

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

)
)
In re Federal National Mortgage Association)
Securities, Derivative, and "ERISA" Litigation)
)
_____)

MDL No. 1688

)
)
In re Fannie Mae Securities Litigation)
)
_____)

Consolidated Civil Action.
No. 1:04-cv-1639 (RLJ)

LEAD PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, lead plaintiffs Ohio Public Employees Retirement System ("OPERS") and State Teachers Retirement System of Ohio ("STRS") ("Lead Plaintiffs"), move this Court for an order certifying this action as a class action and designating Lead Plaintiffs as the representatives of a plaintiff class (the "Class") defined as follows:

All purchasers of the publicly traded common stock and call options of Federal National Mortgage Association ("Fannie Mae"), and sellers of Fannie Mae publicly traded put options during the period from April 17, 2001, through September 27, 2005 (the "Class Period") who suffered damages thereby. Excluded from the Class are: (i) the Defendants, (ii) any person who was an officer or director of Fannie Mae or any of its parents or subsidiaries during the Class Period, (iii) the members of the immediate family of each of the Individual Defendants, (iv) any entity in which any Defendant had a controlling interest during the Class Period, (v) any parent or subsidiary of Fannie Mae, (vi) any incentive, retirement, stock or other benefit plan that benefited solely the Individual Defendants; and (vii) the legal representatives, heirs, predecessors, successors or assigns of any of the foregoing excluded persons and entities.

Lead Plaintiffs further move this court for an Order appointing Waite, Schneider, Bayless & Chesley Co., L.P.A. as Lead Class Counsel and Berman DeValerio Pease Tabacco Burt & Pucillo as Co-Lead Class Counsel.

Lead Plaintiffs make this motion based upon the Second Consolidated Class Action Complaint for Violations of Federal Securities Laws, the Memorandum of Law submitted contemporaneously herewith and on all other pleadings, motions and orders in this action. Lead Plaintiffs' [Proposed] Order is filed concurrently herewith.

Dated: May 17, 2006

Respectfully submitted,

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**MEMORANDUM OF LAW IN SUPPORT OF LEAD
PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION**

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Lead Plaintiffs, Ohio Public Employees Retirement System (“OPERS”) and State Teachers Retirement System of Ohio (“STRS”) (hereinafter collectively “Lead Plaintiffs”), by their counsel, respectfully submit this memorandum of law in support of their motion for class certification.

I. INTRODUCTION

This is a federal securities fraud action against Federal National Mortgage Association (“Fannie Mae” or the “Company”) and Franklin D. Raines, former Chairman of the Board and Chief Executive Officer (“Raines”), Timothy Howard, former Vice Chairman of the Board and Chief Financial Officer (“Howard”) and Leanne G. Spencer, former Vice President and Controller (“Spencer”).¹ Lead Plaintiffs’ Amended Consolidated Class Action Complaint asserts that Defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule 10b-5 promulgated thereunder, by issuing materially false and/or misleading public statements resulting in Fannie Mae’s securities trading at artificially inflated prices.

Pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, Lead Plaintiffs seek certification of a class consisting of the purchasers of Fannie Mae publicly traded common stock and call options and the sellers of Fannie Mae publicly traded put options during the period from April 17, 2001 (the day Fannie Mae issued a press release announcing financial results for the first quarter ending March 31, 2001) through September 27, 2005 (the day prior to *Dow Jones* reporting that “new and pervasive accounting violations” had been found at Fannie

¹ Raines, Howard and Spencer are collectively referred to herein as the “Individual Defendants,” and Fannie Mae and the Individual Defendants are collectively hereinafter referred to as “Defendants.”

Mae, which caused Fannie Mae's stock price to fall 11% from \$46.70 per share to \$41.71 per share on September 28, 2005) (the "Class Period") (the "Class").² Lead Plaintiffs also seek the appointment of OPERS and STRS as class representatives and the appointment of Waite, Schneider, Bayless & Chesley Co., L.P.A. as Lead Class Counsel and Berman DeValerio Pease Tabacco Burt & Pucillo as Co-Lead Class Counsel.

This securities class action is ideally suited for class certification because: (i) the Class is so numerous that joinder of all members is impracticable, (ii) common issues of law and fact predominate, (iii) the claims or defenses of Lead Plaintiffs are typical of the Class, (iv) as demonstrated throughout the prosecution of this action to date, Lead Plaintiffs and their counsel will adequately represent and protect the interests of the Class, and (v) a class action is superior to any other available means for the fair and efficient adjudication of this controversy.

As all of the requirements for class certification under Rule 23 of the Federal Rules of Civil Procedure are satisfied in this case, as described herein, Lead Plaintiffs' Motion for Class Certification should be granted.

II. STATEMENT OF FACTS³

Over a four-year period, Fannie Mae and the Individual Defendants orchestrated a scheme to minimize the Company's earnings volatility and report "smooth earnings" to

² Excluded from the Class are: (i) the Defendants, (ii) any person who was an officer or director of Fannie Mae or any of its parents or subsidiaries during the Class Period, (iii) the members of the immediate family of each of the Individual Defendants, (iv) any entity in which any Defendant had a controlling interest during the Class Period, (v) any parent or subsidiary of Fannie Mae, (vi) any incentive, retirement, stock or other benefit plan that benefited solely the Individual Defendants; and (vii) the legal representatives, heirs, predecessors, successors or assigns of any of the foregoing excluded persons and entities.

³ The facts set forth herein are a general summary of the facts alleged in the Complaint. The allegations of the Complaint are presumed true for purposes of a motion for class certification. *In re Lorazepam & Clorazepate Antitrust Litig.*, 202 F.R.D. 12, 14 (D.D.C. 2001).

investors. ¶¶ 4, 44, 49, 51, 53, 54, 82, 94, 96, 98, 104.⁴ In a 198-page Report of Findings to Date issued by OFHEO on September 22, 2004 (the “OFHEO Report”), OFHEO uncovered a massive financial fraud, carried out by Defendants for one main purpose – to reduce the Company’s earnings volatility and present Fannie Mae as a stable investment. ¶¶ 47, 51, 98, 116.

The majority of Fannie Mae’s fraud involved violations of Statement of Financial Accounting Standards (“SFAS”) 91 (“*Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases*”) and SFAS 133 (“*Accounting for Derivative Instruments and Hedging Activities*”). ¶ 51. With respect to SFAS 91, OFHEO concluded that management “intentionally developed accounting policies and selected and applied accounting methods to inappropriately reduce earnings volatility.” ¶ 53. Similarly, OFHEO found that Fannie Mae specifically implemented SFAS 133 “in a manner that placed minimizing earnings volatility and maintaining simplicity of operations above compliance with GAAP.” ¶ 54. The OFHEO Report also emphasized that Fannie Mae’s accounting violations were not attributed to “mere differences in interpretation of accounting principles” nor were they limited occurrences, but were “pervasive” and “reinforced by management.” ¶¶ 49, 51. This view was affirmed by the SEC’s Chief Accountant, Donald Nicolaisen, who stated that Fannie Mae’s failure to comply with SFAS 133 was “outside professional accounting standards” and was not “just a matter of interpretive judgment where two people could’ve come to varying conclusions.” ¶ 66.

⁴ “¶__” refers to paragraph citations to the Second Amended Consolidated Class Action Complaint for Violations of Federal Securities Laws, dated April 17, 2006 (the “Complaint”).

That Fannie Mae intentionally manipulated its financial accounting in order to achieve the desired goal of smooth and steady earnings growth is not disputed, even by Fannie Mae. During his testimony at an October 6, 2004 hearing before the United States House of Representatives' Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, Defendant Howard admitted that he "made the judgment" that smoothing out some of the volatility SFAS 91 caused in quarterly earnings was necessary because, as he claimed, "it preserves the integrity and the quality of our published financial statements," despite his public certifications and statements that Fannie Mae's financials were accurate and prepared in accordance with GAAP. ¶ 104. The accounting manipulations at Fannie Mae were also specifically brought to the attention of Defendants Raines, Howard and Spencer during the Class Period by a former Manager of Financial Accounting, Deferred Assets in Fannie Mae's Controller Division, but they each ignored the warnings in order to continue to perpetrate the fraud. ¶¶ 12-13, 127-143.

On September 27, 2004, Fannie Mae entered into an agreement with OFHEO to take steps to remedy its deficient internal controls, organization and staffing, governance, accounting and capital. ¶ 58. On October 12, 2004, Fannie Mae publicly disclosed that the U.S. Attorney's Office for the District of Columbia was conducting a criminal investigation. ¶ 59. Seven days later, on October 19, 2004, Fannie Mae announced that the SEC had initiated a formal investigation of the Company. ¶ 60.

On December 15, 2004, only two months after commencing their review, the SEC's Office of the Chief Accountant, whom Fannie Mae had deemed the final arbiter of its accounting compliance, confirmed OFHEO's findings by concluding that "Fannie Mae's accounting practices did not comply in material respects with the accounting requirements in Statement Nos.

91 and 133.” ¶¶ 8, 63. The SEC ordered Fannie Mae to restate its publicly filed financial statements from 2001 through mid-2004, including totally *eliminating* the use of hedge accounting. ¶¶ 63, 64.

Finally, on December 22, 2004, the Company reported that it would fully comply with the SEC’s determination and restate its financial results from 2001 through mid-2004. ¶ 70. Fannie Mae estimated that the restatement would wipe out approximately \$9 billion in previously reported earnings. *Id.* Soon after the SEC’s determination that Fannie Mae’s accounting policies and practices violated GAAP, Defendant Raines “retired,” Defendant Howard “resigned,” and Defendant Spencer “stepped down” from their respective positions with Fannie Mae. ¶¶ 68, 77. Fannie Mae’s public accountants, KPMG LLP, were also discharged. ¶ 72. On December 23, 2004, OFHEO announced that it was reviewing Raines’ and Howard’s termination packages to determine whether “they were unjustly enriched,” and Fannie Mae announced that its financial statements from 2001 to the present, including the third quarter of 2004, “should no longer be relied upon” as they did not comply with GAAP. ¶ 71.

The violations noted in the OFHEO Report and those cited by the SEC were only the tip of the iceberg. On February 23, 2005, Fannie Mae announced that OFHEO identified *additional* violations of GAAP – citing GAAP violations in virtually every major accounting rule that applies to mortgage finance including SFAS 115, *Accounting for Certain Investments in Debt and Equity Securities*, SFAS 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, SFAS 65, *Accounting for Certain Mortgage Banking Activities*, and SFAS 149, *Amendments of Statement 133 on Derivative Instruments and Hedging Activities*. ¶¶ 79, 124. While the full financial impact of these violations have yet to be quantified by Fannie Mae, it was reported that Fannie Mae’s violations of SFAS 149 alone, for

just one year, could cause Fannie Mae to decrease its earnings by nearly \$2.76 billion, bringing Fannie Mae's total earnings restatement to approximately \$12 billion. ¶ 80.

Fannie Mae's accounting violations did not end there. On March 17, 2005, OFHEO disclosed that during its investigation it identified instances of Fannie Mae employees falsifying signatures on accounting ledgers and making changes in database records related to earnings without authorization. That same day Fannie Mae disclosed that it would not be filing its Form 10-K for the fiscal year ended December 31, 2004. On April 4, 2005, *The Wall Street Journal* reported that OFHEO was investigating whether Fannie Mae improperly accounted for trusts it set up to issue mortgage-backed securities. After the close of trading on April 9, 2005, Fannie Mae's current President and Chief Executive Officer, Daniel H. Mudd, disclosed that the Company's restatement would not be completed until the second half of 2006. The Company also disclosed that it was in violation of New York Stock Exchange rules requiring the filing of an annual financial report with the SEC, and thus was facing the possibility of delisting. On September 28, 2005, additional accounting violations at Fannie Mae were reported. According to *Dow Jones*, investigators uncovered "new and pervasive accounting violations." ¶¶ 18-21, 81-83.

III. ARGUMENT

A. The Standards Of Fed. R. Civ. P. 23(a) Have Been Met

Federal Rule of Civil Procedure 23 ("Rule 23") requires a two-step analysis to determine whether class certification is appropriate. First, the action must satisfy the four prerequisites of Rule 23(a): (1) the class is so numerous that joinder of all members is impracticable (numerosity); (2) there are questions of law or fact common to the class (commonality); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class

(typicality); and (4) the representative parties will fairly and adequately protect the interests of the class (adequacy).⁵ See *Freeland v. Iridium World Communications, Ltd.*, 233 F.R.D. 40, 42 (D.D.C. 2006); *In re Vitamins Antitrust Litig.*, 209 F.R.D. 251, 256 (D.D.C. 2002). Second, the action must satisfy one of the requirements of Rule 23(b) (with 23(b)(3) relating to predominance of common questions of law or fact and the superiority of the class action mechanism). *Id.* This action satisfies each of these requirements.

