

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

SONY BMG CD
TECHNOLOGIES LITIGATION

Case No. 1:05-cv-09575-NRB

**JOINT AFFIDAVIT OF DANIEL C. GIRARD AND SCOTT A. KAMBER IN SUPPORT
OF:
(1) MOTION OF CLASS COUNSEL FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, AND
(2) MOTION OF CLASS COUNSEL FOR AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS TO
NAMED PLAINTIFFS**

GIRARD GIBBS

& De BARTOLOMEO LLP

Daniel C. Girard (Pro Hac Vice)
Jonathan K. Levine (JL-8390)
Elizabeth C. Pritzker (Pro Hac Vice)
Aaron M. Sheanin (Pro Hac Vice)
601 California Street, Suite 1400
San Francisco, California 94108
Telephone: (415) 981-4800

KAMBER & ASSOCIATES, LLC

Scott A. Kamber (SK-5794)
19 Fulton Street, Suite 400
New York, NY 10038
Telephone: (877) 773-5469

Class Counsel

Daniel C. Girard and Scott A. Kamber jointly declare as follows:

1. Girard Gibbs & De Bartolomeo LLP (“Girard Gibbs”) and Kamber & Associates, LLC (the “Kamber Firm”) were appointed to serve as Plaintiffs’ Co-Lead Counsel pursuant to Case Management Order No. 1, entered December 1, 2006, and to serve as Class Counsel for the Settlement Class pursuant to this Court’s January 6, 2006 Hearing Order following Plaintiffs’ motion for preliminary approval of the proposed settlement (“Hearing Order”). Girard Gibbs and the Kamber Firm (collectively “Class Counsel”) jointly submit this affidavit in support of Plaintiffs’ motions, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for approval of the settlement, for an award of attorneys’ fees and reimbursement of expenses and for leave to pay incentive awards to the class representatives. The following statements are based on personal knowledge and Class Counsel’s investigation and review of the files in *In re SONY BMG CD Technologies Litigation*, Case No. 1:05-cv-09575-NRB (S.D.N.Y.), unless otherwise noted. Information pertaining to the time and expenses incurred by our respective firms is attested to individually and not jointly.

2. We discuss, in the following order, (a) the history of proceedings in the case, which sheds light on the services required of plaintiff’s counsel in this matter; (b) the reaction of the Class to the settlement; (c) the complexities and risks associated with the litigation; and (d) the terms of Class Counsel’s agreement with SONY BMG Music Entertainment, Inc. (“Sony BMG”) for payment of attorneys’ fees, and the time, rate, and expense figures underlying the application of Class Counsel and other Plaintiffs’ counsel for attorneys’ fees and reimbursement of expenses.

I. HISTORY OF THE CASE

A. Sony BMG's Digital Rights Management Software Creates A Risk Of Harm To Computer Users

3. The recitation of facts in this section is based on Class Counsel's pre-filing investigation of the claims asserted in this litigation against Sony BMG. This investigation took place from November 1 through November 14, 2005, during which time our firms independently reviewed and analyzed various media reports, conducted interviews with witnesses, researched Sony BMG's representations to consumers, and tested the consumer products at issue. The recitation in this section is also based on the facts gathered through the litigation, settlement negotiations, consultations with outside consultants, and confirmatory discovery.

4. Sony BMG is the second largest owner and distributor of recorded music in the world. In an effort to place restrictions on the ability of consumers to use, copy or transfer the digital content, including digital music files, on the compact discs ("CDs") that Sony BMG distributes, Sony BMG has included anti-copying software, known as "digital rights management" software or "DRM" on many of its CDs since 2003.

5. Sony BMG first introduced a line of CDs containing a DRM software program known as MediaMax 3.0, designed and licensed to Sony BMG by SunnComm International, Inc., and MediaMax Technology Corp. (collectively, "SunnComm"), in September 2003. In January 2005, Sony BMG initiated an effort to include DRM software on at least 50 percent of all CDs manufactured and sold through 2005, with the intent of including some form of DRM software on all CDs manufactured and sold by Sony BMG by the end of the year. As part of this effort, in January 2005, Sony BMG introduced a line of music CDs containing a DRM program called Extended Copy Protection ("XCP"), designed and licensed to Sony BMG by First 4 Internet, Ltd. Other music CDs marketed and sold by Sony BMG in 2005 contained an enhanced version of the MediaMax DRM software, commonly known as MediaMax 5.0. Sony BMG

manufactured more than 20 million CDs containing MediaMax software, and approximately 5 million CDs containing XCP software.

6. The central feature of these two Sony BMG DRM software programs is that they limit the consumer to making no more than three copies of the DRM-protected CD. The DRM programs also: (a) prevent the consumer from listening to the digital audio files on the CD through any computer program or digital music player other than those manufactured or licensed by Sony BMG or Microsoft; (b) cause information to be exchanged electronically between the user's computer and Sony BMG; (c) install automatically onto the consumer's computer; and (d) fail to include a program or mechanism to uninstall the DRM software from the consumer's computer at a later time. Consumers who purchased CDs containing these DRM programs were not aware of these restrictions and features, as Sony BMG did not disclose this information on the CD packaging or "jewel" cases, in the course of the DRM software installation process, or elsewhere.

7. In addition to these restrictions and features, the XCP software used by Sony BMG on its CDs contains a cloaking mechanism, commonly referred to as a "rootkit," that automatically installs on the user's computer without the user's knowledge, and hides files, Registry keys and other computer system objects from diagnostic and security software. These "rootkits" effectively disable computer security protection programs and expose consumers who place XCP CDs into their computers to various types of "malware," such as viruses and spyware promulgated by third parties, who use rootkits to hide their malicious actions from antivirus software, spyware blocking programs, and system management utilities. ("Malware" refers to software designed to infiltrate or damage a computer system without the owner's consent, and includes computer viruses, "Trojan horses," spyware and adware.) The rootkit contained on the Sony BMG XCP CDs creates a unique risk to consumers, moreover, because it automatically

installs itself on the consumer's computer and does not contain a way for consumers to easily detect, remove or uninstall it. The XCP security vulnerability was not just theoretical; by November 10, 2005, reports of the first virus written to exploit the XCP security vulnerability made the news.

8. The restrictions, limitations and computer security vulnerabilities associated with Sony BMG's DRM software were not widely known until October 2005, when computer security expert Mark Russinovich inadvertently discovered that a Sony BMG CD he had purchased and installed on his computer, *Get Right With The Man* by Van Zant, had placed a rootkit, hidden device drivers and other hidden applications on his computer. Mr. Russinovich first published his findings on a blog he devotes to research and commentary on issues of computer software and computer security – on October 31, 2005, and November 4, 2005, respectively. The affidavit of Mr. Russinovich is submitted herewith.

9. In various news interviews on or about November 1, 2005, representatives of Sony BMG and First 4 Internet (the Company that authored the XCP software) said that the disclosures in the EULA for the XCP software were adequate, despite the fact that the EULA did not inform end users that the software automatically installs on a user's system, installs hidden software and does not have an uninstaller. Sony BMG and First 4 Internet maintained that the use of a cloaking mechanism in connection with the XCP software was an acceptable practice, and rejected the notion that the XCP software was a legitimate concern for computer users.

10. While publicly denying wrongdoing, Sony BMG began to make available software updates or "patches" that were intended to allow computer users to close any security gaps posed by its DRM software. Many consumers and independent experts reported that the updates developed by Sony BMG were difficult for consumers to obtain and cumbersome to use.

According to Mark Russinovich, the Sony BMG patch was unsafe and had the potential to cause end users' systems to crash and lose data.

11. By early November 2005, Sony BMG had developed an uninstaller for the XCP software. Sony BMG did not publicize the uninstaller on its website, did not make the uninstaller available as a freely accessible download as it did the patch, and required users to submit two requests for the uninstaller and then wait for further instructions to be emailed. While consumers tried to navigate the difficult process of obtaining an uninstaller from Sony BMG, the XCP rootkit remained on their systems and continued to expose them to malware.

12. On November 14, 2005, the Kamber Firm filed a complaint on behalf of James Michaelson and Ori Edelstein in the Southern District of New York, entitled *Michaelson v. Sony BMG Music, Inc.*, Case No. 05-cv-9575 (NRB) (S.D.N.Y.). The case was assigned to the Hon. Naomi Reice Buchwald. Also on November 14, 2005, Girard Gibbs filed an action on behalf of Dora Rivas in this Court, entitled *Rivas v. Sony BMG Music Entertainment, Inc.*, Case No. 05-cv-9598 (S.D.N.Y.). (Dora Rivas is the sister of Rosemary Rivas, an associate with Girard Gibbs. Rosemary Rivas has not taken part in any aspect of this litigation, and has no pecuniary interest in this matter.) These actions alleged that Sony BMG's manufacture, sale and distribution of DRM-enhanced music CDs, especially in the absence of appropriate warnings and disclosures, violated the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030, New York State deceptive consumer practice laws and false advertising statutes, and the common law. Two other related actions — *Potter v. Sony BMG Music Entertainment*, Case No. 05-9607 (S.D.N.Y.); and *Klewan v. Arista Holdings, Inc., d/b/a Sony BMG Music Entertainment, Inc.*, Case No. 05-cv-9609 (S.D.N.Y.) – were filed in this Court on the same date. In December 2005, two (2)

additional consumer class actions raising substantially identical claims were filed in this Court.¹

Throughout November and December 2005, fifteen other class action complaints raising substantially similar claims were filed in state and federal courts around the country.²

13. In addition to initiating a technical and legal dialogue with Sony BMG directed at exploring the possibility of securing a prompt resolution of this litigation, Class Counsel began working closely with other plaintiffs' counsel to coordinate the pending cases, avoid duplication and inefficient activity and limit procedural gamesmanship and competition among plaintiffs' counsel. See Manual For Complex Litigation, Fourth, § 10.22 (2004) ("In some cases the attorneys coordinate their activities without the court's assistance, and such efforts should be encouraged."). Following a series of telephone conferences, Sony BMG and all plaintiffs' counsel in the actions then pending in the Southern District of New York agreed to an

¹ The additional actions filed in this Court include: *Riciutti v. Sony BMG Music Entertainment*, Case No. 05-cv-10190 (S.D.N.Y.) (Dec. 5, 2005), and *Maletta v. Sony BMG Music Entertainment*, Case No. 05-cv-10637 (S.D.N.Y.) (Dec. 19, 2005).

² The actions filed in jurisdictions other than the United States District Court for the Southern District of New York include: *Guevara v. Sony BMG Music Entertainment*, Cal. Superior Court Case No. BC342359 (Nov. 1, 2005); *Gruber v. Sony Corp. of America*, Cal. Superior Court Case No. BC342905 (Nov. 9, 2005); *Stynchula v. Sony Corp. of America*, Cal. Superior Court Case No. BC343100 (Nov. 15, 2005); *DeMarco v. Sony BMG Music*, United States District Court for the District of New Jersey Case No. 2:05-cv-05485-WHW-SDW (Nov. 17, 2005); *Cooke v. Sony BMG Music*, District of Columbia Superior Court Case No. 05-0009093 (Nov. 18, 2005); *Hull v. Sony BMG Music Entertainment*, Cal. Superior Court Case No. BC343383 (Nov. 21, 2005); *Burke v. Sony BMG Music Entertainment Corp.*, Cal. Superior Court Case No. 857213 (Nov. 22, 2005); *Maletta v. Sony BMG Music Entertainment Corp.*, Cal. Superior Court Case No. BC 343615 (Nov. 28, 2005); *Xanthakos v. Sony BMG Music Entertainment, LLC*, District of Columbia Superior Court Case No. 05-0009203 (Nov. 28, 2005); *Bahnmaier v. Sony BMG Music Entertainment*, Oklahoma District Court Case No. CJ 2005 06968 (Nov. 28, 2005); *Jacoby v. Sony BMG Music Entertainment*, New York Superior Court Case No. 05/116679 (Nov. 30, 2005); *Ponting v. SonyBMG Music Entertainment, LLC*, United States District Court for the Central District of California Case No. CV-05-08472-JFW-AJWx (Dec. 2, 2005); *Melcon v. Sony BMG Music Entertainment*, United States District Court for the Northern District of California, Case No. C-05-5084-MHP (Dec. 8, 2005); *Klemm v. Sony BMG Music Entertainment*, United States District Court for the Northern District of California Case No. C-05-5111-BZ (Dec. 9, 2005); and *Black v. Sony BMG Music Entertainment*, United States District Court for the District of New Mexico Case No. CIV-05-1315 WDS/RLP (Dec. 19, 2005).

organizational structure and the provisions of a case management order. On December 1, 2005, the Honorable Naomi Reice Buchwald entered Case Management Order No. 1 (“CMO No. 1”) consolidating all related actions then pending in the Southern District of New York as *In re SONY BMG CD Technologies Litigation*, Case No. 1:05-cv-9575-NRB (S.D.N.Y.). CMO No. 1 provided that any related action subsequently filed in or transferred to the United States District Court for the Southern District of New York would be consolidated with *In re SONY BMG CD Technologies Litigation* absent timely objection. The Court also appointed Girard Gibbs and the Kamber Firm as Plaintiffs’ Co-Lead Counsel, and the firms of Milberg Weiss Bershad & Schulman LLP, Kirby McInerney & Squire, LLP, and Giskin & Solotaroff, LLP as Plaintiffs’ Executive Committee.

14. Class Counsel also sought the coordination and cooperation of counsel in cases outside the Southern District of New York. These efforts were generally successful and resulted in the formal or informal coordination of most cases that had been filed by late November. The refusal of counsel in a minority of cases to coordinate their efforts required the filing of a petition under California law to coordinate a series of cases pending in California state courts.

B. Settlement Negotiations

15. In mid-November 2005 Scott Kamber of the Kamber Firm began a series of discussions and meetings with Sony BMG directed at the technical aspects of the case, the need for immediate remediation and the prospects Class a motion for injunctive relief would succeed. The goal of the discussions was to explore Sony BMG’s willingness to: (i) stop the sale of CDs equipped with the XCP rootkit as soon as possible; (ii) eliminate continued risk/damage from the XCP disks presently in circulation; (iii) remedy the harm that had been caused to class members; (iv) address the risks of an exploit being found on the disks encoded with MediaMax and any

other DRM software used in the future; and (v) waive the enforcement of certain EULA provisions.

16. On or about November 16, 2005, Sony BMG and Mr. Kamber discussed potential remedies for the DRM issues raised in the *Michaelson* complaint. Mr. Kamber also made clear that a failure to take immediate actions regarding the XCP issue could result in a motion for injunctive relief.

17. From November 16, 2005, through November 21, 2005, Mr. Kamber and other counsel worked to prepare for a November 21 meeting with Sony BMG. Mr. Kamber prepared for the meeting by consulting with Mark Russinovich and Matt Curtain. On behalf of the plaintiffs, the meeting was attended by Mr. Kamber, plaintiffs' counsel Himmelfarb and Solotoroff, Matt Curtain and Mark Russinovich (by telephone). Sony BMG was represented at the meeting by counsel, including Jeffrey Jacobson and Jeffrey Cunard.

18. Throughout the November 21 meeting and ensuing discussions, Class Counsel offered the services of Mark Russinovich to Sony BMG in order to ensure the effectiveness of a pre-settlement remediation program for the Class. Class Counsel also discussed the issue of effective notice and the accurate communication to class members of the risks associated with the XCP software and the availability of any patches or uninstalls that Sony BMG might make available. The discussions included the utilization of banner ad functionality as a method of notice to the Class. Prior to the November 21, 2005 meeting, Sony BMG had not contemplated the utilization of banner ad functionality for this purpose. On November 29, Mr. Kamber and Daniel Girard of Girard Gibbs met with Sony BMG's counsel to continue to explore potential settlement terms.

19. From the time the actions were filed until settlement was achieved, counsel worked on a continuous basis, logging hours throughout the holiday season, including Christmas

day. Throughout the negotiation process, every aspect of the settlement was extensively discussed, informed by the knowledge, experience and analysis of Class Counsel and their retained technical consultants.

20. Following the entry of CMO No. 1, Class Counsel began formal settlement negotiations. As settlement negotiations evolved over several weeks, Class Counsel began to prepare the settlement documents, including the proposed form of notice and claim form, settlement agreement, preliminary approval papers, and text for an interactive official settlement website.

21. In early December 2005, Class Counsel and Sony BMG met to negotiate settlement terms, and circulated the first working draft of a settlement agreement. On or about December 12, 2005, Class Counsel shared the working draft of the Settlement Agreement with the Executive Committee. On or about the same time, at the request of Sony BMG, Class Counsel shared certain drafts of settlement documents with plaintiffs' counsel in *Ricciuti v. Sony BMG Music Entertainment*, Case No. 05-cv-10190 (S.D.N.Y.), a newly filed action in the United States District Court for the Southern District of New York. Although filed after the entry of CMO No. 1, it had not yet been consolidated with *In re SONY BMG CD Technologies Litigation* by the Clerk's office pursuant to CMO No. 1.

22. On December 18, 2005, Class Counsel participated in a further settlement conference with Sony BMG in New York. As a result of their case not yet being consolidated, the *Ricciuti* plaintiffs were again included at the request of Sony BMG. At the conclusion of this settlement conference, which continued late into the night, the parties prepared a memorandum of understanding ("MOU"). Class Counsel, counsel for Sony BMG, and counsel for the *Ricciuti* plaintiffs signed the MOU.

23. On December 28, 2005, Class Counsel, counsel for Defendants and counsel for the *Ricciuti* plaintiffs signed the Settlement Agreement, and Plaintiffs filed a Consolidated Amended Class Action Complaint (“CAC”) on behalf of the Plaintiffs and Class Representatives named in the consolidated actions.

24. On December 28, 2005, Class Counsel filed a motion for preliminary approval of the proposed settlement. The specific benefits of settlement are detailed in that Settlement Agreement. Generally speaking, however, the Settlement Agreement provides relief to Settlement Class Members, defined as “all natural persons or entities in the United States who purchased, received, came into possession of or otherwise used one or more MediaMax CDs and/or XCP CDs.” The relief provided by the Settlement Agreement is detailed in the Settlement Agreement at paragraphs III through V and includes the following:

- An immediate recall of all XCP CDs;
- An ongoing return and exchange program to enable consumers to return XCP CDs to Sony BMG and receive an identical, “clean” non-DRM protected CD;
- Publication and distribution of free, effective, and independently-tested software utility programs to allow consumers either to update XCP and MediaMax software on their computers, and thereby eliminate any security vulnerabilities associated with such software, or to uninstall and remove the software altogether;
- Cash incentives and free music downloads for Class members;
- Sony BMG’s agreement not to manufacture or distribute MediaMax CDs or software for at least two years;
- Sony BMG’s agreement not to collect personal information from consumers through DRM software, without consumers’ express and affirmative consent;
- Sony BMG’s agreement to waive certain legal rights specified in the EULAs associated with XCP and MediaMax CDs and software;

- Significant injunctive relief that requires Sony BMG to implement several, new “best practices” for any DRM software that Sony BMG develops and intends to use on CDs, over the next two years, including (a) testing by independent security personnel to screen out and eliminate potential security risks, and (b) improved disclosures about the nature and effect of such DRM software on CD packaging, in future EULAs, and throughout the software installation process;
- “Most favored nations” protection, which preserves the enforcement resources of government authorities across the nation, while at the same time affording Settlement Class Members any and all additional benefits as may be obtained by government authorities through such enforcement efforts;
- A release that excludes claims by individual consumers for consequential damage to a computer or network alleged to have resulted from interaction between Sony BMG’s XCP or MediaMax software and other software or hardware installed on such computer or network;
- A simple claims form and claims administration process; and
- Comprehensive notice to the Class via email, internet publications and search engines, outreach to Sony BMG’s network of music distributors and retailers, internet “banner” advertisements, press releases, and publication in weekly and daily newspapers and magazines with a combined circulation of more than 12.3 million.

