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HEARING DATE : June 14, 2012  
9:45 am (Eastern Time)

OBJECTION DEADLINE: June 7, , 2012  
4:00 pm (Eastern Time)

- and -

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*Class Counsel in General Motors Case,  
Anderson v. General Motors*

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

In re:

**MOTORS LIQUIDATION COMPANY, *et al.*,  
f/k/a General Motors Corp., *et al.***

Debtors.

Chapter 11

Case No. 09-50026 (REG)

(Jointly Administered)

**MEMORANDUM OF LAW IN SUPPORT OF *ANDERSON* CLASS  
COUNSEL'S MOTION FOR APPROVAL OF NOTICE PURSUANT TO  
FED. R. CIV. P. 23(h) FOR AWARD OF ATTORNEY'S FEES FROM  
CLAIM No. 51093 SETTLEMENT FUND**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. Relief Requested .....	1
II. Preliminary Statement.....	2
III. Jurisdiction.....	7
IV. Background.....	7
A. The Underlying <i>Anderson</i> Class Action and the 2009 California State Court Settlement Approval .....	7
B. The 2011 Bankruptcy Settlement Agreement to Benefit the <i>Anderson</i> Class Members .....	9
C. The 2011 Settlement of the Debtors’ Preference Action Against Class Counsel .....	11
V. The Post-Petition Efforts by Class Counsel to Obtain a Settlement Fund for the <i>Anderson</i> Class Members Support An Award of Reasonable Attorneys’ Fees .....	12
VI. The Requested Fee Award Is Reasonable And Merits Court Approval .....	13
A. Class Counsel are Entitled to an Award of Reasonable Attorneys’ Fees for their Efforts in the Chapter 11 Proceedings in Successfully Creating a Common Fund Benefit for Class Members. ....	13
B. The Court Should Award Class Counsel Reasonable Attorneys’ Fee For Their Success in Obtaining a Common Fund Benefit for Class Members in the Chapter 11 Proceeding.....	15
1. The Amount of the Fee Award Sought by Class Counsel Is Reasonable .....	17
(a) The Proposed Fee Award Falls Within The Percentage-of-the-Fund Benchmark Approved In Class Action Common Fund Cases .....	17
(b) The Proposed Fee Award Satisfies the Lodestar Cross-Check.....	18
(c) The <i>Goldberger</i> Factors All Favor Granting Class Counsel’s Proposed Fee Award.....	19

(1)	The Time and Labor Expended by Counsel .....	19
(2)	The Magnitude, Complexities and Risk of the Litigation.....	19
(3)	The Quality of Representation .....	20
(4)	The Requested Fee in Relation to the Settlement .....	20
(5)	Public Policy Considerations .....	21
VII.	Conclusion .....	21

**TABLE OF AUTHORITIES**

<b><u>Case</u></b>	<b><u>Page</u></b>
<i>Adair v. Bristol Tech. Sys., Inc.</i> 1999 WL 1037878 (S.D.N.Y. Nov. 16, 1999).....	18
<i>Alyeska Pipeline Services Co. v. Wilderness Society</i> 421 U.S. 240 (1975).....	6, 14, 15, 16
<i>Blum v. Stenson</i> 465 U.S. 886 (1984).....	17, 20
<i>Boeing Co. v. Van Gemert</i> 444 U.S. 472 (1980).....	6, 14, 15, 16
<i>Cohen v. Apache Corp.</i> WL 126560 (S.D.N.Y. Apr. 21, 1993).....	19
<i>deMunecas v. Bold Food, LLC</i> 2010 U.S. Dist. LEXIS 87644 (S.D.N.Y. Aug. 23, 2010).....	21
<i>Fischel v. Equitable Life Assurance Soc’y of the U.S.</i> 307 F.3d 997, 1006-07 (9th Cir. 2002).....	6
<i>Goldberger v. Integrated Resources, Inc.</i> 209 F.3d 43 (2d. Cir. 2000).....	<i>passim</i>
<i>Greene v. Emersons Ltd.</i> 1987 WL 11558 (S.D.N.Y. May 20, 1987) .....	19
<i>Guippone v. BH S&amp;B Holdings, LLC</i> 2011 U.S. Dist. LEXIS 126026 (S.D.N.Y. Oct. 28, 2011).....	15, 22, 23
<i>In re Agent Orange Products Liability Litigation</i> 818 F.2d 226 (2d Cir.1987).....	15
<i>In Re American Bank Note Holographics, Inc.</i> 127 F.Supp. 2d 418 (S.D.N.Y. 2001).....	17
<i>In re Avon Prods. Inc. Sec. Litig.</i> 1992 WL 349768 (S.D.N.Y. Nov. 6, 1992).....	19

*In Re Consumer Privacy Cases*  
 175 Cal.App.4th 545 (Cal. Ct. App. 2009) ..... 6, 16 17

*In re NASDAQ Market-Makers Antitrust Litig.*  
 187 F.R.D. 465 (S.D.N.Y. 1998) ..... 17

*In re Partsearch Technologies*  
 453 B.R. 84 (Bankr. S.D.N.Y. 2011)..... 5, 15, 17, 18

*In re Union Carbide Corp. v. Consumer Prods. Bus. Sec. Litig.*  
 724 F.Supp. 160 (S.D.N.Y. 1989) ..... 18

*Johnson v. Brennan*  
 2011 U.S. Dist. LEXIS 105775 (S.D.N.Y. Sept. 16, 2011)..... 21

*Klein v. PDG Remediation, Inc.*  
 1999 SL 38179 (S.D.N.Y. Jan. 28, 1999)..... 18

*Lealao v. Beneficial Inc.*  
 82 Cal.App.4th 19 (Cal. Ct. App. 2000) ..... 6, 17

*Luciano v. Olsten Corp.*  
 109 F.3d 111 (2d Cir. 1997)..... 20

*Mills v. Electric Auto-Lite Co.*  
 396 U.S. 375 (1970)..... 6, 14

*Six (6) Mexican Workers v. Arizona Citrus Growers*  
 904 F.2d 1301 (9th Cir. 1990) ..... 17

*Sprague v. Ticonic National Bank*  
 307 U.S. 161 (1939)..... 14

*Stefaniak v. HSBC Bank USA, N.A.*  
 No. 1:05-CV-720 S, 2008 U.S. Dist. LEXIS 53872 (W.D.N.Y. June 28, 2008)..... 22

*Strougo ex rel. Brazilian Equity Fund v. Bassini*  
 258 F.Supp. 2d 254 (S.D.N.Y. 2003)..... 17, 18, 22

*Trustees v. Greenough*  
 105 U.S. 527 (1881)..... 6, 14

*Vizcaino v. Microsoft Corp.*  
 290 F.3d 1043 (9th Cir. 2002) ..... 6, 16, 17

*Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*  
396 F.3d 96 (2d Cir. 2005)..... 17

**Statutes**

28 U.S.C. § 157..... 8

**Rules**

Fed. R. Civ. P. 23..... 1, 5

Girard Gibbs LLP Court Appointed Class Counsel in General Motors Case, *Anderson v. General Motors* (“Class Counsel”) submits this memorandum of law in support of its Motion for Approval of Notice Pursuant To Fed. R. Civ. P. 23(h) for Award of Attorney’s Fees from Claim No. 51093 Settlement Fund (the “Motion”).

**I. Relief Requested**

Pursuant to Rules 7023 and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 23(h) of the Federal Rules of Civil Procedure (“Rule 23(h)”), Class Counsel respectfully requests entry of an order, substantially in the form of the proposed order submitted herewith (the “Order”), approving form and dissemination of notice of Class Counsel’s Application for attorney’s fees from the settlement fund created for approved Claim No. 51093 Pursuant to Fed. R. Civ. P. 23. The settlement fund was created for the benefit of the *Anderson* class members who filed timely and valid claim forms in the underlying class settlement (“*Anderson* Claimants”).

By the Motion, Class Counsel seek approval of the form, content and means of notice to the *Anderson* Claimants of Class Counsel’s application for attorneys’ fees to compensate Class Counsel for post-petition efforts to establish and preserve the common fund settlement for the *Anderson* Claimants’ benefit (“Notice”). The proposed Notice, which is annexed to the proposed Order as Exhibit A, provides the claimants with information regarding the *Anderson* approved Class Claim No. 51093 settlement fund (“Settlement Fund” or “Fund”), which was created through the March 14, 2011 Settlement Agreement Resolving Proof of Claim No. 51093 and the Court’s May 3, 2011 Order. *See* Dkt. No. 10171. The proposed Notice further describes Class Counsel’s fee application to compensate them for their post-petition work to create the

Settlement Fund and explains that any fee awarded by the Court will be paid from the Fund, the *Anderson* Claimants' rights to be heard on the issue of the application for attorneys' fees, and the procedures by which the *Anderson* Claimants can present their views on the post-petition fee application to the Court.

In the accompanying Declaration of A.J. De Bartolomeo in support of the Motion (the "De Bartolomeo Decl."), Class Counsel also present a detailed account of the post-petition work they performed to obtain the common fund benefit for the *Anderson* Claimants and the factual and legal bases for their application for attorneys' fees under the common benefit doctrine. Class Counsel provides this information and authorities so the Court will have a complete record on which to assess the adequacy of the proposed Notice.

## **II. Preliminary Statement**

*Anderson* Class Claim No. 51903 was based on the settlement of a consumer class action (the "*Anderson* Class Action") that was granted final approval by the California Superior Court in March 2009, three months *before* General Motors ("GM") filed its Chapter 11 proceeding. The *Anderson* Class Action settlement was a "claims-made" settlement. Upon the commencement of GM's bankruptcy proceeding, the *Anderson* Class Action settlement and its provisions for relief to affected consumers were stayed. Absent the post-petition efforts of Class Counsel, the approved relief to the affected consumers would have been lost.

The May 2004 complaint in the *Anderson* Class Action alleged that certain model year Silverado trucks exhibited an abnormal engine knock or piston noise. The Plaintiff alleged that GM's business policy was to offer valuable benefits only to consumers who complained about the noise, in violation of California's "Secret Warranty" statute. The settlement and judgment provided for cash benefits for engine evaluation and for reimbursement of money spent by class



claimants for certain engine repairs and protection plans, pursuant to a court-approved claims process. On March 26, 2009, acting in its role as the claims administrator, GM mailed claim forms to the estimated 240,000 members of the *Anderson* class. Approximately 6,000 *Anderson* class members submitted timely claim forms to GM by the May 11, 2009 claims deadline.

The June 1, 2009 GM bankruptcy closed down all *Anderson* settlement and claims administration activities. Although the notice was sent and claim forms were returned to GM, GM did not review, analyze or process any of the *Anderson* claim forms. GM did not provide Class Counsel with any statistical or claims data. GM did not prepare or send any settlement payments to the *Anderson* claimants as required by the settlement and final judgment. GM did not fulfill any class member requests for engine noise evaluations. The GM bankruptcy brought all claims administration work in the *Anderson* class settlement to a standstill and left the claim forms submitted by the class members stored somewhere within General Motors' corporate offices.

Beginning shortly after the June 1, 2009 bankruptcy filing and continuing to the end of 2011, Class Counsel worked to negotiate and obtain a recovery and create a common fund for the class claimants in the bankruptcy that was as close to the original settlement as possible under the circumstances. Without Class Counsel's efforts in the bankruptcy proceeding, each of the *Anderson* claimants would have had to file his own individual proof of claim by the November 30, 2009 deadline to receive any recovery. All *Anderson* Claimants who failed to file a timely proof of claim would receive nothing. A claimant who filed a timely proof of claim would then have to negotiate with the Debtor to settle their claim. If the claim was allowed, the claimant would have to comply with the banking requirements of the Wilmington Trust Company in order to receive a distribution under the bankruptcy plan. After the receipt of the

bankruptcy distribution of GM common stock and 2016 and 2019 warrants, the claimant would have to decide when and how to sell the securities.

Instead, Class Counsel negotiated a stipulation to permit a class Proof of Claim with Debtors' Counsel, analyzed and valued the claims, filed a timely class Proof of Claim for \$10,000,000.00, tracked down the claim forms submitted to GM by *Anderson* class members (which took nearly a year), took on the claims administration duties for the nearly 6,000 claimants, negotiated a carve-out from the Debtor's mandatory arbitration and mediation procedures for the class Proof of Claim, and negotiated and documented a class settlement with the Debtor.