Courts widely recognize that class actions are an appropriate means to enforce the federal securities laws. See, e.g., *Basic Inc. v. Levinson*, 485 U.S. 224 (1988); *In re Newbridge Networks Sec. Litig.*, 926 F. Supp. 1163, 1176 (D.D.C. 1996) (“[C]ourts have widely recognized the utility of, and the necessity for, class actions in securities litigation.”) (citations omitted); *Foltz v. U.S. News & World Report, Inc.*, 111 F.R.D. 49 (D.D.C. 1986). See also *In re Bank One Sec. Litig./First Chi. S’holder Claims*, Case No. 00 CV 0767, 2002 U.S. Dist. LEXIS 8709, at * 7 (N.D. Ill. May 9, 2002) (“[S]ecurities fraud cases are uniquely situated to class action treatment since the claims of individual investors are often too small to merit separate lawsuits.”) (quoting *King v. Kansas City S. Indus., Inc.*, 519 F.2d 20 (7th Cir. 1975)).

Accordingly, Rule 23 is liberally interpreted so as to facilitate certification of class actions. *In re Bearingpoint, Inc. Sec. Litig.*, 232 F.R.D. 534, 2006 U.S. Dist. LEXIS 1718, at * 11-12 (E.D. Va. Jan. 17, 2006) (“it is important to bear in mind that, ‘in light of the importance of the class action device in securities fraud suits’, the requirements of Rule 23 ‘are to be construed liberally’”) (quoting, *Gary Plastic Packing Corp. v. Merrill Lynch, Pierce, Fenner &*

⁵ Recent amendments to Rule 23 require that the adequacy of counsel determination, originally analyzed under Rule 23(a)(4), be made under Rule 23(g), which became effective December 1, 2003. See *Jones v. Ford Motor Credit Co.*, No. 00-8330, 2005 U.S. Dist. LEXIS 5381 at *81 (S.D.N.Y. Mar. 31, 2005) (“although Rule 23(g) replaces the adequacy test as originally developed under Rule 23(a)(4), it largely incorporates the adequacy standards developed thereunder”).

Smith, Inc., 903 F.2d 176, 179 (2d Cir. 1990)). “[W]hen a court is in doubt as to whether or not to certify a class action, the court should err in favor of allowing the class to go forward.” *In re Indep. Energy Holdings, PLC Sec. Litig.*, 210 F.R.D. 476, 479 (S.D.N.Y. 2002) (citation omitted). *See also Eisenberg v. Gagnon*, 766 F.2d 770, 785 (3rd Cir. 1985) (“The interests of justice require that in a doubtful case . . . any error, if there is to be one, should be committed in favor of allowing a class action.”); *Vitamins*, 209 F.R.D. at 258 (“courts tend to favor class certification when in doubt.”); *In re Blech Sec. Litig.*, 187 F.R.D. 97, 102 (S.D.N.Y. 1999) (“Class action treatment of related claims is particularly appropriate when plaintiffs seek redress for violations of the securities laws. It is well recognized that private enforcement of these laws is a necessary supplement to government regulation. . . . Accordingly, in an alleged securities fraud case, when a court is in doubt as to whether or not to certify a class action, the court should err in favor of allowing the class to go forward.”) (citations omitted).

Determining whether an action may be maintained as a class action does not involve a resolution of the merits of the suit. In this regard, the Supreme Court has stated:

[the Court has no] authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action. . . . In determining the propriety of a class action, the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met.

Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 177-78 (1974) (citation omitted). Accordingly, “[c]ourts must not venture too deeply into the merits of a case in deciding whether to certify a class.” *Freeland*, 233 F.R.D. at 44.

Further, in evaluating a motion for class certification, a complaint’s allegations are assumed to be true and the analysis is limited to a review of whether plaintiffs have complied with the requirements of Rule 23. *See, e.g., Lorazepam*, 202 F.R.D. at 14; *Malone v. Microdyne*

Corp., 148 F.R.D. 153, 156 (E.D. Va. 1993).⁶ Finally, the Supreme Court has reiterated that the “dominant concern” governing Rule 23 applicability is “whether a proposed class has sufficient unity so that absent [class] members can fairly be bound by decisions of class representatives.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 621 (1997). As demonstrated below, this case easily satisfies all of the requirements for class certification.

1. The Numerosity Requirement Is Satisfied

Rule 23(a)(1) requires that the class be so numerous that joinder of all members is impracticable. “Impracticability does not mean impossibility of joinder, but refers to the difficulty or inconvenience of joinder.” *Indep. Energy*, 210 F.R.D. at 479. Impracticability of joinder is not determined solely by a numerical test, and impracticability of joinder is generally assumed in class action suits involving nationally traded securities. *See Ballard v. Blue Shield of S.W. Va., Inc.*, 543 F.2d 1075, 1080 (4th Cir. 1976), *cert. denied*, 430 U.S. 922 (1977); *Ganesh, L.L.C. v. Computer Learning Ctrs., Inc.*, 183 F.R.D. 487, 489 (E.D. Va. 1998) (“no mechanical test”). In the same vein, Lead Plaintiffs are not required to quantify the precise number of persons in the class to demonstrate impracticability of joinder where such a conclusion is clear from reasonable estimates and the Court may make common sense assumptions to support a finding of numerosity. *See, e.g., In re Initial Pub. Offering Sec. Litig.*, 227 F.R.D. 65, 86-87 (S.D.N.Y. 2004) (precise calculation not required; court may rely on reasonable inferences).

⁶ On February 9, 2006, this Court denied all Defendants’ motions to dismiss the initial consolidated complaint, holding that it stated claims under the federal securities laws. On April 17, 2006, Lead Plaintiffs filed an Amended Consolidated Class Action Complaint to include options traders within the class definition and to expand the Class to include purchasers who purchased prior to Fannie Mae releasing all the news and information concerning the fraud.

While Lead Plaintiffs do not presently know the exact number of Class members, there can be no dispute that the Class is sufficiently numerous. ¶ 289.⁷ As of July 31, 2004, Fannie Mae had approximately 967,903,726 shares of common stock issued and outstanding and its securities, including its common stock and options, actively traded on the NYSE. *See Vitamins*, 209 F.R.D. at 258 (“There is no set number requirement as long as plaintiffs provide a reasonable basis for their estimate.”); *Lorazepam*, 202 F.R.D. at 26 (same). Further, because Fannie Mae securities traded on national exchanges during the Class Period, it is reasonable to infer that members of the Class are dispersed throughout the United States. Such geographical dispersion among potential claimants also militates in favor of class treatment. *See Stewart v. Rubin*, 948 F. Supp. 1077, 1088 (D.D.C. 1996), *aff’d*, 124 F.3d 1309 (D.C. Cir. 1997) (245 member class spread throughout the country satisfies numerosity requirement); *In re Southeast Hotel Props. Ltd. P’ship Investor Litig.*, 151 F.R.D. 597, 601 (W.D.N.C. 1993) (over 400 limited partners throughout the United States satisfied numerosity requirement). Accordingly, numerosity is amply satisfied here.

2. There Are Questions Of Law And Fact Common To The Class.

Rule 23(a) provides that an action may be maintained as a class action if there are questions of law or fact common to the class. In determining whether common questions exist, Rule 23(a)(2) requires only that there must exist a common nucleus of operative facts or law; commonality does not require that *all* questions of law or fact be common. Instead, “[t]he commonality test is met where there is at least one issue, the resolution of which will affect all or a significant number of the putative class members.” *Pigford v. Glickman*, 182 F.R.D. 341, 348

⁷ The identity of the members of the Class and the exact number of these members can be obtained through discovery. *McCarthy v. Kleindienst*, 741 F.2d 1406, 1410 (D.C. Cir. 1984); *Committee of Blind Vendors v. District of Columbia*, 695 F. Supp. 1234, 1242 (D.D.C. 1988).

(D.D.C. 1998) (quoting *Lightbourn v. County of El Paso*, 118 F.3d 421, 426 (5th Cir. 1997), *cert. denied*, 522 U.S. 1052 (1998)); *See also Initial Pub. Offering*, 227 F.R.D. at 87 (“A single common question may be sufficient to satisfy the commonality requirement.”) (citation omitted).

In the context of federal securities actions, courts have liberally applied the “common question” requirement. For example, in *Lewis v. Capital Mortg. Invs.*, 78 F.R.D. 295, 304 (D. Md. 1977), the court held that the alleged misrepresentations in, and omissions from, public filings were sufficiently similar and presented common questions of law and fact that predominated over individual questions:

[i]t is well-established that a class action is appropriate in securities fraud cases involving similar or identical misrepresentations even if they are issued at different times [citations omitted]. Moreover, the courts generally have been quite liberal in certifying class actions in such cases, recognizing that ‘it is a rare case that involves but one fraudulent statement’

Id. (citations omitted). *See also Blech*, 187 F.R.D. at 104 (holding that the commonality requirement has been applied permissively in securities fraud litigation).

Thus, the “common question” requirement is satisfied where, as here, the Complaint alleges that Defendants, in a series of public statements and documents issued during the Class Period, misrepresented and failed to disclose material facts concerning Fannie Mae’s financial condition and results. ¶¶ 182-287. *In re Medical Corp. Sec. Litig.*, 139 F.R.D. 74, 78 (D. Md. 1991) (“a course of repeated misrepresentations will satisfy the commonality requirement.”) (citing *Lewis*, 78 F.R.D. at 304). *See also Newbridge Networks*, 926 F. Supp. at 1176 (allegations of common questions of law and fact supported certification where complaint pled defendants’ issuance of material misstatements and omissions in documents and public statements disseminated to the public during the class period).

Here, the Complaint identifies numerous common issues of fact and law, all amenable to aggregate proof through evidence of Defendants' conduct. These common issues include:

- (a) whether Defendants' Class Period public statements and reports misrepresented and/or omitted material information;
- (b) whether Defendants violated federal securities laws by the acts and/or omissions alleged;
- (c) whether Defendants acted with *scienter* in issuing false and misleading statements during the Class Period;
- (d) whether the Individual Defendants are liable as control persons under the federal securities laws; and
- (e) whether the members of the Class have sustained damages and, if so, the proper measure of damages.

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Proof of these issues, which concern Defendants' common course of conduct, will not vary appreciably from one Class member to another and will advance the claims of all Class members. Where "issues are 'central' to [plaintiffs'] cause[s] of action under [the federal securities laws], the commonality requirement is satisfied." *Dunnigan v. Metropolitan Life Ins. Co.*, 214 F.R.D. 125, 137 (S.D.N.Y. 2003). The Complaint's allegations thus amply satisfy the commonality requirement of Rule 23(a)(2).

3. Lead Plaintiffs' Claims Are Typical Of Those Of The Members Of The Class

Under Rule 23(a)(3), a proposed class representative must demonstrate that "the claims

or defenses of the representative parties are typical of the claims or defenses of the class.”⁸ The typicality requirement is met “if each class member’s claim arises from the same course of events that led to the claims of the representative parties and each class member makes similar legal arguments.” *Lorazepam*, 202 F.R.D. at 27 (quoting *Pigford*, 182 F.R.D. at 349); *Vitamins*, 209 F.R.D. at 260; *Simpson v. Specialty Retail Concepts, Inc.*, 149 F.R.D. 94 (M.D.N.C. 1993); *Covelo Indian Cmty. v. Watt*, 551 F. Supp. 366, 377 (D.D.C. 1982). This requirement “is not demanding.” *Forbush v. J.C. Penney Co.*, 994 F.2d 1101, 1106 (5th Cir. 1993) (citing *Shipes v. Trinity Indus.*, 987 F.2d 311, 316 (5th Cir. 1993)). The focus of Rule 23(a)(3)’s typicality test is whether the proposed representatives’ *claims* are possessed by the other members of the proposed class, making the proposed representatives’ conduct or peculiarities completely immaterial. *See, e.g., Southeast Hotel Props.*, 151 F.R.D. at 605 (for typicality analysis, it is irrelevant “whether there is a similarity in personal backgrounds or knowledge between individuals”).

“Typicality” does not require class representatives’ claims to be identical to the Class’ claims:

Typicality...does not require that the claims of the named representatives be ‘co-extensive with’ or ‘identical to’ those of the other class members. Rather, this requirement [of typicality] is satisfied even though varying fact patterns support the claims or defenses of individual class members or there is disparity in the damages claimed by the named parties and the other members of the class.

In re Kirschner Medical Corp. Sec. Litig., 139 F.R.D. 74, 79 (D. Md. 1991) (citing *National Constructors Ass’n v. National Elec. Contractors Ass’n*, 498 F. Supp. 510, 545 (D. Md. 1980),

⁸ Courts have recognized that the typicality requirement of Rule 23(a)(3) significantly overlaps with the commonality requirement of Rule 23(a)(2) and the adequacy of representation requirement of Rule 23(a)(4). *See, e.g., General Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 157 n.13 (1982).

modified 678 F.2d 492 (4th Cir. 1982)). See also *Thomas v. Albright*, 139 F.3d 227, 238 (D.C. Cir. 1998) (“as with the requirement of commonality, the facts and claims of each class member do not have to be identical to support a finding of typicality.”); *United States v. Trucking Employers, Inc.*, 75 F.R.D. 682, 687 (D.D.C. 1977) (“If the interests of all class members coincide with respect to the merits of the suit, then in advocating their own interests the named parties will necessarily represent the interests of absentees as well”). Therefore, “[f]actual variations between claims will not defeat typicality.” *Meredith v. Mid-Atlantic Coca Cola Bottling Co.*, 129 F.R.D. 130, 133 (E.D. Va. 1989).

In fact, in a securities fraud action “it is *defendants’* course of conduct . . . the release to the press of the allegedly fraudulent and misleading statements upon which the court must focus in determining typicality.” *In re IGI Sec. Litig.*, 122 F.R.D. 451, 456 (D.N.J. 1988) (emphasis in original). See also *In re Sumitomo Copper Litig.*, 194 F.R.D. 480, 482 (S.D.N.Y. 2000) (“When inquiring into the typicality requirement...the focus must be on the defendants’ behavior and not that of plaintiffs.”). Plaintiffs’ claims satisfy the typicality requirement if, as here, they arise “from the same course of events, and each class member makes similar legal arguments to prove the defendant’s liability.” *In re Drexel Burnham Lambert Group*, 960 F.2d 285, 291 (2nd Cir. 1992); *Lorazepam*, 202 F.R.D. at 27 (same).

Lead Plaintiffs’ claims here are plainly typical of those of the Class. Plaintiffs, like the absent Class members, purchased Fannie Mae securities during the Class Period and sustained damages due to Defendants’ material misrepresentations and omissions. “In the context of a case that implicates Section 10 of the Securities Exchange Act of 1934 . . . and Rule 10b-5 . . . the commonality of these questions and the typicality of the named Plaintiffs’ claims cannot credibly be denied.” *Ganesh*, 183 F.R.D. at 489.

Furthermore, since Rule 23(a)(3)'s requirements are readily met in federal securities actions, courts routinely reject challenges to the typicality of a plaintiff's claims predicated on inevitable factual variations such as individual sophistication, investment strategies, reliance or other particulars surrounding the purchases of the securities at issue. Indeed, in a Section 10(b) action, such individual questions are irrelevant to typicality due to the rebuttable presumption of reliance stemming from the "fraud-on-the-market-theory." *Basic*, 485 U.S. at 241-42 (adopting the fraud-on-the-market doctrine and dispensing with the requirement that an investor was personally aware of a particular misstatement prior to purchasing his stock).⁹

As the Supreme Court recognized in *Basic*, where materially misleading statements were disseminated into an impersonal, well-developed market for securities:

An investor who buys or sells stock at the price set by the market does so in reliance on the integrity of that price. Because most publicly available information is reflected in market price, an investor's reliance on any public material misrepresentations, therefore, may be presumed for purposes of a Rule 10b-5 action.

485 U.S. at 247.

Nor can Defendants rebut the presumption of reliance on the class motion, because to attempt to do so would require the Court to engage in the type of inquiry into the merits of Plaintiffs' claims prohibited by *Eisen*, 417 U.S. at 177. "[W]hether or not [plaintiff] in fact relied on the integrity of the market goes to the merits of the case and is therefore an inappropriate matter for the Court to consider on a motion for class certification." *Seidman v. American Mobile Sys.*, 157 F.R.D. 354, 361 (E.D. Pa. 1994) (citing *Eisen*, 417 U.S. at 177-78).

⁹ See *Gilbert v. First Alert Inc.*, 904 F. Supp. 714, 719-20 (N.D. Ill. 1995) (citing *Basic*, 485 U.S. at 247) (Under the fraud-on-the-market doctrine, "a plaintiff need not allege that he actually relied on the misstatement").

As a result, where the fraud-on-the-market doctrine applies, as here, purported “unique defenses” based on the relative sophistication of the proposed class representatives are wholly irrelevant to class certification, because “[t]he securities laws afford protection to all investors, both sophisticated and unsophisticated.” *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 112 F.R.D. 383, 388 (S.D.N.Y. 1986). *See also Basic*, 485 U.S. at 242. “Plaintiff as a professional investor, the class members as amateurs, and indeed, those who choose stock by means of ouija board or by throwing darts at the list, all believe as an article of faith that the market is an honest market, representing the sum total of the effects on price, supply and demand of shares, of all public information.” *Kolin v. American Plan Corp.*, No. CV-84-3183, 1986 U.S. Dist. LEXIS 27057 at *26-27 (E.D.N.Y. Apr. 8, 1986) (citation omitted). Therefore, highly sophisticated investors, including market professionals, are regularly certified as class representatives. *See, e.g., Kalodner v. Michaels Stores, Inc.*, 172 F.R.D. 200, 205-06 (N.D. Tex. 1997).¹⁰

Likewise, the courts have consistently held that investment strategies are not relevant in a fraud-on-the-market case. *See, e.g., Kirby v. Cullinet Software, Inc.*, 116 F.R.D. 303, 308 (D. Mass. 1987) (“investment strategy is of little importance to . . . suitability as a class representative”); *Tolan v. Computervision Corp.*, 696 F. Supp. 771, 779-80 (D. Mass. 1988) (“[i]t is of no consequence that the putative plaintiffs devised different investment strategies”).¹¹

¹⁰ *See Hanon v. Dataproducts Corp.*, 976 F.2d 497, 506 (9th Cir. 1992) (“Differences in sophistication, etc., among purchasers have no bearing in the impersonal market fraud context, because dissemination of false information necessarily translates through market mechanisms into price inflation which harms each purchaser identically.”); *Blackie v. Barrack*, 524 F.2d 891, 905 (9th Cir. 1975).

¹¹ *See also Fine v. American Solar King Corp.*, 919 F.2d 290, 299 (5th Cir. 1990) (“The evidence upon which [defendant] relies demonstrates only that the named Plaintiffs had their own investment strategies and motives in purchasing [the subject] stock”); *Moskowitz v. Lopp*, 128 F.R.D. 624, 631 (E.D. Pa. 1989) (“traders in puts and calls rely on the integrity of information disseminated in the market just as do purchasers and sellers of the underlying

In fact, even investors who engage in “erratic, counterintuitive, or speedy trading practices” have been found typical, because “[t]he securities laws . . . exist for the protection of every investor, not just the conservative or wise investor.” *In re Electro-Catheter Sec. Litig.*, Civ. No. 87-41, 1987 U.S. Dist. LEXIS 13500 at *12 (D.N.J. Dec. 3, 1987). Regardless of Lead Plaintiffs’ investment strategies or transactions in Fannie Mae securities, each has claims typical of the Class at large.

Whether Lead Plaintiffs, for example, performed their own research before making investment decisions or relied on the recommendations of others, are also irrelevant to Lead Plaintiffs’ typicality. *See, e.g., In re Worldcom, Inc. Sec. Litig.*, 219 F.R.D. 267, 281-82 (S.D.N.Y. 2003) (“swiftly” rejecting defendants’ argument that the institutional plaintiffs relied on, among other things, “highly sophisticated investment managers” and “computer models that replicate the portfolio of the S&P 500,” and stating, “[e]ach of these methods of making investment decisions is representative of methods used by many other investors”). Indeed, “courts have adopted an ‘indirect reliance’ theory under which the plaintiff’s friend’s or broker’s reliance on misleading information suffices to establish reliance. . . . Therefore, even if . . . some of the plaintiffs relied exclusively on the advice of others in buying stock . . . that . . . would not prove plaintiffs’ claims atypical.” *Electro-Catheter*, 1987 U.S. Dist. LEXIS 13500 at *10-11.

As the Court held in *In re Data Access Systems Securities Litigation*, 103 F.R.D. 130, 139 (D.N.J. 1984):

[D]iffering types of reliance are present in almost every securities class action. There will always be some individuals who read the financial statements directly, others who read secondary analyses such as Moody’s or Value Line, and many others who relied on the

security....shareholders of every large, publicly traded corporation includes [sic] institutional investors, short-sellers, arbitrageurs, etc. The fact that these traders have divergent motivations in purchasing shares should not defeat the fraud-on-the-market presumption. . . .”).

advice of stockbrokers or friends. If defendants' argument were to prevail that factual differences of this nature were sufficient to defeat class action certification, there could never be a class action of securities purchasers.

Further, as long as plaintiffs' claims arise from the same practice and course of conduct that forms the basis of the Class claims, it is immaterial to this analysis when, during the Class Period, plaintiffs purchased their Fannie Mae securities. Irrespective of "whether [plaintiffs] and other class members bought early in the Class Period or late, they are all alleged to have been injured by the inter-related misstatements and omissions." *In re Bally Mfg. Sec. Corp. Litig.*, 141 F.R.D. 262, 268 (N.D. Ill. 1992) (quoting *Nicholas v. Poughkeepsie Sav. Bank*, [1990-1991 Transfer Binder], Fed. Sec. L. Rep. (CCH) ¶ 95,606 at 97,840 (S.D.N.Y. Sept. 26, 1990)). See also *Yang v. Odom*, No. 02-5968 (JAP), 2005 U.S. Dist. LEXIS 18089 at *14-16 (D.N.J. Aug. 16, 2005) ("class representatives are not atypical by virtue of acquiring shares late into the class period"). As the Court stated in *Ziemack v. Centel Corp.*, 163 F.R.D. 530, 535 (N.D. Ill. 1995), "[w]hen a securities action class plaintiff alleges a common course of conduct spanning a class period, the particular date when he purchased does not vitiate the typicality of his claims."¹²

The types of Fannie Mae securities Plaintiffs purchased during the Class Period are equally inapplicable to this analysis. It is well established that a purchaser of one type of security of a given issuer may represent purchasers of other types of securities of that issuer where defendants, as here, are alleged to have engaged in a common course of fraudulent

¹² See also *Blackie*, 524 F.2d at 910 (stating, with respect to class certification, "the potential conflict [between early and late purchasers] is present in most prolonged classes involving a series of misrepresentations."); *Gilbert v. First Alert, Inc.*, 165 F.R.D. 81, 83 (N.D. Ill. 1996) ("because the plaintiffs have alleged a common scheme against all purchasers of First Alert stock, the named plaintiffs are permitted to represent prior and subsequent purchasers of stock without undermining their typicality").

conduct that affected all issues similarly. *See, e.g., In re Sepracor, Inc. Sec. Litig.*, 233 F.R.D. 52, 56 (D. Mass. 2005) (“purchasers of different types of securities have often been found qualified to represent purchasers of other types of securities of the same issuer”); *In re Enron Corp. Sec. Litig.*, 206 F.R.D. 427, 445 (S.D. Tex. 2002) (“When plaintiffs have alleged such a common course of conduct, courts consistently have found no bar to class certification even though members of a class may have purchased different types of securities or interests.”); *Deutschman v. Beneficial Corp.*, 132 F.R.D. 359, 371 (D. Del. 1990) (certifying plaintiff who never purchased common stock to represent all purchasers of both common stock and call options).¹³

Therefore, whether Lead Plaintiffs purchased call options, sold put options, or purchased common stock or other types of Fannie Mae securities is irrelevant to their ability to represent the Class. Indeed, the fraud-on-the-market doctrine applies to any instrument whose value is tied to the common stock of a corporation, including options.¹⁴ *See In re Oxford Health Plans, Inc.*

¹³ *See also Eisenberg*, 766 F.2d at 786 (named plaintiffs “were not untypical because they invested in two different limited partnerships or because members of the class may have invested in either of these two or a third....these were identical investments prepared by the same defendants, and containing the same alleged omissions and misrepresentations”); *Schur v. Friedman & Shaftan, P.C.*, 123 F.R.D. 611, 613-14 (N.D. Cal. 1988) (Plaintiff who invested in one limited partnership may represent investors in related limited partnerships where common overarching scheme to defraud was alleged); *In re Saxon Sec. Litig.*, No. 82-Civ-3103, 1984 U.S. Dist. LEXIS 19223 at *19 (S.D.N.Y. Feb. 23, 1984) (debenture holders could represent debenture holders and common stockholders because debenture holders had “an interest identical to that of the holders of common stock in demonstrating a common course of fraudulent conduct and in implicating defendants in that conduct.”).

¹⁴ A put option permits the buyer of the option to require the seller, at any time during a fixed period, to sell the company’s common stock at a set price, commonly referred to as the “exercise price.” *See generally Hochschuler v. G.D. Searle & Co.*, 82 F.R.D. 339, 342 n.6, 346-47 (N.D. Ill. 1978). The greater the amount by which the market price for the stock exceeds the exercise price, the lower the market will price the put option. Similarly, a call option permits the purchaser of the option to purchase the underlying stock at a set exercise price. Thus, an inflated stock price will result in an inflated price for the call option. Accordingly, Defendants’ alleged

Sec. Litig., 199 F.R.D. 119, 124 (S.D.N.Y. 2001) (“*Oxford II*”) (“where the public market of a quoted security is polluted by false information, or where price, supply and demand are distorted as a result of misleading omissions, all types of investors are injured”) (citation omitted). *See also Moskowitz*, 128 F.R.D. at 635 (“the price of the option is directly related to the price of the stock”); *Kirby*, 116 F.R.D. at 308 (“The court has found no case law to suggest that covered calls in this context render a representative atypical.”); *Hochschuler*, 82 F.R.D. at 347 (“The fact that the sale of a put involves different considerations does not render [a plaintiff’s] claim atypical. The put option seller must prove the same case as the common stock purchaser would.”) (citation omitted).¹⁵

Accordingly, Plaintiffs satisfy the Rule 23(a)(3) typicality requirement.

4. Lead Plaintiffs Will Fairly And Adequately Protect The Interests Of The Class

Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” *Initial Pub. Offering*, 227 F.R.D. at 88 (citation omitted); *Simpson*, 149 F.R.D. at 102. This requirement is met here because: (a) Lead Plaintiffs have interests in common with, and not antagonistic to,¹⁶ the interest of the other members of the Class; and (b)

scheme created artificial prices for Fannie Mae’s options which directly corresponded with the artificial prices Defendants created for the Company’s common stock.

¹⁵ Unlike a short seller, a put seller does not “gamble on a predicted loss” on the common stock. *Ganesh*, 183 F.R.D. at 491. A drop in the stock market value increases the likelihood that the seller of the put (*i.e.* the investor who has an obligation to purchase the security) will be forced to purchase the stock at the exercise price, for a loss. The return of the price to its true value also diminishes the ability of the put seller to “buy back” the option because the “premium” increases. In short, it would cost the investor more than he would receive on the “sell.” Thus, the put seller, like the common stock purchaser, is harmed by an artificially inflated stock price and equally would be ill-served by a subsequent material decrease in that price.

¹⁶ For a conflict of interest to be sufficiently serious to defeat class certification, Defendants must make “an actual showing of a real probability of a potential conflict.” *Scholes v. Stone, McGuire*

Lead Plaintiffs' attorneys are qualified, experienced, and competent to conduct the litigation. *Id.* See also *Kirschner*, 139 F.R.D. at 79; *Lewis v. National Football League*, 146 F.R.D. 5, 19 (D.D.C. 1992); *Covelo*, 551 F. Supp. at 377; *Arnett v. American Nat'l Red Cross*, 78 F.R.D. 73, 75 (D.D.C. 1978).

Both prongs of the "adequacy" test are met here. First, Lead Plaintiffs have no interests antagonistic to those of the Class; indeed, their interests are directly aligned with the interests of the Class Members. The false and misleading statements made by the defendants during the Class Period artificially inflated the price of Fannie Mae's securities. Lead Plaintiffs and the other members of the Class purchased Fannie Mae securities during the Class Period and have been similarly damaged by Defendants' alleged misconduct. The claims of Lead Plaintiffs and the absent Class members arise from the same wrongful conduct and they all seek redress under the same legal theories. Each proposed class representative has the same interest in recovering damages caused as a result of the Defendants' unlawful conduct. No cognizable conflicts or antagonisms exist between Lead Plaintiffs and the other members of the Class.

Further, OPERS and STRS are precisely the kind of class representatives Congress envisioned when it enacted the Private Securities Litigation Reform Act of 1995 ("PSLRA").

& Benjamin, 143 F.R.D. 181, 187 (N.D. Ill. 1992). In order to deny class certification, the court must find a "fundamental conflict or inconsistency between the claims of the proposed class members" that is "so palpable as to outweigh the substantial interest of every class member in proceeding with the litigation." *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 514-15 (S.D.N.Y. 1996). Courts reject "efforts by Defendants to defeat certification by raising the possibility of hypothetical conflicts or antagonisms among class members, especially regarding proof of damages." *Id.* at 513 (citations omitted). See also *Blackie*, 524 F.2d at 909. For instance, as discussed above, the timing of plaintiffs' purchases of the subject securities during the class periods is irrelevant as long as the representatives' claims arise from the same practice and course of conduct that forms the basis of the class claims. See, e.g., *Robbins v. Moore Med. Corp.*, 788 F. Supp. 179, 187 (S.D.N.Y. 1992) ("Whether plaintiff and other class members bought early in the Class Period or late, they are all alleged to have been injured by the inter-related misstatements and omissions . . ."). See also *Eisenberg*, 766 F.2d at 785.

Lead Plaintiffs are institutional investors and have experience serving as class representatives in other securities fraud litigations, including *Ohio Public Employees Retirement System and State Teachers Retirement System of Ohio v. Freddie Mac, et al.*, Lead Case No. 03-CV-4261, U.S. District Court, Southern District of New York, and *In re Global Crossing Ltd. Securities Litigation*, Case No. 02-CV-910, U.S. District Court, Southern District of New York. Lead Plaintiffs understand the duties and responsibilities of being class representatives in a securities class action and have been fulfilling those duties in this case, by vigorously prosecuting this litigation.

Further, Lead Plaintiffs have demonstrated their adequacy by retaining counsel extensively experienced in securities class action litigation to prosecute the claims of the class in this case.¹⁷ On January 13, 2005, this Court approved Waite, Schneider, Bayless & Chesley Co., L.P.A. as Lead Counsel and Berman DeValerio Pease Tabacco Burt & Pucillo as Co-Lead Counsel for the Lead Plaintiffs and the putative class pursuant to the PSLRA. These firms have done extensive work in investigating and identifying the claims brought in this action and have

¹⁷ Rule 23(g), providing for the appointment of class counsel, complements Rule 23(a)(4)'s requirement that class counsel be adequate. *Ford Motor Credit*, 2005 U.S. Dist. LEXIS 13224 at *81 (noting that 23(g) incorporates the adequacy of counsel analysis formerly performed under Rule 23(a)(4)). Rule 23(g) direct a court to appoint "class counsel" when a class is certified. Fed. R. Civ. P. 23(g)(1)(A). Consistent with Rule 23(a)(4), class counsel "must fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). In appointing class counsel, the Court must consider:

- the work counsel has done in identifying or investigating potential claims in the action,
- counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action,
- counsel's knowledge of the applicable law, and
- the resources counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(C)(i). The Court may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class. Fed. R. Civ. P. 23(g)(1)(C)(ii).

zealously represented their clients in this action, including by vigorously and successfully arguing against all Defendants' motions to dismiss. Both firms also have extensive experience and expertise in complex class actions, and have successfully prosecuted securities class action cases throughout the country. The firm profiles of Waite, Schneider, Bayless & Chesley Co. L.P.A. and Berman DeValerio Pease Tabacco Burt & Pucillo are attached hereto as Exhibits A and B respectively. As the counsel selected by Lead Plaintiffs are qualified, experienced and have demonstrated their capability of prosecuting this action diligently and competently on behalf of the class, Lead Plaintiffs respectfully request that the Court appoint Waite, Schneider, Bayless & Chesley Co. L.P.A. as Lead Class Counsel and Berman DeValerio Pease Tabacco Burt & Pucillo as Co-Lead Class Counsel pursuant to Rule 23(g)(1)(A).

B. The Requirements Of Rule 23(b)(3) Are Satisfied

In addition to satisfying the requirements of Rule 23(a), Lead Plaintiffs must satisfy Rule 23(b)(3), which requires the Court to find that: (1) questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and (2) that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. As discussed below, this case satisfies both of these criteria.

1. Common Questions Of Law And Fact Predominate

Predominance is met "when there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class members' individual position." *Vitamins*, 209 F.R.D. at 262. "In determining whether the predominance standard is met, courts focus on the issue of liability, and if the liability issue is common to the class, common questions are held to predominate over individual ones." *Kirschner*, 139 F.R.D. at 80. Unlike certain other types of class actions, such as mass tort

personal injury cases, the Supreme Court has held “[p]redominance is a test readily met in certain cases alleging. . . securities fraud. . . .” *Amchem Prods.*, 521 U.S. at 625.

As set forth above, the core issues of liability common to the entire Class involve the allegedly unlawful public dissemination of materially false and misleading statements concerning Fannie Mae in press releases, public reports and SEC filings. It is well-established that “[i]n determining whether common questions of fact predominate, a court’s inquiry is directed primarily toward whether the issue of liability is common to members of the class.” *Indep. Energy*, 210 F.R.D. at 486; *Kirschner*, 139 F.R.D. at 80 (same). Securities fraud cases are typically found to satisfy the predominance requirement, since defendants’ liability to the entire class will be based on a common course of conduct. *See In re Arakis Energy Corp. Sec. Litig.*, No. 95-3431, 1999 U.S. Dist. LEXIS 22246 at *37 (E.D.N.Y. Apr. 27, 1999) (“In securities fraud class actions in which the fraud is alleged to have been carried out through public communications to a wide variety of market participants, common issues of law and fact will generally predominate over individual issues.”); *RMED Int’l, Inc. v. Sloan’s Supermarkets, Inc.*, No. 94 Civ. 5587 (PKL), 1996 U.S. Dist. LEXIS 3531 at *21 (S.D.N.Y. Mar. 25, 1996) (The issue of “whether defendants failed to disclose material non-public information . . . thereby committing a fraud on the market . . . is the same for all class members, and therefore predominates over the class.”).

Moreover, “Rule 23(b)(3) does not require that all questions of law or fact be common; it only requires that the common questions predominate over individual questions.” *Dura-Bilt Corp. v. Chase Manhattan Corp.*, 189 F.R.D. 87, 93 (S.D.N.Y. 1981). *See also Lorazepam*, 202 F.R.D. at 29 (“The common issues must only predominate; they do not have to be dispositive of the litigation.”). As the court explained in *In re Oxford Health Plans, Inc. Sec. Litig.*, 191 F.R.D.

369, 374 (S.D.N.Y. 2000) (“*Oxford F*”), “[c]ommon questions may predominate where there exists a common course of conduct even though there is not a complete identity of facts....Where, as here, there exists a common nucleus of operative facts affecting all members, common questions unquestionably prevail.” (citation omitted).

Given that the predominance test focuses on the nature of the claims asserted, differences in the amount of damages recoverable by individual Class members are irrelevant to class certification. *See, e.g., Worldcom*, 219 F.R.D. at 302 (“individualized damage issues are not ordinarily a bar to class certification.”); *Switzenbaum v. Orbital Scis. Corp.*, 187 F.R.D. 246, 248 (E.D. Va. 1999) (“All of the Plaintiffs appear to share a similar interest in recovering from the Defendants, and the fact that the amount of their damages may differ does not pose a disabling risk of prejudice or confusion because separate claims for payment could be processed if liability were found.”). In fact, as courts have noted, “[i]ndividual questions of damages are *typical* in class actions.” *DeLoach v. Philip Morris Cos.*, 206 F.R.D. 551, 566 (M.D.N.C. 2002) (emphasis added). *See also Barabin v. ARAMARK Corp.*, 210 F.R.D. 152, 160 (E.D. Pa. 2002) (“awarding damages normally entails examination of individual claims”), *aff’d*, No. 02-8057, 2003 U.S. App. LEXIS 3532 (3d Cir. Jan. 24, 2003); *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 249 (D. Del. 2002) (“[T]he need for individual damages calculations does not defeat predominance and class certification.”); *Indep. Energy*, 210 F.R.D. at 486 (“While damage amounts may vary, the claims are based on a common legal theory of material misrepresentations and omissions such that common questions clearly predominate.”); *NASDAQ Market-Makers*, 169 F.R.D. at 523-24 (“even if it develops that each class member’s damages must be separately determined, class certification would still be appropriate”). This is because “[t]he amount of damages is invariably an individual question and does not defeat class action

treatment.the process of computing individual damages will be virtually a mechanical task.”
Blackie, 524 F.2d at 905 (citations omitted).

Further, where, as here, Lead Plaintiffs allege a series of misrepresentations and omissions that were made as part of a common course of conduct or in furtherance of a single scheme to inflate the issuer’s stock price, which continued throughout the Class Period, certification is appropriate for the entire period. As the Ninth Circuit stated in *Blackie*, when faced with a proposed class period spanning twenty-seven months and involving forty-five documents issued during that period:

Confronted with a class of purchasers allegedly defrauded over a period of time by similar misrepresentations, courts have taken the common sense approach that the class is united by a common interest in determining whether a defendant’s course of conduct is in its broad outlines actionable, which is not defeated by slight differences in class members’ positions, and that the issue may profitably be tried in one suit.

* * *

[L]ike standing dominoes . . . one misrepresentation . . . cause[s] subsequent statements to fall into inaccuracy and distortion when considered by themselves or compared with previous misstatements.

524 F.2d at 902-04. (citations and footnote omitted).

For these reasons, courts have consistently certified classes extending over substantial periods of time – far longer than the 53 months alleged here – where there was a continuous scheme and a common course of misrepresentations and omissions over the entire class period. *See, e.g., Saxon*, 1984 U.S. Dist. LEXIS 19223 at *15 (the court certified a class period of six years, stating: “[i]t is not uncommon in securities fraud cases, where plaintiffs allege a continuing course of fraudulent conduct which spans a number of years, for courts to certify classes for periods approaching or exceeding the length of the class period here.”). *See also In re*

Technical Equities Federal Sec. Litig., No. C-86-20157(A)WAI, 1998 U.S. Dist. LEXIS 15813 at *8 (N.D. Cal. Oct. 3, 1988) (finding 6 year and seventh month class period “appropriate”).

Likewise, the fact that Class members may have relied on different documents at different times during the Class Period does not affect the predominance of the common questions applicable to all Class members. As the court in *Steiner v. Equimark Corp.*, 96 F.R.D. 603, 612 (W.D. Pa. 1983) held:

[T]he fact that members of the class may not have had the same information available to them because of the various documents issued by Defendants at different times and because of changes in the state of the economy during that period, does not preclude class certification. Where, as here, Plaintiffs’ allegations relate to a common course of conduct, common issues predominate over any individual issues which may be raised by the varying amounts of information available.¹⁸

In sum, the misrepresentations and omissions upon which Lead Plaintiffs’ claims are founded injured each member of the Class in a substantially similar, if not identical, manner. They were prepared and disseminated by Defendants as part of an interrelated and common course of conduct to distort the price of Fannie Mae’s securities. The Complaint alleges no conduct particular to Lead Plaintiffs that was not directed at every member of the Class in the same manner and to the same effect. Accordingly, since Lead Plaintiffs allege that Defendants’ misrepresentations and omissions were all part of the same pattern and scheme to defraud, the

¹⁸ See also *Kennedy v. Tallant*, 710 F.2d 711, 717 (11th Cir. 1983) (“[Plaintiff] claimed and later proved that [defendants] committed the same unlawful acts in the same method against an entire class. Thus, all members of th[e] class have identical claims.”); *In re Storage Tech. Corp. Sec. Litig.*, 113 F.R.D. 113 (D. Colo. 1986) (“While there may not have been a consistent ‘quantum of hype’ throughout the 28 month period, and while the alleged misrepresentations relate to different STC projects, there is sufficient commonality to support class certification”); *Seidman v. Stauffer Chem. Corp.*, Civil No. B-84-543(TFGD), 1986 U.S. Dist. LEXIS 30264 at *12 (D. Conn. July 28, 1986) (“the fact that the alleged misrepresentation are contained in a number of different documents, each of which pertains to a different period of defendants’ operation, or to a different accounting practice, does not preclude this Court from certifying the putative class.”).

common issues of fact and law arising from Defendants' conduct predominate over any individual issues and satisfy the standard for class certification under Rule 23(b)(3).

2. **A Class Action Is Superior To Other Available Methods For The Fair And Efficient Adjudication Of This Action**

In determining whether the "superiority" requirement of Rule 23(b)(3) is satisfied, the Court must consider: (a) the interest of members of the class in individually controlling separate actions; (b) the extent and nature of any related litigation already commenced by class members; (c) the desirability of concentrating the litigation of the claims in the particular forum; and (d) the potential difficulties of managing a class action. *Jarvaise v. Rand Corp.*, 212 F.R.D. 1, 4 (D.D.C. 2002); Fed. R. Civ. P. 23(b)(3). In this case, each of these factors strongly militates in favor of class certification.

First, the expense of individual actions, weighed against the potential small individual recoveries of the vast majority of Class members here, would be prohibitive. Although some Class members may have suffered damages substantial enough that it might be economically viable for them to bring their own suits, this fact does not support a finding that Class members have an interest in individually "controlling" the litigation under Rule 23(b)(3). The reference in Rule 23(b)(3) to the interest of individual Class members in controlling the litigation relates to the interests of most or all of the Class members – rather than the interests of only a few – since if only a small fraction of the Class has an interest in controlling the litigation, they may serve their interest by opting out of the suit. 1 H. Newberg, *Newberg on Class Actions* § 4.29 at 332 (3d ed. 1992). Second, the burden on the courts of adjudicating hundreds of thousands of separate Fannie Mae investor actions would be, to say the least, significant. *See Arakis*, 1999 U.S. Dist. LEXIS 22246 at *38 ("were plaintiffs required to bring individual actions, the potential for duplicative litigation and consequent waste of judicial and party resources would be

significant.”). Third, there is no other litigation outside of this action asserting the claims Lead Plaintiffs are pursuing here. Finally, there is no reason to believe that Lead Plaintiffs’ attorneys, who have experience in securities class action litigation, including in this District, will encounter significant or unusual difficulties in managing this litigation.

Thus, it is clear that securities suits such as this one satisfy the superiority requirement of Rule 23. Most violations of the federal securities laws, such as those alleged in the Complaint, inflict economic injury on large numbers of geographically dispersed persons to such an extent that the cost of pursuing individual litigation to seek recovery is not feasible. In the present case there are a large number of injured individuals, many with damage claims too small to justify the expense of individual actions, and each of whom possesses effectively identical claims against Defendants. Because the requirements of Federal Rule of Civil Procedure 23 are fully satisfied, the proposed Class should be certified.

IV. CONCLUSION

For the foregoing reasons, Lead Plaintiffs, Ohio Public Employees Retirement System and State Teachers Retirement System of Ohio, respectfully request that the Court grant their motion for class certification.

Dated: May 17, 2006

Respectfully submitted,

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FIRM PROFILE

Waite, Schneider, Bayless & Chesley was founded in 1860 in Cincinnati, Ohio. Today it remains the city's oldest law firm in continuous operation. The firm has 16 attorneys and prosecutes class and private actions, nationwide, on behalf of both individual and corporate clients. The firm's litigation practice areas include, but are not limited to, securities class actions, derivative/corporate governance actions, antitrust litigation, FELA litigation, insurance litigation, products liability litigation and trade secret and employment litigation in federal and state courts.

Firm's Practice Areas

Securities Fraud Litigation

The firm has prosecuted, defended and settled high profile securities fraud class actions in federal and state courts. Since the passage of the Private Securities Litigation Reform Act of 1995, which sought to encourage institutional investors to become more active in securities class action litigation, the firm has represented prominent institutional investors in securities fraud litigation. The firm successfully represented shareholders against DPL, Inc., a public company traded on the New York Stock Exchange, and obtained a \$145.5 global settlement of federal and state cases for its clients. The firm currently is Lead Counsel in two federal securities fraud class action cases pending against government-sponsored entities Freddie Mac and Fannie Mae. The attorneys in the securities fraud litigation department have extensive experience in federal securities laws and regulations and the rules and regulations of the various stock exchanges. Securities Class Actions and Derivative Case Representation includes:

Freddie Mac Securities Litigation, Lead Case No. 03-cv-4261, U.S. District Court, S.D.N.Y., Lead Counsel for lead plaintiffs and class in securities fraud class action litigation (pending).

In Re Fannie Mae Securities Litigation, U.S. District Court, District of Columbia, Consolidated Civil Action No. 04-cv-01639, Lead Counsel for lead plaintiffs and class in securities fraud class action litigation (pending).

In Re DPL Inc. Securities Litigation, U.S. District Court, Southern District of Ohio, Co-Lead Counsel for lead plaintiffs and class in prosecution of federal securities fraud claims; \$145.5 global settlement of federal and state cases for clients.

In Re OM Group, Inc. Securities Litigation, U.S. District Court, Northern District of Ohio, Eastern Division, Case No. 1:02-CV-2163, counsel for lead plaintiffs and class in securities fraud class action litigation (settled for \$92.4 million).

David Slone, et al. v. Fifth Third Bancorp, et al., U.S. District Court, Southern District of Ohio, Western Division, Case No. 1:03-CV-211, special counsel for Defendant Fifth Third Bancorp in securities fraud class action litigation.

In Re FirstEnergy Shareholder Derivative Litigation, U.S. District Court, Northern District of Ohio, Co-Lead Counsel for lead plaintiff in shareholder derivative action (settled for \$25 million).

Central Laborer's Pension Fund, Derivatively on Behalf of Ashland, Inc., v. Chellgren, et al. and Ashland, Inc., United States District Court, Eastern District of Kentucky, at Covington, special counsel for Defendant Ashland, Inc. in shareholder derivative action.

Products Liability, Antitrust and Other Complex Litigation

The firm enjoys a highly successful litigation practice in several areas, including products liability, antitrust, commercial, insurance and FELA litigation. The following are examples of litigation in which the firm has been Co-Chair, Lead Counsel and/or Class Counsel in the following representative cases:

In Re Microsoft Corp. Litigation, United States District Court, District of Maryland (Co-Chair)

In Re Vitamins Antitrust Litigation, United States District Court, District of Columbia; United States District Court, Southern District of Ohio, Western Division (Counsel for Procter & Gamble)

In Re Castano Tobacco Litigation, (Lead counsel for settlement negotiations and member of the Executive Committee)(and related cases including the Louisiana state class action, the Ohio state class action, the New Mexico state class action, the Maryland state class action, the District of Columbia class action, the New York state class action, the California state class action, the Pennsylvania state class action, the Alabama state class action, the Minnesota state class action, the Texas state class action, the New Jersey state class action, and the Illinois state class action.)

In Re United Parcel Service Inc. Excess Value Insurance Coverage Litigation, United States District Court, Southern District of New York (Co-Lead Counsel)

City of Cincinnati v. Beretta, U.S.A. Corp., et al., Court of Common Pleas, Hamilton County, Ohio

Procter & Gamble v. Amway Litigation, United States District Court, Southern District of Texas, at Houston

In Re Fernald Litigation (I and II), United States District Court, Southern District of Ohio, Western Division

In Re Choice Care Litigation, United States District Court, Southern District of Ohio, Western Division

In Re Chubb Drought Insurance Litigation, United States District Court, Southern District of Ohio, Western Division

Procter & Gamble v. Bankers' Trust Litigation, United States District Court, Southern District of Ohio

In Re Union Carbide Corporation, Gas Plant Disaster at Bhopal, India On December 6, 1984, United States District Court, Southern District of New York

In Re MGM Grand Hotel Fire Litigation, United States District Court, District of Nevada

In Re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litigation, United States District Court, Eastern District of Pennsylvania (National Co-Chair of Litigation Committee).

In Re Telectronics Pacing Systems, Inc., Accufix Atrial "J" Leads Products Liability Litigation, United States District Court, Southern District of Ohio, Western Division (Chair of Litigation Committee).

In Re Silicone Gel Breast Implant Products Liability Litigation, United States District Court, Northern District of Alabama, Southern Division (National Co-Chair of Litigation Committee).

Bowling, et al. v. Pfizer, et al., United States District Court, Southern District of Ohio, Western Division.

In Re Copley Pharmaceuticals, Inc., "Albuterol" Products Liability Litigation, United States District Court, District of Wyoming.

Corporate Governance, Shareholder Rights and Proxy Campaigns

The firm seeks to promote good corporate governance and protect shareholder rights by prosecuting shareholder derivative actions for breaches of fiduciary duties and gross mismanagement by companies and their executive officers. The firm had addressed issues of gross mismanagement, corporate waste, shareholder voting issues and excessive executive compensation.

The firm also represents several public companies in a variety of matters including securities offerings, tender offers, required reporting such as reports on Forms 10-K, 10-Q and 8-K and compliance with the Securities Act, Exchange Act and stock exchange rules. We have developed a specialty in advising corporations on good corporate governance practices and policies and assisting them with shareholder relations and responding to shareholder proposals. We also assist shareholder clients in winning proxy contests and corporate clients in defending against proxy contests. In one notable case, the firm represented a small group of dissenting shareholders in waging a proxy solicitation campaign and successfully elected a majority of its candidates to the company's board of directors. We also prosecute and defend against derivative actions, claims for breach of fiduciary duty and proxy violations in state and federal courts. The attorneys in the practice area have up-to-date knowledge of changing SEC rules and regulations on corporate governance issues, a comprehensive understanding of a wide variety of corporate law transactions and both substantive and courtroom expertise in the specific legal areas involved.

Trade Secret, Employment Litigation and Civil Rights Litigation

The firm has developed expertise in negotiating, drafting and litigating non-competition and trade secret issues. The firm has successfully prosecuted actions against employers and other institutions that violate federal or state discrimination and civil rights laws. The firm also defends clients in federal and state employment disputes. We have a large client range, including Fortune 500 companies, manufacturers, medical practices, distributors, professional service organizations and restaurant chains.

General Business Representation

The firm's corporate attorneys have represented hundreds of businesses, including corporations, partnerships, limited liability companies and joint ventures, in practically every aspect of their businesses. They have provided legal services for formation and organization matters and drafting and negotiation of operating agreements, shareholder agreements, employment agreements, leases, mergers, acquisitions, financing transactions, and real and personal property acquisitions and dispositions. We also have substantial experience in the successful resolution of shareholder disputes.

**STANLEY M. CHESLEY
PROFESSIONAL PROFILE**

Stanley M. Chesley is the senior partner of Waite, Schneider, Bayless & Chesley Co., L.P.A. He is a 1960 graduate of the University of Cincinnati College of Law, a licensed member of the Ohio Bar, Kentucky Bar, Federal Bar and has also been admitted to the Bar of the United States Supreme Court. Mr. Chesley is the Past Chairman of the Supreme Court of Ohio, Board of Commissioners on Grievances and Discipline and is a current member of the Board of Commissioners on Grievances and Discipline. Mr. Chesley has been Co-Chairman, Lead Counsel and/or Class Counsel in the following cases:

Securities Class Actions and Derivative Case Representation:

In Re DPL Inc. Securities Litigation, U.S. District Court, Southern District of Ohio, Co-Lead Counsel for lead plaintiffs and class in prosecution of federal securities fraud claims; \$145.5 global settlement of federal and state cases for clients.

Freddie Mac Securities Litigation, Lead Case No. 03-cv-4261, U.S. District Court, S.D.N.Y., Lead Counsel for lead plaintiffs and class in nationwide securities fraud class action litigation.

In Re Fannie Mae Securities Litigation, U.S. District Court, District of Columbia, Consolidated Civil Action No. 04-cv-01639, Lead Counsel for lead plaintiffs in securities fraud class action litigation.

In Re FirstEnergy Shareholder Derivative Litigation, U.S. District Court, Northern District of Ohio, Co-Lead Counsel for lead plaintiff in shareholder derivative action.

In Re OM Group, Inc. Securities Litigation, U.S. District Court, Northern District of Ohio, Eastern Division, Case No. 1:02-CV-2163, counsel for lead plaintiffs and class in securities fraud class action litigation.

David Slone, et al. v. Fifth Third Bancorp, et al., U.S. District Court, Southern District of Ohio, Western Division, Case No. 1:03-CV-211, special counsel for Defendant Fifth Third Bancorp in securities fraud class action litigation.

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Product Liability and Other Litigation:

In Re Procter & Gamble Company Securities Litigation, United States District Court, Southern District of Ohio, Western Division.

In Re Vitamins Antitrust Litigation, The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al., United States District Court, District of Columbia.

Procter & Gamble v. Bankers' Trust Litigation, United States District Court, Southern District of Ohio, Eastern Division.

Academy of Medicine, et al. v. Aetna Health, Inc., et al. Court of Common Pleas, Hamilton County, Ohio; Boone Cir. Ct., Boone County, Kentucky

USX Corp. v. Penn Cent. Corp., Court of Appeals of Ohio, Eighth District, Cuyahoga County, Ohio.

Procter & Gamble, et al. v. Amway Corporation, et al., United States District Court, Southern District of Texas; United States District Court, District of Utah, Central Division.

Amway Corporation v. Procter & Gamble, et al., United States District Court, Western District of Michigan, Southern Division.

City of Cincinnati v. Beretta U.S.A. Corp., et al., Hamilton County Court of Common Pleas, Hamilton County, Ohio.

TRW Inc., v. Industrial Systems Assoc., Inc., United States District Court, Northern District of Ohio, Eastern Division.

Worldwide Basketball and Sport Tours, Inc., et al. v. The National Collegiate Athletic Association, United States District Court, Southern District of Ohio, Eastern Division.

In Re Microsoft Corp. Litigation, United States District Court, District of Maryland (Co-Chair).

In Re Castano Tobacco Litigation, (Lead counsel for settlement negotiations and member of the Executive Committee) (and related cases including the Louisiana state class action, the Ohio state class action, the New Mexico state class action, the Maryland state class action, the District of Columbia class action, the New York state class action, the California state class action, the Pennsylvania state class action, the Alabama state class action, the Minnesota state class action, the Texas state class action, the New Jersey state class action, and the Illinois state class action.)

In Re Premiere Technologies Litigation, United States District Court, Northern District of Georgia.

In Re United Parcel Service Inc. Excess Value Insurance Coverage Litigation, United States District Court, Southern District of New York (Co-Lead Counsel).

In Re Air Crash Near Peggy's Cove Nova Scotia on September 2, 1998, United States District Court, Eastern District of Pennsylvania.

In Re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litigation, United States District Court, Eastern District of Pennsylvania (National Co-Chair).

In Re Telectronics Pacing Systems, Inc., Accufix Atrial "J" Leads Products Liability Litigation, United States District Court, Southern District of Ohio, Western Division (Chair).

In Re Silicone Gel Breast Implant Products Liability Litigation, United States District Court, Northern District of Alabama, Southern Division (National Co-Chair).

Bowling, et al. v. Pfizer, et al., United States District Court, Southern District of Ohio, Western Division.

In Re Copley Pharmaceuticals, Inc., "Albuterol" Products Liability Litigation, United States District Court, District of Wyoming.

In Re Fernald Litigation (I and II), United States District Court, Southern District of Ohio, Western Division.

In Re US Air Disaster at New York LaGuardia Airport on March 22, 1992, United States District Court, Northern District of Ohio, Eastern Division.

In Re Choice Care Litigation, United States District Court, Southern District of Ohio, Western Division.

In Re Chubb Drought Insurance Litigation, United States District Court, Southern District of Ohio, Western Division.

In Re San Juan DuPont Plaza Hotel Fire Litigation, United States District Court, District of Puerto Rico.

In Re Northwest Flight #255 Air Crash at Detroit Metropolitan Airport, on August 16, 1987, United States District Court, Eastern District of Michigan, Southern Division.

In Re Aircrash Disaster of Pan Am World Airways Flight #103, on December 21, 1988 at Lockerbie, Scotland, United States District Court, Eastern District of New York, At Brooklyn.

In Re Air Crash at Gander, Newfoundland on December 12, 1985, United States District Court, Eastern District of Kentucky, At Louisville.

In Re Union Carbide Corporation, Gas Plant Disaster at Bhopal, India On December 6, 1984, United States District Court, Southern District of New York.

In Re MGM Grand Hotel Fire Litigation, United States District Court, District of Nevada

In Re "Bendectin" Products Liability Litigation, United States District Court, Southern District of Ohio, Western Division.

In Re Beverly Hills Fire Litigation, United States District Court, Eastern District of Kentucky, at Covington.

JAMES R. CUMMINS

PROFESSIONAL PROFILE

James R. Cummins is the Chairman of the Corporate and Securities Law Department of Waite, Schneider, Bayless & Chesley Co. L.P.A. He has been recently recognized, among only 236 lawyers in 40 countries, for his corporate governance experience and expertise by the *International Who's Who of Corporate Governance Lawyers*. He has practiced in the securities and corporate governance fields for over 25 years, including securities fraud class actions, shareholder derivative actions, proxy contests and board governance matters, as well as advising corporate officers and directors in compliance and enforcement matters.

In 2003, Jim was co-lead trial attorney in the successful prosecution of a federal securities fraud claim and state breach of fiduciary duty claim against DPL Inc. (NYSE: DPL). The global settlement of \$145.5 million in the combined federal and state cases ranks as the fourteenth largest in the history of securities fraud cases.

He currently supervises the firm's work as Lead Counsel in the Freddie Mac and Fannie Mae securities class action litigation, *Ohio Public Employees Retirement System, et al. v. Federal Home Loan Mortgage Corporation, et al.*, S.D.N.Y. and *In Re Fannie Mae Securities Litigation*, U.S.D.C., District of Columbia.

Jim was co-trial counsel for 200 physicians in the nation's first successful antitrust, RICO and securities fraud case against a HMO system. The trial team secured a jury verdict of \$108 million for their clients, the largest award in the history of Hamilton County, Ohio, which eventually resulted in \$65 million payout to the clients.

Jim's creative and unique approach to proxy contests resulted, in 1996, in a successful change in management of an American Stock Exchange bank holding company. Characterized as an "exercise in corporate democracy," by *US Banker*, the monthly bible of the banking industry, Jim was recognized as the first attorney in the nation to use the Internet's worldwide web in a proxy contest, communicating rapidly and simultaneously with all of the company's shareholders. According to the *Cincinnati Enquirer*, Jim "became the 'nerve center' through which the proxy fight was staged."

His achievements in complex corporate litigation were recognized in an *American Lawyer* survey of 400 corporate general counsel, as one of two recommended corporate litigators in the southern Ohio region.

Additional Information

Practice Areas: Securities Law; Corporate Law; Class Action, Derivative and Commercial Litigation; Health Care; Antitrust.

Admitted: 1967, Ohio; 1970, U.S. District Court, Southern District of Ohio; 1995, U.S. Court of Appeals, Sixth Circuit; 1999, Kentucky; 2004, District of Columbia.

Law School: University of Cincinnati, J.D., 1967; New York University, LL.M. in International Business Transactions, 1968.

College: Princeton University, A.B., 1964.

Member: Cincinnati (Member, Long Range Planning Subcommittee, 1989), Ohio State, Kentucky and American (Member, Committee on Federal Regulation of Securities, 1981-; Member, Subcommittee on Investment Companies and Investment Advisers, 1981-) Bar Associations.

Biography: Phi Delta Phi. Case Note Editor, University of Cincinnati Law Review, 1966-1967. Editor, New York International Law Review, 1967-1968. Lecturer: “*Attorney Responses to Accountant Opinion Request Letters*,” Cincinnati Bar Association, 1987; “*Civil RICO*,” Ohio Northern University, 1988; “*The Year 2000 Time Bomb: Legal & Corporate Governance Implications for Board of Directors, Trustees and Officers*,” Cincinnati and Columbus Bar Associations, 1999; Co-chair with KPMG Forensics, “*Corporate Ethics: Can Trust Be Rebuilt – Pro-Active Steps Toward Effective Corporate Governance*,” Cincinnati Bar Association, 2002. Member, Board of Commissioners on Grievances and Discipline of Supreme Court of Ohio, 1989-1994. Member, Advisory Committee on Local Rules, U.S. District Court for the Southern District of Ohio.

Representative Clients, Engagements and Recent Honors

Securities and Shareholder Derivative Actions:

Freddie Mac Securities Litigation, U.S. District Court, S.D.N.Y. Lead Counsel for lead plaintiffs in national federal securities fraud class action against Freddie Mac and three of its former executive officers.

In Re Fannie Mae Securities Litigation, U.S. District Court, District of Columbia, Consolidated Civil Action No. 04-cv-01639, Lead Counsel for lead plaintiffs in securities fraud class action litigation.

In Re DPL Inc. Securities Litigation, U.S. District Court, SD Ohio, Co-Lead Counsel for lead plaintiffs in federal securities fraud class action. Global settlement of \$145.5 million for combined federal and state cases is the fourteenth largest securities class action and settlement in the United States (as of 2004).

In Re OM Group, Inc. Securities Litigation, U.S. District Court, Northern District of Ohio, Eastern Division, Case No. 1:02-CV-2163, counsel for lead plaintiffs and class in securities fraud class action litigation.

David Slone, et al. v. Fifth Third Bancorp, et al., U.S. District Court, Southern District of Ohio, Western Division, Case No. 1:03-CV-211, special counsel for Defendant Fifth Third Bancorp in securities fraud class action litigation.

ChoiceCare Litigation, U.S. District Court, SD Ohio
Co-lead trial attorney; obtained jury verdict of \$108 Million against ChoiceCare for physicians.

Austern Trust v. Peter H. Forster, et al., Hamilton Cty. Common Pleas
Represented plaintiff in shareholder derivative action resulting in a \$5.5 million settlement, which included important corporate governance reforms.

In Re FirstEnergy Shareholder Derivative Litigation, U.S. District Court, Northern District of Ohio, Co-Lead Counsel for plaintiffs in shareholder derivative action.

Other Litigation and Regulatory Enforcement Matters:

State of Ohio, Milk Antitrust Litigation, U.S. District Court, SD Ohio

Co-lead trial attorney with Stanley M. Chesley; obtained settlement for Ohio schools in price fixing litigation.

Clorox (NYSE:CLX):

Defense litigation against claims of P & G (three cases); continuing defense litigation services.

Countrywide Credit Industries (NYSE:CCR):

Prosecution of noncompetition and trade secret case.

Johnson & Johnson (NYSE:JNJ):

Represent subsidiaries, including Ethicon Endo-Surgery, defense of non-competition litigation; representation of officers and employees in shareholder litigation involving Theragenics Corporation (not a J&J entity); employment law defense litigation.

Structural Dynamics Research Corporation (NASD:SDRC)

Defense representation of CEO in civil securities litigation and regulatory enforcement matters.

F&C Flavoring Co. (NASD)

Defense representation of Chairman and outside directors in shareholder litigation and regulatory enforcement matters.

Corporate Governance Projects:

Professional Bancorp (AMEX:MDB)

Successful proxy contest; board restructuring; crisis management; corporate governance matters; SEC compliance.

Frisch's Restaurants (AMEX:FRS)

Representation of board against dissident challenges; board restructuring; crisis management; continuing representation for SEC compliance and corporate governance matters.

Recent Honors:

The International Who's Who of Corporate Governance Lawyers (2002), selected as one of 66 U.S. attorneys (236 internationally), recognized by their peers and their clients as leaders in the field of corporate governance.

Chairman & Featured Speaker, ***Corporate Ethics: Can Trust be Rebuilt*** (2002) with KPMG Forensic, Cincinnati Bar Association.

Featured Speaker, ***Sarbanes-Oxley Act Implications for Internal Auditors*** (2002) with Protiviti (Arthur Andersen's former Risk Management Practice Group).

The American Lawyer, Corporate General Counsels' Selection (1 of 2 firms in Tri-State) for Litigation Resource in Ohio.

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BERMAN DEVALERIO PEASE TABACCO BURT & PUCILLO

THE FIRM

The law firm of Berman DeValerio Pease Tabacco Burt & Pucillo prosecutes class actions nationwide on behalf of victims of securities and antitrust law violations. Founded in 1982, Berman DeValerio has 34 attorneys in offices in Boston, San Francisco, and West Palm Beach. The firm holds leadership positions in dozens of securities and antitrust actions around the country.

The attorneys at Berman DeValerio have prosecuted hundreds of class actions on behalf of defrauded individuals and institutions, recovering billions of dollars overall for clients. In addition to the financial recoveries, the firm has achieved significant changes in corporate governance.

The firm acts as monitoring, evaluation, and/or litigation counsel to more than 45 public and Taft-Hartley pension funds, including some of the nation's largest. In antitrust matters, the firm's institutional clients include the State of Florida and Aetna U.S. Healthcare, Inc.

RESULTS

Securities Settlements

The firm has negotiated substantial settlements for its clients. The following is a sample of significant results in securities litigation:

As counsel to court-appointed bondholder representatives the County of Fresno, Calif., and the Fresno County Employees' Retirement Association in In Re: WorldCom, Inc. Sec. Litig., 02civ3288 (S.D.N.Y.), Berman DeValerio helped a team of lawyers representing the New York State Common Retirement Fund obtain a settlement from underwriters worth more than \$6 billion as of March 17, 2005. Claims against some defendants remain pending.

In In Re: Bristol-Myers Squibb Sec. Litig., 02CV2251 (S.D. N.Y.), Berman DeValerio represented the Fresno County Employees' Retirement Association and the Louisiana State Employees' Retirement System as lead plaintiffs. The firm negotiated a cash settlement of \$300 million in July 2004. The settlement is the largest by a drug company in a U.S. securities fraud case.

Berman DeValerio represented the Louisiana Municipal Police Employees Retirement System as co-lead plaintiff in In Re: Symbol Technologies, Inc. Sec. Litig., 2:02cv01383 (E.D.N.Y.), obtaining a \$139 million partial settlement in June 2004. Lead plaintiffs continue to prosecute the claims against individual defendants. A separate lawsuit is pending against Symbol's former auditor, Deloitte & Touche LLP.

As co-lead counsel in In Re: Lernout & Hauspie Products, N.V., Securities Litigation, 00-CV-11589 (PBS) (D. Mass.), Berman DeValerio negotiated the third largest settlement ever paid by accounting firms in a securities class action – a \$115 million agreement with the U.S. and Belgian affiliates of KPMG International to settle claims of accounting malpractice. The case stemmed from KPMG's work for Lernout & Hauspie Speech Products, a software company driven into bankruptcy by a fraud scandal. The firm has reached additional partial settlements worth \$5.5 million. The case is continuing against other defendants, including Lernout & Hauspie's former top officers, who are currently facing criminal charges in Belgium.

In Oracle Cases, Coordination Proceeding, Special Title (Rule 1550(b)) No. 4180 (Cal. Sup. Ct., SM Cty.). In this coordinated derivative action, Oracle Corporation shareholders allege that the company's CEO, Lawrence J. Ellison, profited from illegal insider trading. Acting as co-lead counsel, the firm reached a settlement under which Mr. Ellison would personally make a charitable donation of \$100 million over five years in Oracle's name to an institution or charity that is approved by the company and pay \$22 million in attorneys' fees and expenses associated with the prosecution of the case. This innovative agreement, approved by a judge in December 2005, benefits Oracle through increased goodwill and brand recognition, while minimizing issues that would be raised by a payment from Mr. Ellison to the company, of which he is a large shareholder. In addition, the lawsuit has resulted in important changes to Oracle's insider trading policies that decrease the chances that an insider will trade in possession of material, non-public information. Under the agreement, Mr. Ellison denies any alleged wrongdoing and the parties acknowledge that the settlement does not constitute an admission of wrongdoing.

In Re: Reliant Energy, Inc. Sec. Litig., 02-cv-1810 (S.D. Tex.). As lead counsel representing the Louisiana Municipal Police Employees' Retirement System, the firm negotiated a \$75 million cash settlement from the company and Deloitte & Touche LLP, an underwriter of its 2001 initial stock offering. A settlement agreement was announced in July 2005. The settlement requires Court approval.

Berman DeValerio acted as sole lead counsel in a case against Enterasys Networks, Inc., in which the Los Angeles County Employees' Retirement Association was lead plaintiff. In Re: Enterasys Networks, Inc. Securities Litigation, 02-CV-71 (D.H.H.) settled in October 2003 for \$17 million in cash, stock valued at \$33 million, and major corporate governance improvements that opened the computer networking company to greater public scrutiny. Changes included requiring the company to back a proposal to eliminate its staggered board of directors, allowing certain large shareholders to propose candidates

to the board, and expanding the company's annual proxy disclosures. The settlement received court approval in December 2003.

Representing the Teachers' Retirement System of Louisiana as co-lead plaintiff, Berman DeValerio negotiated a \$30.5 million partial settlement in In Re: SmartForce PLC Securities Litigation, Case No. 02-CV-544 (PJB) (D. N.H.). The agreement received court approval in September 2004. The case is continuing against the company's auditors Ernst & Young Chartered Accountants and Ernst & Young, LLP.

In In Re: Warnaco Group, Inc. Securities Litigation, 00civ6266 (LMM) (S.D.N.Y.), the firm negotiated a \$12.85 million settlement against several current and former top officers of the company. The firm represented the Fresno County Employees Retirement Association as co-lead plaintiff in the case.

The firm represented the Florida State Board of Administration as co-lead plaintiff in In Re: Sykes Enterprises, Inc. Sec. Litig., Case No. 8:00-CV-212-T-26F (M.D. Fla.), in which Sykes Enterprises was accused of using improper means to match the company's earnings with Wall Street's expectations. The firm negotiated a \$30 million settlement, which received final approval in March 2003.

The firm served as co-lead counsel in In Re: Thomas & Betts Securities Litigation, Civil Action No. 2:00cv2127 (JPM) (W.D. Tenn.), which settled for \$51 million in 2004. Plaintiffs in this action had accused the company and other defendants of issuing false and misleading financial statements for 1996, 1997, 1998, 1999 and the first two quarters of 2000.

A member of the executive committee representing plaintiffs, Berman DeValerio secured a \$45 million settlement in Giarraputo v. UNUMProvident Corp., cv99-301-P-C (D. Me.), a lawsuit stemming from the 1999 merger that created UNUMProvident. Shareholders of both predecessor companies accused the insurer of misleading the public about its business condition before the merger. The settlement received final approval in June 2002.

In In Re: Critical Path, Inc. Securities Litigation, C-01-0551-WHA (N.D. Ca.), the firm negotiated a \$17.5 million recovery to settle claims of accounting improprieties at a California software development company. The firm, representing the Florida State Board of Administration, was appointed sole lead counsel in August of 2001. Allegations of serious fraud arose shortly after the spectacular collapse of Critical Path's stock price and certain former officers were indicted for stock fraud. The difficulties facing the lead plaintiff related to marshalling all available resources to secure a recovery for the class as Critical Path teetered on bankruptcy. Following arduous negotiations, the case settled for \$17.5 million. The settlement was approved in June 2002.

As one of co-lead counsel in In Re: Molten Metal Technology Inc. Sec. Litig., No. 97-10325-MLW(D. Mass.) and Axler v. Scientific Ecology Group, Inc., et al., No. MLW (D.

Mass.), the Boston office played a key role in settling the actions after Molten Metal and several affiliates filed a petition for bankruptcy reorganization in Massachusetts. The individual defendants and the insurance carriers in Molten Metal agreed to settle for \$11.91 million. After the bankruptcy trustee objected to the use of insurance proceeds for the settlement, the parties agreed to pay the trustee \$1.325 million of the Molten Metal settlement. The parties also agreed to settle claims against Scientific Ecology Group for \$1.25 million, giving Molten Metals investors \$11.835 million.

In In Re: Interspeed, Inc. Sec. Litig., 00-CV-12090-EFH (D. Mass.), the Boston office served as co-lead counsel and negotiated a \$7.5 million settlement on behalf of the class. The settlement was reached in an early stage of the proceedings largely as a result of the financial condition of Interspeed and the need to salvage a recovery from its available assets and insurance.

In In re Avant, Sec. Litig., 96 CV 20132 (N.D. Cal.), Avant!, a software company, was charged with securities fraud in connection with its alleged theft of a competitor's software code, which Avant! incorporated into its flagship software product. Serving as lead counsel, the firm recovered \$35 million for the class. The recovery resulted in each eligible class claimant receiving almost 50% of losses net of attorneys' fees and expenses.

The Boston office, as co-lead counsel in In Re: Summit Technology Sec. Litig., No. 96-11589-JLT (D. Mass.), negotiated a settlement consisting of \$10 million for the benefit of the class. The action was intensely litigated for four years, resulting in motion practice on the adequacy of the complaint and the issue of class certification, the review and analysis of over a million pages of documents produced by the defendants and 40 third-party witnesses, the depositions of 40 witnesses, the exchange of nine expert reports and the filing of and responding to nine motions for summary judgment.

In Re: Prison Realty Sec. Litig., 3:99 CV 0452 (In Re: Old CCA Sec. Litig.) 3:99 CV 0458 (M.D. Tenn.). The firm represented the former shareholders of Corrections Corporation of America, which merged with another company to form Prison Realty Trust, Inc. The action charged that the registration statement issued in connection with the merger contained untrue statements. The firm successfully countered arguments that the class' claims for securities fraud were released in prior litigation involving the merger and overcame motions to dismiss. It negotiated a global settlement of approximately \$120 million in cash and stock for this case and other related litigation.

The Boston office served as co-lead counsel in Gelfer v. Pegasystems, Inc., et al., 98 CV 12527 (D. Mass.) and negotiated a settlement valued at \$12.5 million consisting of \$4.5 million in cash and \$7.5 million in shares of the company's stock or cash at the company's option.

In In Re: Sybase II, Sec. Litig., C-98-0252-CAL (N.D. Cal.), Sybase was charged with inflating its quarterly financial results by improperly recognizing revenue at its wholly

owned subsidiary in Japan. Acting as co-lead counsel, attorneys in the California office obtained a \$28.5 million settlement.

In In Re: UCAR International, Inc. Sec. Litig., 98-CV-0600-JBA (D. Conn.), the firm represented the Florida State Board of Administration as the lead plaintiff in a securities claim arising from an accounting restatement. The case settled for \$40 million cash and the requirement that UCAR appoint an independent director to its Board of Directors. The settlement was approved in 2000 and the lead plaintiff's recommended nominee is currently serving on the board. It was one of the first securities class actions to achieve such significant corporate governance relief.

The firm served as sole lead counsel in the class action In Re: Centennial Technologies Litigation, No. 97-10304-REK (D. Mass.) involving a massive accounting scandal that shot down the company's high-flying stock. The Boston office negotiated a settlement that permitted a turnaround of the company and provided a substantial recovery for class members. The firm negotiated changes in corporate practice, a strengthening of internal financial controls, and obtained 37% of the company's stock for the class. In addition, the firm recovered \$20 million from Coopers & Lybrand, Centennial's auditor at the time – the largest settlement with an auditor in a shareholder class action in New England and among the largest in the nation. The firm also recovered \$2.1 million from defendants Jay Alix & Associates and Lawrence J. Ramaekers for a total recovery of more than \$35 million for the class.

In In Re: Exide Corp. Sec. Litig., 98 CV 6006 (E.D. Mich.), Exide was charged with having altered its inventory accounting system to artificially inflate profits by reselling used, outdated, or unsuitable batteries as new ones. The Boston office, as co-lead counsel for the class, recovered more than \$10 million in cash for class members.

In In Re: Digital Lightwave Sec. Litig., 98-152-CIV-T-24C (M.D. Fla.), the Boston office acted as co-lead counsel and the Florida office acted as liaison counsel in negotiating a settlement that included changing company management and strengthening the company's internal financial controls so the company could be poised for a successful turnaround. In addition, the class received 1.8 million shares of freely tradable common stock that traded at just below \$4 per share when the court approved the settlement. At the time the shares were distributed to the members of the class, the stock traded at approximately \$100 per share and class members received more than 200% of their losses after the payment of attorneys' fees and expenses. The total value of the settlement, at the time of distribution to the class, was almost \$200 million.

The Florida office acted as co-lead counsel in Ehrenreich v. Witter, 95 CV 6637 (S.D. Fla.) involving Sensormatic Electronics Corp., which resulted in a settlement of \$53.5 million approved in 1998. It was one of the largest class-action settlements in the State of Florida.

In Hallet v. Li & Fung, Ltd., et al., 95 CIV 8917 (S.D.N.Y.) the company Cyrk Inc. was charged with misrepresenting its financial results and failing to disclose that its largest customer was ending its relationship with the company. In 1998, the Boston office successfully recovered more than \$13 million for defrauded investors.

In In Re: Valence Sec. Litig., 95-20459-JW (EAI) (N.D. Cal.), the California office served as co-lead counsel for the class litigating against a Silicon Valley-based company that overstated performance and development of an allegedly revolutionary battery technology. Following the Ninth Circuit's reversal of the District Court's granting summary judgment in defendants' favor, the case settled for \$30 million in Valence common stock.

Berman DeValerio represented the Florida State Board of Administration (FSBA) in Sand Point Partners, L.P. v. Pediatrix Medical Group, Inc., 99-6181-CIV-2LOCH (S.D. Fla.). The FSBA was appointed co-lead plaintiff along with several other public pension funds. The complaint accused Pediatrix of Medicaid billing fraud, claiming that the company illegally increased revenue and profit margins by improperly coding treatment rendered. The case settled for \$12 million on the eve of trial in 2002, after completion of discovery. As co-lead counsel, the firm prosecuted the case through pre-trial proceedings.

The firm helped obtain an \$11.5 million settlement for co-lead plaintiff Warburg, Dillon, Read, LLC (now UBS Warburg) in In Re: CHS Electronics, Inc. Sec. Litig., 99-8186-CIV (S.D. Fla.).

Using a novel theory in In Re: Fidelity/Micron Sec. Litig., 95 Civ. 12676 (D. Mass.), Berman DeValerio & Pease recovered \$10 million in cash for Micron investors after a Fidelity Fund manager touted Micron while secretly selling the stock.

Antitrust Settlements

Over the past two decades, Berman DeValerio has held leadership roles in scores of complex antitrust cases, negotiating substantial settlements for its clients. Among those results are the following:

The California office served as lead counsel in In Re: Sorbates Direct Purchaser Antitrust Litigation, Master File No. C 98-4886 CAL (N.D. Cal.), alleging that six manufacturers of sorbates, a food preservative, violated antitrust laws through participation in a worldwide conspiracy to fix prices and allocations to customers in the United States. The firm negotiated a partial settlement of \$82 million with four of the defendants in 2000. Following intensive pretrial litigation, the firm achieved a further \$14.5 million settlement with the two remaining defendants, Japanese manufacturers, in 2002. Total settlement achieved for the class was \$96.5 million.

Attorneys in the Florida office acted as co-lead counsel and chief trial counsel in In Re: Disposable Contact Lens Antitrust Litigation, MDL 1030 (M.D. Fla.). Representing both a national class and the State of Florida, the firm helped secure settlements from defendants Bausch & Lomb and the American Optometric Association before trial and from Johnson & Johnson after five weeks of trial. The settlements were valued at more than \$92 million and also included significant injunctive relief to make disposable contact lenses available at more discount outlets and at more competitive prices.

The California office negotiated a \$62 million settlement in In Re: Toys "R" Us Antitrust Litigation, MDL 1211 (E.D.N.Y.) to answer claims that the retailer violated laws by colluding to cut off or limit supplies of popular toys to stores that sold the products at lower prices. A component of the settlement included \$40 million worth of toys to needy children throughout the United States over a three-year period.

The California office served as co-lead counsel in In Re: Industrial Diamonds Antitrust Litigation, MDL-948 (WCC) (S.D.N.Y.) alleging General Electric and DeBeers conspired to fix, raise, and maintain the prices of industrial diamond products in violation of the federal antitrust laws. The action settled for a combined cash and coupon settlement valued at \$26 million.

The firm played a significant role in one of the largest antitrust settlements on record in a case that involved alleged price-fixing by more than 30 Nasdaq Market-Makers on about 6,000 Nasdaq-listed stocks over a four-year period. The settlement, one of the largest of its kind at the time, was valued at near \$1 billion.

Berman DeValerio attorneys also played a key role in obtaining a \$535 million agreement from Bristol-Myers Squibb Co. to partially settle claims that the drug company had illegally blocked generic competition for its anxiety medication, BuSpar.

In another case involving generic drug competition, Berman DeValerio, as co-lead counsel, helped secure an \$80 million settlement from French-German drug maker Aventis Pharmaceuticals and the Andrx Corporation of Florida. The payment to consumers, state agencies, and insurance companies settles claims that the companies conspired to prevent the marketing of a less expensive generic version of the blood pressure medication Cardizem CD. The state attorneys general of New York and Michigan joined that case in support of the class.

LEADERSHIP ROLES

The firm has acted as lead or co-lead counsel in dozens of high profile cases, and has played an active role in some of the country's most prominent class actions. The following is a list of active cases where the firm is currently serving as lead or co-lead counsel for the class. This list does not include the numerous closed actions where the firm served as lead or co-lead counsel.

Securities Class Actions

- In Re: Abercrombie & Fitch Co. Securities Litigation, M21-83 (TPG) (S.D.N.Y.) – Member of the Executive Committee.
- In Re: Buca Inc. Securities Litigation, Civil Action No. 05-cv-1762 (D. Minn.)
- In Re: Oscar Wyatt v. El Paso Corp., Civil Action No. H-02-2717 (S.D. Tex.); Deputy Lead Counsel
- In Re: Fannie Mae Securities Litigation, 1:04-cv-1639 (RJL) (D. D.C.) – Co-lead Counsel.
- In re: GenesisIntermedia, Inc. Securities Litigation, 01cv9024 (C.D. Cal) – Co-lead Counsel.
- Hanley v. Warburg (Magma Copper), 96-390 (D. Ariz.) – Co-lead Counsel.
- Heartland High Yield Municipal Bond Fund et al., 00 C 1388 (JPS) (E.D. Wisc.) – Lead Counsel.
- In re: ICG Communications Inc. Securities Litigation, 00-CV-1864 (D. Colo.) – Co-lead Counsel.
- In Re: Philip Services Corp Securities Litigation, 98cv835 (MBM) (S.D.N.Y.), 99-7825 (2d Cir.) – Co-lead Counsel.
- In re Silicon Storage Tech., Inc. Securities Litigation, C-05-0295 (PJH) (N.D. Cal.)
- In Re: Stone & Webster, Inc. Securities Litigation, 00cv10874 (RCL) (D. Mass.) – Member of the Executive Committee and Liaison Counsel.
- In Re: Xcelera.com Securities Litigation, 1:00cv11649 (RWZ) (D. Mass.) – Co-lead Counsel.
- Carlson v. Xerox Corp., 3:00-CV-1621 (AWT) (D.Conn.) – Co-lead Counsel

Antitrust Class Actions

- In Re: Canadian Car Antitrust Litigation.

- In Re: SBC Communications, Inc. Antitrust Litigation, (Lead Case No. 3:02CV1617 (DJS), D. Conn.) and Syncro Services v. Bell Atlantic Corp. (02 civ. 7650 (SHS), S.D. N.Y.).
- In Re: Automotive Refinishing Paint Litigation, (JCCP4199, Superior Court of California, County of Alameda).
- Sample v. Monsanto et al. [Bioseeds Antitrust Litigation], (4:01cv00065RWS, E.D. Mo.).
- In Re: High Fructose Corn Syrup Antitrust Litigation, (95-1477, MDL No. 1087, C.D. Ill.).
- Samole v. Bayer Ag, et al. [Cipro Antitrust Litigation], (MDL1383, E.D. N.Y.).
Koonan v. Barr Laboratories, Inc. [Tamoxifen Antitrust Litigation], (MDL 1408, E.D. N.Y.).
- Blevins v. Wyeth-Ayerst Laboratories, et al. [Premarin Antitrust Litigation], (CGC-01-324380, Superior Court of California, County of San Francisco).
- In Re: Neurontin Antitrust Litigation, (MDL1479, D. N.J.).
- In Re: Terazosin Hydrochloride Antitrust Litigation, [Hytrin], (99-MD-1317, S.D. Fla.).
- MC - UA Local 119 Health and Welfare Plan V. Glaxosmithkline, PLC et al. [Wellbutrin], (02-cv-4398, E.D. Pa.).

TRIAL EXPERIENCE

The firm also has extensive experience in taking securities and antitrust class actions to trial. Over the years, its attorneys have gone to trial against pharmaceutical companies in New York and Boston, a railroad conglomerate in Delaware, one of the nation's largest trustee banks in Philadelphia, a major food retailer in St. Louis and the top officers of a failed New England bank. The firm also took an environmental products company to trial in Philadelphia and successfully argued the case before a federal appeals court.

The firm has been involved in more trials than most of the firms in the plaintiffs' class action bar. Our trial experience includes In Re: Disposable Contact Lens Antitrust Litigation, MDL 1030 (M.D. Fla.) (settled for \$60 million with defendant Johnson & Johnson after five weeks of trial); Hurley v. Federal Deposit Insurance Corp., 88 Civ. 1940 (D. Mass.) (bench verdict for plaintiffs); Howard Savings Bank, (\$3 million plaintiffs' verdict following four week trial); In Re: Equitec Sec. Litig., (\$35 million settlement at close of evidence following five month trial); In Re: ICN/Viratek Sec. Litig., 87 Civ. 4296 (S.D.N.Y.) (hung jury with 8-1 vote in favor of plaintiffs; the case settled for over \$14.5 million after the trial); In Re: Biogen Sec. