	7.96	B	3068261
L0814	In-House Legal Research	12/12/2005	In-House Legal Research	CONTRERAS, La REINA	28.89	B	3047947
L0814	In-House Legal Research	12/12/2005	In-House Legal Research	SCARLETT, SHANA E.	14.75	B	3068262
L0814	In-House Legal Research	12/12/2005	In-House Legal Research	SCARLETT, SHANA E.	27.43	B	3068263
L0814	In-House Legal Research	12/12/2005	In-House Legal Research	SCARLETT, SHANA E.	1.42	B	3068264
L0814	In-House Legal Research	12/15/2005	In-House Legal Research	SCARLETT, SHANA E.	12.39	B	3068265
L0814	In-House Legal Research	12/15/2005	In-House Legal Research	SCARLETT, SHANA E.	0.35	B	3068266
L0814	In-House Legal Research	1/5/2006	In-House Legal Research	CONTRERAS, La REINA	7.21	B	3089012
L0814	In-House Legal Research	1/5/2006	In-House Legal Research	CONTRERAS, La REINA	60.63	B	3089013
L0814	In-House Legal Research	1/5/2006	In-House Legal Research	CONTRERAS, La REINA	19.38	B	3089014
L0814	In-House Legal Research	1/5/2006	In-House Legal Research	CONTRERAS, La REINA	30.21	B	3089015
L0814	In-House Legal Research	1/5/2006	LEXIS NEXIS/FACTIVA JAN 2006 In-House Legal Research	SCHNEIDER, DIANA	9.08	B	3105335
L0814	In-House Legal Research	1/6/2006	In-House Legal Research	CONTRERAS, La REINA	49.53	B	3089017
L0814	In-House Legal Research	1/9/2006	In-House Legal Research	CONTRERAS, La REINA	101.98	B	3089016
L0814	In-House Legal Research	1/9/2006	In-House Legal Research	CONTRERAS, La REINA	10.07	B	3089021

Code	Description	Date	Narrative	Name	Amount	Status	Index
L0814	In-House Legal Research	1/10/2006	In-House Legal Research	CONTRERAS, La REINA	54.86	B	3089022
L0814	In-House Legal Research	1/10/2006	In-House Legal Research	CONTRERAS, La REINA	9.69	B	3089023
L0814	In-House Legal Research	1/10/2006	In-House Legal Research	CONTRERAS, La REINA	50.34	B	3089024
L0814	In-House Legal Research	1/11/2006	In-House Legal Research	CONTRERAS, La REINA	6.46	B	3089018
L0814	In-House Legal Research	1/11/2006	In-House Legal Research	CONTRERAS, La REINA	92.07	B	3089019
L0814	In-House Legal Research	1/11/2006	In-House Legal Research	CONTRERAS, La REINA	50.34	B	3089020
L0814	In-House Legal Research	2/21/2006	In-House Legal Research SERVICE: LAW REVIEWS - SINGLE DOCUMENT RETRIEVAL , QTY: 0, USER : SCARLETT, SHANA	SCARLETT, SHANA E.	0.30	B	3111248
L0814	In-House Legal Research	2/21/2006	In-House Legal Research SERVICE: LEXIS LEGAL SERVICES - DOCUMENT PRINTIN G, QTY: 0, USER : SCARLETT, SHANA	SCARLETT, SHANA E.	0.35	B	3111249
L0814	In-House Legal Research	2/21/2006	In-House Legal Research SERVICE: LEXIS LEGAL SERVICES - SINGLE DOCUMENT RETRIEVAL, QTY: 0, USER : SCARLETT, SHANA	SCARLETT, SHANA E.	16.47	B	3111250
L0814	In-House Legal Research	2/21/2006	In-House Legal Research SERVICE: SHEPARDS SERVICE - LEGAL CITATION SERVI CES, QTY: 0, USER : SCARLETT, SHANA	SCARLETT, SHANA E.	0.31	B	3111251
L1011	Experts	03/10/2006-04/03/2006	Analysis on valuation of settlement terms regarding MP3s, incentive payments, and injunctive relief		7,050.00	B	
L1011	Experts	4/4/2006	Professional Services relating to the SONY BMG settlement analysis on extrapolated privacy cost impact.		4,725.00	B	
L1011	Experts	4/4/2006	Dr. Steven Bellovin - expert re valuation of settlement terms for security issues		600.00	B	
L1511	Staff Overtime	12/5/2005	Staff Overtime-FILE, PHONES, FAX LETTERS FOR REED KATHREIN	COKER, AMY M.	22.61	B	3031430
L1511	Staff Overtime	12/6/2005	Staff Overtime-CREATE NEW CASE NUMBER	YOUNG, DENISE	17.65	B	3031215
L1511	Staff Overtime	12/6/2005	Staff Overtime-FILE, PHONES, FAX LETTERS FOR REED KATHREIN	COKER, AMY M.	22.61	B	3031431
L1511	Staff Overtime	12/8/2005	Staff Overtime-FILE, PHONES, FAX LETTERS FOR REED KATHREIN	COKER, AMY M.	22.61	B	3031432
L1511	Staff Overtime	12/12/2005	Staff Overtime-FILE, PHONES, FAX LETTERS FOR REED KATHREIN	COKER, AMY M.	22.61	B	3031433
L1511	Staff Overtime	12/12/2005	Staff Overtime-MOTION TO TRANSFER AND COORDINATE ALL PRETRIAL PROCEEDINGS	SHEPPARD, CYNTHIA	26.42	B	3053349
L1511	Staff Overtime	12/13/2005	Staff Overtime-FILE, PHONES, FAX LETTERS FOR REED KATHREIN	COKER, AMY M.	22.61	B	3031434
L1511	Staff Overtime	12/19/2005	Staff Overtime-ENTER COMPLAINTS	YOUNG, DENISE	17.65	B	3044284
L1511	Staff Overtime	1/6/2006	Staff Overtime-INDEX PLEADINGS	ASUNCION, MELANIA	15.07	B	3053293
L1511	Staff Overtime	1/11/2006	Staff Overtime-INDEX PLEADINGS	ASUNCION, MELANIA	15.07	B	3053299
L1511	Staff Overtime	2/2/2006	Staff Overtime-FIX DATABASE & LETTER TO ALL COUNSEL OF RECORD	PONIATOWSKA, MARZENA	17.06	B	3074095
L1511	Staff Overtime	2/27/2006	Staff Overtime-INDEX PLEADINGS	CAMERON, SARAH M.	10.71	B	3102030
L1511	Staff Overtime	3/1/2006	Staff Overtime-FORMAT AND REORGANIZE LITIGATION FOLDER AND CORRESPONDENCE FOLDER	GONZALES, DAWN	23.60	B	3094385
	Investigators	11/16/2005	Background Research on Potential Defendant	BRANDON, KELLEY T.	670.00	B	3227687
		12/15/2005	Locate company addresses	SCHNEIDER, DIANA	1,200.00	B	3256715
		1/3/2006	Research record labels	SCHNEIDER, DIANA	900.00	B	3303849
		1/4/2006	Research record labels/company info	SCHNEIDER, DIANA	1,800.00	B	3303850
		1/5/2006	Research record labels/company research	SCHNEIDER, DIANA	1,800.00	B	3303853
		1/6/2006	Research record labels/company info	SCHNEIDER, DIANA	1,200.00	B	3303855
		1/9/2006	Research record labels	SCHNEIDER, DIANA	900.00	B	3303856
		1/10/2006	Research record labels/company research	SCHNEIDER, DIANA	1,200.00	B	3303860
					\$ 31,273.62		