To date, Class Counsel has not been compensated for any of the services performed on behalf of the Anderson Class Action claimants in this Chapter 11 proceeding resulting in the claim No. 51093 settlement fund.<sup>1</sup>

Under this Bankruptcy Court's May 3, 2011 Order approving the agreement between Anderson and the Debtors, Class Counsel obtained \$8,853,300.00 in settlement relief on the \$10,000,000.00 class Proof of Claim submitted by Anderson for the *Anderson* Claimants. Because Class Counsel has achieved a substantial and tangible benefit for the class, they request an award of attorneys' fees from the common settlement fund under Rule 23 and the common benefit doctrine. See Fed. R. Civ. P. 23(h); *In re Partsearch Techs., Inc.*, 453 B.R. 84, 103 (Bankr. S.D.N.Y. 2011) (Glenn, Bankr. J.) (approving class settlement in Chapter 11 proceeding and holding that the payment of attorneys' fees to Class Counsel is "procedurally appropriate" under Rule 23(h) standards).

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<sup>1</sup> The background facts described in Section IV and the post-petition work and efforts of the Class Counsel described in Section V are set out in detail in the accompanying Declaration of A. J. De Bartolomeo filed in support of the Motion.

A court considering a motion for attorneys' fees in a class action must direct notice to class members "in a reasonable manner." Fed. R. Civ. P. 23(h)(1). By the Motion, Class Counsel proposes that the Notice be directed to the *Anderson* Claimants by U.S. mail, to the name and address identified on the claim form submitted to GM in the original settlement.

As for content, the proposed Notice includes a description of the underlying class action and settlement, the relevant proceedings in the Bankruptcy Court, and the post-petition settlement with the *Anderson* Claimants; information regarding the request for attorneys' fees and how the claimant can comment on the fee application; how the post-bankruptcy settlement proceeds will be allocated and distributed so that the Claimants can calculate or estimate their individual recoveries; and contact information for Class Counsel.

Class Counsel is entitled to an award of reasonable attorneys' fees for their efforts in the Chapter 11 proceedings on behalf of the *Anderson* Claimants under the "common fund" or "common benefit" doctrine. This doctrine permits attorneys who recover a common fund for the benefit of a class of persons to obtain reasonable attorneys' fees out of the fund, thus spreading the cost of the litigation to its beneficiaries. *Alyeska Pipeline Services Co. v. Wilderness Society*, 421 U.S. 240, 245 (1975); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 392-93 (1970); *see also Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 47 (2d. Cir. 2000) ("*Goldberger*") (citing *Trustees v. Greenough*, 105 U.S. 527, 533 (1881), and *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980): "where an attorney succeeds in creating a common fund...., the attorneys whose efforts created the fund are entitled to a reasonable fee—set by the court—to be taken from the fund").

The amount of attorneys' fees requested in the Motion, \$447,767, is fair and reasonable under the six factors outlined by the Second Circuit in *Goldberger v. Integrated Resources, Inc.*,

209 F.3d at 50 (2d Cir. 2000). Application of the *Goldberger* factors shows that the fee requested by Class Counsel is reasonable. First, Class Counsel expended substantial time and effort — a total investment of 1,326 attorney hours calculating to \$516,101 in lodestar — in litigation and settlement negotiations with GM’s attorneys after the commencement of this Chapter 11 proceeding, as set forth in detail in the De Bartolomeo Decl. Second, class action litigation is inherently complex and the fact that this was one of the largest Chapter 11 reorganizations in history has only amplified that complexity. Third, participation in this litigation involved significant risk to Class Counsel, as their ability to receive a fee has been entirely dependent on their success in obtaining meaningful relief for the affected consumers. Fourth, Class Counsel have extensive experience in litigating class actions and negotiating settlements in complex matters on behalf of consumers and investors, as reflected in the Girard Gibbs LLP firm resume attached hereto as **Exhibit A**. Fifth, the total fee including costs that Class Counsel would receive if the Court grants the Motion is \$447,767, which represents 5.1% of the allowed general unsecured claim of \$8,853,300.00 in settlement relief that Class Counsel have obtained for the *Anderson* Claimants, or 30% of the monetized value of that relief assuming the shares that underlie the allowed general unsecured claim are sold in a commercially reasonable manner at prevailing market rates—percentages that are commonly considered fair and reasonable in the Second Circuit. Sixth, public policy favors the representation of consumers in class action litigation – and continuing into the Chapter 11 proceedings -- on a contingent fee basis as Class Counsel have undertaken here.

For all of the reasons described herein, Class Counsel request that the Court grant the Motion and approve the form, content and manner of Notice to the *Anderson* Claimants.

### **III. Jurisdiction**

This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, the March 14, 2011 Settlement Agreement resolving Proof of Claim No. 51093, and the Court's Order entered on May 3, 2011. *See* Dkt. Nos. 9805 and 10171.<sup>2</sup>

### **IV. Background**

#### **A. The Underlying *Anderson* Class Action and the 2009 California State Court Settlement Approval**

The procedural history of the *Anderson* Class Action before the California Superior Court and its settlement are detailed and documented in the Debtors' motion to approve the agreement resolving Anderson's class proof of claim (No. 51903). *See* Dkt. No. 9805. The procedural history is summarized briefly here.<sup>3</sup>

On May 18, 2004, Anderson filed a class action complaint against GM on behalf of himself and a class of similarly situated consumers alleging that certain Silverado trucks exhibited an abnormal engine knock or piston noise. Anderson further alleged that GM knew about this condition and that GM had a business policy under which it provided certain benefits, including a 6 year/100,000 General Motors Protection Plan (or "GMPP"), to California owners and lessees of Silverados who complained to GM about the condition. Anderson asserted that GM's business policy to offer a GMPP or other benefit to some consumers, but not others, who own or lease a Silverado with an abnormal engine knock or piston noise condition was an adjustment program or "secret warranty" that violates California law, including the California Motor Vehicle Warranty Adjustment Program, because GM allegedly did not notify Anderson or other consumers about the adjustment program or provide them with coverage under the plan.

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<sup>2</sup> "Dkt. No. \_\_\_" refers to the numbered docket entries in the above-captioned litigation.

<sup>3</sup> Unless otherwise indicated, capitalized terms used herein conform to the meaning of the terms in the Debtor's motion at Dkt. No. 9805.

On November 13, 2008, following 4 ½ years of sharply contested discovery, law and motion practice and settlement negotiations, GM and the *Anderson* Class reached a comprehensive claims-made stipulation of settlement. *See* De Bartolomeo Decl., ¶4. Under the terms of the settlement, GM agreed to reimburse class members who submitted valid, timely claims for: (i) monies spent on the purchase of a GMPP that otherwise would have been available to them for free under GM's allegedly unlawful adjustment program; and/or (ii) repair costs paid by class members to correct the abnormal engine knock or piston noise or on other specified engine repairs. GM also agreed that certain members of the *Anderson* class with continuing engine knock or piston noise concerns could request a free evaluation from a Chevrolet dealer and, if appropriate, obtain free repairs to correct the condition.

The class settlement provided for cash benefits for engine evaluation and for reimbursement of sums expended by class claimants for certain engine repairs and protection plans, pursuant to the court-approved claims process. *See* De Bartolomeo Decl., ¶4. As part of the settlement terms, GM agreed to act as the notice and claims administrator in the case.

In subsequent orders, the California Superior Court granted preliminary approval of the settlement, appointed Girard Gibbs LLP as Class Counsel and directed notice of the settlement to be disseminated to *Anderson* class members. On March 5, 2009, the California Superior Court conducted a fairness hearing, granted final approval of the class action settlement, and entered Final Judgment. *Id.* ¶4.

Also on March 5, 2009, the Superior Court awarded the *Anderson* Class Counsel attorneys' fees and reimbursement of expenses for the work that they did from the start of the case in May 2004 to the final approval of the settlement in March 2009. Based on the applicable California fee-shifting statute, California Code of Civil Procedure 1021.5, the Court ordered a

total of \$1,950,000 in attorneys' fees and \$212,500 in documented out-of-pocket costs and expenses. *Id.* ¶4.

Pursuant to the approved settlement and the final judgment, members of the *Anderson* class had the opportunity to submit a claim form to obtain the benefits of the settlement. On March 26, 2009, GM, in its role as the notice and claims administrator, mailed claim forms to the approximately 240,000 class members. Approximately 6,000 class members submitted timely claim forms to GM by the May 11, 2009 claims deadline. These claim forms were in GM's sole and exclusive possession when it filed for bankruptcy. *Id.* ¶8.

**B. The 2011 Bankruptcy Settlement Agreement to Benefit the *Anderson* Class Members**

The GM Chapter 11 proceeding commenced on June 1, 2009 and stayed implementation of the settlement before any of the *Anderson* class members received any settlement benefits.

On November 25, 2009, Class Counsel filed the *Anderson* class Proof of Claim, in accordance with this Court's September 16, 2009 order, on behalf of the *Anderson* class. The *Anderson* Proof of Claim, which was assigned claim number 51093, asserted a class claim in the amount of \$10,000,000.00, for consideration to the class members due pursuant to the *Anderson* Class Action Settlement. *Id.* ¶12.

After the filing of the *Anderson* class Proof of Claim, the Parties engaged in good-faith, arm's-length negotiations, and reached an agreement to resolve the *Anderson* Proof of Claim and to implement the *Anderson* Class Action Settlement, as modified, subject to this Court's approval.

The key provisions of the settlement agreement for the *Anderson* class in the GM bankruptcy proceeding are summarized as follows:

a. The Proof of Claim was resolved and the Participating Anderson class members are to receive, in the aggregate, a single allowed general unsecured claim in the amount of \$8,853,300.00 (the “Settlement Fund for Claim No. 51093” or “Settlement Fund”).

b. Class Counsel was authorized to dispose of the Settlement Fund for Claim No. 51093 by making an appropriate pro rata distribution of consideration to the *Anderson* Claimants in accordance with the Agreement.

c. Cash proceeds resulting from the sale or assignment of the Settlement Fund for Claim No. 51093 are to be distributed, on a pro rata basis, depending on the Claim Form information submitted by the *Anderson* Claimants. *See* Dkt. No. 9805.

On March 24, 2011, the Debtors filed their motion with this Court for an order approving the Agreement pursuant to Bankruptcy Rule 9019 and Rule 23 of the Federal Rules of Civil Procedure. *See* Dkt. No. 9805. Anderson and Class Counsel consented to the Debtors’ motion and Class Counsel appeared with Debtors’ Counsel to present the settlement to the Court.

In its May 3, 2011 order, this Court granted the motion and approved the resolution of the Claim and the implementation of the *Anderson* Class Action Settlement and Agreement, as described above. The Court further ruled that it retained jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of the May 3, 2011 order. *See* Dkt. No. 10171.

On November 15, 2011, in accordance with the rules imposed by the Wilmington Trust Company, the bank account established by Class Counsel for the benefit of the *Anderson* claimants received the Total Allowed Unsecured Claim from Debtors in the form of General Motors common stock and General Motors 2016 and 2019 warrants. *See* De Bartolomeo Decl., ¶42.



**C. The 2011 Settlement of the Debtors' Preference Action Against Class Counsel**

In December 2010, GM notified Class Counsel that it would ask the Bankruptcy Court to recover the fee payment awarded to Class Counsel in the state court *Anderson* settlement. Class Counsel disputed GM's claim and raised numerous defenses. *See id.* ¶30.

From January to May 2011, the Debtors and Class Counsel engaged in extensive discussions related to the potential preference action and the possible defenses raised. *See id.* ¶36.

The Parties entered into a May 31, 2011 tolling agreement, which provided that any applicable statute of limitation, statute of repose, or any other time-related defense was tolled through June 30, 2011. *See id.*

During that time period, the Debtors and Class Counsel engaged in good faith, arm's-length discussions and negotiations and, on June 30, 2011, reached an amicable resolution of all potential claims and disputes relating to the attorneys' fee payment. Class Counsel agreed to pay \$750,000 to the Debtors' estate to resolve the preference claim. *Id.* ¶40.

As part of the resolution of the preference claim, the Debtors acknowledged that Class Counsel would submit an application under the common fund doctrine for attorneys' fees and costs for the services Class Counsel provided to the *Anderson* Claimants after the Debtors' bankruptcy filing, and that the application would seek payment of attorneys' fees and costs solely from the proceeds of the claim allowed pursuant to the Agreement Resolving Class Proof of Claim No. 51093 and Implementing Modified Class Settlement, not from the Debtors. The Debtors agreed that they would take no position on the application. *Id.* ¶41. Class Counsel has not included any of the time spent on the preference action in their time and expense calculations for post-petition work on behalf of the *Anderson* Claimants. *See De Bartolomeo Decl.*, ¶50.