25. The Settlement Agreement entered into by the parties achieves Plaintiffs’ objectives for this litigation. As set out in the Consolidated Amended Class Action Complaint, these objectives include: (a) prompt elimination and removal of any and all computer vulnerabilities associated with Sony BMG’s XCP and MediaMax CDs and software; (b) a mechanism to allow consumers to easily exchange Sony BMG DRM-protected CDs for identical CDs or music downloads that do not contain DRM software; (c) compensation for Class members, in the form of cash and music downloads, to expedite the exchange of affected CDs for “clean” versions; (d) a moratorium on Sony BMG’s use of MediaMax DRM software; (e) a mandate that Sony BMG conform its DRM practices and DRM notification procedures to the requirements of the Consumer Fraud and Abuse Act, New York State consumer protection statutes, and common law; and (f) requiring Sony BMG to adopt a “best practice” approach to

future DRM software applications, to screen out and eliminate potential security risks associated with any such software, and provide consumers with clear, plain-language disclosures, on CD packaging, in EULAs, and elsewhere, about the nature and effect of such DRM software.

C. The District Court Grants Preliminary Approval Of The Settlement

26. On January 6, 2006, the Court held a hearing at which Class Counsel argued in support of the motion for preliminary approval of the proposed settlement. Toward the conclusion of the hearing, the parties advised the Court of the possibility they would seek approval of one or more amendments to the Settlement Agreement and conforming amendments to the notice to be given to class members. The Court preliminarily approved the proposed settlement, provisionally certified the class, appointed Girard Gibbs and the Kamber Firm to serve as Class Counsel, and directed that notice be given to the class.

27. On January 31, 2006, Class Counsel and Sony BMG filed a stipulation and supporting memorandum to modify the Settlement Agreement and forms of notice. The proposed modifications were as follows: (a) Sony BMG's agreement to publish the Summary Settlement Notice in English and Spanish-language publications beyond those specified in the Settlement Agreement; (b) the provision of a cash payment to Settlement Class Members who make claims but do not take advantage of the right to download music; (c) Sony BMG's agreement to provide an alternate benefit of equivalent or greater value to any Settlement Class Member for whom Sony BMG is unable to provide a replacement CD or album download within a reasonable time; and (d) a rolling extension of the deadline by which individuals who become Settlement Class Members after May 1, 2006 may opt-out of the settlement. On February 1, 2006, the Court entered an Order granting the stipulation.

28. On February 8, 2006, the parties and the *Ricciuti* plaintiffs filed a stipulation which details the “alternate benefit” provision of the Settlement Agreement with greater specificity. On February 15, 2006, the Court entered an Order granting the stipulation.

D. The Parties Seek Transfer Of All Federal Actions To This Court

29. This litigation has been subject to two motions for consolidation and transfer before the Judicial Panel on Multidistrict Litigation (“the Panel”). On December 13, 2005, the *Ricciuti* plaintiffs’ motion before the Panel to consolidate all proceedings in the United States District Court for the Northern District of California was served on Class Counsel, shortly after counsel for the *Ricciuti* plaintiffs received Class Counsel’s draft of an agreement providing for settlement of the litigation in the Southern District of New York. Counsel for the *Ricciuti* plaintiffs also had filed an action entitled *Melcon v. Sony BMG Music Entertainment, et al.*, Case No. C-05-5084-MHP, in the United States District Court for the Northern District of California.

30. On December 23, 2005, Sony BMG filed a second motion for consolidation and transfer before the Panel. Sony BMG asked that the Panel consolidate and transfer all actions to the United States District Court for the Southern District of New York.

31. On January 3, 2006, the *Ricciuti* plaintiffs amended their motion for consolidation and transfer to ask that the Panel transfer all cases to the United States District Court for the Southern District of New York.

32. At the January 6, 2006 preliminary approval hearing, the Court advised the parties that it was amenable to accepting transfer of all related cases pending before the Panel.

33. On January 9, 2006, Class Counsel worked with counsel for Sony BMG and other plaintiffs’ counsel to coordinate the Multidistrict Litigation briefing.

34. On January 17, 2006, Class Counsel filed a memorandum on behalf of the Settlement Class in support of the motions to transfer the actions to the United States District

Court for the Southern District of New York. No opposition to the motions for consolidation and transfer of the actions to this Court was filed. As of the date of this affidavit, the Panel has yet to rule on the pending motions.

E. Notice Is Disseminated In Accordance With The Hearing Order

35. Counsel for Sony BMG advised Class Counsel that on or about February 15, 2006, the long form settlement notice approved by the Court was sent by email to 1.1 million Settlement Class Members who had given their email addresses to Sony BMG or were subscribers of artist fan email lists known to Sony BMG. In consultation with Class Counsel, the settlement notice was sent by email to an additional 1.2 million Settlement Class Members on or about March 2, 2006.

36. Sony BMG retained Rust Consulting as the Claims Administrator. Rust Consulting has attested that beginning on or about February 10, 2006, the Summary Settlement Notice was published in *People*, *Rolling Stone*, *USA Today*, the *Atlanta Journal Constitution*, the *Austin American Statesman*, the *Chicago Tribune*, the *Dallas Morning News*, the *Los Angeles Times*, the *Miami Herald*, the *New York Daily News*, the *New York Post* and the *San Francisco Chronicle*. We are also informed that a Spanish-language version of the Summary Settlement Notice was published in *El Nuevo Herald* (Florida), *Hoy* (New York), *La Opinion* (California), *Rumbo* (Texas) and *La Subasta Houston* (Texas).

37. Rust Consulting, in consultation with Class Counsel and counsel for Sony BMG, created an official settlement administration website, accessible at www.sonybmgcdtechsettlement.com (the “Website”). Between February 1, 2006 and February 15, 2006, Class Counsel conducted tests of and made recommendations regarding the Website’s interactive capabilities to ensure its accessibility and functionality. These recommendations were incorporated in the Website that went “live” and became available to process the claims of

Settlement Class Members on or about February 15, 2006. The Website includes, among other things, information about the class action settlement, official settlement documents, an on-line claims process, and downloadable utilities to update and uninstall Sony BMG's DRM software.

38. We are informed and believe that on or about February 15, 2006, Sony BMG: (a) placed internet advertisements for the Website with popular search engines, such as Google™ and Yahoo!™; (b) made written communications to Sony BMG-authorized music distributors referring them and their customers to the settlement and the XCP recall campaign in particular; and (c) caused the interactive "banner advertising" features of its DRM CDs to inform Settlement Class Members about the settlement and to provide Settlement Class Members with a hyperlink to the Website. Class Counsel had worked with Sony BMG to create these banner advertisements in a manner that is effective and will provide notice to Settlement Class Members.

39. On or about February 16, 2006, Class Counsel and Sony BMG issued press releases regarding the settlement in accordance with the terms of the Settlement Agreement. On or about March 8, 2006, Class Counsel sent via email a copy of a press release announcing the settlement to a list of more than 200 of Sony BMG's music retailers and distributors, including Tower Records, Wal-Mart, Sam's Club, Best Buy, Amazon.com, Musicland and Circuit City, for redistribution to their personnel, affiliates and customers.

40. All of these forms of notice were provided to Settlement Class Members in accordance with the Hearing Order entered January 6, 2006.

II. THE REACTION TO THE SETTLEMENT

41. The claims process began on or about February 15, 2006 when the Website went "live." Under the proposed settlement, class member benefits were available as of February 15, 2006 and will continue to be available until at least December 31, 2006. The deadline for

submitting comments regarding the proposed settlement is May 1, 2006 – nearly one month after the date these motions are filed with the Court. Based on our experience with class action settlements, we anticipate that the parties will receive additional comments from Settlement Class Members within a few days of the Court-ordered deadline.

42. Mark Russinovich, Plaintiffs’ technical expert, states that the settlement provides significant relief for those affected consumers who purchased, received, or used one or more of the 22 million XCP or MediaMax CDs manufactured and distributed in the United States to date. (Russinovich Aff., ¶ 34.) Mr. Russinovich confirms that the settlement’s required injunctive relief and “best practice” provisions for future DRM software use provide additional, significant benefit for millions of consumers. (Russinovich Aff., ¶¶ 36-38.) In Mr. Russinovich’s opinion, based on his experience as a computer software and computer security analyst, the settlement “is the best case outcome for affected consumers” under the circumstances. (Russinovich Aff., ¶ 38.)

43. The Class Representatives echo Mr. Russinovich’s views. According to Dora Rivas, the proposed settlement meets all of the objectives of this litigation. She believes the settlement is in the best interests of the class members. (Rivas Aff., ¶ 17.) Ori Edelstein states that “the proposed Settlement achieves all of the major goals of the litigation and compares favorably with the results the Class could expect to achieve after a complex and costly trial.” (Edelstein Decl., ¶ 10.) Alexander Guevara attests: “[T]he proposed Settlement permits an immediate resolution of the problems resulting from the installation of DRM software on Sony BMG CDs without the risk, delay, and expense of trial.” (Guevara Decl., ¶ 11.)

44. So far, the public response to the settlement has also been favorable. The settlement has received considerable media attention and is the subject of spirited discussion on the internet. The commentary in internet discussions about the settlement runs the gamut – from

laudatory comments about the breadth of relief available for consumers, to generalized condemnations of DRM software, Sony BMG's business practices, class action lawyers and the class representatives. We found no indication from our survey of public reaction to the settlement that consumers were having difficulty understanding the terms of the settlement, exchanging their CDs, securing downloads or otherwise availing themselves of the relief afforded by the settlement. Our legal assistants, who have responded to calls and emails from class members, also find no indication of dissatisfaction on the part of consumers with the settlement or logistics problems.

III. THE COMPLEXITIES AND RISKS ASSOCIATED WITH THIS LITIGATION

45. This settlement is the product of adversarial negotiations conducted at arm's length by experienced counsel for plaintiffs and defendants, with a firm understanding of the strengths and weaknesses of their claims and defenses. Class Counsel, who have considerable experience in complex litigation and class actions, are well-qualified to evaluate the complexities and risks associated with this litigation.

46. Girard Gibbs has considerable experience in consumer protection actions involving emerging technologies and telecommunications. Some of these cases include *In re MCI Non-Subscriber Rates Litigation*, MDL No. 1275 (S.D. Ill.) (co-lead counsel) (\$88 million settlement); *Allen Lund Company v. Business Discount Plan*, Case No. CV-98-1500-DDP (C.D. Cal.) (lead) (full refund of overcharges for "slamming" small business long distance service); *In re PayPal Litigation*, Case No. 02-01227 JF PVT (N.D. Cal.) (co-lead counsel) (aggregate \$14 million settlement and substantial injunctive relief for alleged violations of Electronic Fund Transfer Act); *In re iPod Cases*, Case No. 436509 (J.C.C.P. No. 4355) (San Mateo Superior Court) (co-lead counsel) (injunctive relief and \$14.8 million in cash, store credits and services); *In re Looksmart Litigation*, Case No. CGC-02-407778 (San Francisco Superior Court) (co-lead

counsel) (\$15 million in cash and services); *Tompkins v. Proteva, Inc., et al.*, Case No. 99 CH 12012 (Circuit Court of Cook County) (co-counsel) (\$5.1 million cash fund); *Steff v. United Online, et al.*, Case No. BC 265953 (Los Angeles Superior Court) (lead counsel) (injunctive relief and cash payments).

47. Scott Kamber and his firm are also experienced in tech-related class actions. These actions include: *In re WebTV Networks Litig.*, Case No. CV 793511 (Santa Clara Sup. Ct.) (consumer class action for false advertising); *Blackford v. At Home Corp. et al.*, Case No. 416131 (San Mateo Sup. Ct.) (consumer class action relating to internet connectivity); *Wormley v. GeoCities*, Case No. 196032 (Los Angeles Sup. Ct.) (consumer class action for privacy violations that is believed to be the first internet privacy case to recover a benefit for impacted class members); *Tepper v. AT&T et al.*, Case No. 99/18034 (New York Supreme Ct., Westchester County) (consumer class action regarding use of improper boosting of signal strength for cellular phones); *Stassi et al. v. Loch Harris et al.*, No. GN 200180 (Dist. Ct., 201st Jud. Dist., Travis County, Tex.) (derivative action on behalf of technology development company that successfully obtained dissolution of corporation and distribution of assets to shareholders); *In re Command Systems*, Case No. 98-cv-3279 (AKH) (SDNY) (securities class action against technology company in which participating shareholders recovered over 80% of their losses).

48. The Sony DRM litigation presented various legal and technological challenges. Class Counsel are unaware of any prior litigation brought on behalf of consumers arising out of the unauthorized installation of a rootkit. Understanding this exploit and the vulnerability it created for consumers was crucial to the case. The release by Sony BMG of utilities to patch or update their content protection software required frequent technical consultation. (Russinovich Aff., ¶¶ 24-29.) To negotiate for appropriate remedies, Class Counsel had to develop a thorough

understanding of the technologies implicated and their interaction with personal computer systems maintained by consumers.

49. Negotiations over each of the benefits available to consumers as a result of the settlement were complex. Each of these issues required an adequate understanding of the technology involved and the impact of the software on consumers' computer systems. Seemingly straight-forward matters, such as the best practicable form of notice, were complicated by the need to determine the extent to which the "banner advertisement" technology in the CDs themselves could be used to provide information about the settlement directly to Settlement Class Members.

50. Further complicating the litigation was the fact that the attorneys general of several states and the Federal Trade Commission were pursuing separate investigations into Sony BMG's use of DRM software. An action by the Attorney General of the State of Texas against Sony BMG remains pending. To account for these government inquiries, Class Counsel negotiated a "most favored nations" provision of the settlement requiring Sony BMG to augment benefits to all Settlement Class Members if Defendants provide additional benefits to a subset of them through the settlement of a government inquiry.

51. The subject matter of the litigation posed additional complexity and risks. First, the restrictions, limitations, and computer security issues associated with Sony BMG's DRM software, while unknown to consumers until October 2005, posed an immediate harm to consumers. This harm included installation of a hidden "rootkit" on consumers' computers, the creation of attendant security vulnerabilities, the potential for collection of private data without consumers' knowledge, and other concerns. This harm had to be addressed without delay through injunctive relief secured voluntarily or through litigation. Adoption of a "business as usual" approach to the litigation would have left consumers vulnerable to computer hackers and

third parties seeking to exploit the security vulnerabilities associated with the Sony BMG XCP and MediaMax DRM technologies.

52. Second, this case involved the interaction of software with millions of consumers' computers, presenting vexing problems of proof, as the dangers posed by the XCP and MediaMax software are inherently transitory. The likelihood that Sony BMG or a software security company would develop and release on a widespread basis effective utilities to patch, update or uninstall Sony BMG's content protection software created a risk that Plaintiffs would not have been able to establish damages. At some point, the advent of new software and computer systems would have undermined any effective remedy that could have been achieved through litigation.

53. Third, there is a significant risk that the diversity of computer systems and software configurations and evidentiary obstacles would have caused individual issues to predominate in the litigation, thus precluding class certification.

54. We believe the risks associated with pursuing this litigation, and the attendant delay and expense, considered in relation to the benefits available through settlement, make settlement the only responsible choice. There is little reason to think that contentious motion practice and discovery battles would yield a more favorable result. The prompt resolution of this case on the favorable terms achieved through the settlement is an outstanding result in light of the complexities and risks of the litigation.

IV. CLASS COUNSEL AND SONY BMG HAVE AGREED TO A REASONABLE FEE PAYMENT THAT WILL NOT IN ANY WAY AFFECT THE BENEFITS AVAILABLE FOR SETTLEMENT CLASS MEMBERS

A. The Fee Agreement Between Class Counsel and Sony BMG

55. To ensure that counsel would retain their focus on finalizing and implementing the settlement, the parties agreed to defer fee negotiations until after the Court granted preliminary approval.

56. As of the signing of the Settlement Agreement, the parties agreed only that Plaintiffs' counsel were entitled to a reasonable fee to be paid by Defendants, that the fee award would not affect the benefits to Settlement Class Members, and that Class Counsel and Sony BMG would attempt to reach agreement on a reasonable fee. The Settlement Agreement memorializes these terms as follows:

A. As of the date this Settlement Agreement was executed, the Parties have not substantially discussed either the amount of attorneys' fees or costs that Plaintiffs' counsel may ask the Court to award them. It is, however, the understanding of the Parties that Plaintiffs' counsel will apply for an award of attorneys' fees and reimbursable expenses in accordance with legal principles, that any fees and costs applied for and ultimately awarded by the Court will be paid by Defendants, and that Defendants' payment of Plaintiffs' attorneys' fees and reimbursable expenses will not affect the Settlement Benefits provided to Settlement Class Members in any way.

B. The Parties will seek to reach agreement on the amount of attorneys' fees and reimbursable expenses to be applied for. If the Parties reach agreement on the subject of fees and/or costs to be awarded to Plaintiffs' counsel prior to the sending of notice to Settlement Class Members, the Full Settlement Notice will reflect that agreement.

(Settlement Agreement, IX.A-B.)

57. Class Counsel and Sony BMG have entered into an agreement concerning the payment of attorneys' fees and litigation expenses ("Attorneys' Fee Agreement"). A true and correct copy of that agreement is attached hereto as Exhibit A. Under the Attorneys' Fee

Agreement, Sony BMG agrees not to oppose an application by Class Counsel and the firms identified Class Counsel's fee application for attorneys' fees of \$2,300,000 and reimbursement of expenses of up to \$75,000, subject to additional terms described below. (Exh. A, ¶ II.A.) In accordance with the Court's CMO No. 1 and the Settlement Agreement, Class Counsel undertook to negotiate a single, agreed fee payment that would subsequently be allocated among participating plaintiffs' counsel in accordance with their respective contributions. See Manual For Complex Litigation, Fourth, § 40.23 (2004) ("In cases in which the court may award fees, time and expense records should ordinarily be submitted through lead counsel, if one has been appointed, in order to assist lead counsel in monitoring the activities of co-counsel and in preparing a single, consolidated report for filing with the court.").

58. Class Counsel requested time and expense information from all plaintiffs' counsel, and received in return sworn declarations from virtually all participating counsel. The declarations of plaintiffs' counsel who submitted their time and expenses to Class Counsel ("Fee Declarations") are being filed with the Court in the accompanying Appendix In Support Of Class Counsel's Application For Award Of Attorneys' Fees, Reimbursement Of Expenses, And Incentive Awards To Named Plaintiffs.

59. On March 30, 2006, Class Counsel were notified by one of the counsel for plaintiffs in *Ricciuti*, *Melcon* and *Hull*, who are represented by the firms of Lerach Coughlin, Stoia, Geller, Rudman & Robbins LLP, Green Welling LLP, Lawrence E. Feldman & Associates, and the Electronic Frontier Foundation ("the *Ricciuti* Group"), that the *Ricciuti* Group's counsel were refusing to submit time and expense data to Class Counsel and were intending instead to file a separate application for attorneys' fees. A true and correct copy of the March 30, 2006 letter from Jeff Friedman to Daniel C. Girard is attached hereto as Exhibit B.

60. As represented in the Attorneys' Fee Agreement, "Sony BMG believes that the time expended and costs incurred by Plaintiffs' Class Counsel, and/or at the direction of Plaintiffs' Class Counsel, all of which is included in [Class Counsel's fee request], are the only time and expenses for counsel for Plaintiffs or Settlement Class Members compensable by SONY BMG in this matter." (Exh. A, ¶ II.B.) Under the terms of the Attorneys' Fee Agreement, Sony BMG reserves the right to object to any applications for fees and/or expenses by any other counsel (including the *Ricciuti* Group), if the amount requested exceeds \$250,000, individually or collectively. Sony BMG represents in the agreement that "based on the information that it has, [Sony BMG] expects to object to any such request(s) to the extent that it or they individually or collectively exceed US\$400,000." (*Id.*)

61. Under the Attorneys' Fee Agreement, Sony BMG and Class Counsel have agreed that if the Court awards more than \$400,000 to the *Ricciuti* Group or any other counsel filing separate fee applications, individually or collectively, then Class Counsel's agreed-upon fee award would be reduced on a dollar-for-dollar basis to limit Sony BMG's total fee payment to \$2,775,000. *Id.*, ¶ II.F. Class Counsel will therefore oppose any application by the *Ricciuti* Group's counsel and other plaintiffs' counsel to the extent they collectively seek an amount in excess of \$400,000.

B. The Requested Fees, Expenses And Incentive Awards Are Reasonable

1. Attorneys' Fees

62. Class Counsel and Plaintiffs' Executive Committee devoted more than 2,751 professionals' hours to the case for a total lodestar of \$1,186,504. The services provided by these firms included: conducting a pre-filing investigation and analysis; retaining experts and identifying and interviewing witnesses; testing the application of the software products at issue to personal computers; drafting the initial complaints and Consolidated Amended Class Action

Complaint; negotiating the Settlement Agreement and all amendments with counsel for Defendants; drafting all settlement documents; drafting all papers in support of preliminary and final approval of the settlement; communicating with the Court; appearing at the preliminary approval at the January 6, 2006 hearing; coordinating plaintiffs' counsel's response to the motions for consolidation and transfer before the Panel, and drafting papers in support of the same; drafting the confidentiality agreement governing the exchange of information in confirmatory discovery; preparing a confirmatory discovery plan; negotiating the scope of confirmatory discovery with counsel for Defendants; reviewing and analyzing documents produced as part of confirmatory discovery; working with counsel for Defendants and the Claims Administrator to implement notice and the claims process; communicating with Settlement Class Members about the terms of the settlement and claims process; and monitoring the claims process.

63. In addition to the time recorded by Class Counsel and the Executive Committee who provided services at the direction of Class Counsel, other Plaintiffs' counsel report more than 1,416 additional hours of professional time spent on the litigation. (As much of the work done by other Plaintiffs' counsel involved research not undertaken at the request of Class Counsel, such work will be compensated based on Class Counsel's evaluation of the extent to which the work involved conferred a benefit on the Settlement Class or otherwise materially advanced the objectives of the litigation.)

64. All counsel attest that their lodestar is calculated from contemporaneous, daily time records, which Plaintiffs' counsel regularly prepared and maintained in the ordinary course of business. Plaintiffs' counsel's rates are their actual current rates. A true and correct summary of the hours, lodestar and expenses of Plaintiffs' counsel is attached hereto as Exhibit C.

65. Considering only the time recorded by Class Counsel and the Executive Committee, the agreed fee of \$2.3 million would result in a multiplier of less than two. Thus, there can be no suggestion that the proposed fee agreement, which is the product of arm's-length negotiations, will confer a windfall of Plaintiffs' counsel.

2. Litigation Expenses

66. Plaintiffs' counsel report that they have reasonably and necessarily incurred \$69,788 in unreimbursed expenses in the prosecution of the litigation. See Exh. C. As described in the Fee Declarations, these expenses include: court fees; consultant fees; photocopying; telephone; overnight delivery services; legal research services including Lexis-Nexis and Westlaw; postage; messenger services; travel; and meals.

67. As described in the Fee Declarations, the expenses incurred in this case are reflected in the books and records of each of Plaintiffs' counsel's firms. These books and records are prepared from expense vouchers, check records and other contemporaneously-recorded billing records. They are an accurate record of expenses incurred in this litigation.

3. Incentive Awards

68. Class Counsel is requesting incentive awards to the named Plaintiffs and others identified in Exhibit D attached hereto, in the amount of \$1,000 each. Per the Settlement Agreement, Defendants have agreed not to oppose these awards and will pay them, if approved by the Court.

69. The incentive awards requested are justified in light of the initiative Plaintiffs took in coming forward to represent the class, are reasonable in consideration of the overall benefit conferred on the Settlement Class, and should be approved.

C. Fee And Expense Figures Of Class Counsel Girard Gibbs

70. Based on the records of Girard Gibbs, the firm has spent at least 1,493 hours on this matter, representing a lodestar at their current hourly rates of \$602,413. In addition, to date in this case Girard Gibbs has incurred \$27,928 in expenses. Girard Gibbs's expense detail is set forth in Exhibit E, attached hereto. The expenses Girard Gibbs incurred are reflected in our books and records which were prepared from expense vouchers, check records and other contemporaneously-recorded billing records. They are an accurate record of expenses the firm incurred in this litigation.

71. The hourly rates for the timekeepers included in the lodestar figure for Girard Gibbs are as follows:

<u>Attorneys</u>	<u>Hours</u>	<u>Rate</u>
Daniel C. Girard (P)	281.20	\$580.00
Eric H. Gibbs (P)	56.60	\$480.00
A.J. De Bartolomeo (P)	24.90	\$460.00
Jonathan K. Levine (P)	18.20	\$450.00
Elizabeth C. Pritzker (P)	283.90	\$450.00
Aaron M. Sheanin (A)	362.10	\$390.00
Dylan S. Hughes (A)	206.40	\$340.00
Lindy K. Lucero (A)	109.80	\$300.00
 <u>Support Staff</u>	 <u>Hours</u>	 <u>Rate</u>
Antonia Vincente	42.00	\$120.00
Adam M. Conley	64.00	\$140.00
Andrea Winternitz	42.51	\$140.00

72. Although most of Girard Gibbs' practice consists of representing consumers and investors in class action and contingent-fee litigation, Girard Gibbs also provides services on an hourly-rate basis. A list of representative clients includes NuSkin International, Inc., a New York Stock Exchange company; Kennetech Corporation; the State of Wisconsin Investment Board; the California Public Employees' Retirement System; the California State Teachers' Retirement System; the Kansas Public Employees' Retirement System; Certain Underwriters at

Lloyd's, an insurance syndicate; and various professional services firms and individuals, including an accounting firms, the former chief executive officer of a publicly traded company and the former managing director and officer of a privately held investment banking firm. The hourly rates set forth for Girard Gibbs's attorneys and paralegals are the firm's current, customary rates for non-contingent matters.

73. The hourly rates charged by Girard Gibbs have been approved as reasonable by several federal and state courts over the past four years. Courts have granted applications for fees based on the lodestar-multiplier method and for reimbursement of costs by Girard Gibbs in the following recent matters: May 2002: *Mager v. First Bank of Marin*, Case No. CV-S-00-1524-PMP (D. Nev.); February 2003: *Mitchell v. American Fair Credit Ass'n.*, Case No. 785811-2 (Cal. Super. Ct. Alameda County); February 2003: *Mitchell v. Bankfirst*, Case No. C-97-1421-MMC (N.D. Cal.); May 2003: *Mackhouse v. Good Guys*, Case No. 2002-049656 (Cal. Super. Ct. Alameda County); September 2003: *Steff v. United Online*, Case No. BC 265953 (Cal. Super. Ct. Los Angeles County); October 2003: *In re Looksmart Litigation*, Case No. 02-407778 (Cal. Super. Ct. San Francisco County); September 2004: *Cromwell v. Sprint Communications*, Case No. CV 99-2125 GTV (D. Kan.); March 2005: *Landreneau v. Fleet Financial*, Case No. 01-26-B-MI (M.D. La.); September 2005: *In re iPod Cases*, Case No. JCCP 4355 (Cal. Sup. Ct. San Mateo County); December 2005: *Puckett v. Pacific Bell Internet Services*, Case No. 1-04-CV-019724 (Cal. Super. Ct. Santa Clara County); March 2006: *Lehman v. Blue Shield of California*, Case No. CGC-03-419349 (Cal. Super. Ct. San Francisco County).

74. Attached hereto as Exhibit F is a true and correct copy of the Girard Gibbs firm resume.

D. Fees And Expense Figures Of Class Counsel Kamber & Associates

75. The Kamber Firm, including attorneys and paralegals, has spent at least 952 hours in connection with the Sony BMG Litigation. At customary hourly rates, this time reflects a lodestar of \$463,969. In addition, the Kamber Firm has incurred \$23,730 in expenses to date in this case. The time reported by the Kamber Firm includes time recorded by counsel associated with the firm for their expertise and experience in technology-related class actions. These attorneys either practice by themselves or are affiliated with law firms who are not otherwise involved in this litigation and who are not otherwise represented in the declarations included with this application for payment of attorneys' fees and expenses. Their inclusion in this declaration is consistent with the basis on which the Kamber Firm retained their assistance. The Kamber Firm assigned and supervised all tasks performed by such associated counsel and the billing rates applied to such counsel are consistent with the rates charged by them in the ordinary course of their own practice.

76. The hourly rates for the timekeepers included in the lodestar figure for the Kamber Firm are as follows:

<u>Attorneys</u>	<u>Hours</u>	<u>Rate</u>
S. Kamber	858.75	\$500.00
C. Cantor	5.70	\$350.00
C. Sandberg	22.75	\$450.00
E. Odette	25.00	\$275.00
J. Halebian	5.75	\$610.00
R. Shelquist	20.25	\$475.00
<u>Support Staff</u>		<u>Rate</u>
R. Whitener	14.75	\$160.00

77. The hourly rates set forth above are the firm's current, customary rates for contingent and non-contingent matters alike.

78. In the compilation of the expense figures, I directed that the figures reported for telephone, WestLaw/LEXIS, outside photocopying, outside facsimile, and messenger charges reflect amounts that the Kamber Firm actually paid, with no mark-up, and that reimbursement sought for airfare be limited to the coach rate. A true and correct photocopy of the Kamber & Associates firm resume is attached hereto as Exhibit G.

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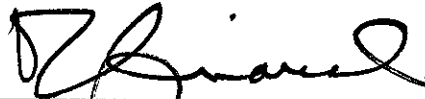
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V. CONCLUSION

For the reasons set forth above and in the accompanying memoranda in support of plaintiffs' motion for final approval of the proposed Settlement and Class Counsel's motion for attorneys' fees, reimbursement of expenses, and incentive awards, we respectfully submit that: (1) the settlement is fair, reasonable and adequate and should be approved; and (2) the application for an award of attorneys' fees, reimbursement of expenses, and incentive awards is also fair, reasonable and adequate, and should be granted.

We declare under penalty of perjury under the laws of the United States of America and the States of California and New York that the foregoing is true and correct.

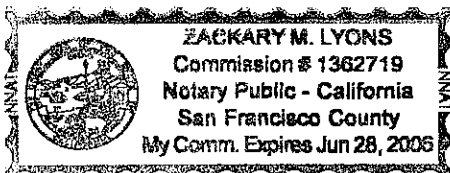


Daniel C. Girard

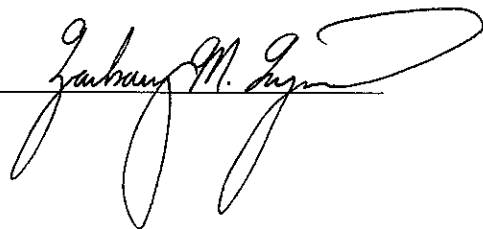
Scott Kamber

State of California)
County of San Francisco)

Subscribed and sworn to (or affirmed) before me on this 6th day of April, 2006 by Daniel C. Girard, personally known to me to be the person who appeared before me.



Signature _____



V. CONCLUSION

For the reasons set forth above and in the accompanying memoranda in support of plaintiffs' motion for final approval of the proposed Settlement and Class Counsel's motion for attorneys' fees, reimbursement of expenses, and incentive awards, we respectfully submit that: (1) the settlement is fair, reasonable and adequate and should be approved; and (2) the motion for an award of attorneys' fees, reimbursement of expenses, and incentive awards is also fair, reasonable and adequate, and should be granted.

We declare under penalty of perjury under the laws of the United States of America and the States of California and New York that the foregoing is true and correct.

Daniel C. Girard

Scott Kamber

STATE OF New Jersey)
COUNTY OF Essex) :ss:

Subscribed and sworn to me this
6th day of April 2006.

Notary Public

Anne Baglivo Fitzpatrick
Attorney-at-Law of
the State of New Jersey

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

SONY BMG CD
TECHNOLOGIES LITIGATION

Case No. 1:05-cv-09575-NRB

**JOINT AFFIDAVIT OF DANIEL C. GIRARD AND SCOTT A. KAMBER IN SUPPORT
OF:
(1) MOTION OF CLASS COUNSEL FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, AND
(2) MOTION OF CLASS COUNSEL FOR AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS TO
NAMED PLAINTIFFS**

GIRARD GIBBS

& De BARTOLOMEO LLP

Daniel C. Girard (Pro Hac Vice)
Jonathan K. Levine (JL-8390)
Elizabeth C. Pritzker (Pro Hac Vice)
Aaron M. Sheanin (Pro Hac Vice)
601 California Street, Suite 1400
San Francisco, California 94108
Telephone: (415) 981-4800

KAMBER & ASSOCIATES, LLC

Scott A. Kamber (SK-5794)
19 Fulton Street, Suite 400
New York, NY 10038
Telephone: (877) 773-5469

Class Counsel

Daniel C. Girard and Scott A. Kamber jointly declare as follows:

1. Girard Gibbs & De Bartolomeo LLP (“Girard Gibbs”) and Kamber & Associates, LLC (the “Kamber Firm”) were appointed to serve as Plaintiffs’ Co-Lead Counsel pursuant to Case Management Order No. 1, entered December 1, 2006, and to serve as Class Counsel for the Settlement Class pursuant to this Court’s January 6, 2006 Hearing Order following Plaintiffs’ motion for preliminary approval of the proposed settlement (“Hearing Order”). Girard Gibbs and the Kamber Firm (collectively “Class Counsel”) jointly submit this affidavit in support of Plaintiffs’ motions, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for approval of the settlement, for an award of attorneys’ fees and reimbursement of expenses and for leave to pay incentive awards to the class representatives. The following statements are based on personal knowledge and Class Counsel’s investigation and review of the files in *In re SONY BMG CD Technologies Litigation*, Case No. 1:05-cv-09575-NRB (S.D.N.Y.), unless otherwise noted. Information pertaining to the time and expenses incurred by our respective firms is attested to individually and not jointly.

2. We discuss, in the following order, (a) the history of proceedings in the case, which sheds light on the services required of plaintiff’s counsel in this matter; (b) the reaction of the Class to the settlement; (c) the complexities and risks associated with the litigation; and (d) the terms of Class Counsel’s agreement with SONY BMG Music Entertainment, Inc. (“Sony BMG”) for payment of attorneys’ fees, and the time, rate, and expense figures underlying the application of Class Counsel and other Plaintiffs’ counsel for attorneys’ fees and reimbursement of expenses.

I. HISTORY OF THE CASE

A. Sony BMG's Digital Rights Management Software Creates A Risk Of Harm To Computer Users

3. The recitation of facts in this section is based on Class Counsel's pre-filing investigation of the claims asserted in this litigation against Sony BMG. This investigation took place from November 1 through November 14, 2005, during which time our firms independently reviewed and analyzed various media reports, conducted interviews with witnesses, researched Sony BMG's representations to consumers, and tested the consumer products at issue. The recitation in this section is also based on the facts gathered through the litigation, settlement negotiations, consultations with outside consultants, and confirmatory discovery.

4. Sony BMG is the second largest owner and distributor of recorded music in the world. In an effort to place restrictions on the ability of consumers to use, copy or transfer the digital content, including digital music files, on the compact discs ("CDs") that Sony BMG distributes, Sony BMG has included anti-copying software, known as "digital rights management" software or "DRM" on many of its CDs since 2003.

5. Sony BMG first introduced a line of CDs containing a DRM software program known as MediaMax 3.0, designed and licensed to Sony BMG by SunnComm International, Inc., and MediaMax Technology Corp. (collectively, "SunnComm"), in September 2003. In January 2005, Sony BMG initiated an effort to include DRM software on at least 50 percent of all CDs manufactured and sold through 2005, with the intent of including some form of DRM software on all CDs manufactured and sold by Sony BMG by the end of the year. As part of this effort, in January 2005, Sony BMG introduced a line of music CDs containing a DRM program called Extended Copy Protection ("XCP"), designed and licensed to Sony BMG by First 4 Internet, Ltd. Other music CDs marketed and sold by Sony BMG in 2005 contained an enhanced version of the MediaMax DRM software, commonly known as MediaMax 5.0. Sony BMG

manufactured more than 20 million CDs containing MediaMax software, and approximately 5 million CDs containing XCP software.

6. The central feature of these two Sony BMG DRM software programs is that they limit the consumer to making no more than three copies of the DRM-protected CD. The DRM programs also: (a) prevent the consumer from listening to the digital audio files on the CD through any computer program or digital music player other than those manufactured or licensed by Sony BMG or Microsoft; (b) cause information to be exchanged electronically between the user's computer and Sony BMG; (c) install automatically onto the consumer's computer; and (d) fail to include a program or mechanism to uninstall the DRM software from the consumer's computer at a later time. Consumers who purchased CDs containing these DRM programs were not aware of these restrictions and features, as Sony BMG did not disclose this information on the CD packaging or "jewel" cases, in the course of the DRM software installation process, or elsewhere.

7. In addition to these restrictions and features, the XCP software used by Sony BMG on its CDs contains a cloaking mechanism, commonly referred to as a "rootkit," that automatically installs on the user's computer without the user's knowledge, and hides files, Registry keys and other computer system objects from diagnostic and security software. These "rootkits" effectively disable computer security protection programs and expose consumers who place XCP CDs into their computers to various types of "malware," such as viruses and spyware promulgated by third parties, who use rootkits to hide their malicious actions from antivirus software, spyware blocking programs, and system management utilities. ("Malware" refers to software designed to infiltrate or damage a computer system without the owner's consent, and includes computer viruses, "Trojan horses," spyware and adware.) The rootkit contained on the Sony BMG XCP CDs creates a unique risk to consumers, moreover, because it automatically

installs itself on the consumer's computer and does not contain a way for consumers to easily detect, remove or uninstall it. The XCP security vulnerability was not just theoretical; by November 10, 2005, reports of the first virus written to exploit the XCP security vulnerability made the news.

8. The restrictions, limitations and computer security vulnerabilities associated with Sony BMG's DRM software were not widely known until October 2005, when computer security expert Mark Russinovich inadvertently discovered that a Sony BMG CD he had purchased and installed on his computer, *Get Right With The Man* by Van Zant, had placed a rootkit, hidden device drivers and other hidden applications on his computer. Mr. Russinovich first published his findings on a blog he devotes to research and commentary on issues of computer software and computer security – on October 31, 2005, and November 4, 2005, respectively. The affidavit of Mr. Russinovich is submitted herewith.

9. In various news interviews on or about November 1, 2005, representatives of Sony BMG and First 4 Internet (the Company that authored the XCP software) said that the disclosures in the EULA for the XCP software were adequate, despite the fact that the EULA did not inform end users that the software automatically installs on a user's system, installs hidden software and does not have an uninstaller. Sony BMG and First 4 Internet maintained that the use of a cloaking mechanism in connection with the XCP software was an acceptable practice, and rejected the notion that the XCP software was a legitimate concern for computer users.

10. While publicly denying wrongdoing, Sony BMG began to make available software updates or "patches" that were intended to allow computer users to close any security gaps posed by its DRM software. Many consumers and independent experts reported that the updates developed by Sony BMG were difficult for consumers to obtain and cumbersome to use.

According to Mark Russinovich, the Sony BMG patch was unsafe and had the potential to cause end users' systems to crash and lose data.

11. By early November 2005, Sony BMG had developed an uninstaller for the XCP software. Sony BMG did not publicize the uninstaller on its website, did not make the uninstaller available as a freely accessible download as it did the patch, and required users to submit two requests for the uninstaller and then wait for further instructions to be emailed. While consumers tried to navigate the difficult process of obtaining an uninstaller from Sony BMG, the XCP rootkit remained on their systems and continued to expose them to malware.

12. On November 14, 2005, the Kamber Firm filed a complaint on behalf of James Michaelson and Ori Edelstein in the Southern District of New York, entitled *Michaelson v. Sony BMG Music, Inc.*, Case No. 05-cv-9575 (NRB) (S.D.N.Y.). The case was assigned to the Hon. Naomi Reice Buchwald. Also on November 14, 2005, Girard Gibbs filed an action on behalf of Dora Rivas in this Court, entitled *Rivas v. Sony BMG Music Entertainment, Inc.*, Case No. 05-cv-9598 (S.D.N.Y.). (Dora Rivas is the sister of Rosemary Rivas, an associate with Girard Gibbs. Rosemary Rivas has not taken part in any aspect of this litigation, and has no pecuniary interest in this matter.) These actions alleged that Sony BMG's manufacture, sale and distribution of DRM-enhanced music CDs, especially in the absence of appropriate warnings and disclosures, violated the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030, New York State deceptive consumer practice laws and false advertising statutes, and the common law. Two other related actions — *Potter v. Sony BMG Music Entertainment*, Case No. 05-9607 (S.D.N.Y.); and *Klewan v. Arista Holdings, Inc., d/b/a Sony BMG Music Entertainment, Inc.*, Case No. 05-cv-9609 (S.D.N.Y.) – were filed in this Court on the same date. In December 2005, two (2)

additional consumer class actions raising substantially identical claims were filed in this Court.¹ Throughout November and December 2005, fifteen other class action complaints raising substantially similar claims were filed in state and federal courts around the country.²

13. In addition to initiating a technical and legal dialogue with Sony BMG directed at exploring the possibility of securing a prompt resolution of this litigation, Class Counsel began working closely with other plaintiffs' counsel to coordinate the pending cases, avoid duplication and inefficient activity and limit procedural gamesmanship and competition among plaintiffs' counsel. See Manual For Complex Litigation, Fourth, § 10.22 (2004) ("In some cases the attorneys coordinate their activities without the court's assistance, and such efforts should be encouraged."). Following a series of telephone conferences, Sony BMG and all plaintiffs' counsel in the actions then pending in the Southern District of New York agreed to an

¹ The additional actions filed in this Court include: *Riciutti v. Sony BMG Music Entertainment*, Case No. 05-cv-10190 (S.D.N.Y.) (Dec. 5, 2005), and *Maletta v. Sony BMG Music Entertainment*, Case No. 05-cv-10637 (S.D.N.Y.) (Dec. 19, 2005).

² The actions filed in jurisdictions other than the United States District Court for the Southern District of New York include: *Guevara v. Sony BMG Music Entertainment*, Cal. Superior Court Case No. BC342359 (Nov. 1, 2005); *Gruber v. Sony Corp. of America*, Cal. Superior Court Case No. BC342905 (Nov. 9, 2005); *Stynchula v. Sony Corp. of America*, Cal. Superior Court Case No. BC343100 (Nov. 15, 2005); *DeMarco v. Sony BMG Music*, United States District Court for the District of New Jersey Case No. 2:05-cv-05485-WHW-SDW (Nov. 17, 2005); *Cooke v. Sony BMG Music*, District of Columbia Superior Court Case No. 05-0009093 (Nov. 18, 2005); *Hull v. Sony BMG Music Entertainment*, Cal. Superior Court Case No. BC343383 (Nov. 21, 2005); *Burke v. Sony BMG Music Entertainment Corp.*, Cal. Superior Court Case No. 857213 (Nov. 22, 2005); *Maletta v. Sony BMG Music Entertainment Corp.*, Cal. Superior Court Case No. BC 343615 (Nov. 28, 2005); *Xanthakos v. Sony BMG Music Entertainment, LLC*, District of Columbia Superior Court Case No. 05-0009203 (Nov. 28, 2005); *Bahnmaier v. Sony BMG Music Entertainment*, Oklahoma District Court Case No. CJ 2005 06968 (Nov. 28, 2005); *Jacoby v. Sony BMG Music Entertainment*, New York Superior Court Case No. 05/116679 (Nov. 30, 2005); *Ponting v. SonyBMG Music Entertainment, LLC*, United States District Court for the Central District of California Case No. CV-05-08472-JFW-AJWx (Dec. 2, 2005); *Melcon v. Sony BMG Music Entertainment*, United States District Court for the Northern District of California, Case No. C-05-5084-MHP (Dec. 8, 2005); *Klemm v. Sony BMG Music Entertainment*, United States District Court for the Northern District of California Case No. C-05-5111-BZ (Dec. 9, 2005); and *Black v. Sony BMG Music Entertainment*, United States District Court for the District of New Mexico Case No. CIV-05-1315 WDS/RLP (Dec. 19, 2005).

organizational structure and the provisions of a case management order. On December 1, 2005, the Honorable Naomi Reice Buchwald entered Case Management Order No. 1 (“CMO No. 1”) consolidating all related actions then pending in the Southern District of New York as *In re SONY BMG CD Technologies Litigation*, Case No. 1:05-cv-9575-NRB (S.D.N.Y.). CMO No. 1 provided that any related action subsequently filed in or transferred to the United States District Court for the Southern District of New York would be consolidated with *In re SONY BMG CD Technologies Litigation* absent timely objection. The Court also appointed Girard Gibbs and the Kamber Firm as Plaintiffs’ Co-Lead Counsel, and the firms of Milberg Weiss Bershad & Schulman LLP, Kirby McInerney & Squire, LLP, and Giskin & Solotaroff, LLP as Plaintiffs’ Executive Committee.

14. Class Counsel also sought the coordination and cooperation of counsel in cases outside the Southern District of New York. These efforts were generally successful and resulted in the formal or informal coordination of most cases that had been filed by late November. The refusal of counsel in a minority of cases to coordinate their efforts required the filing of a petition under California law to coordinate a series of cases pending in California state courts.

B. Settlement Negotiations

15. In mid-November 2005 Scott Kamber of the Kamber Firm began a series of discussions and meetings with Sony BMG directed at the technical aspects of the case, the need for immediate remediation and the prospects Class a motion for injunctive relief would succeed. The goal of the discussions was to explore Sony BMG’s willingness to: (i) stop the sale of CDs equipped with the XCP rootkit as soon as possible; (ii) eliminate continued risk/damage from the XCP disks presently in circulation; (iii) remedy the harm that had been caused to class members; (iv) address the risks of an exploit being found on the disks encoded with MediaMax and any

other DRM software used in the future; and (v) waive the enforcement of certain EULA provisions.

16. On or about November 16, 2005, Sony BMG and Mr. Kamber discussed potential remedies for the DRM issues raised in the *Michaelson* complaint. Mr. Kamber also made clear that a failure to take immediate actions regarding the XCP issue could result in a motion for injunctive relief.

17. From November 16, 2005, through November 21, 2005, Mr. Kamber and other counsel worked to prepare for a November 21 meeting with Sony BMG. Mr. Kamber prepared for the meeting by consulting with Mark Russinovich and Matt Curtain. On behalf of the plaintiffs, the meeting was attended by Mr. Kamber, plaintiffs' counsel Himmelfarb and Solotoroff, Matt Curtain and Mark Russinovich (by telephone). Sony BMG was represented at the meeting by counsel, including Jeffrey Jacobson and Jeffrey Cunard.

18. Throughout the November 21 meeting and ensuing discussions, Class Counsel offered the services of Mark Russinovich to Sony BMG in order to ensure the effectiveness of a pre-settlement remediation program for the Class. Class Counsel also discussed the issue of effective notice and the accurate communication to class members of the risks associated with the XCP software and the availability of any patches or uninstalls that Sony BMG might make available. The discussions included the utilization of banner ad functionality as a method of notice to the Class. Prior to the November 21, 2005 meeting, Sony BMG had not contemplated the utilization of banner ad functionality for this purpose. On November 29, Mr. Kamber and Daniel Girard of Girard Gibbs met with Sony BMG's counsel to continue to explore potential settlement terms.

19. From the time the actions were filed until settlement was achieved, counsel worked on a continuous basis, logging hours throughout the holiday season, including Christmas

day. Throughout the negotiation process, every aspect of the settlement was extensively discussed, informed by the knowledge, experience and analysis of Class Counsel and their retained technical consultants.

20. Following the entry of CMO No. 1, Class Counsel began formal settlement negotiations. As settlement negotiations evolved over several weeks, Class Counsel began to prepare the settlement documents, including the proposed form of notice and claim form, settlement agreement, preliminary approval papers, and text for an interactive official settlement website.

21. In early December 2005, Class Counsel and Sony BMG met to negotiate settlement terms, and circulated the first working draft of a settlement agreement. On or about December 12, 2005, Class Counsel shared the working draft of the Settlement Agreement with the Executive Committee. On or about the same time, at the request of Sony BMG, Class Counsel shared certain drafts of settlement documents with plaintiffs' counsel in *Ricciuti v. Sony BMG Music Entertainment*, Case No. 05-cv-10190 (S.D.N.Y.), a newly filed action in the United States District Court for the Southern District of New York. Although filed after the entry of CMO No. 1, it had not yet been consolidated with *In re SONY BMG CD Technologies Litigation* by the Clerk's office pursuant to CMO No. 1.

22. On December 18, 2005, Class Counsel participated in a further settlement conference with Sony BMG in New York. As a result of their case not yet being consolidated, the *Ricciuti* plaintiffs were again included at the request of Sony BMG. At the conclusion of this settlement conference, which continued late into the night, the parties prepared a memorandum of understanding ("MOU"). Class Counsel, counsel for Sony BMG, and counsel for the *Ricciuti* plaintiffs signed the MOU.

23. On December 28, 2005, Class Counsel, counsel for Defendants and counsel for the *Ricciuti* plaintiffs signed the Settlement Agreement, and Plaintiffs filed a Consolidated Amended Class Action Complaint (“CAC”) on behalf of the Plaintiffs and Class Representatives named in the consolidated actions.

24. On December 28, 2005, Class Counsel filed a motion for preliminary approval of the proposed settlement. The specific benefits of settlement are detailed in that Settlement Agreement. Generally speaking, however, the Settlement Agreement provides relief to Settlement Class Members, defined as “all natural persons or entities in the United States who purchased, received, came into possession of or otherwise used one or more MediaMax CDs and/or XCP CDs.” The relief provided by the Settlement Agreement is detailed in the Settlement Agreement at paragraphs III through V and includes the following:

- An immediate recall of all XCP CDs;
- An ongoing return and exchange program to enable consumers to return XCP CDs to Sony BMG and receive an identical, “clean” non-DRM protected CD;
- Publication and distribution of free, effective, and independently-tested software utility programs to allow consumers either to update XCP and MediaMax software on their computers, and thereby eliminate any security vulnerabilities associated with such software, or to uninstall and remove the software altogether;
- Cash incentives and free music downloads for Class members;
- Sony BMG’s agreement not to manufacture or distribute MediaMax CDs or software for at least two years;
- Sony BMG’s agreement not to collect personal information from consumers through DRM software, without consumers’ express and affirmative consent;
- Sony BMG’s agreement to waive certain legal rights specified in the EULAs associated with XCP and MediaMax CDs and software;

- Significant injunctive relief that requires Sony BMG to implement several, new “best practices” for any DRM software that Sony BMG develops and intends to use on CDs, over the next two years, including (a) testing by independent security personnel to screen out and eliminate potential security risks, and (b) improved disclosures about the nature and effect of such DRM software on CD packaging, in future EULAs, and throughout the software installation process;
- “Most favored nations” protection, which preserves the enforcement resources of government authorities across the nation, while at the same time affording Settlement Class Members any and all additional benefits as may be obtained by government authorities through such enforcement efforts;
- A release that excludes claims by individual consumers for consequential damage to a computer or network alleged to have resulted from interaction between Sony BMG’s XCP or MediaMax software and other software or hardware installed on such computer or network;
- A simple claims form and claims administration process; and
- Comprehensive notice to the Class via email, internet publications and search engines, outreach to Sony BMG’s network of music distributors and retailers, internet “banner” advertisements, press releases, and publication in weekly and daily newspapers and magazines with a combined circulation of more than 12.3 million.

25. The Settlement Agreement entered into by the parties achieves Plaintiffs’ objectives for this litigation. As set out in the Consolidated Amended Class Action Complaint, these objectives include: (a) prompt elimination and removal of any and all computer vulnerabilities associated with Sony BMG’s XCP and MediaMax CDs and software; (b) a mechanism to allow consumers to easily exchange Sony BMG DRM-protected CDs for identical CDs or music downloads that do not contain DRM software; (c) compensation for Class members, in the form of cash and music downloads, to expedite the exchange of affected CDs for “clean” versions; (d) a moratorium on Sony BMG’s use of MediaMax DRM software; (e) a mandate that Sony BMG conform its DRM practices and DRM notification procedures to the requirements of the Consumer Fraud and Abuse Act, New York State consumer protection statutes, and common law; and (f) requiring Sony BMG to adopt a “best practice” approach to

future DRM software applications, to screen out and eliminate potential security risks associated with any such software, and provide consumers with clear, plain-language disclosures, on CD packaging, in EULAs, and elsewhere, about the nature and effect of such DRM software.

C. The District Court Grants Preliminary Approval Of The Settlement

26. On January 6, 2006, the Court held a hearing at which Class Counsel argued in support of the motion for preliminary approval of the proposed settlement. Toward the conclusion of the hearing, the parties advised the Court of the possibility they would seek approval of one or more amendments to the Settlement Agreement and conforming amendments to the notice to be given to class members. The Court preliminarily approved the proposed settlement, provisionally certified the class, appointed Girard Gibbs and the Kamber Firm to serve as Class Counsel, and directed that notice be given to the class.

27. On January 31, 2006, Class Counsel and Sony BMG filed a stipulation and supporting memorandum to modify the Settlement Agreement and forms of notice. The proposed modifications were as follows: (a) Sony BMG's agreement to publish the Summary Settlement Notice in English and Spanish-language publications beyond those specified in the Settlement Agreement; (b) the provision of a cash payment to Settlement Class Members who make claims but do not take advantage of the right to download music; (c) Sony BMG's agreement to provide an alternate benefit of equivalent or greater value to any Settlement Class Member for whom Sony BMG is unable to provide a replacement CD or album download within a reasonable time; and (d) a rolling extension of the deadline by which individuals who become Settlement Class Members after May 1, 2006 may opt-out of the settlement. On February 1, 2006, the Court entered an Order granting the stipulation.

28. On February 8, 2006, the parties and the *Ricciuti* plaintiffs filed a stipulation which details the “alternate benefit” provision of the Settlement Agreement with greater specificity. On February 15, 2006, the Court entered an Order granting the stipulation.

D. The Parties Seek Transfer Of All Federal Actions To This Court

29. This litigation has been subject to two motions for consolidation and transfer before the Judicial Panel on Multidistrict Litigation (“the Panel”). On December 13, 2005, the *Ricciuti* plaintiffs’ motion before the Panel to consolidate all proceedings in the United States District Court for the Northern District of California was served on Class Counsel, shortly after counsel for the *Ricciuti* plaintiffs received Class Counsel’s draft of an agreement providing for settlement of the litigation in the Southern District of New York. Counsel for the *Ricciuti* plaintiffs also had filed an action entitled *Melcon v. Sony BMG Music Entertainment, et al.*, Case No. C-05-5084-MHP, in the United States District Court for the Northern District of California.

30. On December 23, 2005, Sony BMG filed a second motion for consolidation and transfer before the Panel. Sony BMG asked that the Panel consolidate and transfer all actions to the United States District Court for the Southern District of New York.

31. On January 3, 2006, the *Ricciuti* plaintiffs amended their motion for consolidation and transfer to ask that the Panel transfer all cases to the United States District Court for the Southern District of New York.

32. At the January 6, 2006 preliminary approval hearing, the Court advised the parties that it was amenable to accepting transfer of all related cases pending before the Panel.

33. On January 9, 2006, Class Counsel worked with counsel for Sony BMG and other plaintiffs’ counsel to coordinate the Multidistrict Litigation briefing.

34. On January 17, 2006, Class Counsel filed a memorandum on behalf of the Settlement Class in support of the motions to transfer the actions to the United States District

Court for the Southern District of New York. No opposition to the motions for consolidation and transfer of the actions to this Court was filed. As of the date of this affidavit, the Panel has yet to rule on the pending motions.

E. Notice Is Disseminated In Accordance With The Hearing Order

35. Counsel for Sony BMG advised Class Counsel that on or about February 15, 2006, the long form settlement notice approved by the Court was sent by email to 1.1 million Settlement Class Members who had given their email addresses to Sony BMG or were subscribers of artist fan email lists known to Sony BMG. In consultation with Class Counsel, the settlement notice was sent by email to an additional 1.2 million Settlement Class Members on or about March 2, 2006.

36. Sony BMG retained Rust Consulting as the Claims Administrator. Rust Consulting has attested that beginning on or about February 10, 2006, the Summary Settlement Notice was published in *People*, *Rolling Stone*, *USA Today*, the *Atlanta Journal Constitution*, the *Austin American Statesman*, the *Chicago Tribune*, the *Dallas Morning News*, the *Los Angeles Times*, the *Miami Herald*, the *New York Daily News*, the *New York Post* and the *San Francisco Chronicle*. We are also informed that a Spanish-language version of the Summary Settlement Notice was published in *El Nuevo Herald* (Florida), *Hoy* (New York), *La Opinion* (California), *Rumbo* (Texas) and *La Subasta Houston* (Texas).

37. Rust Consulting, in consultation with Class Counsel and counsel for Sony BMG, created an official settlement administration website, accessible at www.sonybmgcdtechsettlement.com (the “Website”). Between February 1, 2006 and February 15, 2006, Class Counsel conducted tests of and made recommendations regarding the Website’s interactive capabilities to ensure its accessibility and functionality. These recommendations were incorporated in the Website that went “live” and became available to process the claims of

Settlement Class Members on or about February 15, 2006. The Website includes, among other things, information about the class action settlement, official settlement documents, an on-line claims process, and downloadable utilities to update and uninstall Sony BMG's DRM software.

38. We are informed and believe that on or about February 15, 2006, Sony BMG: (a) placed internet advertisements for the Website with popular search engines, such as Google™ and Yahoo!™; (b) made written communications to Sony BMG-authorized music distributors referring them and their customers to the settlement and the XCP recall campaign in particular; and (c) caused the interactive "banner advertising" features of its DRM CDs to inform Settlement Class Members about the settlement and to provide Settlement Class Members with a hyperlink to the Website. Class Counsel had worked with Sony BMG to create these banner advertisements in a manner that is effective and will provide notice to Settlement Class Members.

39. On or about February 16, 2006, Class Counsel and Sony BMG issued press releases regarding the settlement in accordance with the terms of the Settlement Agreement. On or about March 8, 2006, Class Counsel sent via email a copy of a press release announcing the settlement to a list of more than 200 of Sony BMG's music retailers and distributors, including Tower Records, Wal-Mart, Sam's Club, Best Buy, Amazon.com, Musicland and Circuit City, for redistribution to their personnel, affiliates and customers.

40. All of these forms of notice were provided to Settlement Class Members in accordance with the Hearing Order entered January 6, 2006.

II. THE REACTION TO THE SETTLEMENT

41. The claims process began on or about February 15, 2006 when the Website went "live." Under the proposed settlement, class member benefits were available as of February 15, 2006 and will continue to be available until at least December 31, 2006. The deadline for

submitting comments regarding the proposed settlement is May 1, 2006 – nearly one month after the date these motions are filed with the Court. Based on our experience with class action settlements, we anticipate that the parties will receive additional comments from Settlement Class Members within a few days of the Court-ordered deadline.

42. Mark Russinovich, Plaintiffs’ technical expert, states that the settlement provides significant relief for those affected consumers who purchased, received, or used one or more of the 22 million XCP or MediaMax CDs manufactured and distributed in the United States to date. (Russinovich Aff., ¶ 34.) Mr. Russinovich confirms that the settlement’s required injunctive relief and “best practice” provisions for future DRM software use provide additional, significant benefit for millions of consumers. (Russinovich Aff., ¶¶ 36-38.) In Mr. Russinovich’s opinion, based on his experience as a computer software and computer security analyst, the settlement “is the best case outcome for affected consumers” under the circumstances. (Russinovich Aff., ¶ 38.)

43. The Class Representatives echo Mr. Russinovich’s views. According to Dora Rivas, the proposed settlement meets all of the objectives of this litigation. She believes the settlement is in the best interests of the class members. (Rivas Aff., ¶ 17.) Ori Edelstein states that “the proposed Settlement achieves all of the major goals of the litigation and compares favorably with the results the Class could expect to achieve after a complex and costly trial.” (Edelstein Decl., ¶ 10.) Alexander Guevara attests: “[T]he proposed Settlement permits an immediate resolution of the problems resulting from the installation of DRM software on Sony BMG CDs without the risk, delay, and expense of trial.” (Guevara Decl., ¶ 11.)

44. So far, the public response to the settlement has also been favorable. The settlement has received considerable media attention and is the subject of spirited discussion on the internet. The commentary in internet discussions about the settlement runs the gamut – from

laudatory comments about the breadth of relief available for consumers, to generalized condemnations of DRM software, Sony BMG's business practices, class action lawyers and the class representatives. We found no indication from our survey of public reaction to the settlement that consumers were having difficulty understanding the terms of the settlement, exchanging their CDs, securing downloads or otherwise availing themselves of the relief afforded by the settlement. Our legal assistants, who have responded to calls and emails from class members, also find no indication of dissatisfaction on the part of consumers with the settlement or logistics problems.

III. THE COMPLEXITIES AND RISKS ASSOCIATED WITH THIS LITIGATION

45. This settlement is the product of adversarial negotiations conducted at arm's length by experienced counsel for plaintiffs and defendants, with a firm understanding of the strengths and weaknesses of their claims and defenses. Class Counsel, who have considerable experience in complex litigation and class actions, are well-qualified to evaluate the complexities and risks associated with this litigation.

46. Girard Gibbs has considerable experience in consumer protection actions involving emerging technologies and telecommunications. Some of these cases include *In re MCI Non-Subscriber Rates Litigation*, MDL No. 1275 (S.D. Ill.) (co-lead counsel) (\$88 million settlement); *Allen Lund Company v. Business Discount Plan*, Case No. CV-98-1500-DDP (C.D. Cal.) (lead) (full refund of overcharges for "slamming" small business long distance service); *In re PayPal Litigation*, Case No. 02-01227 JF PVT (N.D. Cal.) (co-lead counsel) (aggregate \$14 million settlement and substantial injunctive relief for alleged violations of Electronic Fund Transfer Act); *In re iPod Cases*, Case No. 436509 (J.C.C.P. No. 4355) (San Mateo Superior Court) (co-lead counsel) (injunctive relief and \$14.8 million in cash, store credits and services); *In re Looksmart Litigation*, Case No. CGC-02-407778 (San Francisco Superior Court) (co-lead

counsel) (\$15 million in cash and services); *Tompkins v. Proteva, Inc., et al.*, Case No. 99 CH 12012 (Circuit Court of Cook County) (co-counsel) (\$5.1 million cash fund); *Steff v. United Online, et al.*, Case No. BC 265953 (Los Angeles Superior Court) (lead counsel) (injunctive relief and cash payments).

47. Scott Kamber and his firm are also experienced in tech-related class actions. These actions include: *In re WebTV Networks Litig.*, Case No. CV 793511 (Santa Clara Sup. Ct.) (consumer class action for false advertising); *Blackford v. At Home Corp. et al.*, Case No. 416131 (San Mateo Sup. Ct.) (consumer class action relating to internet connectivity); *Wormley v. GeoCities*, Case No. 196032 (Los Angeles Sup. Ct.) (consumer class action for privacy violations that is believed to be the first internet privacy case to recover a benefit for impacted class members); *Tepper v. AT&T et al.*, Case No. 99/18034 (New York Supreme Ct., Westchester County) (consumer class action regarding use of improper boosting of signal strength for cellular phones); *Stassi et al. v. Loch Harris et al.*, No. GN 200180 (Dist. Ct., 201st Jud. Dist., Travis County, Tex.) (derivative action on behalf of technology development company that successfully obtained dissolution of corporation and distribution of assets to shareholders); *In re Command Systems*, Case No. 98-cv-3279 (AKH) (SDNY) (securities class action against technology company in which participating shareholders recovered over 80% of their losses).

48. The Sony DRM litigation presented various legal and technological challenges. Class Counsel are unaware of any prior litigation brought on behalf of consumers arising out of the unauthorized installation of a rootkit. Understanding this exploit and the vulnerability it created for consumers was crucial to the case. The release by Sony BMG of utilities to patch or update their content protection software required frequent technical consultation. (Russinovich Aff., ¶¶ 24-29.) To negotiate for appropriate remedies, Class Counsel had to develop a thorough

understanding of the technologies implicated and their interaction with personal computer systems maintained by consumers.

49. Negotiations over each of the benefits available to consumers as a result of the settlement were complex. Each of these issues required an adequate understanding of the technology involved and the impact of the software on consumers' computer systems. Seemingly straight-forward matters, such as the best practicable form of notice, were complicated by the need to determine the extent to which the "banner advertisement" technology in the CDs themselves could be used to provide information about the settlement directly to Settlement Class Members.

50. Further complicating the litigation was the fact that the attorneys general of several states and the Federal Trade Commission were pursuing separate investigations into Sony BMG's use of DRM software. An action by the Attorney General of the State of Texas against Sony BMG remains pending. To account for these government inquiries, Class Counsel negotiated a "most favored nations" provision of the settlement requiring Sony BMG to augment benefits to all Settlement Class Members if Defendants provide additional benefits to a subset of them through the settlement of a government inquiry.

51. The subject matter of the litigation posed additional complexity and risks. First, the restrictions, limitations, and computer security issues associated with Sony BMG's DRM software, while unknown to consumers until October 2005, posed an immediate harm to consumers. This harm included installation of a hidden "rootkit" on consumers' computers, the creation of attendant security vulnerabilities, the potential for collection of private data without consumers' knowledge, and other concerns. This harm had to be addressed without delay through injunctive relief secured voluntarily or through litigation. Adoption of a "business as usual" approach to the litigation would have left consumers vulnerable to computer hackers and

third parties seeking to exploit the security vulnerabilities associated with the Sony BMG XCP and MediaMax DRM technologies.

52. Second, this case involved the interaction of software with millions of consumers' computers, presenting vexing problems of proof, as the dangers posed by the XCP and MediaMax software are inherently transitory. The likelihood that Sony BMG or a software security company would develop and release on a widespread basis effective utilities to patch, update or uninstall Sony BMG's content protection software created a risk that Plaintiffs would not have been able to establish damages. At some point, the advent of new software and computer systems would have undermined any effective remedy that could have been achieved through litigation.

53. Third, there is a significant risk that the diversity of computer systems and software configurations and evidentiary obstacles would have caused individual issues to predominate in the litigation, thus precluding class certification.

54. We believe the risks associated with pursuing this litigation, and the attendant delay and expense, considered in relation to the benefits available through settlement, make settlement the only responsible choice. There is little reason to think that contentious motion practice and discovery battles would yield a more favorable result. The prompt resolution of this case on the favorable terms achieved through the settlement is an outstanding result in light of the complexities and risks of the litigation.

IV. CLASS COUNSEL AND SONY BMG HAVE AGREED TO A REASONABLE FEE PAYMENT THAT WILL NOT IN ANY WAY AFFECT THE BENEFITS AVAILABLE FOR SETTLEMENT CLASS MEMBERS

A. The Fee Agreement Between Class Counsel and Sony BMG

55. To ensure that counsel would retain their focus on finalizing and implementing the settlement, the parties agreed to defer fee negotiations until after the Court granted preliminary approval.

56. As of the signing of the Settlement Agreement, the parties agreed only that Plaintiffs' counsel were entitled to a reasonable fee to be paid by Defendants, that the fee award would not affect the benefits to Settlement Class Members, and that Class Counsel and Sony BMG would attempt to reach agreement on a reasonable fee. The Settlement Agreement memorializes these terms as follows:

A. As of the date this Settlement Agreement was executed, the Parties have not substantially discussed either the amount of attorneys' fees or costs that Plaintiffs' counsel may ask the Court to award them. It is, however, the understanding of the Parties that Plaintiffs' counsel will apply for an award of attorneys' fees and reimbursable expenses in accordance with legal principles, that any fees and costs applied for and ultimately awarded by the Court will be paid by Defendants, and that Defendants' payment of Plaintiffs' attorneys' fees and reimbursable expenses will not affect the Settlement Benefits provided to Settlement Class Members in any way.

B. The Parties will seek to reach agreement on the amount of attorneys' fees and reimbursable expenses to be applied for. If the Parties reach agreement on the subject of fees and/or costs to be awarded to Plaintiffs' counsel prior to the sending of notice to Settlement Class Members, the Full Settlement Notice will reflect that agreement.

(Settlement Agreement, IX.A-B.)

57. Class Counsel and Sony BMG have entered into an agreement concerning the payment of attorneys' fees and litigation expenses ("Attorneys' Fee Agreement"). A true and correct copy of that agreement is attached hereto as Exhibit A. Under the Attorneys' Fee

Agreement, Sony BMG agrees not to oppose an application by Class Counsel and the firms identified Class Counsel's fee application for attorneys' fees of \$2,300,000 and reimbursement of expenses of up to \$75,000, subject to additional terms described below. (Exh. A, ¶ II.A.) In accordance with the Court's CMO No. 1 and the Settlement Agreement, Class Counsel undertook to negotiate a single, agreed fee payment that would subsequently be allocated among participating plaintiffs' counsel in accordance with their respective contributions. See Manual For Complex Litigation, Fourth, § 40.23 (2004) ("In cases in which the court may award fees, time and expense records should ordinarily be submitted through lead counsel, if one has been appointed, in order to assist lead counsel in monitoring the activities of co-counsel and in preparing a single, consolidated report for filing with the court.").

58. Class Counsel requested time and expense information from all plaintiffs' counsel, and received in return sworn declarations from virtually all participating counsel. The declarations of plaintiffs' counsel who submitted their time and expenses to Class Counsel ("Fee Declarations") are being filed with the Court in the accompanying Appendix In Support Of Class Counsel's Application For Award Of Attorneys' Fees, Reimbursement Of Expenses, And Incentive Awards To Named Plaintiffs.

59. On March 30, 2006, Class Counsel were notified by one of the counsel for plaintiffs in *Ricciuti*, *Melcon* and *Hull*, who are represented by the firms of Lerach Coughlin, Stoia, Geller, Rudman & Robbins LLP, Green Welling LLP, Lawrence E. Feldman & Associates, and the Electronic Frontier Foundation ("the *Ricciuti* Group"), that the *Ricciuti* Group's counsel were refusing to submit time and expense data to Class Counsel and were intending instead to file a separate application for attorneys' fees. A true and correct copy of the March 30, 2006 letter from Jeff Friedman to Daniel C. Girard is attached hereto as Exhibit B.

60. As represented in the Attorneys' Fee Agreement, "Sony BMG believes that the time expended and costs incurred by Plaintiffs' Class Counsel, and/or at the direction of Plaintiffs' Class Counsel, all of which is included in [Class Counsel's fee request], are the only time and expenses for counsel for Plaintiffs or Settlement Class Members compensable by SONY BMG in this matter." (Exh. A, ¶ II.B.) Under the terms of the Attorneys' Fee Agreement, Sony BMG reserves the right to object to any applications for fees and/or expenses by any other counsel (including the *Ricciuti* Group), if the amount requested exceeds \$250,000, individually or collectively. Sony BMG represents in the agreement that "based on the information that it has, [Sony BMG] expects to object to any such request(s) to the extent that it or they individually or collectively exceed US\$400,000." (*Id.*)

61. Under the Attorneys' Fee Agreement, Sony BMG and Class Counsel have agreed that if the Court awards more than \$400,000 to the *Ricciuti* Group or any other counsel filing separate fee applications, individually or collectively, then Class Counsel's agreed-upon fee award would be reduced on a dollar-for-dollar basis to limit Sony BMG's total fee payment to \$2,775,000. *Id.*, ¶ II.F. Class Counsel will therefore oppose any application by the *Ricciuti* Group's counsel and other plaintiffs' counsel to the extent they collectively seek an amount in excess of \$400,000.

B. The Requested Fees, Expenses And Incentive Awards Are Reasonable

1. Attorneys' Fees

62. Class Counsel and Plaintiffs' Executive Committee devoted more than 2,751 professionals' hours to the case for a total lodestar of \$1,186,504. The services provided by these firms included: conducting a pre-filing investigation and analysis; retaining experts and identifying and interviewing witnesses; testing the application of the software products at issue to personal computers; drafting the initial complaints and Consolidated Amended Class Action

Complaint; negotiating the Settlement Agreement and all amendments with counsel for Defendants; drafting all settlement documents; drafting all papers in support of preliminary and final approval of the settlement; communicating with the Court; appearing at the preliminary approval at the January 6, 2006 hearing; coordinating plaintiffs' counsel's response to the motions for consolidation and transfer before the Panel, and drafting papers in support of the same; drafting the confidentiality agreement governing the exchange of information in confirmatory discovery; preparing a confirmatory discovery plan; negotiating the scope of confirmatory discovery with counsel for Defendants; reviewing and analyzing documents produced as part of confirmatory discovery; working with counsel for Defendants and the Claims Administrator to implement notice and the claims process; communicating with Settlement Class Members about the terms of the settlement and claims process; and monitoring the claims process.

63. In addition to the time recorded by Class Counsel and the Executive Committee who provided services at the direction of Class Counsel, other Plaintiffs' counsel report more than 1,416 additional hours of professional time spent on the litigation. (As much of the work done by other Plaintiffs' counsel involved research not undertaken at the request of Class Counsel, such work will be compensated based on Class Counsel's evaluation of the extent to which the work involved conferred a benefit on the Settlement Class or otherwise materially advanced the objectives of the litigation.)

64. All counsel attest that their lodestar is calculated from contemporaneous, daily time records, which Plaintiffs' counsel regularly prepared and maintained in the ordinary course of business. Plaintiffs' counsel's rates are their actual current rates. A true and correct summary of the hours, lodestar and expenses of Plaintiffs' counsel is attached hereto as Exhibit C.

65. Considering only the time recorded by Class Counsel and the Executive Committee, the agreed fee of \$2.3 million would result in a multiplier of less than two. Thus, there can be no suggestion that the proposed fee agreement, which is the product of arm's-length negotiations, will confer a windfall of Plaintiffs' counsel.

2. Litigation Expenses

66. Plaintiffs' counsel report that they have reasonably and necessarily incurred \$69,788 in unreimbursed expenses in the prosecution of the litigation. See Exh. C. As described in the Fee Declarations, these expenses include: court fees; consultant fees; photocopying; telephone; overnight delivery services; legal research services including Lexis-Nexis and Westlaw; postage; messenger services; travel; and meals.

67. As described in the Fee Declarations, the expenses incurred in this case are reflected in the books and records of each of Plaintiffs' counsel's firms. These books and records are prepared from expense vouchers, check records and other contemporaneously-recorded billing records. They are an accurate record of expenses incurred in this litigation.

3. Incentive Awards

68. Class Counsel is requesting incentive awards to the named Plaintiffs and others identified in Exhibit D attached hereto, in the amount of \$1,000 each. Per the Settlement Agreement, Defendants have agreed not to oppose these awards and will pay them, if approved by the Court.

69. The incentive awards requested are justified in light of the initiative Plaintiffs took in coming forward to represent the class, are reasonable in consideration of the overall benefit conferred on the Settlement Class, and should be approved.

C. Fee And Expense Figures Of Class Counsel Girard Gibbs

70. Based on the records of Girard Gibbs, the firm has spent at least 1,493 hours on this matter, representing a lodestar at their current hourly rates of \$602,413. In addition, to date in this case Girard Gibbs has incurred \$27,928 in expenses. Girard Gibbs's expense detail is set forth in Exhibit E, attached hereto. The expenses Girard Gibbs incurred are reflected in our books and records which were prepared from expense vouchers, check records and other contemporaneously-recorded billing records. They are an accurate record of expenses the firm incurred in this litigation.

71. The hourly rates for the timekeepers included in the lodestar figure for Girard Gibbs are as follows:

<u>Attorneys</u>	<u>Hours</u>	<u>Rate</u>
Daniel C. Girard (P)	281.20	\$580.00
Eric H. Gibbs (P)	56.60	\$480.00
A.J. De Bartolomeo (P)	24.90	\$460.00
Jonathan K. Levine (P)	18.20	\$450.00
Elizabeth C. Pritzker (P)	283.90	\$450.00
Aaron M. Sheanin (A)	362.10	\$390.00
Dylan S. Hughes (A)	206.40	\$340.00
Lindy K. Lucero (A)	109.80	\$300.00
 <u>Support Staff</u>	 <u>Hours</u>	 <u>Rate</u>
Antonia Vincente	42.00	\$120.00
Adam M. Conley	64.00	\$140.00
Andrea Winternitz	42.51	\$140.00

72. Although most of Girard Gibbs' practice consists of representing consumers and investors in class action and contingent-fee litigation, Girard Gibbs also provides services on an hourly-rate basis. A list of representative clients includes NuSkin International, Inc., a New York Stock Exchange company; Kennetech Corporation; the State of Wisconsin Investment Board; the California Public Employees' Retirement System; the California State Teachers' Retirement System; the Kansas Public Employees' Retirement System; Certain Underwriters at

Lloyd's, an insurance syndicate; and various professional services firms and individuals, including an accounting firms, the former chief executive officer of a publicly traded company and the former managing director and officer of a privately held investment banking firm. The hourly rates set forth for Girard Gibbs's attorneys and paralegals are the firm's current, customary rates for non-contingent matters.

73. The hourly rates charged by Girard Gibbs have been approved as reasonable by several federal and state courts over the past four years. Courts have granted applications for fees based on the lodestar-multiplier method and for reimbursement of costs by Girard Gibbs in the following recent matters: May 2002: *Mager v. First Bank of Marin*, Case No. CV-S-00-1524-PMP (D. Nev.); February 2003: *Mitchell v. American Fair Credit Ass'n.*, Case No. 785811-2 (Cal. Super. Ct. Alameda County); February 2003: *Mitchell v. Bankfirst*, Case No. C-97-1421-MMC (N.D. Cal.); May 2003: *Mackhouse v. Good Guys*, Case No. 2002-049656 (Cal. Super. Ct. Alameda County); September 2003: *Steff v. United Online*, Case No. BC 265953 (Cal. Super. Ct. Los Angeles County); October 2003: *In re Looksmart Litigation*, Case No. 02-407778 (Cal. Super. Ct. San Francisco County); September 2004: *Cromwell v. Sprint Communications*, Case No. CV 99-2125 GTV (D. Kan.); March 2005: *Landreneau v. Fleet Financial*, Case No. 01-26-B-MI (M.D. La.); September 2005: *In re iPod Cases*, Case No. JCCP 4355 (Cal. Sup. Ct. San Mateo County); December 2005: *Puckett v. Pacific Bell Internet Services*, Case No. 1-04-CV-019724 (Cal. Super. Ct. Santa Clara County); March 2006: *Lehman v. Blue Shield of California*, Case No. CGC-03-419349 (Cal. Super. Ct. San Francisco County).

74. Attached hereto as Exhibit F is a true and correct copy of the Girard Gibbs firm resume.

D. Fees And Expense Figures Of Class Counsel Kamber & Associates

75. The Kamber Firm, including attorneys and paralegals, has spent at least 952 hours in connection with the Sony BMG Litigation. At customary hourly rates, this time reflects a lodestar of \$463,969. In addition, the Kamber Firm has incurred \$23,730 in expenses to date in this case. The time reported by the Kamber Firm includes time recorded by counsel associated with the firm for their expertise and experience in technology-related class actions. These attorneys either practice by themselves or are affiliated with law firms who are not otherwise involved in this litigation and who are not otherwise represented in the declarations included with this application for payment of attorneys' fees and expenses. Their inclusion in this declaration is consistent with the basis on which the Kamber Firm retained their assistance. The Kamber Firm assigned and supervised all tasks performed by such associated counsel and the billing rates applied to such counsel are consistent with the rates charged by them in the ordinary course of their own practice.

76. The hourly rates for the timekeepers included in the lodestar figure for the Kamber Firm are as follows:

<u>Attorneys</u>	<u>Hours</u>	<u>Rate</u>
S. Kamber	858.75	\$500.00
C. Cantor	5.70	\$350.00
C. Sandberg	22.75	\$450.00
E. Odette	25.00	\$275.00
J. Halebian	5.75	\$610.00
R. Shelquist	20.25	\$475.00
<u>Support Staff</u>		<u>Rate</u>
R. Whitener	14.75	\$160.00

77. The hourly rates set forth above are the firm's current, customary rates for contingent and non-contingent matters alike.

78. In the compilation of the expense figures, I directed that the figures reported for telephone, WestLaw/LEXIS, outside photocopying, outside facsimile, and messenger charges reflect amounts that the Kamber Firm actually paid, with no mark-up, and that reimbursement sought for airfare be limited to the coach rate. A true and correct photocopy of the Kamber & Associates firm resume is attached hereto as Exhibit G.

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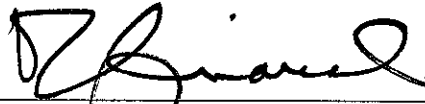
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V. CONCLUSION

For the reasons set forth above and in the accompanying memoranda in support of plaintiffs' motion for final approval of the proposed Settlement and Class Counsel's motion for attorneys' fees, reimbursement of expenses, and incentive awards, we respectfully submit that: (1) the settlement is fair, reasonable and adequate and should be approved; and (2) the application for an award of attorneys' fees, reimbursement of expenses, and incentive awards is also fair, reasonable and adequate, and should be granted.

We declare under penalty of perjury under the laws of the United States of America and the States of California and New York that the foregoing is true and correct.

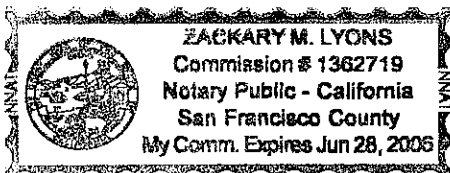


Daniel C. Girard

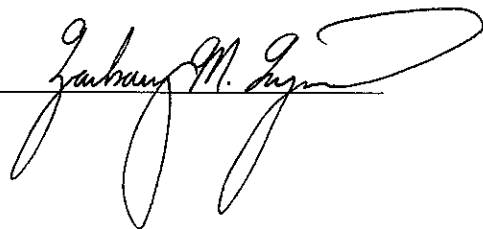
Scott Kamber

State of California)
County of San Francisco)

Subscribed and sworn to (or affirmed) before me on this 6th day of April, 2006 by Daniel C. Girard, personally known to me to be the person who appeared before me.



Signature _____



V. CONCLUSION

For the reasons set forth above and in the accompanying memoranda in support of plaintiffs' motion for final approval of the proposed Settlement and Class Counsel's motion for attorneys' fees, reimbursement of expenses, and incentive awards, we respectfully submit that: (1) the settlement is fair, reasonable and adequate and should be approved; and (2) the motion for an award of attorneys' fees, reimbursement of expenses, and incentive awards is also fair, reasonable and adequate, and should be granted.

We declare under penalty of perjury under the laws of the United States of America and the States of California and New York that the foregoing is true and correct.

Daniel C. Girard

Scott Kamber

STATE OF New Jersey)
COUNTY OF Essex) :ss:

Subscribed and sworn to me this
6th day of April 2006.

Notary Public

Anne Baglivo Fitzpatrick
Attorney-at-Law of
the State of New Jersey

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X
:
:
In re SONY BMG CD Technologies Litigation :
:
:
----- X

No 1:05-cv-09575 (NRB)

ATTORNEYS' FEES AGREEMENT

WHEREAS, SONY BMG Music Entertainment ("SONY BMG") and Plaintiffs entered into a Settlement Agreement on December 28, 2005;

WHEREAS, the Settlement Agreement was preliminarily approved by Judge Naomi Reice Buchwald on January 6, 2006;

WHEREAS, Article IX of the Settlement Agreement contemplates that an application will be made by Plaintiffs for attorneys' fees and reimbursable expenses and that the parties would seek to reach agreement on the amount of such application;

WHEREAS, Plaintiffs' Class Counsel wish to apply for attorneys' fees on behalf of themselves and all other Plaintiffs' counsel in the litigation who submitted summaries of time incurred and expenses advanced to Plaintiffs' Class Counsel; and

WHEREAS all Plaintiffs' counsel who have done work at the direction of Plaintiffs' Class Counsel have submitted summaries of time incurred and expenses advanced to Plaintiffs' Class Counsel;

NOW, THEREFORE, BE IT AGREED by and between the parties to this Attorneys' Fees Agreement, that:

I. DEFINITIONS

A. Capitalized terms not otherwise defined in this Attorneys' Fees Agreement shall have the same meaning as set out in the Settlement Agreement.

B. "Attorneys' Fees and Expenses Application" means the motion for fees and expenses to be made by Plaintiffs' Class Counsel.

C. "Attorneys' Fees and Expenses Award" means the amounts awarded by the Court to compensate Plaintiffs' Class Counsel, and Plaintiffs' counsel working at Plaintiffs' Class Counsel's direction, for their fees and expenses in connection with investigating, prosecuting, and/or settling the Action.

II. MOTION FOR ATTORNEYS' FEES AND EXPENSES AWARD

A. Plaintiffs' Class Counsel will file the Attorneys' Fees and Expenses Application seeking an Attorneys' Fees and Expenses Award in an amount not to exceed US\$2,300,000 (subject to paragraph II.F., below) and expenses in an amount not to exceed \$75,000 ("Maximum Class Counsel Request"). SONY BMG shall inform the Court that it does not oppose an application by Plaintiffs' Class Counsel seeking an Attorneys' Fees and Expenses Award up to the Maximum Class Counsel Request.

B. SONY BMG believes that the time expended and costs incurred by Plaintiffs' Class Counsel, and/or at the direction of Plaintiffs' Class Counsel, all of which is included in the Maximum Class Counsel Request, are the only time and expenses for counsel for Plaintiffs or Settlement Class Members compensable by SONY BMG in this matter. SONY BMG further believes that, to the extent any counsel for plaintiffs, Settlement Class Members or objectors, other than Plaintiffs' Class Counsel or those working at the direction

of Plaintiffs' Class Counsel, have expended time or incurred expenses in this matter, the aggregate value of such time and expenses is considerably less than \$400,000.

C. Notwithstanding SONY BMG's belief, as set out in Paragraph II.B, above, SONY BMG (1) will not object to any requests for award of attorneys' fees and reimbursable expenses that are filed by any counsel for any plaintiff, Settlement Class Member or objector, other than Plaintiffs' Class Counsel, if such request(s) individually or collectively do not exceed the sum of US\$250,000; (2) fully reserves all of its rights to object to any such requests to the extent that it or they individually or collectively exceed US\$250,000; and, (3) based on the information that it has, expects that it will object to any such request(s) to the extent that it or they individually or collectively exceed US\$400,000.

D. The parties did not begin discussions on the subject of the payment of fees and reimbursement of expenses until after they had reached preliminary agreement on all material terms of the Settlement Agreement.

E. Neither SONY BMG nor any other Released Party shall be liable or obligated to pay any fees, expenses, costs or disbursements to, or incur any expense on behalf of, any person or entity (including, without limitation, Plaintiffs' Class Counsel), directly or indirectly, in connection with the Action or the Settlement Agreement, except as expressly provided for in this Attorneys' Fee Agreement.

F. In the event that, notwithstanding any objections submitted to the Court in accordance with Paragraph II.C, above, the Court directs SONY BMG to pay any amounts to counsel for any plaintiff, Settlement Class Member or objector, other than Plaintiffs' Class Counsel, which amounts collectively exceed US\$400,000, then Plaintiffs' Class Counsel

agrees that the Maximum Class Counsel Request, and the amount SONY BMG is obligated to pay Plaintiffs' Class Counsel, shall be reduced dollar-for-dollar, such that the total amount of plaintiffs' attorneys' fees and expenses paid or reimbursed by SONY BMG for or in connection with the Action pursuant to the Attorneys' Fees and Expenses Award, or otherwise, shall not exceed the sum of US\$2,775,000. SONY BMG acknowledges that this provision makes Plaintiffs' Class Counsel a real party in interest with respect to applications for fees made by other counsel, the amounts of which collectively exceed \$400,000.

G. SONY BMG will pay the Attorneys' Fees and Expenses Award to Plaintiffs' Class Counsel (or to such other party or parties as Plaintiffs' Class Counsel directs or as otherwise ordered by the Court) within five business days after the Effective Date or at such earlier time after the entry of the Final Judgment as SONY BMG and Plaintiffs' Class Counsel may agree (assuming that, in such agreement, Plaintiffs' Class Counsel shall furnish such assurance of repayment of the Attorneys' Fees and Expenses Award as SONY BMG shall deem satisfactory).

H. The parties agree that Plaintiffs' Class Counsel will disclose the material terms of this agreement, including the provisions of paragraph II.F., in the Attorneys' Fees and Expenses Application.

III. MISCELLANEOUS PROVISIONS

A. If, pursuant to the terms of the Settlement Agreement, the Settlement Agreement is terminated or SONY BMG withdraws from the Settlement Agreement, then this Attorneys' Fees Agreement shall terminate as of the effective date of such termination or withdrawal.

B. If this Attorneys' Fees Agreement is terminated, then its terms and provisions shall, at that time, have no further force and effect with respect to the parties and, to the extent permitted by law, shall not be used in any action or proceeding for any purpose.

C. The undersigned signatories represent that they are fully authorized to execute and enter into the terms and conditions of this Attorneys' Fees Agreement on behalf of the respective persons or entities for whom they have signed this Attorneys' Fees Agreement.

D. This Attorneys' Fees Agreement contains the entire agreement among the parties hereto and supersedes any prior agreements or understandings between them. All terms of this Attorneys' Fees Agreement are contractual and not mere recitals and shall be construed as if drafted by all parties. All provisions of this Attorneys' Fees Agreement are and shall be binding upon each of the parties hereto, their agents, attorneys, employees, successors and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of the parties hereto.

E. This Attorneys' Fees Agreement may be amended or modified only by a written instrument signed by or on behalf of all parties hereto or their successors-in-interest.

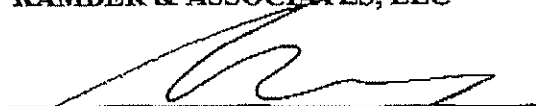
F. This Attorneys' Fees Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Attorneys' Fees Agreement shall exchange among themselves copies of the original signed counterparts, and a complete set of original signed counterparts shall be filed with the Court.

G. The parties agree that the Court shall have exclusive and continuing jurisdiction over the parties for all purposes relating to the implementation, effectuation, interpretation, administration, monitoring and enforcement of this Attorneys' Fees Agreement and all provisions thereof with respect to all parties hereto and all beneficiaries hereof, including all Plaintiffs, Plaintiffs' Class Counsel, Defendants, Settlement Class Members and Released Parties. Any and all disputes, requests or petitions regarding or arising out of the enforcement, construction, administration or interpretation of this Attorneys' Fees Agreement must be made, if at all, to the Court by motion.

H. The terms and conditions of this Attorneys' Fees Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of New York, without regard to any applicable choice of law or conflicts rules.

DATED: April 5, 2006

KAMBER & ASSOCIATES, LLC



Scott A. Kamber, Esq. (SK-5794)
19 Fulton Street, Suite 400
New York, New York 10038
(212) 571-2000

**GIRARD, GIBBS & DE BARTOLOMEO
LLP**



Daniel C. Girard, Esq.
Elizabeth C. Pritzker, Esq.
601 California Street, Suite 1400
San Francisco, California 94108
(415) 981-4800

Plaintiffs' Class Counsel

SONY BMG MUSIC ENTERTAINMENT

Daniel M. Mandil, Esq.
550 Madison Avenue
New York, New York 10022
(212) 833-8000

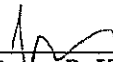
SONY BMG MUSIC ENTERTAINMENT



Daniel M. Mandil, Esq., Executive Vice
President, General Counsel
550 Madison Avenue
New York, New York 10022
(212) 833-8000

*Defendant SONY BMG Music
Entertainment*

DEBEVOISE & PLIMPTON LLP



Bruce P. Keller, Esq.
Jeffrey S. Jacobson, Esq.
919 Third Avenue
New York, New York 10022
(212) 909-6000

*Attorneys for Defendant
SONY BMG Music Entertainment*

EXHIBIT B



SAN DIEGO • SAN FRANCISCO
LOS ANGELES • NEW YORK • BOCA RATON
WASHINGTON, DC • HOUSTON
PHILADELPHIA • SEATTLE

Jeff Friedman
Jfriedman@lerachlaw.com

March 30, 2006

VIA FACSIMILE
415-981-4846

Dan Girard
Girard Gibbs & De Bartolomeo LLP
601 California Street, Suite 1400
San Francisco, CA 94108-2805

Re: *In re Sony BMG CD Technologies Litigation*
Case No. 1:05-cv-09575 (NRB)

Dear Dan:

Consistent with our ongoing discussions to date, the Rucciuti class representatives' counsel presently intend to file a separate application for attorneys' fees. Accordingly, we will not be submitting time records to you for submission on our behalf.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jeff Friedman".

Jeff Friedman

JDF:mp
TaCasesSP\Sony NY\Corres\Dan Girard 3-31-06 JDF.doc



SAN DIEGO • SAN FRANCISCO
LOS ANGELES • NEW YORK • BOCA RATON
WASHINGTON, DC • HOUSTON
PHILADELPHIA • SEATTLE

FACSIMILE

Fax No.

Telephone No.

To: Dan Girard
Girard Gibbs &
DeBartolomeo LLP

415-981-4846

From: Jeff Friedman

Date: March 30, 2006

Case Code: 050236

Time:

Subject: Sony NY

Message/Document(s) faxed:

Please see the attached letter. Thank you.

Please call fax operator at 415-676-4474 if all pages are not received.

ORIGINAL DOCUMENTS: Will follow by mail ☐ courier – OR - X Will not follow unless requested.

CONFIDENTIALITY NOTE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

Number of pages being transmitted including the cover page: 2

FAX OPERATOR: Return originals to: Marzena

Ext: 3584

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EXHIBIT C

In re SONY BMG CD Technologies Litigation
Case No. 1:05-cv-09575-NRB

Attorneys' Fees

	<u>FIRM NAME</u>	<u>HOURS</u>	<u>LODESTAR</u>
	<i>Class Counsel</i>		
1)	Girard Gibbs & De Bartolomeo LLP	1493.11	\$602,412.99
2)	Kamber & Associates LLC	953.30	\$463,968.75
	Class Counsel subtotal:	2446.41	\$1,066,381.74
	<i>Plaintiffs' Executive Committee</i>		
3)	Milberg Weiss Bershad & Schulman LLP	128.25	\$52,933.75
4)	Kirby McInerney & Squire LLP	118.50	\$42,571.25
5)	Giskan & Solotaroff LLP	58.70	\$24,617.50
	Plaintiffs' Executive Committee subtotal:	305.45	\$120,122.50
	Class Counsel and Executive Committee subtotal:	2751.86	\$1,186,504.24
	<i>Plaintiffs' Counsel</i>		
6)	Abington Intellectual Property Law Group PC	81.50	\$14,670.00
7)	Altman & Altman	82.10	\$28,735.00
8)	Law Offices of Dennis A. Burke	13.85	\$4,760.00
9)	Finkelstein Thompson & Loughran	187.30	\$56,883.00
10)	Law Offices of Michael D. Halbfish LLP	19.49	\$6,305.00
11)	Law Offices of Allan Himmelfarb	241.70	\$98,430.10
12)	Hollister & Brace***	7.50	\$2,025.00
13)	Kirtland & Packard LLP	156.30	\$68,593.50
14)	Robert I. Lax & Associates	22.50	\$11,025.00
15)	Linde Law Firm	12.00	\$4,500.00
16)	Law Offices of Daniel Lynch	26.50	\$11,265.50
17)	Markson Pico Huff LLP	35.00	\$12,250.00
18)	Milstein Adelman & Kreger	161.60	\$54,280.00
19)	Law Offices of Ethan Preston	66.70	\$19,009.50
20)	Raff & Raff LLP	46.90	\$12,898.00
21)	Robbins Umeda & Fink LLP	104.25	\$26,608.25
22)	Tortoreti Tomes & Callahan PC	23.60	\$9,746.00
23)	Wechsler Harwood LLP	22.60	\$7,417.00
24)	Wilentz Goldman & Spitzer PA	62.10	\$19,286.50
25)	Zimmerman Levi & Korsinsky LLP	42.75	\$19,037.50
	[Other] Plaintiffs' Counsel subtotal:	1416.24	\$487,724.85

TOTAL: 4168.10 \$1,674,229.09

*** See Robbins Umeda & Fink LLP declaration.

EXHIBIT D

EXHIBIT C

*Incentive Awards Are Requested
On Behalf Of The Persons Listed Below*

In re SONY BMG CD Technologies Litigation
Case No. 1:05-cv-09575-NRB (S.D.N.Y.)

- | | |
|------------------------------|-----------------------------|
| 1) Donald J. Bahnmaeir | 16) Daniel D. Linde |
| 2) Chad Black | 17) John Maletta |
| 3) Edwin Bonner | 18) Erin Melcon |
| 4) Aree L. Burke | 19) James Michaelson |
| 5) Amanda Cruz | 20) Stephen L. Mosley |
| 6) Darren DeMarco | 21) Jeffrey T. Ponnting |
| 7) Ori Edelstein | 22) Jeffrey Potter |
| 8) Victor Gruber | 23) Tom Ricciuti |
| 9) Alexander William Guevara | 24) Yvonne Ricciuti |
| 10) Randy L. Guy | 25) Dora Rivas |
| 11) Robert Hall | 26) Mary Schumacher |
| 12) Joseph Halpin | 27) James Springer |
| 13) Mark Jacoby | 28) Daniel Joseph Stynchula |
| 14) Laura Klemm | 29) William Ward |
| 15) Andrew Klewan | 30) Nicholas Xanthakos |

EXHIBIT E

EXHIBIT D

In re SONY BMG CD Technologies Litigation, Case No. 1:05-cv-09575-NRB

GIRARD GIBBS & De BARTOLOMEO LLP

EXPENSE REPORT - November 2005 through April 6, 2006

<u>Categories:</u>	<u>Amount:</u>
Photocopies/Reproduction	\$951.40
Postage/Notice Costs	\$921.95
Telephone	\$130.67
Messengers/Express Services	\$421.26
Filing/Witness Fees	\$175.00
Lexis/Westlaw/Legal Research	\$240.05
Experts/Consultants	\$9,537.64
Meals, Hotels & Transportation	\$12,355.71
Facsimile Charges	\$3,194.00
TOTAL EXPENSES:	<hr/> \$27,927.68

EXHIBIT F

GIRARD GIBBS & De BARTOLOMEO

A LIMITED LIABILITY
PARTNERSHIP
Attorneys at Law

601 California Street, Suite 1400

San Francisco, California

94108-2805

Telephone: (415) 981-4800

Facsimile: (415) 981-4846

URL: www.girardgibbs.com

FIRM RESUME

Girard Gibbs & De Bartolomeo LLP specializes in class action and business litigation. Founded in 1995, the firm represents clients throughout the United States in complex securities, antitrust, product liability, and consumer protection actions. The firm has been on the cutting-edge of consumer fraud class actions involving technology issues, having served as co-lead counsel in In re America Online, Inc. Version 5.0 Software Litigation (\$15.5 million settlement of class action alleging violations of the Computer Fraud and Abuse Act), In re PayPal Litigation (aggregate \$14 million settlement plus substantial injunctive relief), and In re iPod Cases (\$60 million settlement).

The firm also specializes in representing and counseling institutional investors in securities and derivative litigation and has represented or advised some of the largest institutional investors in the United States. Girard Gibbs currently is prosecuting securities actions on behalf of the California State Teachers' Retirement System, Allianz of America, Inc., Fireman's Fund Insurance Company, Jefferson Life Insurance Company and Preferred Life Insurance Company. The firm previously has served as outside counsel to the California Public Employees Retirement System (CalPERS), the Kansas Public Employees Retirement System, the State of Wisconsin Investment Board, the Louisiana Teachers' Retirement System, the Louisiana State Employees Retirement System, and the Los Angeles County Employees Retirement Association.

The firm's partners are experienced in all aspects of class action practice and complex securities and business litigation. Girard Gibbs seeks to apply its experience as plaintiffs' attorneys to manage and resolve civil litigation effectively on behalf of all the firm's clients. The firm also provides consulting and preventive counseling services to corporate clients and professionals on a variety of legal issues.

PARTNERS

Daniel C. Girard has served as court-appointed lead counsel, class counsel and liaison counsel in class action proceedings throughout the United States. He has prosecuted over 50 class action matters successfully, including cases in the fields of securities, corporate governance, partnership, antitrust, civil rights, telecommunications, anti-racketeering, unfair competition, false advertising, computer fraud, credit repair, truth-in-lending, and multi-level marketing. Some of the cases in which Mr. Girard served in a leadership role include the Prison Realty Securities Litigation, where as co-lead counsel he obtained one of the largest securities settlements on record (\$134 million), the Digex Litigation, where he was counsel to

the Kansas Public Employees Retirement System, and helped obtain one of the largest class action settlements in Delaware Chancery Court (\$165 million in cash and stock, and non-cash benefits valued at \$450 million), the In re i2 Technologies Securities Litigation, where he was again counsel to the Kansas Public Employees Retirement System and obtained a settlement of \$88 million in cash, and the MCI Non-Subscriber Rates Litigation, where as lead counsel he obtained the largest settlement ever achieved in a telecommunications class action (\$90 million). Mr. Girard also served as the lead attorney for San Francisco's Chinese American schoolchildren in Ho v. San Francisco Unified School District. The Ho litigation settled on the first day of trial when the SFUSD agreed to a comprehensive injunction prohibiting the unlawful use of race and ethnicity in San Francisco public school admissions. The Ho litigation was widely followed, and has been discussed in a number of law review articles.

Mr. Girard currently serves as co-lead counsel in In re SONY BMG Technologies Litigation, a class action alleging that SONY BMG violated the Computer Fraud and Abuse Act by placing digital rights management software on its music CDs. He represents Allianz of America, Inc., Fireman's Fund and other large private institutional investors in litigation against Grant Thornton, Salomon Smith Barney and other defendants arising out of their investments in Winstar Communications, Inc. He represents the California State Teachers Retirement System in litigation against Qwest Communications, Inc. and outside auditor Arthur Andersen. Mr. Girard is co-lead counsel in the In re American Express Financial Advisors Securities Litigation, which has tentatively settled for more than \$100 million. He serves in a leadership capacity in Natural Gas Antitrust Cases I, II, III and IV, antitrust litigation against numerous natural gas companies for manipulating the market for natural gas in California. Mr. Girard also is prosecuting several class actions on behalf of consumers nationwide.

On August 24, 2004, the late Chief Justice Rehnquist appointed Mr. Girard to a three-year term on the Judicial Conference Advisory Committee on Civil Rules, beginning October 1, 2004. Mr. Girard is past Chair of the American Bar Association Business Law Section Subcommittee on Class Actions, Co-Chair of the Business and Corporate Litigation Committee's Task Force on Litigation Reform and Rule Revision, and Vice-Chair of the Business and Corporate Litigation Committee. He is also a member of the National Association of Public Pension Attorneys, the International Corporate Governance Network and the Council of Institutional Investors. Mr. Girard serves as Chairman of the Board of Trustees of the St. Matthew's Episcopal Day School in San Mateo, California and has been a volunteer conservation easement monitor for the Peninsula Open Space Trust since 1991.

Mr. Girard was a partner at Lieff, Cabraser, Heimann & Bernstein LLP from 1988 to 1994. He was an associate with Brobeck, Phleger & Harrison from 1984 to 1987, specializing in securities and corporate law. Mr. Girard is a 1984 graduate of the School of Law, University of California at Davis where he was a member of the Law Review. He received his undergraduate degree from Cornell University in 1979. Mr. Girard is admitted to the California Bar. He also is admitted to practice before the United States Supreme Court, the United States Courts of Appeals for the Fifth and Ninth Circuits and the United States District Courts for the District of Colorado and the Northern, Eastern, Central and Southern Districts of California.

Eric H. Gibbs has served as court-appointed lead counsel, class counsel and liaison counsel in numerous consumer class actions throughout the United States. He has prosecuted over 25 consumer class action matters successfully, including cases involving telecommunications, credit cards, unfair competition, false advertising, truth-in-lending, product liability and credit repair. Some of the cases in which Mr. Gibbs served in a leadership role include In Re Ipod Cases, where as co-lead counsel he obtained a settlement of over \$60 million, Mitchell v. American Fair Credit Association and Mitchell v. Bankfirst, N.A., which generated one of the largest settlements in the United States under the credit services laws (over \$40 million), and Providian Credit Card Cases, which resulted in one of the largest class action recoveries in the United States arising out of consumer credit card litigation (\$105 million).

Mr. Gibbs currently serves as lead counsel in the following matters, among others: In Re America Online Spin-Off Accounts Litigation, MDL No. 04-1581-RSWL, pending in the USDC, Central District of California, Western Division; In re General Motors Corp. DexCool Vehicle Coolant Litigation, MDL No. 1562, pending in the USDC, Southern District of Illinois; In Re Hyundai and Kia Horsepower Litigation, Case No. 02CC00287, Orange County, California; In Re Girls Gone Wild Litigation, Case No. BC296675, Los Angeles County, California; and Sanute v. General Motors Corp., Case No. HG03093843, Alameda County, California.

Mr. Gibbs is a 1995 graduate of the Seattle University School of Law. He received his undergraduate degree from San Francisco State University in 1991. Before joining Girard Gibbs, he worked for two years as a law clerk for the Consumer Protection Division of the Washington Attorney General's Office. Mr. Gibbs has lectured on consumer class action. He is a member of the American Bar Association, the Association of Trial Lawyers of America, the National Association of Consumer Advocates, the Consumer Attorneys of California, and the Alameda County Bar Association. Mr. Gibbs is admitted to the California Bar. He also is admitted to practice before the United States Court of Appeals for the Ninth Circuit, as well as the United States District Courts for the District of Colorado and the Northern, Eastern, Central and Southern Districts of California.

A. J. De Bartolomeo has extensive experience in complex litigation, including the prosecution and defense of class actions arising under the securities, communications, consumer protection and copyright laws. Ms. De Bartolomeo currently serves as co-lead counsel representing the California State Teachers Retirement System in securities litigation against Qwest Communications, Inc., its former officers and directors, and outside auditor Arthur Andersen, involving one of the largest and most pervasive corporate financial frauds in United States history in CalSTRS v. Qwest Communications, et al., pending in California Superior Court for the County of San Francisco. She served as counsel for the State of New Jersey in a securities fraud matter against Gemstar – TV Guide and two of its former officers in State of New Jersey v. Gemstar. She also currently serves as co-lead counsel in the Literary Works in Electronic Databases Litigation, in which the United States District Court for the Southern District of New York recently granted final approval to what is believed to be the largest copyright class action settlement in history (\$18 million). Ms. De Bartolomeo has extensive experience in the negotiation and administration of class action settlements, including the \$90 million settlement in MCI Non-Subscriber Rates Litigation. She has also

worked in the securities industry from 1982-1985, as an assistant trader at Tucker, Anthony & R.L. Day (now known as RBC Dain Rauscher).

Ms. De Bartolomeo is a member of the American Bar Association Sections on Litigation, Business Law and Communications. She also is a member of the National Association of Public Pension Attorneys, where she is an active participant in the Task Force on Securities Litigation and Damage Calculation, as well as a member of the Council of Institutional Investors and the National Association of State Retirement Administrators.

Ms. De Bartolomeo is a 1988 graduate of the University of California, Hastings College of the Law. She received her undergraduate degree from Fairfield University in 1982, and a General Course degree in Economics from the University of London, London School of Economics and Political Science in 1981. Before joining Girard Gibbs, Ms. De Bartolomeo was an associate with Robins Kaplan Miller & Ciresi. She is admitted to the California Bar. She also is admitted to practice before the United States Supreme Court, the United States Courts of Appeals for the First and Ninth Circuits, and the United States District Courts for the District of Michigan, the Southern District of Texas, and the Northern, Eastern, Central and Southern Districts of California.

Elizabeth C. Pritzker has extensive experience in complex litigation matters, including the prosecution of consumer, product liability, and securities class actions. She also represents journalists, print and broadcast media, and not-for-profit organizations in First Amendment-related litigation.

Ms. Pritzker currently serves as court-appointed co-lead counsel in In re SONY BMG Technologies Litigation, S.D.N.Y. Case No. 1:05-cv-09575 (NRB), a class action alleging that SONY BMG Music Entertainment violated the Computer Fraud and Abuse Act by placing digital rights management software on its music CDs.

Ms. Pritzker also serves as lead counsel in the following cases: CalSTRS v. Qwest Communications et al., San Francisco Superior Court Case No. 415566, securities fraud litigation brought on behalf of the California State Teachers Retirement System ("CalSTRS") against Qwest Communications, Inc., its former officers and directors, and outside auditor, Arthur Andersen; In Re Natural Gas Antitrust Cases I, II, III and IV, J.C.C.P. No. 4221, coordinated antitrust litigation against numerous natural gas companies for manipulating the market for natural gas in California; and Nordberg v. Trilegiant Corporation et al., N.D. Cal. Case No. C-05-3246 MHP, a class action alleging that Trilegiant's practice of placing consumers into the company's membership service programs, and billing consumers for "membership fees," without consumers' valid authorization violates federal and state consumer laws. Ms. Pritzker also served as co-lead counsel in coordinated consumer class action litigation against Apple Computer, Inc., In Re iPod Cases, J.C.C.P. No. 4335, which resulted in a settlement of over \$60 million.

In 1992, Ms. Pritzker co-founded the First Amendment Project, a nonprofit, public interest law firm devoted exclusively to First Amendment-related litigation. From 1992 to 1999, she served as the Project's Executive Director and chief staff attorney. Over her seven-year tenure, she successfully litigated matters involving defamation law, copyright and trademark enforcement, licensing, privacy law, Internet law, and enforcement of state and

federal right-to-know laws. In 2000, Ms. Pritzker was honored by the Society of Professional Journalists with the prestigious James Madison Freedom of Information Award for her legal work on behalf of journalists and media.

Prior to joining Girard Gibbs, Ms. Pritzker was a principal at the law firm of Cotchett, Pitre, Simon & McCarthy, where she specialized in consumer fraud, product liability, securities, construction fraud, and First Amendment-related litigation. Ms. Pritzker has served as a Lecturer in Mass Communications Law in the Department of Journalism at San Francisco State University. She formerly served as a Supervising Attorney in the Civil Law and Motion Departments of the Alameda County Superior Court, and as a judicial extern to Judge Marilyn Hall Patel of the United States District Court for the Northern District of California. Ms. Pritzker is a frequent speaker on civil litigation matters, including discovery, pre-trial and class action procedures, for the Continuing Education of the Bar, the State Bar of California, and other professional attorney groups. Ms. Pritzker is a 1989 graduate of the University of San Francisco School of Law. She received her undergraduate degree in Economics from McGill University in 1983.

Ms. Pritzker is a member of the Association of Trial Lawyers of America, Trial Lawyers for Public Justice, California Women Lawyers, Consumer Attorneys of California, the Bar Association of San Francisco, the San Mateo Bar Association, and the Alameda County Bar Association. Ms. Pritzker is admitted to the California Bar. She also is admitted to practice before the United States Supreme Court, the United State Court of Appeals for Ninth Circuit, and the United States District Courts for the District of Colorado and the Northern, Central, Southern, and Eastern Districts of California. Ms. Pritzker is a Board Member for the Legal Aid Society of San Mateo County.

Jonathan K. Levine has extensive experience prosecuting complex securities fraud, accounting fraud and class action litigation. He has served and is serving as court-appointed class counsel, lead counsel and liaison counsel in numerous complex class actions in federal courts throughout the United States and in state courts in California. Mr. Levine has prosecuted over 20 securities fraud actions successfully, including cases of complex accounting fraud involving Arthur Andersen, Ernst & Young, KPMG Peat Marwick, Deloitte & Touche, Price Waterhouse and Grant Thornton. Some of the cases in which Mr. Levine served in a leadership role include Rosen v. Macromedia, Inc., where as co-lead counsel he obtained a \$48 million securities class action settlement in California state court, In re Gupta Corporation Securities Litigation, where as co-lead counsel he obtained a \$15 million settlement, Provenz v. Miller, where as co-lead counsel he obtained a \$15 million securities class action settlement, and Providian Credit Card Cases, where as co-lead counsel he obtained a class action settlement of \$105 million, one of the largest class action recoveries in the United States arising out of consumer credit card litigation.

Mr. Levine currently represents Allianz of America, Inc., Fireman's Fund and other large private institutional investors in federal securities litigation against Grant Thornton, Salomon Smith Barney and other defendants arising out of their investments in Winstar Communications, Inc. He is court-appointed co-lead counsel in the In re American Express Financial Advisors Securities Litigation, which has tentatively settled for more than \$100 million, and the AOL Spin-Off Accounts Billing Litigation. He also is serving as lead counsel in Paul v. HCI Direct, Inc. and Griffin v. Fleetwood Enterprises, Inc.

Mr. Levine is the author of "E-Mail and Voice Mail Discovery Issues," Glasser LegalWorks (1998), "Discovery Techniques in Commercial Litigation and Recent Developments In the Rules of Discovery," American Trial Lawyers Association (1991), and the co-author of "The Business Judgment Rule and Derivative Actions," Practising Law Institute (1989). He has lectured on securities litigation under the Private Securities Litigation Reform Act of 1995, consumer fraud and predatory lending litigation, and computer discovery and electronic data retention risk control. He is the past chair of the American Bar Association Litigation Section Subcommittee on Officers and Directors Liability. He currently serves as Vice-Chairman of the Piedmont Planning Commission.

For nine years prior to joining Girard Gibbs, Mr. Levine was a partner at the New York law firm of Kaplan Fox & Kilsheimer LLP, where he specialized in securities fraud, accounting fraud and consumer class action litigation. Mr. Levine is a 1988 graduate of Fordham University School of Law. He received his undergraduate degree from Columbia University in 1985. Mr. Levine is a member of the California State Bar Association, New York State Bar Association, Connecticut Bar Association, American Bar Association, the Association of Business Trial Lawyers – Northern California, and the Association of Trial Lawyers of America. He is admitted to the New York, Connecticut and California Bars. He also is admitted to practice before the United States Supreme Court, the United States Courts of Appeals for the Second, Fourth, Ninth and Eleventh Circuits, as well as the United States District Courts for the Southern and Eastern Districts of New York, the Northern District of Texas, and the Northern, Central, Eastern and Southern Districts of California.

ASSOCIATES

Karen L. Hindin is a 1994 graduate of Santa Clara University School of Law, where she was a public interest law scholar. She received her undergraduate degree from the University of California at Los Angeles in 1991. Ms. Hindin specializes in litigating consumer protection class actions and representative suits involving unfair and deceptive business practices in the banking, insurance, telecommunications, automotive, credit card, and various other industries. Prior to joining Girard Gibbs, Ms. Hindin practiced class action law at The Sturdevant Law Firm in San Francisco and Engstrom, Lipscomb & Lack in Los Angeles. Ms. Hindin also served as a research attorney for Judges Aurelio Munoz, Loren Miller, Jr., Judith Chirlen and Florence Marie Cooper. Ms. Hindin is an active member of the Consumer Attorneys of California, serving as an editor of the Forum Magazine, the San Francisco Trial Lawyers Association, serving as Co-Chair of the Women's Caucus, and Trial Lawyers for Public Justice, by whom she was awarded the Public Justice Achievement Award for her work on the case of *Ting v. AT&T*. She is admitted to the California Bar. She also is admitted to practice before the United States Court of Appeals for the Ninth Circuit as well as the United States District Courts for the Northern, Central and Southern Districts of California.

Aaron M. Sheanin is a 1999 graduate of Columbia University School of Law, where he was a James Kent Scholar and a Harlan Fiske Stone Scholar. He received his undergraduate degree from the University of California at Berkeley in 1993, where he was elected to Phi Beta Kappa. Mr. Sheanin focuses on litigating securities fraud and corporate

governance cases on behalf of individual and institutional investors. Mr. Sheanin also devotes a significant portion of his time advising several state pension funds with respect to securities matters. He has presented before the American Bar Association's Task Force on Contingent Fees (Tort Trial and Insurance Practice Section). From 1999 to 2001, Mr. Sheanin was a Pro Se law clerk for the United States Court of Appeals for the Second Circuit. Prior to joining Girard Gibbs, Mr. Sheanin was an associate with Lieff, Cabraser, Heimann & Bernstein LLP, where he had extensive experience in prosecuting class action cases involving consumer protection, product defect and employment discrimination. In the summer of 1997, he was a judicial extern to the Honorable Barrington D. Parker, Jr. of the United States District Court, Southern District of New York. Mr. Sheanin is admitted to the New York, New Jersey and California Bars. He also is admitted to practice before the United States District Courts for the Northern, Central, Eastern and Southern Districts of California.

Rosemary M. Rivas is a 2000 graduate of the University of California, Hastings College of the Law, where she served as Senior Note Editor of the Hastings Constitutional Law Quarterly and was a member of the Hastings Moot Court Board. While at Hastings, Ms. Rivas received the American Jurisprudence Award and the CALI Excellence For The Future Award for her studies in Wills & Trusts. She also assisted in the research and writing of a casebook on Wills & Trusts. Ms. Rivas received her undergraduate degree from San Francisco State University in 1997. Her practice includes litigating consumer class actions and representative cases involving unfair and deceptive business practices in the banking, insurance, internet and retail services industries. She is the Chair of the Consumer Rights Section of the Barristers Club. Ms. Rivas is an active member of the San Francisco Bar Association, the American Bar Association, the Association of Trial Lawyers of America and the Consumer Attorneys of California. Ms. Rivas also participates in the U.C. Hastings Alumni Mentor Program and was a speaker on the U.C. Hastings "Careers In The Law Panel." Ms. Rivas is fluent in Spanish. She is admitted to the California Bar. She also is admitted to practice before the United States Court of Appeals for the Ninth Circuit as well as the United States District Courts for the Northern and Central Districts of California.

Dylan Hughes is a 2000 graduate of the University of California, Hastings College of Law. He received his undergraduate degree from the University of California at Berkeley in 1995. Mr. Hughes was a spring 2000 extern for the Honorable Charles A. Legge of the United States District Court, Northern District of California. Before joining Girard Gibbs, he was a law clerk for the Honorable Paul A. Mapes, Administrative Law Judge of the Office of Administrative Law Judges, United States Department of Labor. Mr. Hughes is a member of the American Bar Association and the Consumer Rights Section of the Barristers Club. He is admitted to the California Bar. He also is admitted to practice before the United States Court of Appeals for the Ninth Circuit as well as the United States District Courts for the Northern and Central Districts of California.

Allison L. Ehlert is a 2003 graduate of the University of California at Berkeley (Boalt Hall School of Law). While at Boalt, Ms. Ehlert was awarded the American Jurisprudence Prize for Criminal Law, the Prosser Prize for Voting Rights and a Moot Court Best Brief commendation. She also served as a Senior Articles Editor on the Berkeley Journal of International Law. Ms. Ehlert received his undergraduate degree, summa cum laude, from Ohio Wesleyan University in 1998, where she was elected to Phi Beta Kappa. She has also

studied International Relations at the London School of Economics and Political Science. In the summer of 2001, Ms. Ehlert was a judicial extern to the Honorable Victor A. Marrero of the United States District Court, Southern District of New York. She is admitted to the California Bar. Ms. Ehlert also is admitted to practice before the United States District Courts for Northern and Central Districts of California.

Sheri L. Kelly is a 2003 graduate of the University of California, Hastings College of the Law, where she was Executive Editor of the Hastings Women's Law Journal. Ms. Kelly received her undergraduate degree from the University of California at Berkeley in 1997. In 2002 she served as an extern to the Honorable James R. Lambden of the California Court of Appeal (First District). Before joining Girard Gibbs, Ms. Kelly was an associate with Cotchett, Pitre, Simon & McCarthy from 2003 to 2005, where she prosecuted contract fraud, consumer protection, securities and antitrust cases on behalf of governmental entities, individuals and corporations. Ms. Kelly is a member of the Consumer Attorneys of California, the Association of Trial Lawyers of America, California Women's Lawyers and the American Bar Association. She is admitted to the California Bar. She also is admitted to practice before the United States Court of Appeals for the Ninth Circuit as well as the United States District Court for the Central District of California.

OF COUNSEL

Anthony K. Lee has over ten years of experience in securities and class action litigation. He joined Girard Gibbs as an associate in 1997 and became a partner in 2000. Mr. Lee became of counsel to the firm in 2002. He is a 1991 graduate of Harvard Law School and received his undergraduate degree from Stanford University in 1988. Mr. Lee is admitted to the California Bar. He also is admitted to practice before the United States Courts of Appeal for the Fifth and Ninth Circuits and the United States District Courts for the Northern, Eastern, Central and Southern Districts of California.

CASES

Some of the cases in which the firm has had a leadership role are described below:

<u>In re America Online, Inc. Version 5.0 Software Litigation</u> MDL Docket No. 1341 (S.D. Fla.)	Firm served as co-lead counsel in this MDL proceeding which centralized 45 class actions. The action involved alleged violations of the Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030 <u>et seq.</u> , federal antitrust laws and state consumer protection statutes based on AOL's distribution of its Version 5.0 software upgrade. The Honorable Alan S. Gold granted final approval to a \$15.5 million cash settlement on August 1, 2002.
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<p><u>In re LookSmart Litigation</u>, Case No. 02-407778 (San Francisco Super. Ct.)</p>	<p>This nationwide class action suit was brought against LookSmart, Ltd. on behalf of LookSmart's customers who paid an advertised "one time payment" to have their web sites listed in LookSmart's directory, only to be later charged additional payments to continue service. The action involved claims for breach of contract and violation of California's consumer protection laws, among other things. On October 31, 2003, the Honorable Ronald M. Quidachay granted final approval of a nationwide class action settlement providing cash and benefits valued at approximately \$20 million.</p>
<p><u>In re MCI Non-Subscriber Telephone Rates Litigation</u>, MDL Docket No. 1275 (S.D. Ill.)</p>	<p>Class action brought on behalf of all MCI subscribers who were charged MCI's non-subscriber or "casual caller" rates and surcharges instead of the lower rates which MCI advertises and which subscribers expect to be charged. Ten cases were consolidated for pretrial proceedings before the Honorable David R. Herndon, U.S. District Judge for the Southern District of Illinois. Judge Herndon appointed firm as co-lead counsel for the consolidated actions. On March 29, 2001, Judge Herndon granted final approval of a settlement for over \$90 million in cash.</p>
<p><u>Mitchell v. American Fair Credit Association</u>, Case No. 785811-2 (Cal. Super. Ct. Alameda County); <u>Mitchell v. Bankfirst, N.A.</u>, Case No. C-97-1421-MMC (N.D. Cal.)</p>	<p>Class action brought on behalf of California residents who became members of the American Fair Credit Association ("AFCA"). Plaintiffs allege that AFCA operated an illegal credit repair scheme. The Honorable James Richman certified the class and appointed the firm as class counsel on April 12, 1999. In February 2003, Judge Ronald Sabraw of the Alameda County Superior Court and Judge Maxine Chesney of the U.S. District Court for the Northern District of California granted final approval to settlements valued at over \$40 million. See <u>Mitchell et al., v. American Fair Credit Association, Inc., et al.</u>, 99 Cal. App. 4th 1345 (2002) (first reported decision under the California Credit Services Act of 1984).</p>

<p><u>In re: Digex, Inc. Shareholder Litigation</u> <u>Consol. Case No. 18336 (Del. Ch. Ct. 2000)</u></p>	<p>In this lawsuit, minority shareholders of Digex, Inc. sued to enjoin MCI WorldCom's planned acquisition of a controlling interest in Digex through a merger with Intermedia Communications, Inc., the majority shareholder. In a settlement approved by Delaware Chancery Court on April 6, 2000, a fund consisting of \$165 million in MCI WorldCom stock and \$15 million in cash was secured for Digex shareholders, as well as non-cash benefits valued at \$450 million. Girard Gibbs represented the Kansas Public Employees Retirement System, one of two institutional lead plaintiffs.</p>
<p><u>Lund v. AT&T Corp.,</u> <u>Case No. C 98-1500-DDP (AJW)</u> <u>(C.D. Cal.)</u></p>	<p>Class action brought on behalf of small businesses whose long-distance service was switched to Business Discount Plan, Inc. Firm was appointed class counsel by the Honorable Dean D. Pregerson. Settlement providing for full cash refunds and free long-distance telephone service approved in December 1999.</p>
<p><u>Steff v. United Online, Inc.,</u> <u>Case No. BC265953, (Los Angeles Super. Ct.)</u></p>	<p>This nationwide class action suit was brought against NetZero, Inc. and its parent, United Online, Inc., by former NetZero customers. The Plaintiffs alleged that Defendants falsely advertised their internet service as being unlimited and guaranteed for a specific period of time when it was not, in violation of Consumers Legal Remedies Act, Civil Code §§ 17500 <u>et seq.</u> and the Unfair Competition Law, Business And Professions Code §§ 17200 <u>et seq.</u> The Honorable Victoria G. Chaney of the Los Angeles Superior Court granted final approval of a settlement that provides full refunds to customers whose services were cancelled and additional cash compensation. The settlement also places restrictions on Defendants' advertising.</p>
<p><u>Mackouse v. The Good Guys - California, Inc.,</u> Case No. 2002-049656, (Alameda County Super. Ct.)</p>	<p>This nationwide class action suit was brought against The Good Guys and its affiliates alleging violations of the Song-Beverly Warranty Act and other California consumer statutes. The Plaintiff alleged that The Good Guys failed to honor its service contracts, which were offered for sale to customers and designed to protect a customer's purchase after the manufacturer's warranty expired. In May 9, 2003, the Honorable Ronald M. Sabraw granted final approval of a settlement that provides cash refunds or services at the customer's election.</p>

<p><u>Stoddard v. Advanta Corp.</u>, Case No. 97C-08-206-VAB (Del. Superior Ct.)</p>	<p>Class action on behalf of cardholders who were promised a fixed APR for life in connection with balance transfers, whose APR was then raised pursuant to a notice of change in terms. The Honorable Vincent A. Bifferato approved a \$7.25 million settlement and appointed firm as co-lead counsel for the settlement class.</p>
<p><u>In re Oxford Tax Exempt Fund Securities Litigation</u>, Case No. WMN-95-3643 (D. Md.)</p>	<p>Class and derivative litigation brought on behalf of real estate limited partnership with assets of over \$200 million. Settlement providing for exempt issuance of securities under section 3(a)(10) of Securities Act of 1933, public listing of units, and additional settlement benefits valued at over \$10 million approved January 31, 1997. Firm served as co-lead counsel.</p>
<p><u>Ho v. San Francisco Unified School District</u>, Case No. C-94-2418-WHO (N.D. Cal.)</p>	<p>Civil rights action on behalf of certified class of San Francisco public school students of Chinese descent to terminate racial and ethnic quotas imposed under 1983 desegregation consent decree. <u>See Ho v. San Francisco Unified Sch. Dist.</u>, 965 F. Supp. 1316 (N.D. Cal. 1997), <u>aff'd</u> 147 F.3d 854 (9th Cir. 1998); <u>see also</u> 143 Cong. Rec. S6097, 6099 (1997) (statement of United States Senator Hatch referring to testimony of class representative before Senate Judiciary Committee).</p>
<p><u>Mager v. First Bank of Marin</u>, CV-S-00-1524-PMP (D. Nev.)</p>	<p>Nationwide class action brought on behalf of people who were enrolled in First Bank of Marin's credit card program. In May 2002, the Judge Pro of the U.S. District Court for the District of Nevada approved a settlement providing for cash and non-cash benefits to class members.</p>
<p><u>Calliott v. HFS, Inc.</u>, Case No. 3:97-CV-0924-L (N.D. Tex.)</p>	<p>Firm intervened on behalf of institutional client in this securities class action arising out of bankruptcy of Amre, Inc., a seller of home remodeling and repair services. Firm was designated lead plaintiff's counsel under Private Securities Litigation Reform Act. Settlements for \$7.3 million approved August 1999 and December 2000.</p>

<p><u>In re Total Renal Care Securities Litigation</u>, Case No. 99-01750 (C.D. Cal.)</p>	<p>Securities fraud action arising out of restatement of earnings by healthcare provider, brought under the PSLRA by the Louisiana Teachers' Retirement System and the Louisiana School Employees Retirement System. Settled for \$25 million and issuer's commitment to adopt comprehensive corporate governance reforms. Girard Gibbs served as liaison counsel.</p>
<p><u>In re Towers Financial Corporation Noteholders Litigation</u>, MDL No. 994 (S.D.N.Y.)</p>	<p>Securities and RICO class action against promoters and professionals associated with failed investment scheme described by United States Securities and Exchange Commission as "largest Ponzi scheme in U.S. history." \$6 million in partial settlements. \$250 million judgment entered against four senior Towers executives. Firm served as liaison counsel and as a plaintiffs' executive committee member. See <u>Dinsmore v. Squadron, Ellenoff, Plesent, Sheinfeld & Sorkin</u>, 945 F. Supp. 84 (S.D.N.Y.1996), <u>rev'd</u>, No. 97-7011, 1998 U.S. App. LEXIS 1448 (2d Cir. Jan. 28, 1998); <u>In re Towers Financial Corporation Noteholders Litigation</u>, 177 F.R.D. 167 (S.D.N.Y. 1997) ("class counsel--particularly Plaintiffs' Liaison counsel, Daniel Girard--has represented the plaintiffs diligently and ably in the several years that this litigation has been before me").</p>
<p><u>In re World War II Era POW Litigation</u>, Case No. C-99-5042-VRW (N.D. Cal.)</p>	<p>Class action on behalf of American veterans who, as prisoners-of-war held by the Japanese during World War II, were forced to perform slave labor for Japanese industry. Commenting on the Ninth Circuit decision affirming dismissal of the claims, Mr. Girard was quoted in the New York Times, "It's not unusual that you see a demand for payment that isn't legally enforceable. But the demand stands. If the position of the Japanese companies involved is that they refuse to consider the demand for compensation and stand on legal defenses, the moral consequences are what they are."</p>

In re: Prison Realty Securities
Litigation

Case No. 3:99-0452 (M.D. Tenn.)

Girard Gibbs served as co-lead counsel in this securities class action brought on behalf of investors against a real estate investment trust and its officers and directors, following defendants' alleged false statements made in the context of a merger between Corrections Corporation of America and CCA Prison Realty Trust and subsequent operation of the merged entity. On February 13, 2001, the Court granted final approval to a settlement for over \$134 million in cash and stock.

EXHIBIT G

SCOTT A. KAMBER of Kamber & Associates, LLC specializes in technology-related litigation and representing individuals and businesses in complex international matters against foreign sovereigns. Mr. Kamber has an extremely diverse practice before federal and state courts throughout the United States and arbitration panels abroad, with clients ranging from individuals to multinational corporations to classes of consumers and investors.

Experienced in law and business, Mr. Kamber has a proven track record of addressing a client's needs in an individualized manner that is sensitive to budgetary requirements.

Presently, Mr. Kamber serves as co-lead counsel in the *In re Sony BMG CD Technologies* litigation pending in the United States District Court for the Southern District of New York and *In re Network Commerce Securities Litigation* pending in the United States District Court for the Western District of Washington. Mr. Kamber has previously served in a leadership role in numerous private and class actions including suits on behalf of shareholders, consumers and private corporations in the United States and abroad. Mr. Kamber has served as lead counsel and in other leadership roles for numerous class actions that have achieved significant results for the class, including: *Wormley v. GeoCities* (consumer class action for privacy violations that is believed to be the first internet privacy case to recover a benefit for impacted class members); *In re Starlink Growers* (represented sub-class of farmers who grew Starlink in a consolidated settlement of federal class action valued in excess of \$100 million); *In re Loch Harris* (derivative action that successfully obtained dissolution of corporation and distribution of

assets to shareholders); *In re Command Systems* (securities class action in which participating shareholders recovered over 80% of their losses); and *In re WebTV* (consumer class action for false advertising). In addition to these commercial litigations, Mr. Kamber has been involved in the efforts of African torture victims to bring their persecutors to justice under the Alien Tort Claims Act and has achieved significant decisions for his clients before the United States Court of Appeals for the Second Circuit and the Southern District of New York. One such result, *Cabiri v. Ghana*, 165 F.3d 193 (1999), is a leading Second Circuit case under the Foreign Sovereign Immunities Act.

Mr. Kamber graduated *cum laude* from University of California, Hastings College of the Law in 1991 where he was Order of the Coif, Articles Editor for Hastings Constitutional Law Quarterly and a member of the Moot Court Board. Mr. Kamber graduated with University and Departmental Honors from The Johns Hopkins University in 1986. Mr. Kamber has extensive courtroom experience and has tried over 15 cases to verdict. Prior to founding Kamber & Associates, LLC, Mr. Kamber represented both plaintiffs and defendants in a wide range of commercial litigation. Mr. Kamber is admitted to practice in the State of New York as well as the United States Supreme Court, the United States Court of Appeals for the Second Circuit and Eighth Circuit, and the United States District Courts for the Southern and Eastern Districts of New York. In addition, Mr. Kamber is well-versed in the procedures and practice of numerous arbitration forums, both domestic and international. Prior to practicing law, Mr. Kamber was a financial consultant.