**V. The Post-Petition Efforts by Class Counsel to Obtain a Settlement Fund for the Anderson Class Members Support An Award of Reasonable Attorneys' Fees**

Beginning in July 2009 and continuing to the present, Class Counsel worked with Debtors' Counsel and the Trustee to resolve the *Anderson* Class Claim, create the Settlement Fund for the benefit of the *Anderson* Claimants, and to distribute the proceeds. These post-petition efforts have included and will include: (a) negotiating a stipulation to permit the filing of a class Proof of Claim with Debtors' Counsel, (b) assessing the valuation for the class Proof of Claim, (c) drafting, filing and preparing for argument a motion to exclude the *Anderson* claim from the Debtor's proposed mandatory arbitration and mediation procedures (d) negotiating a resolution to that motion, (e) tracking down the settlement benefit claim forms submitted to GM by *Anderson* class members, which took nearly a year, (f) reviewing and analyzing the 5,913 claim forms for valuation and settlement purposes, and then ultimately determining that 4,579 claim forms qualify for settlement distribution purposes, (g) negotiating with Debtors' Counsel to draft the *Anderson* class Claim No. 51093 settlement documentation and present it to the Bankruptcy Court, (h) working with AlixPartners and the Wilmington Trust Company to provide the requisite information for the approved claims processing and bankruptcy settlement distribution; (i) monetizing the distribution, (j) distributing the settlement checks to the claimants, and (l) following up with any claimants whose settlement checks are returned as "undeliverable" or whose settlement checks become stale. The post-petition work performed by Class Counsel is set forth in detail in the accompanying *See De Bartolomeo Decl.*, ¶¶9-44, exclusive of ¶¶30, 36, 40, and 41.

In total, Class Counsel expended 1,326 attorney hours representing a total lodestar of \$516,101 and costs in the amount of \$8,837 since the commencement of this Chapter 11 proceeding to obtain and distribute the allowed general unsecured claim in the amount of

\$8,853,300.00 for approved Claim No. 51093 to the *Anderson* Claimants. Class Counsel has received no compensation for these efforts. De Bartolomeo Decl., ¶51.

**VI. The Requested Fee Award Is Reasonable And Merits Court Approval**

**A. Class Counsel is Entitled to an Award of Reasonable Attorneys' Fees for their Efforts in the Chapter 11 Proceedings in Successfully Creating a Common Fund Benefit for Class Members.**

The Court has the authority to award Class Counsel reasonable attorneys' fees for their efforts in the Chapter 11 proceedings on behalf of the *Anderson* Claimants under the "common fund" or "common benefit" doctrine.

Since the nineteenth century, the Supreme Court has approved the use of the common benefit doctrine in awarding counsel who recovers a common fund benefitting Class members reasonable attorneys' fees out of the fund. *See Trustees v. Greenough*, 105 U.S. 527, 533 (1881) ("*Greenough*"); *Sprague v. Ticonic National Bank*, 307 U.S. 161, 164–65 (1939); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 392-93 (1970 ("*Mills*")); *Alyeska Pipeline Services Co. v. Wilderness Society*, 421 U.S. 240, 245 (1975) ("*Alyeska*"); and *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("*Boeing*"). The doctrine "reflects the traditional practice in courts of equity," which recognized "that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense." *Boeing*, 444 U.S. 478 (citing *Greenough*, 105 U.S. 532–37, and *Mills*, 396 U.S. at 392). A court acting in equity therefore may assess attorney's fees proportionally among those benefitted by the suit. *Id* (citing *Mills*, 396 U.S. at 394).

Courts routinely employ the common benefit doctrine in awarding attorneys' fees to counsel in class actions that result in a lump sum recovery that benefits an identifiable class. *See Boeing*, 444 U.S. at 479–81, 100 S.Ct. 745; *In re Agent Orange Products Liability Litigation*, 818 F.2d 226, 237 (2d Cir.1987). Indeed, Rule 23(h), itself, recognizes the applicability of the

doctrine in class action cases that result in the creation of a common fund for the class. *See, e.g.*, Comment to 2003 Amendment to Rule 23(h) (“This subdivision authorizes an award of ‘reasonable’ attorneys’ fees.... This is the customary term for measurement of a fee award in cases in which counsel may obtain an award of fees under the ‘common fund’ theory that applies in many class actions....”). The Second Circuit similarly has held that “attorneys whose efforts created the [common] fund are entitled to a reasonable fee—to be set by the court—to be taken from the fund.” *Goldberger*, 209 F.3d at 47 (citing *Boeing*, 44 U.S. at 478). The doctrine also has been applied to compensate counsel who obtains a common fund benefit for class members in bankruptcy. *See, e.g.*, *In re Partsearch Technologies*, 453 B.R. 84, 103 (Bankr. S.D.N.Y. 2011) (approving settlement of class action against Chapter 11 debtor and awarding fees to class counsel out of common fund); *Guippone v. BH S&B Holdings, LLC*, No. 09 Civ. 01029 (CM), 2011 U.S. Dist. LEXIS 126026, \*23 (S.D.N.Y. Oct. 28, 2011) (McMahon, Dist. J.) (awarding attorneys’ fees from common fund in Rule 23 class settlement involving Chapter 7 trustee).

Class Counsel are entitled to reasonable attorneys’ fees for work performed for the Class in this bankruptcy proceeding under these authorities. In *Alyeska*, the Supreme Court identified several characteristics of common fund cases that make an award of attorneys’ fees to counsel appropriate. These include the ease of identifying the class of persons benefitted by the recovery, the ease in tracing the benefits that flow from the fund to those persons, and confidence that the costs of achieving those benefits for the class can be shifted with some exactitude to those to those benefitted by the litigation. *Alyeska*, 421 U.S. at 264 n. 39; *see Boeing*, 444 U.S. at 478-79.

Each of the *Alyeska* factors applies here. As a result of Class Counsel’s efforts, the Court approved a common fund, in the form of a “Total Allowed Unsecured Claim” totaling

\$8,853,000.00, from which the Anderson Class Claimants will be compensated. (Dkt. Entry. No. 10162). First, the number of *Anderson* Claimants in the Class, 4,579 people, is known. Second, the Court previously approved a plan of allocation that specified the manner in which proceeds from the common fund will be awarded to Class Claimants. (*Id.*). Thus, it is easy to determine and trace the amount of aggregate benefit conferred on the *Anderson* Class Claimants as a result of Class Counsel's efforts. Finally, as described more fully below, the Court may arrive at a reasonable fee for Class Counsel's efforts on behalf of the Class in the Chapter 11 proceeding, by setting some percentage of the recovery as Class Counsel's fee or, using the "lodestar approach," ascertain the number of hours reasonably billed to the Class, multiply it by an appropriate hourly rate, and deduct that product from the fund. *Goldberger*, 209 F.3d at 47.

**B. The Court Should Award Class Counsel Reasonable Attorneys' Fee For Their Success in Obtaining a Common Fund Benefit for Class Members in the Chapter 11 Proceeding.**

Courts may employ either the lodestar or percentage-of fund method to calculate attorneys' fees. *Goldberger*, 209 F.3d at 50.<sup>4</sup> Under the lodestar method, "hours reasonably expended" are multiplied by a "reasonable hourly rate." *Id.*, at 49. A "multiplier" to the base lodestar amount may be employed to increase the award depending on "factors such as the riskiness of the litigation and the quality of the attorneys." *Id.* "Under the common fund doctrine' . . . a reasonable fee is based on a percentage of the fund bestowed on the class."

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<sup>4</sup> The analysis is similar under Ninth Circuit precedent and California state law standards. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (in calculating amount of attorneys' fee award to be paid from common fund, district court has discretion to use either percentage-of-fund or lodestar method); *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 557-58 (Cal. Ct. App. 2009) ("Regardless of whether attorneys' fees are determined using the lodestar method or awarded based on a 'percentage-of-the-benefit' analysis under the common fund doctrine, [t]he ultimate goal...is the award of a reasonable" fee to compensate counsel for their efforts, irrespective of the method of calculation.") (internal citation omitted).)

*Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F.Supp. 2d 254, 261 (S.D.N.Y. 2003) (citing *Blum v. Stenson*, 465 U.S. 886, 900, n.16 (1984)).

In the Second Circuit, and elsewhere, the trend in common fund cases is toward the use of the percentage-of-the-settlement fund method. See *In re Partsearch Technologies*, 453 B.R. at 105 (citing *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005)); *In Re American Bank Note Holographics, Inc.*, 127 F.Supp. 2d 418, 431 (S.D.N.Y. 2001) (“Although the law in this Circuit has not been uniform, the trend in the district courts of this Circuit is to use the percentage of the fund approach to calculate attorneys’ fees”); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 484 (S.D.N.Y. 1998) (“[T]here is strong support for the percentage approach from district courts in this Circuit.”); see also *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) (“A reasonable fee under the common fund doctrine is calculated as a percentage of the recovery.”) The court may apply the lodestar method as a cross-check of the percentage method. See *Goldberger*, 209 F.3d at 50.

Regardless of which method is employed, the court must undertake an analysis that ensures a proposed attorneys’ fee award is reasonable. The Second Circuit has set forth criteria to guide the court’s analysis. Those criteria are: “(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation...; (4) the quality of the representation; (5) the requisite fee in relation to the settlement; and (6) public policy considerations.” *Goldberger*, 209 F.3d at 50 (citation and internal quotations omitted); see also *In re Union Carbide Corp. v. Consumer Prods. Bus. Sec. Litig.*, 724 F.Supp. 160, 163 (S.D.N.Y. 1989).

**1. The Amount of the Fee Award Sought by Class Counsel Is Reasonable**

**(a) The Proposed Fee Award Falls Within The Percentage-of-the-Fund Benchmark Approved In Class Action Common Fund Cases**

The courts in this District have awarded reasonable attorney fees representing twenty-five percent (25%) to fifty percent (50%) of a common class fund recovery. As a general rule, however, the reasonable range for percentage-of-the-fund fee applications awarded in common fund class cases is 25% to 33 1/3% of the common fund. See *In re Partsearch*, 453 B.R. at 105 (approving fee award of 25% of \$180,000.00 class settlement involving Chapter 11 debtor); *Strougo*, 248 F.Supp. at 262 (approving fee award of 33/13 % of \$1.5 million settlement); *Adair v. Bristol Tech. Sys., Inc.*, No. 97 Civ. 5874 (RWS), 1999 WL 1037878, at \*1 (S.D.N.Y. Nov. 16, 1999) (approving fee award representing 33 1/3 % of settlement fund); *Klein v. PDG Remediation, Inc.*, No. 95 Civ. 4954 (DAB), 1999 SL 38179, at \*3-4 (S.D.N.Y. Jan. 28, 1999) (stating that “33 1/3 % of the settlement fund” is within the range of reasonable attorney fees awarded in the Second Circuit); *Cohen v. Apache Corp.*, 89 Civ. 0076 (PNL), 1993 WL 126560, at \*1 (S.D.N.Y. Apr. 21, 1993) (approving fee award of 33% of settlement fund); *In re Avon Prods. Inc. Sec. Litig.*, No. 89 Civ. 6216 (MEL), 1992 WL 349768, at \*3 (S.D.N.Y. Nov. 6, 1992) (“The request for 30% is in line with numerous [fee] awards in this Court and elsewhere in recent litigation.”); *Greene v. Emersons Ltd.*, No. 76 Civ. 2178 (CSH), 1987 WL 11558, at \*1-2 (S.D.N.Y. May 20, 1987) (awarding fees and expenses of 46.2 % of settlement fund).

The proposed fee award falls within the reasonable attorney fee percentage approved by other courts in this District, both in Chapter 11 proceedings and class litigation outside of bankruptcy. In the fee application, Class Counsel will ask for a proposed fee award of \$447,766.00 inclusive of costs. The requested fee and cost award represents approximately 5.1% of the Settlement Fund for the allowed general unsecured claim in the amount of \$8,853,300.00

secured for *Anderson* Claimants in this proceeding. Alternatively, if calculated in light of the monetized value of securities that form the basis of the Total Allowed Unsecured Claim, which have a market value of \$1,492,580 in cash proceeds that will be available for distribution to *Anderson* Class Claimants, the requested fee represents 30% of the monetized Settlement Fund. Under either scenario, the requested fee award falls within the percentages that are commonly considered fair and reasonable in the Second Circuit.

**(b) The Proposed Fee Award Satisfies the Lodestar Cross-Check**

The requested fee award also is reasonable under the lodestar-multiplier cross-check analysis. Class Counsel supports the Motion with the De Bartolomeo Declaration, which sets out in detail the work performed by Class Counsel on behalf of the *Anderson* Class in the Chapter 11 proceeding, the total hours worked, and Class Counsel's resulting lodestar. The fee requested is considerably *less than* the total lodestar Class Counsel have included in the bankruptcy proceedings. *See* De Bartolomeo Decl., ¶46.

Class Counsel requests compensation for the 1,326 hours Class Counsel spent negotiating, perfecting, litigating, and resolving Proof of Claim No. 51093. *See* Motion ¶¶36-37 and De Bartolomeo Decl., ¶¶9-44, exclusive of ¶¶30, 36, 40, and 41.

Class Counsel set their hourly rates consistent with the hourly rates approved for lawyers of comparable skill, experience, and reputation. *See Luciano v. Olsten Corp.*, 109 F.3d 111, 115-116 (2d Cir. 1997) (quoting *Blum v. Stenson*, 465 U.S. at 896, n.11: "The 'lodestar' figure should be in line with those [rate] prevailing in the market for similar services by lawyers of reasonably comparable skill, experience, and reputation.""). The lawyers primarily responsible for the work performed in the bankruptcy proceeding were A. J. De Bartolomeo (24 years experience, \$625/hour) and Elizabeth C. Pritzker (22 years experience, \$610/hour). Each of these attorneys are experienced litigators who regularly prosecute class and complex actions all across the



United States. The hourly rates set by Girard Gibbs are reasonable and have recently been approved by federal courts in several decisions. *See* De Bartolomeo Decl. ¶52.

The Court may also consider evidence of other courts approving similar rates or other attorneys who are engaged in similar litigation charging similar rates. The Girard Gibbs firm specializes in the prosecution of complex and class action cases, and the hourly rates of its attorneys are comparable to those approved for class counsel in similarly complex litigation. *Id.*

**(c) The *Goldberger* Factors All Favor Granting Class Counsel’s Proposed Fee Award**

All of the six *Goldberger* factors — “(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations” — favor granting the fee award in the amount requested by Class Counsel. *Goldberger*, 209 F.3d at 50.

**(1) The Time and Labor Expended by Counsel**

As detailed in the De Bartolomeo Decl. and Exhibit A attached thereto, Class Counsel expended 1,326 attorney-hours litigating and engaging in settlement discussions related to these Chapter 11 proceedings. Based on Class Counsel’s current billing rates, Class Counsel’s “lodestar” is \$516,101. *Id.* ¶51. Thus, the first *Goldberger* factor, the time and labor expended, weighs in favor of approving the fee award sought by Class Counsel.

**(2) The Magnitude, Complexities and Risk of the Litigation**

The second and third *Goldberger* factors, which examine the complexity, magnitude and risk, also support the fee award that Class Counsel requests. Class litigation under Rule 23 is “inherently complex.” *Johnson v. Brennan*, No. 10 Civ. 4712 (CM), 2011 U.S. Dist. LEXIS 105775, at \*25 (S.D.N.Y. Sept. 16, 2011). Here, Class Counsel litigated class claims in the

context of one of the largest Chapter 11 reorganizations in the nation's history. Had Class Counsel not obtained a meaningful common fund recovery for the *Anderson* Claimants, it would not have been entitled to any compensation for their efforts before this Court. See *deMunecas v. Bold Food, LLC*, 09 Civ. 00440 (DAB), 2010 U.S. Dist. LEXIS 87644, at \*21 (S.D.N.Y. Aug. 23, 2010) (Batts, Dist. J.) (“Common fund recoveries are contingent on a successful litigation outcome.”).

### (3) The Quality of Representation

The fourth *Goldberger* factor, quality of representation, weighs in favor of the fee award Class Counsel has requested. As detailed in the firm resume of Girard Gibbs, LLP, attached hereto as **Exhibit A**, Class Counsel have extensive experience litigating complex class action suits on behalf of consumers. *Id.* ¶52.

### (4) The Requested Fee in Relation to the Settlement

The fifth *Goldberger* factor, which weighs the fee request against the settlement, is also satisfied. Class Counsel seeks a fee award of \$468,472 from the Settlement Fund.

As discussed, if the Court grants Class Counsel's motion for post-petition fees and approves the fee requested, the total amount of attorneys' fees Class Counsel will receive will be 5.1% of the Settlement Fund for the allowed general unsecured claim in the amount of \$8,853,300.00 for the *Anderson* Claimants. The requested fee constitutes 30% of the \$1,492,580.10 cash proceeds that will be available for distribution to the *Anderson* Claimants should the Settlement Fund be monetized at share prices prevailing in the market today. Such an award is well within the percentage proportions commonly held to be fair and reasonable in this Circuit. See *Guippone*, 2011 U.S. Dist. LEXIS 126026, at \*23 (“In the Second Circuit, the trend is to use the percentage-of-recovery method for class counsel fee awards in common fund cases, and one-third has been held to be a ‘fair and appropriate award.’”); *Stefaniak v. HSBC Bank*

*USA, N.A.*, No. 1:05-CV-720 S, 2008 U.S. Dist. LEXIS 53872, at \*9-10 (W.D.N.Y. June 28, 2008) (noting that a one-third award is “typical in class action settlements in the Second Circuit”); *accord Strougo*, 248 F.Supp. at 262 (approving attorneys’ fee award of 33/13 % of \$1.5 million settlement).

**(5) Public Policy Considerations**

Finally, public policy, the sixth *Goldberger* factor supports granting Class Counsel’s requested fee. As described above, Class Counsel undertook to represent the interests of the *Anderson* Class Claimants in these proceedings with the expectation that they would recoup their attorney’s fees, if at all, only if meaningful benefits were obtained for the *Anderson* Claimants. In short, Class Counsel shouldered the entire burden and attendant risk of attempting to secure a common fund benefit for the Class in the Chapter 11 proceeding. Public policy favors such contingent fee awards in class action litigation. *See Guippone*, 2011 U.S. Dist. LEXIS 126026, at \*37 (concluding that the sixth *Goldberger* factor was met: “but for the work of Class Counsel and their willingness to bear the entire risk of bringing this litigation to fruition, Class Members likely would receive nothing on their claims.”).

**VII. Conclusion**

For all of the foregoing reasons, the Court should grant Class Counsel’s Motion and approve the proposed Notice for distribution to the *Anderson* Claimants as to Class Counsel’s fee application.

[Signature Page Follows]

Date: May 14, 2012

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## FIRM RESUME

Girard Gibbs LLP specializes in class action and complex business litigation. Founded in 1995, the firm represents clients throughout the United States in employment, securities, antitrust, product liability, and consumer protection actions. Girard Gibbs is currently prosecuting securities actions on behalf of Allianz of America, Inc., Fireman's Fund Insurance Company, Jefferson Life Insurance Company, Preferred Life Insurance Company, AGF Asset Management, Cornhill Life Insurance Company and Merchant Investors Insurance Company Ltd. The firm has represented the Kansas Public Employees Retirement System (KPERs) in several securities actions and currently serves as outside counsel to KPERs with respect to all securities litigation. Girard Gibbs has also served as outside counsel to the California Public Employees Retirement System (CalPERS), the California State Teachers' Retirement System (CalSTRS), 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 and efficiently 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** serves as the firm's managing partner and coordinates the prosecution of various securities, antitrust and consumer legal matters handled by the firm.

He has successfully represented investors and consumers in a series of precedent-setting cases. Some of the cases in which Mr. Girard served as lead counsel include Billitteri v. Securities America, Inc., (\$150 million settlement), In re American Express Financial Advisors Securities Litigation, (\$100 million settlement), In re Prison Realty Securities Litigation, (\$104 million settlement), In re i2 Technologies Securities Litigation, (\$88 million settlement), and In re MCI Non-Subscriber Rates Litigation, (\$90 million). He served as a member of the Executive Committee in the 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. The Natural Gas litigation resulted in total settlements of nearly \$160 million. Mr. Girard served as lead counsel in In re H&R Block Express IRA Litigation, which resulted in a \$19.5 million settlement for low-income consumers. Mr. Girard also represented the California State Teachers Retirement System in litigation in a non-class securities action against Qwest Communications, Inc. and outside auditor Arthur Andersen, resulting in a recovery of \$45 million for CalSTRS.

Mr. Girard currently serves as lead counsel in the In re Royal Bank of Scotland Group plc Securities Litigation, representing investors who held the company's Non-cumulative Dollar Preference Shares (preferred share group). He also serves as lead counsel in the In re SLM Corporation Securities Litigation, where he represents a certified class of purchasers of SLM Corp. stock (commonly known as Sallie Mae). He is a member of the executive committee charged with managing In re Lehman Brothers Holdings Securities and ERISA Litigation, multidistrict proceedings arising out of the collapse of Lehman Brothers Holdings, Inc., the largest bankruptcy in United States history. Mr. Girard also advises institutional investors in the United States and Europe on securities litigation matters, and assists in the prosecution of several international arbitration proceedings on behalf of European clients.

Mr. Girard was appointed by the late Chief Justice Rehnquist to serve on the United States Judicial Conference Committee on Civil Rules in 2004, and reappointed by Chief Justice John Roberts to a second three year term on the Committee in 2007. As a member of the Civil Rules Advisory Committee's Discovery Subcommittee, he participated in the Committee's drafting of amendments governing electronic discovery, summary judgment and expert discovery. He is a member of the American Law Institute. He serves on the Advisory Board of the Institute for the Advancement of the American Legal System, a national, non-partisan organization dedicated to improving the process and culture of the civil justice system.

Mr. Girard is the co-author of *Limiting Evasive Discovery: A Proposal for Three Cost-Saving Amendments to the Federal Rules*, 87 DENV. U. L. REV. 213, 473 (2010) and *Managez efficacement vos litiges d'affaires*, Extrait du magazine, Décideurs N°121, November 2010. Other published articles include: *Stop Judicial Bailouts*, The National Law Journal, December 1, 2008, and *Billions to Answer For*, Legal Times, September 15, 2008. He is a frequent speaker on issues of electronic discovery, class actions and financial fraud, including the following recent presentations: *Panel on Class Actions*, U.S. Judicial Conference Standing Committee on Rules of Practice and Procedure, Phoenix, January 2012; *Panel on Paths to (Mass) Justice*, Conference on Globalization of Class Actions and Mass Litigation, The Hague, December 2011; *Contentieux et Arbitrage International: les bons réflexes à acquérir (Litigation and International Arbitration: acquiring the right reflexes)*, Paris, France, March 2011; *Panel on Proposals for Rule Amendments and Preservation Obligations*, United States Judicial Conference Advisory Committee on Rules of Practice and Procedure, San Francisco, January 2011; *Panel on Dispositive Motions*, 2010 United States Judicial Conference Advisory Committee on Civil Rules, Litigation Conference, Duke Law School, May, 2010; "Iqbal/Twombly Fallout- Are General Federal Rules Passé?," ABA, Section of Litigation Annual Conference, April 22, 2010; "Opportunities for Cooperation between Plaintiffs' Counsel in Global Financial Frauds," Financial Fraud- Background and Litigation Panel, Global Justice Forum, October 16, 2009; "Les tendances des contentieux Américains issus de la crise financière," Paris, France, May 12, 2009; "Ethical Issues in E-Discovery," Electronic Discovery and Records Retention Conference, Thomson Reuters, December 10, 2008; "How the Economic Crisis is Affecting U.S. Class Actions," Asset Managers Working Group on U.S. Class Actions, Paris, France, October 14, 2008; "Auction Rate Securities: The Real Story," NERA's Eleventh Annual Finance, Law and Economics Securities Seminar, July 2008; "Electronic Discovery and the Amended Rules After a Year...What's New? What's Next?," Emerging Ethics Issues in E- Discovery, West LegalWorks, February 26, 2008; "The Subprime Loan Crisis- Strategies for Pension Fund

*Counsel*," 2008 NAPPA Investment Roundtable, February 7, 2008; "*Class Action Litigation in the United States*," Presentation for Japanese Fact-Finding Mission on Class Actions in the United States, June 13, 2007.

Mr. Girard is a member of the Business Law Section of the American Bar Association and currently serves as the Section's representative on the Task Force on Federal Preemption. He is past Chair of the Business Law Section's 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 has served as a guest lecturer on class actions and complex litigation at the UC Davis Law School, UC Berkeley (Boalt Hall), UC Hastings College of the Law, and Stanford Law School.

Mr. Girard was selected for inclusion in *Northern California Super Lawyers* from 2007 through 2011, and has earned an AV-Preeminent rating from *Martindale-Hubbell*, recognizing him in the highest class of attorneys for professional ethics and legal skills. He was also selected for inclusion in the 2012 edition of *The Best Lawyers in America*® in the practice areas of Securities and Mass Tort Litigation / Plaintiffs Class Actions. He served as a member of the Board of Trustees of St. Matthew's Episcopal Day School in San Mateo, California from 2003-2008, including three years as board chair from 2005-2008. He served as a volunteer conservation easement monitor for the Peninsula Open Space Trust from 1991 to 2010.

He is a 1984 graduate of the School of Law, University of California at Davis, where he served as an editor of the Law Review. He received his undergraduate degree from Cornell University in 1979. Mr. Girard is a member of the California Bar.

**Eric H. Gibbs** specializes in the prosecution of consumer and employment class actions. Mr. Gibbs has served as court-appointed lead counsel, class counsel and liaison counsel in numerous class actions throughout the United States.

He has successfully prosecuted more than 50 class action matters, including cases involving defective products, telecommunications, credit cards, unfair competition, false advertising, truth-in-lending, product liability, credit repair, employment misclassification and wage and hour under both state and federal law. Some of the recent cases in which Mr. Gibbs served as court appointed class counsel and achieved favorable results for class members include In Re: Pre-Filled Propane Tank Marketing and Sales Practices Litigation (negotiated cash reimbursements of up to \$75 per class member for the purchase of allegedly under-filled propane tanks- Court approval pending), Browne et al. v. American Honda Motor Co., Inc., (negotiated class settlement providing for cash reimbursements of up to \$150 for rear brake pad replacement expenses in certain Honda and Acura vehicles), Collado v. Toyota Motor Sales, U.S.A., Inc. (negotiated a class settlement providing for a free warranty extension and cash reimbursements for many Prius owners who paid for headlight repairs), In Re Mercedes-Benz Tele Aid Contract Litigation (negotiated a class settlement providing for cash reimbursements of \$650, or new vehicle credits for up to \$1,300), Parkinson v. Hyundai Motor America (achieved nationwide class certification and settlement providing for cash reimbursements for certain flywheel / clutch parts repairs in 2003 Hyundai Tiburons), Refuerzo v. Spansion LLC, (negotiated more than \$8.5

million in cash settlements on behalf of a certified class of former employees in a class action for violations of the WARN Act), In Re General Motors Dex-Cool Cases (negotiated cash reimbursements from \$50 to \$800 per class member vehicle repair), Bacca v. BMW of North America (negotiated reimbursement for sub-frame repair expenses and Nationwide Sub-frame Inspection and Repair Program), and Piercy v. NetZero (achieved nationwide class settlement providing cash reimbursements, and changes in billing and account practices).

Mr. Gibbs currently serves as lead counsel in Smith vs. The Regents of the University of California, where he represents a certified class of current and former patients of the UCSF medical center for unlawful disclosure of confidential medical information. He was appointed as interim class counsel on the Plaintiffs' Executive Committee in the In re Chase Bank U.S.A., N.A. "Check Loan" Contract Litigation, multi-district litigation alleging that Chase Bank wronged consumers by offering them long-term fixed-rate loans, and then attempting to deny them the benefit of their bargain by more-than-doubling their loan payments. Mr. Gibbs also serves as co-lead counsel in De La Cruz v. Masco Retail Cabinet Group, a class action brought on behalf of current and former account representatives of Masco, alleging employment misclassification in violation of the FLSA. He serves as interim class counsel in Milano v. Interstate Battery System of America, Inc., representing purchasers of automobile batteries in a breach of warranty action.

Other significant consumer class actions in which Mr. Gibbs acted in a leadership role include 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); 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); In Re Ipod Cases (achieved settlement in California state-court class action alleging material misrepresentations respect to the battery life providing for warranty extensions, battery replacements, cash payments, and store credits to those class members who experienced a battery failure), Roy v. Hyundai Motor America (negotiated nationwide class settlement providing for the repair of allegedly defective passenger-side airbags, reimbursement for transportation related expenses, and an alternative dispute resolution program allowing for trade-ins and buy-backs), Paul v. HCI Direct (achieved nationwide class certification and settlement on behalf of consumers charged for merchandise they allegedly did not knowingly order), Kim v. BMW of North America (negotiated nationwide class settlement providing for notification program and free vehicle repair related to passenger-side airbags), In re LookSmart Litigation, a nationwide class action settlement providing cash and benefits valued at approximately \$20 million; and Fantauzzo v. Razor, where plaintiffs alleged that defendant marketed and sold electric scooters with defective stopping mechanisms, the court approved a nationwide class action settlement providing for, among other things, a recall of the potentially defective electric scooters.

Mr. Gibbs has lectured on consumer class actions, including as a featured speaker addressing *Strategic Considerations Under CAFA following Supreme Court's Rulings in Shady Grove and Purdue* at the Bridgeport 9th Annual Class Action Litigation Conference; *Current Issues Arising in Attorney Fee Negotiations, Including Best Practices* at the 2010 AAJ Annual Convention; *Dealing With Objectors* at the Consumer Attorneys of California 3rd Annual Class Action Seminar; *What is a Class Action?* at the CAOC Annual Ski Seminar; *After the Class Action Fairness Act* at CAOC's 1st Annual Class Action Seminar; *Class Certification In Consumer Cases* for the Litigation Section of the Barristers Club of the San Francisco Bar



Association; and *Successfully Obtaining Attorneys' Fees Under Fee-Shifting Statutes* for the Consumer Rights Section of the Barristers Club of the San Francisco Bar Association. Mr. Gibbs is the co-author of *Consumer Class Actions in the Wake of Daugherty v. American Honda Motor Company*, CAOC's Forum Magazine, January/February 2009.

Mr. Gibbs was selected for inclusion in *Northern California Super Lawyers* in 2010 and 2011, and has earned an AV-Preeminent rating from *Martindale-Hubbell*, recognizing him in the highest class for professional ethics and legal skills. Mr. Gibbs is the co-chair and editor of the Quarterly Newsletter for the Class Action Litigation Group of the American Association for Justice (AAJ), and is a member of the Board of Governors of the Consumer Attorneys of California. He is a member of Public Justice, serving on the Class Action Preservation Project Committee. He is also a member of the American Bar Association, the National Association of Consumer Advocates, the Alameda County Bar Association, and the San Francisco Trial Lawyers Association.

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. He is a member of the California Bar.

**A. J. De Bartolomeo** has more than twenty years of experience in complex litigation, including the prosecution and defense of class actions arising under the securities, communications, consumer protection and copyright laws, and experience in the collection of class action recoveries and claims administration in bankruptcy proceedings. Ms. De Bartolomeo has served as court-appointed lead counsel and class counsel in several class actions throughout the United States.

Ms. De Bartolomeo served as Lead Counsel in Telstar v. MCI, Inc. (S.D.N.Y) (achieved settlement for over \$2.8 million in cash on behalf of class of commercial subscribers alleging FCA violations), Lehman v. Blue Shield (Cal. Super. Ct. San Francisco County) (parties negotiated a settlement for over \$6.5 million in cash on behalf of class of subscribers overpaying insurance premiums), Powers Law Offices v. Cable & Wireless, USA (D. Mass.) (Bankr. D. Del.) (achieved settlement for over \$2.2 million in cash after Chapter 7 filing on behalf of Rule 23(b)(3) certified class of commercial customers alleging FCA violations), and In re Cosmo Store Services, (Bankr. C.D. Cal.) (achieved settlement for \$1 million in cash after Chapter 11 filing on behalf of class of unsecured creditor employees). Ms. De Bartolomeo has also held a leadership position in In re American Express Advisors Securities Litigation (S.D.N.Y), CALSTRS v. Quest Communications, et al. (Cal. Super. Ct. San Francisco County), Cromwell v. Sprint Communications (D. Kan), and Brennan v. AT&T Corp. (S.D. Ill.). Ms. De Bartolomeo served as second chair in In re MCI Non-Subscriber Rates Litigation (MDL, S.D. Ill.) (\$88 million settlement). From 2005 to 2008, A. J. De Bartolomeo served on the Discovery and Law Committees in the In Re Medtronic, Inc. Implantable Defibrillators Product Liability Litigation, MDL No. 05-1726 (JMR/AJB) (D.Minn.).

Ms. De Bartolomeo currently serves on the Plaintiffs' Steering Committee of the In Re: Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation, and on the Plaintiff's Steering committee for the prosecution of more than 700 coordinated pelvic mesh repair system lawsuits. She is Co-Lead counsel in In re Electronic Database Copyright Litigation, (MDL, S.D.N.Y) (now pending before the United States Supreme Court), and In re Girls Gone Wild Litigation (Los Angeles Super. Ct.).

She is a member of the American Bar Association Sections on Litigation, Business Law and Communications, the American Bankruptcy Institute, Consumer Attorneys of California and the American Association for Justice. She also is also a former member of the National Association of Public Pension Attorneys, where she was an active participant in the Task Force on Securities Litigation and Damage Calculation, as well as a member of the Council of Institutional Investors. Ms. De Bartolomeo has been invited to speak on consumer and securities class actions, as well as the settlement approval process before defense law firms, institutional investors and government committees; most recently, for the Women's Leadership Summit at the AAJ Annual Convention and the Fact-finding Mission to Class Actions in the United States, sponsored by the Japan Federation of Bar Associations and Kyoto Bar Association. She is the author of "*Facilitating the Class Action Approval Process*," AAJ's Women Trial Lawyers Caucus Newsletter, summer 2010.

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 (1981). Before joining Girard Gibbs, Ms. De Bartolomeo was an associate with Robins Kaplan Miller & Ciresi and a Staff Attorney with the Securities and Exchange Commission (Enforcement Division). 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, the Eastern District of Wisconsin, and the Northern, Eastern, Central and Southern Districts of California.

**Jonathan K. Levine** has more than 20 years of experience prosecuting complex securities fraud, accounting fraud and class action litigation. He has served and is serving in a leadership capacity in numerous complex class actions in federal courts throughout the United States and in state courts in California. Mr. Levine has prosecuted over 30 securities fraud actions successfully, including cases of complex accounting fraud. Some of the cases in which Mr. Levine served in a leadership role include In re American Express Financial Advisors Securities Litigation (\$100 million settlement), Rosen v. Macromedia, Inc. (\$48 million settlement), In re Gupta Corporation Securities Litigation (\$15 million settlement), Provenz v. Miller (\$15 million 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 is also experienced in derivative litigation, having served as lead attorney in Wixon v. Wyndham Resort Development Corporation, a class and derivative action alleging that the directors of WorldMark violated their fiduciary duties by taking actions for the financial benefit of Wyndham, the timeshare developer, to the detriment of the timeshare owners. Mr. Levine led the firm's pre-trial preparation in In re SLM Corp. Securities Litigation. He also participates in the firm's representation of structured note holders in the In re Lehman Brothers Equity/Debt Securities Litigation, and preferred share purchasers in the In re Royal Bank of Scotland Securities Litigation.

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, most recently as a featured speaker addressing *Successful Direct Examination of Expert Witnesses* at the Bridgeport 2011 Conference on Working With and Deposing Experts (March 2011). Mr. Levine is a member of the Committee on Federal Courts of the State Bar of California. He is the past chair of the American Bar Association Litigation Section Subcommittee on Officers and Directors Liability. He also currently serves on the Piedmont Planning Commission.

For nine years prior to joining Girard Gibbs, Mr. Levine was a partner of a New York law firm, 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, New York and Connecticut Bars, and is admitted to practice in federal courts throughout the United States.

**Elizabeth C. Pritzker** is a seasoned litigation and trial attorney with broad experience in complex litigation matters, including the prosecution of antitrust, consumer, product liability, and securities class actions.

Ms. Pritzker serves in a leadership capacity in a number of antitrust matters. She received appointment to serve as Liaison Counsel for the Direct Purchaser Plaintiffs in In Re TFT-LCD (Flat Panel) Antitrust Litigation, MDL No. 1897, N.D.Cal. Master File No. C-07-1827-SI (multi-district class action alleging price-fixing by foreign and domestic manufacturers of Thin Film Transistor Liquid Crystal Display (TFT-LCD) products), and as Interim Co-Lead Class Counsel in In Re California Title Insurance Antitrust Litigation, N.D. Cal. Master File No. C-08-CV-1341-JSW (coordinated class action alleging unfair business practices in California title insurance market). She performs an ESI discovery chair function in In Re: Chocolate Confectionary Antitrust Litigation, MDL No. 1995, E.D. Pa. Master File No. 08-MDL-1995-CCC (multi-district class action alleging price-fixing by foreign and domestic chocolate confection manufacturers). Ms. Pritzker also has an active and ongoing role in other antitrust matters, including In Re Flash Memory Antitrust Litigation, MDL No. 1852, N.D. Cal. Master File No. 07-0086-SBA (executive committee) (multi-district class action alleging price-fixing by foreign and domestic manufacturers of flash memory); In Re International Air Transportation Surcharge Antitrust Litigation, MDL No. 1913, N.D. Cal. Master File No. M-06-1793-CRB

(executive committee) (multi-district class action alleging fuel surcharge price-fixing by airlines in the transpacific passenger airline market); Dolan et al v. Fidelity National Title Insurance Co. et al., E.D.N.Y. Case No. 08-cv-0466-TCP (class action alleging price fixing in New York State title insurance market); and In re: Hawaiian and Guamanian Cabotage Antitrust Litigation, W.D.Wash. Case No. 08-md-01972-TSZ (multi-district class action alleging price-fixing in ocean shipping between the mainland United States and Hawaii and Guam.)

She served as Class Counsel in In Re General Motors Cases, JCCP No. 4396, a certified state court class action against General Motors alleging violations of California's "Secret Warranty" law, California Civil Code § 1795.90 *et seq.*, that resulted in a final settlement on behalf of California owners and lessees model year 1999-2003 Chevrolet Silverado vehicles in March 2009. She also currently represents plaintiffs in Wixon v. Wyndham Resort Development Corporation (a/k/a Trendwest Resorts, Inc.), N.D. Cal. Case No. C-07-02361-JSW, a certified class and derivative action alleging, among other things, violations of the California Time-Share Act, Cal. Bus. & Prof. Code §§ 11210 *et seq.*

Ms. Pritzker's consumer and product liability experience extends to new and emerging technologies. She served as co-lead counsel in a multi-district class action alleging that SONY BMG Music Entertainment had violated the Computer Fraud and Abuse Act by placing digital rights management software on music CDs distributed to the public (In re SONY BMG Technologies Litigation, S.D.N.Y. Case No. 1:05-cv-09575 (NRB)), and as co-lead counsel in a California state-court class action against Apple, Inc., alleging that Apple had made material misrepresentations and omissions with respect to the battery life of its early-generation iPod music players (In Re iPod Cases, J.C.C.P. No. 4335).

Ms. Pritzker was selected for inclusion in *Northern California Super Lawyers* in 2011. She is a member of the American Bar Association, the American Association for Justice, Bay Area Lawyers for Individual Freedom, California Women Lawyers, Consumer Attorneys of California, Public Justice, the Alameda County Bar Association, the Bar Association of San Francisco, and the San Mateo County Bar Association.

She is a 1989 graduate of the University of San Francisco School of Law and received her undergraduate degree in Economics from McGill University in 1983. She is admitted to the State Bar of California. She also is admitted to practice before the United States Supreme Court, the United States Courts of Appeals for the Ninth Circuit, the District of Colorado, and the Northern, Eastern, Central and Southern Districts of California.

**Amanda M. Steiner** specializes in the prosecution of complex securities and consumer class actions. She helped achieve recoveries on behalf of class members in Billitteri v. Securities America, Inc., (\$150 million settlement achieved on behalf Provident Royalties and Medical Capital investors). She is currently involved in the prosecution of In re SLM Corporation Securities Litigation, representing a certified class of investors in SLM common stock. She also participates in the firm's representation of structured note-holders in the In re Lehman Brothers Equity/Debt Securities Litigation.

Ms. Steiner is a 1997 graduate of the University of California at Berkeley, Boalt Hall School of Law, where she served as an Associate Editor for the *Berkeley Journal of Employment and Labor Law* (1995-96) and Articles Editor for the *Berkeley Women's Law Journal* (1994-97). She received her undergraduate degree, *cum laude*, from Carleton College in 1991. Prior to joining Girard Gibbs, Ms. Steiner handled a variety of complex litigation matters, including cases involving defective products, employment, real estate development, construction issues, commercial and real estate contracts, mortgages and trust deeds, and lender-related disputes.

Prior to obtaining her law degree, Ms. Steiner served as an extern for U.S. District Court Judge Marilyn Hall Patel, and also worked as a law clerk for the Criminal Division of the U.S. Attorney's Office, the Alameda County District Attorney, and the Hopi Appellate Court Clinic and Tribal Law Project. She is admitted to the California, New York and Washington Bars. She is also admitted to practice before the United States Court of Appeals for the Ninth Circuit as well as the United States District Court for the Northern District of California and the Western and Eastern District of Washington.

**Dylan Hughes** specializes in the prosecution of consumer and employment class actions. He represents consumers in cases involving defective products, telecommunications, credit cards, product liability, credit repair, employment misclassification and wage and hour under state and federal laws. Mr. Hughes has extensive experience prosecuting complex automobile-defect cases and helped achieve recoveries on behalf of class members in the In Re General Motors Dex-Cool Cases (settlement of \$50 to \$800 cash reimbursements per class member vehicle repair) and In Re General Motors Cases, a certified California state court class action against General Motors alleging violations of California's "Secret Warranty" law, California Civil Code § 1794.90 et seq. Mr. Hughes is currently involved in the Parkinson v. Hyundai Motor America lawsuit, a class action against Hyundai for engaging in unfair and deceptive practices by selling vehicles with defective flywheel systems, recently granted class certification.

Mr. 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. He is a member of the American Bar Association, Consumer Attorneys of California, the Class Action Litigation Group of the American Association for Justice and the Consumer Rights Section of the Barristers Club. He is admitted to the California Bar and 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.

## ASSOCIATES

**Gabriel Bluestone** is a 2010 graduate of the Rutgers University School of Law, where he was a Notes Editor for the Rutgers Journal of Law and Public Policy. He received his undergraduate degree in history from Connecticut College in 2005, where he was a four year member of the varsity basketball team.

Prior to joining Girard Gibbs, Mr. Bluestone served on the U.S. Senate Committee on the Judiciary: Antitrust, Competition Policy and Consumer Rights Subcommittee. In this role he was responsible for antitrust, competition and other business regulation issues for Subcommittee Chairman Herb Kohl (D-WI) and his staff. During his time on the subcommittee, Mr. Bluestone's work focused on antitrust oversight and investigations into various industries in addition to legislative work.

Mr. Bluestone was a summer 2009 law clerk for United States Senator Amy Klobuchar (D-MN) where he participated in the preparation for then-Judge Sotomayor's U.S. Supreme Court confirmation hearings; he also served as a summer 2008 judicial intern for the Honorable Anthony M. Pugliese of the Superior Court of N.J., Civil Division. He is admitted to the New Jersey and Maryland Bars.

**Matthew Brinegar** is a 2004 graduate of the University of Washington School of Law, where he was a member of the Pacific Rim Law & Policy Journal. He received his undergraduate degree, *magna cum laude*, in political science from The Ohio State University, where he was a member of the Golden Key Honors Society. Prior to joining Girard Gibbs, Mr. Brinegar served as Litigation Counsel for the Center for Responsible Lending, and represented seniors as a staff attorney for AARP Legal Counsel for the Elderly. He is the co-author of *Policy and Litigation Barriers to Fighting Predatory Lending*, 2 Northeastern U.L.J. 193(2010), and is a frequent speaker on litigating predatory lending matters. He is a member of the California, Washington, District of Columbia, Illinois (inactive) and Florida (inactive) Bars.

**Claire Choo** is a 2007 graduate of the University of San Francisco, School of Law, where she was a member of the legal fraternity, Phi Delta Phi—Stephens Inn, the Korean American Law Student Association and the Asian Pacific American Law Student Association. She received her undergraduate degree in sociology and legal studies from the University of California, Berkeley in 2002. Ms. Choo was a fall 2006 extern for the Honorable Joyce L. Kennard of the California Supreme Court. She was also a summer clerk for the San Francisco District Attorney's office in 2005. Ms. Choo served as a certified law clerk for the Family Violence Law Center in Oakland, representing survivors of domestic violence in court in 2006.

She is a member of the Asian American Bar Association of the Greater Bay Area, the Korean Bar Association of Northern California, and the San Francisco Bar Association. Ms. Choo is admitted to the California Bar. She is also admitted to practice before the United States District Courts for the Northern and Eastern Districts of California.

**C. Tucker Cottingham** is a 2011 graduate of the University of San Francisco School of Law, where he served on the Executive Board of the *Intellectual Property Law Bulletin* and founded the USF Clean Technology and the Law Symposium. He received his undergraduate degree in classics from Kenyon College in 2007. Mr. Cottingham was a 2010 certified law clerk for the U.S. Attorney's Office, and a Judicial Law Clerk for the California Public Utilities Commission. He is admitted to the California Bar.

**Todd Espinosa** is a 2000 graduate of Harvard Law School, where he participated in the Harvard Legal Aid Bureau and Tenant Advocacy Project. He received his undergraduate degree from Harvard College in 1997 and a Master of City Planning degree from University of California at Berkeley in 2006. Before joining Girard Gibbs, Mr. Espinosa was a law clerk for the Honorable Claudia Wilken, United States District Court for the Northern District of California. He is the co-author of *Limiting Evasive Discovery: A Proposal for Three Cost-Saving Amendments to the Federal Rules*, 87 DENV. U. L. REV. 213, 473 (2010). He also worked as a legal research attorney for the Superior Court of California, County of Santa Clara. Mr. Espinosa is admitted to the California Bar. He is also admitted to practice before the United States District Court for the Central District of California.

**Matthew B. George** is a 2005 graduate of the University of Michigan Law School. He received his undergraduate degree, *magna cum laude*, from Chapman University in 2002, where he was a Presidential Scholar. He was a featured speaker addressing *Developments in the Arbitration of Wage and Hour Disputes* at the Bridgeport 2010 Wage and Hour Conference (October 2010).

He was selected as a *2011 Rising Star* by *Northern California Super Lawyers*, recognizing him as one of the best young attorneys practicing in Northern California. He is a member of the American Bar Association- Section of Labor and Employment Law and Young Lawyers Division, Consumer Attorneys of California, and BALIF. Before joining Girard Gibbs, Mr. George represented employees in complex labor and employment actions in both federal and California state courts. Mr. George is admitted to the California Bar, as well as the United States District Court for the Northern, Central, and Eastern Districts of California and the District of Colorado.

**Scott Grzenczyk** is a 2011 graduate of the University of California, Davis, School of Law, where he was the Chair of the Moot Court Board and the Executive Editor of the UC Davis Journal of International Law and Policy. He was the recipient of the Witkin Award for Legal Research and Writing, Best Brief and Best Advocate awards in his moot court class, and numerous awards at national moot court competitions. He was also a member of the Law School's national mock trial team and the law school faculty named him as a member of the Order of the Barristers. Scott received his undergraduate degree in political science and certificate in political theory from Princeton University in 2006. Scott has appeared before the Ninth Circuit Court of Appeals and the Federal District Court for the Eastern District of California.

**Geoffrey A. Munroe** is a 2003 graduate of the University of California at Berkeley, Boalt Hall School of Law, where he was the recipient of the American Jurisprudence Award in Torts, Business Law & Policy and Computer Law. He received his undergraduate degree in chemistry from the University of California at Berkeley in 2000. Since joining Girard Gibbs in 2007, Mr. Munroe has worked on several high-profile consumer protection class action matters involving complex issues in both federal and state courts throughout the United States.

He twice selected as a *Rising Star* by *Northern California Super Lawyers* (2010-2011), recognizing him as one of the best young attorneys practicing in Northern California. He is the co-author of “*Consumer Class Actions in the Wake of Daugherty v. American Honda Motor Company*,” CAOC’s Forum Magazine, January/February 2009, and a frequent contributor to the Class Action Litigation Group Newsletter of the American Association for Justice. Mr. Munroe is a member of the Public Justice Class Action Preservation Project Committee, the Class Action Litigation Group of the American Association for Justice and the Consumer Attorneys of California. He is a member of the California Bar and 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.

**Ian Samson** is a 2011 graduate, *cum laude*, of the University of California, Hastings College of the Law, where he was a Senior Supervising Editor for the Hastings Constitutional Law Quarterly and authored *Boumediene as a Constitutional Mandate: Bivens Actions at Guantánamo Bay*, 38 Hastings Const. L.Q. 439 (2011). He was also the recipient of the Best Brief Award in his moot court class and Witkin award in his Civil Procedure II, Effective Representation in Mediation, and Sale and Lease of Goods courses. Ian received his undergraduate degree in history and international studies: comparative religion, *magna cum laude*, from the University of Washington in 2007. Mr. Samson was a fall 2010 extern for the Honorable Marsha S. Berzon of the Ninth Circuit Court of Appeals in San Francisco. He is admitted to the California Bar.

**Dena Connolly Sharp** is a 2006 graduate, *cum laude*, of the University of California, Hastings College of Law, where she was a member of the Thurston Society and was the recipient of the Best Oral Advocate Award. She was also the recipient of the Witkin Award in Legal Writing and Criminal Law. She received her undergraduate degree in history, *magna cum laude*, from Brown University in 1997. Ms. Sharp was a summer 2005 extern for the Honorable Phyllis J. Hamilton of the United States District Court, Northern District of California. Ms. Sharp also served as a spring 2005 extern for the Honorable John E. Munter, San Francisco Superior Court.

She was selected from 2009 through 2011 as a *Rising Star* by *Northern California Super Lawyers*, recognizing her as one of the best young attorneys practicing in Northern California. She is a member of the American Bar Association, the Bar Association of San Francisco and the San Francisco Trial Lawyers Association. Ms. Sharp is admitted to the California Bar. She is also admitted to practice before the United States District Courts for the Northern, Central, Eastern and Southern Districts of California.



**David Stein** is a 2007 graduate of the Emory University School of Law, where he was the Executive Notes & Comments Editor for the *Emory Bankruptcy Developments Journal* and authored *Wrong Problem, Wrong Solution: How Congress Failed the American Consumer*, 23 *Emory Bankr. Dev. J.* 619 (2007). He received his undergraduate degree in philosophy from the University of California at Santa Barbara in 2003. Before joining Girard Gibbs, Mr. Stein was served as judicial law clerk to the Honorable Keith Starrett, United States District Court for the Southern District of Mississippi and to Magistrate Judge Karen L. Hayes, United States District Court for the Western District of Louisiana. Mr. Stein is admitted to the California Bar.

**Lesley Vittetoe** is a 2010 graduate of the University of San Francisco School of Law, where she was a member of the Investor Justice Clinic, assisting investors in legal actions involving allegations of wrongdoing by securities firms. She received her undergraduate degree in International Relations with a minor in Peace and Conflict Studies from the University of Southern California in 2007. Ms. Vittetoe was a spring 2010 extern for the Honorable William Alsup of the United States District Court, Northern District of California. Prior to joining Girard Gibbs, Ms. Vittetoe represented investors in securities arbitration and other dispute resolution proceedings before the Financial Industry Regulatory Authority (FINRA) against brokers and brokerage firms. She is a member of the California Bar.

**Janice Yi** is a 2007 graduate of UCLA School of Law, where she was an Articles Editor for the *Asian Pacific American Law Journal*, secretary of the Asian Pacific Islander Law Student Association, and a graduate student instructor for Wills and Trusts. She was a summer law clerk at the San Francisco Attorney's Office specializing in Construction Litigation. Ms. Yi received her undergraduate degrees in Legal Studies and Sociology from UC Berkeley in 2003. She is admitted to the California Bar.

**Amy Zeman** is a 2010 graduate, *magna cum laude*, of the University of California, Hastings College of Law, where she was a member of the Thurston Society and served on the Hastings Law Journal. She received her undergraduate degrees in German and Art History and Archaeology, *summa cum laude*, from the University of Missouri in 1998. Ms. Zeman was a spring 2010 extern for the Honorable Marilyn Hall Patel of the United States District Court, Northern District of California. She is admitted to the California Bar.

#### OF COUNSEL

**Michael S. Danko** is a renowned trial lawyer with more than 25 years of legal experience. He represents individuals who have suffered catastrophic personal injuries, as well as families of wrongful death victims in cases involving product defects, defective medications and medical devices, airplane and helicopter accidents, and dangerous structures. He has tried cases in state and federal courts throughout the country, and has won numerous eight-figure verdicts on behalf of his clients.

Mr. Danko represents dozens of victims of a Pacific Gas & Electric gas explosion and serves on the Plaintiffs' Steering Committee in a California state coordinated proceeding San Bruno Fire Cases, JCCP No. 4648. He also serves on the Science Committee for Plaintiffs in In Re Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation, MDL No. 2100.

In 2009, he won a \$15 million jury verdict for a client injured by a defective aircraft part, which has earned him a nomination for 2009 California Trial Lawyer of the Year by the Consumer Attorneys of California.

Mr. Danko's trial advocacy has helped bring about significant reforms and changes to corporate policies as well. As lead counsel in In Re Deep Vein Thrombosis Litigation, MDL No. 04-1606 (N.D. Cal.) he represented more than one hundred air travelers who had suffered strokes, pulmonary emboli, or heart attacks as a result of airline-induced blood clots. He developed theories of liability and proof regarding the cause of his clients' injuries that lead to virtually every major air carrier warning air travelers about the risks of deep vein thrombosis and the steps that can be taken to mitigate those risks. Mr. Danko also represented parents of children who were injured or killed by a popular candy made by a foreign manufacturer. His work in proving that the candy's unusual ingredients and consistency made it a choking hazard resulted in the candy being removed from Costco and Albertson's stores nationwide, and helped lead the FDA to ban the candy from further import into the United States.

He has been named a *Northern California Super Lawyer* each year since the award's inception in 2004. He is a *Lawdragon 500* finalist. In 2010, he was named one of the *Best Lawyers in America*. He is a member of the American Association for Justice, the Lawyer Pilots Bar Association and the Consumer Attorneys of California, where he serves on the board of governors. Mr. Danko received his AB degree from Dartmouth College, magna cum laude in 1980 and earned his JD from the University of Virginia School of Law in 1983.

**Kristine Keala Meredith** is a trial attorney specializing in product liability litigation.

She served as co-lead counsel with Mr. Danko representing more than one hundred air travelers who had suffered strokes, pulmonary emboli, or heart attacks as a result of airline-induced blood clots in *In Re Deep Vein Thrombosis Litigation*, MDL No. 1606.

Ms. Meredith served on the Law and Motion committee in *In Re Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2100, where she assisted in the successful opposition to 15 *Daubert* motions in fewer than three weeks.

Before devoting her practice to representing plaintiffs, Ms. Meredith worked on the national defense counsel teams for medical device manufacturers in multi-district litigation including, *In re Silicone Gel Breast Implants Product Liability Litigation* MDL No. 926; and, *In re Orthopedic Bone Screw Product Liability Litigation* MDL No. 1014. She also represented doctors and hospitals in defense of medical malpractice actions, where she worked with some of the world's leading medical experts.

In 2010, Ms. Meredith was named a *Northern California Super Lawyer*. She is currently an officer of the American Association for Justice and the San Mateo County Trial Lawyers Association. She is also a member of the San Francisco Trial Lawyers Association and the Consumer Attorneys of California. She is a former chair of the Minority Issues Committee of the San Francisco Bar Association Barrister Club.

She obtained her B.S. with honors from the University of California at Davis and was awarded a scholarship to attend Brigham Young University's J. Reuben Clark Law School. While in law school, she was awarded the Distinguished Student Service Award and spent a semester at Howard University Law School in Washington, D.C., as a member of the faculty/student diversity exchange.

### **SIGNIFICANT RECOVERIES**

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

***Wixon v. Wyndham Resort Development Corp.***, Case No. C-07-02361 JSW (BZ), (N.D. Cal. 2007). Girard Gibbs served as class and derivative counsel in this litigation brought against a timeshare developer and the directors of a timeshare corporation for violations of California state law. Plaintiffs alleged that the defendants violated their fiduciary duties as directors by taking actions for the financial benefit of the timeshare developer to the detriment of the owners of timeshare interests. On September 14, 2010, Judge White granted approval of a settlement of the plaintiffs' derivative claims. Preliminary approval of a settlement of the plaintiffs' class claims was granted on December 3, 2010.

***Browne v. Am. Honda Motor Co., Inc.***, Case No. CV 09-06750 (C.D. Cal.). In this class action in which Girard Gibbs and co-counsel served as class counsel, plaintiffs alleged that about 750,000 Honda Accord and Acura TSX vehicles were sold with a defective braking system, causing the rear brake pads to wear prematurely. Girard Gibbs negotiated a settlement in which improved brake pads were made available and class members who had them installed could be reimbursed in full, up to \$150. The settlement also provided reimbursements to those who replaced their brake pads before the new pads became available. The settlement received final court approval in July 2010 and, though the claims period remains open, over \$12 million has already been distributed to class members.

***In re TFT-LCD (Flat Panel) Antitrust Litigation***, MDL 1827 (N.D. Cal.). Girard Gibbs serves as liaison counsel in this multi-district antitrust litigation against numerous TFT-LCD (Flat Panel) manufacturers alleging a conspiracy to fix prices, which has achieved settlements of more than \$400 million to date.

***In re Natural Gas Antitrust Cases I, II, III and IV***, J.C.C.P. No. 4221 (Cal. Super. Ct. San Diego County). Girard Gibbs served in a leadership capacity in this coordinated antitrust litigation against numerous natural gas companies for manipulating the California natural gas market, which has achieved settlements of nearly \$160 million to date.

***Sugarman v. Ducati North America, Inc.*** Case No. 5:10-cv-05246-JF (N.D. Cal.). Girard Gibbs served as class counsel on behalf of a nationwide class of Ducati motorcycle owners. Plaintiffs alleged that the plastic fuel tanks on certain Ducati motorcycles were defective because they degraded and deformed due to an incompatibility with the motorcycles' fuel. On January 12, 2012, the Court fully approved a settlement that provided an extended warranty and repairs for fuel tank expansion issues, and improved parts on behalf of a class of 39,000 owners of 2003-2011 Ducati motorcycles with plastic fuel tanks.

***Collado v. Toyota Motor Sales, U.S.A., Inc.***, Case No. 2:10-cv-3113-R (C.D. Cal.). Girard Gibbs served as lead counsel in this product liability class action alleging a material defect in the HID Headlight System in certain Prius models. The class settlement provided for a free warranty extension and cash reimbursements for many class members who paid for headlight repairs.

***Parkinson v. Hyundai Motor America***. Case No. CV 8:06-0345 (C.D. Cal.). Girard Gibbs and co-counsel served as class counsel in this class action featuring allegations that the flywheel and clutch system in certain 2003 Hyundai Tiburons were defective. The complaint alleged that though Hyundai knew of the defect it sold the vehicles without telling its customers about the problem and did not cover the repairs under warranty. After achieving nationwide class certification, Girard Gibbs negotiated a settlement that provided for reimbursements to class members for their repairs ranging, depending on mileage at time of repair, from 50% to 100% reimbursement. The settlement, which was granted final approval in June 2010, also provided full reimbursement for rental vehicle expenses for class those members who incurred them while flywheel or clutch repairs were being performed.

***In re Sony BMG CD Technologies Litigation***, Case No. 1:05-cv-09575-NRB (S.D.N.Y.). Girard Gibbs served as co-lead counsel in this class action for violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.* on behalf of millions of consumers who purchased SONY BMG music compact discs encoded with digital rights management (“DRM”) software which limited CD functionality and acted as spyware on the users’ computers. The Hon. Naomi Reice Buchwald granted approval to a settlement that provided for a nationwide recall of certain CDs, the dissemination of software utilities to remove the offending DRM, cash and other compensation for consumers, and injunctive relief governing SONY BMG’s use of DRM.

***In re iPod Cases***, JCCP No. 4355 (Cal. Super. Ct. San Mateo County). Girard Gibbs, as court appointed co-lead counsel, negotiated a settlement conservatively valued at approximately \$15 million which provided warranty extensions, battery replacements, cash payments, and store credits for those class members who experienced a battery failure. In granting final approval of the settlement, the Hon. Beth L. Freeman said that the class was represented by “extremely well qualified” counsel who negotiated a “significant and substantial benefit” for the class members.

***In re PayPal Litigation***, Case No. C-02-1227-JF (PVT) (N.D.Cal., S.J. Div. 2002). Girard Gibbs served as co-lead counsel in this nationwide class action brought against PayPal alleging violations of the Electronic Funds Transfer Act (“EFTA”) and California consumer protection statutes. The plaintiffs alleged that PayPal did not comply with the EFTA when restricting access to consumers’ PayPal accounts, initiating certain electronic funds transfers or its error resolution processes. On September 24, 2004, Judge Fogel granted final approval to a settlement valued at \$14.35 million in cash and returned funds, plus injunctive relief to ensure compliance with the EFTA.

***In re America Online, Inc. Version 5.0 Software Litigation***, MDL Docket No. 1341 (S.D. Fla.). Girard Gibbs 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 *et seq.*, 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.

***In re Literary Works In Electronic Databases Copyright Litigation***, MDL No. 1379 (GBD) (S.D.N.Y. 2000). Girard Gibbs served as co-lead counsel in this class action brought on behalf of freelance authors alleging that after freelance authors' works were published in newspapers, magazines, and other print publications with the authors' permission, those publications then licensed the works without the authors' permission to the commercial databases for electronic publication, in violation of the Federal Copyright Act. Five cases were consolidated for pretrial proceedings before the Honorable George B. Daniels, U.S. District Judge for the Southern District of New York. On September 27, 2005, Judge Daniels granted final approval of an \$18 million cash settlement. On November 29 2007, the U.S. Court of Appeals for the Second Circuit vacated the District Court's ruling, citing lack of subject-matter jurisdiction. On March 2, 2010, the United States Supreme Court unanimously reversed the Second Circuit's ruling, holding that section 411(a) of the Copyright Act does not restrict a federal court's subject-matter jurisdiction over infringement lawsuits.

***In Re General Motors Dex-Cool Cases***. Case No. HG03093843 (Cal. Super Ct. Alameda County). In these class action lawsuits filed throughout the country, plaintiffs alleged that General Motors' Dex-Cool engine coolant caused damage to certain vehicles' engines, and that in certain other vehicles, Dex-Cool formed a rusty sludge, which caused the vehicles' cooling systems to overheat. After successfully certifying consumer classes in both Missouri and California, General Motors agreed to pay cash reimbursements to class members ranging from \$50 to \$800 per vehicle. On October 27, 2008 the California court granted final approval to the cash settlement.

***In Re Medtronic, Inc. Implantable Defibrillators Product Liability Litigation***, MDL No. 05-1726 (JMR/AJB) (D.Minn.). Girard Gibbs served on the Discovery and Law Committees and provided legal, discovery and investigative support in this lawsuit, following a February 2005 recall of certain models of Medtronic implantable cardioverter defibrillator ("ICD") devices. Approximately 2,000 individual cases were filed around the country and consolidated in an MDL proceeding in District Court in Minnesota. The approximate 2,000 cases were settled in 2007 for \$75 Million.

***In re Providian Credit Card Cases***, J.C.C.P. No. 4085 (Cal. Super. Ct. San Francisco County). Girard Gibbs served as court-appointed co-lead counsel in this nationwide class action suit brought on behalf of Providian credit card holders. The lawsuit alleged that Providian engaged in unlawful, unfair and fraudulent business practices by charging its customers unauthorized fees and charges. The Hon. Stuart Pollack approved a \$105 million settlement, plus injunctive relief, which is one of the largest class action recoveries in the United States arising out of consumer credit card litigation.

***In re Hyundai and Kia Horsepower Litigation***, Case No. 02CC00287 (Cal. Super. Ct. Orange County). Girard Gibbs served as lead counsel in this coordinated nationwide class action against Hyundai for selling more than 1 million vehicles with overstated horsepower ratings over a ten year period. The case was aggressively litigated on both sides over several years. In all, over 850,000 Hyundai owners received notice of the settlement, resulting in over 165,000 claims for up to \$225 in cash and \$325 in services, and a total payout of approximately \$30 million.

***In re America Online Spin-Off Accounts Litigation***, MDL No. 04-1581-RSWL (C.D. Cal.). Girard Gibbs served as court-appointed co-lead counsel in this nationwide class action suit brought on behalf of America Online subscribers who were billed for a second account without their knowledge, authorization or consent. The litigation settled for \$25 million and certain changes in AOL's billing and account practices.

***Lehman v. Blue Shield of California***, Case No. CGC-03-419349 (Cal. Super. Ct. San Francisco County). In this class action lawsuit alleging that Blue Shield engaged in unlawful, unfair and fraudulent business practices when it modified the risk tier structure of its individual and family health care plans, a \$6.5 million settlement was negotiated on behalf of former and current Blue Shield subscribers residing in California. The Honorable James L. Warren granted final approval of the settlement in March 2006.

***Roy v. Hyundai Motor America***, Case No. SACV 05-483-AHS (C.D. Cal.). Girard Gibbs served as court appointed co-lead counsel in this nationwide class action suit brought on behalf of Hyundai Elantra owners and lessees, based on allegations that the passenger air bag system installed on the Elantras was defective. A settlement was negotiated whereby Hyundai agreed to repair the air bag systems, provide reimbursement for transportation related expenses and an alternative dispute resolution program allowing for trade-ins and buy-backs. In approving the settlement negotiated by Girard Gibbs, the Honorable Alicemarie H. Stotler presiding, described the settlement as "pragmatic" and a "win-win" for all involved.

***Telestar v. MCI, Inc.***, Case No. C-05-Civ-10672-JGK (S.D.N.Y). This class action was brought on behalf of MCI commercial subscribers who were charged both interstate and intrastate fees for the same frame relay on prorate line service during the same billing period. On April 17, 2008, the Honorable John G. Koeltl granted final approval of a settlement for over \$2.8 million in cash.

***Powers Law Offices, P.C. v. Cable & Wireless USA, Inc.***, Case No. 99 CV 12007 (EFH) (D. Mass 1999). Class action brought on behalf of all Cable & Wireless subscribers who were overcharged for recurring and incorrect fees on lines that were not presubscribed to C&W at the time. Girard Gibbs prosecuted the case from 1999 through 2005, and on October 27, 2005, Judge Harrington granted final approval of the \$8 million settlement and the Bankruptcy Judge approved the 30% distribution from the unsecured creditors' fund of the bankruptcy liquidation proceeds.

***Allen Lund Co., Inc. v. AT&T Corp.***, Case No. C 98-1500-DDP (AJW) (C.D. Cal.). This class action lawsuit was brought on behalf of small businesses whose long-distance service was switched to Business Discount Plan, Inc. Girard Gibbs was appointed class counsel by the Honorable Dean D. Pregerson. The settlement, providing for full cash refunds and free long-distance telephone service, was approved in December 1999.

***In re MCI Non-Subscriber Telephone Rates Litigation***, MDL Docket No. 1275 (S.D. Ill.). This class action lawsuit was 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 Girard Gibbs 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.

***Mitchell v. American Fair Credit Association***, Case No. 785811-2 (Cal. Super. Ct. Alameda County); ***Mitchell v. Bankfirst, N.A.***, Case No. C-97-1421-MMC (N.D. Cal.). This class action lawsuit was brought on behalf of California residents who became members of the American Fair Credit Association ("AFCA"). Plaintiffs alleged 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 Mitchell, et al., v. American Fair Credit Association, Inc., et al.*, 99 Cal. App. 4th 1345 (2002) (first reported decision under the California Credit Services Act of 1984).

***In re LookSmart Litigation***, Case No. 02-407778 (Cal. Super. Ct. San Francisco County). 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.

***Steff v. United Online, Inc.***, Case No. BC265953, (Los Angeles Super. Ct.). 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 *et seq.* and the Unfair Competition Law, Business And Professions Code §§ 17200 *et seq.* 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.

***Mackouse v. The Good Guys - California, Inc.***, Case No. 2002-049656, (Alameda County Super. Ct.). This nationwide class action lawsuit 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.

***Stoddard v. Advanta Corp.***, Case No. 97C-08-206-VAB (Del. Superior Ct.). This nationwide class action lawsuit was brought 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.

***Mager v. First Bank of Marin***, CV-S-00-1524-PMP (D. Nev.). This nationwide class action was 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.

***Ho v. San Francisco Unified School District***, Case No. C-94-2418-WHO (N.D. Cal.). This civil rights action was brought on behalf of a certified class of San Francisco public school students of Chinese descent to terminate racial and ethnic quotas imposed under 1983 desegregation consent decree. See *Ho v. San Francisco Unified Sch. Dist.*, 965 F. Supp. 1316 (N.D. Cal. 1997), *aff'd* 147 F.3d 854 (9th Cir. 1998); see also 143 Cong. Rec. S6097, 6099 (1997) (statement of United States Senator Hatch referring to testimony of class representative before Senate Judiciary Committee).

***Billiteri v. Securities America, Inc.***, Case No. 3:09-cv-01568-F (N.D. Tex.). Girard Gibbs served as lead counsel in an action against broker-dealer Securities America, Inc. and its corporate parent, Ameriprise, Inc. in connection with sales of investments in the Provident Royalties and Medical Capital investment schemes. Daniel Girard coordinated negotiations resulting in a \$150 million settlement, with \$80 million allocated to class plaintiffs represented by Girard Gibbs and \$70 million allocated to individual investors who had initiated arbitration proceedings. The settlements returned over 40% of investment losses.

***In re American Express Financial Advisors Securities Litigation***, Case No. 04-cv-01773-DAB (S.D.N.Y.). Girard Gibbs served as co-lead counsel in this class action, brought on behalf of individuals who bought financial plans and invested in mutual funds from American Express Financial Advisors. The case alleged that American Express steered its clients into underperforming "shelf space funds" to reap kickbacks and other financial benefits. On July 13, 2007, the Court granted final approval to a cash settlement of \$100 million in addition to other relief.

***Scheiner v. i2 Technologies, Inc., et al.***, Case No. 3:01-CV-418-H (N.D. Tex.). Girard Gibbs represented lead plaintiff, the Kansas Public Employees Retirement System, and served as co-lead counsel in this securities fraud class action on behalf of investors in i2 Technologies. The Hon. Barefoot Sanders approved cash settlements for \$88 million from the company, its officers and its former auditor, Arthur Andersen LLP. As part of the settlement, i2 agreed to institute significant corporate governance reforms.

***CalSTRS v. Qwest Communications, et al.***, Case No. 415546 (Cal. Super. Ct. San Francisco County). Girard Gibbs represented the California State Teachers Retirement System in this opt-out securities fraud case against Qwest Communications, Inc. and certain of its officers and directors, as well as its outside auditor Arthur Andersen. The case resulted in a precedent-setting \$45 million settlement for California school teachers.



***In re Winstar Communications Securities Litigation***, Case No. 01 Civ. 11522 (S.D.N.Y.) Girard Gibbs represents Allianz of America, Inc., Fireman's Fund and other large private institutional investors in federal securities litigation against Grant Thornton and other defendants arising out of their investments in Winstar Communications, Inc. The firm has obtained settlements to date from Lucent Technologies and the individual officers and directors of Winstar, and is continuing to prosecute the case against Grant Thornton, outside auditor to Winstar.

***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 \$120 million in cash and stock.

***In re Digex, Inc. Shareholder Litigation***, Consol. Case No. 18336 (Del. Ch. Ct. 2000). Girard Gibbs represented the Kansas Public Employees Retirement System, one of two institutional lead plaintiffs in this lawsuit whereby 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.

***In re Oxford Tax Exempt Fund Securities Litigation***, Case No. WMN-95-3643 (D. Md.). Girard Gibbs served as co-lead counsel in this class and derivative litigation brought on behalf of a 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.

***Calliott v. HFS, Inc.***, Case No. 3:97-CV-0924-L (N.D. Tex.). Girard Gibbs intervened on behalf of an institutional client in this securities class action arising out of bankruptcy of Amre, Inc., a seller of home remodeling and repair services. Girard Gibbs was designated lead plaintiff's counsel under Private Securities Litigation Reform Act. Settlements for \$7.3 million were approved August 1999 and December 2000.

***In re Total Renal Care Securities Litigation***, Case No. 99-01750 (C.D. Cal.). This securities fraud action arose 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.

***In re Towers Financial Corporation Noteholders Litigation***, MDL No. 994 (S.D.N.Y.). This securities and RICO class action was brought 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. Girard Gibbs served as liaison counsel and as a plaintiffs’ executive committee member. See Dinsmore v. Squadron, Ellenoff, Plesent, Sheinfeld & Sorkin, 945 F. Supp. 84 (S.D.N.Y.1996), rev’d, No. 97-7011, 1998 U.S. App. LEXIS 1448 (2d Cir. Jan. 28, 1998); In re Towers Financial Corporation Noteholders Litigation, 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”).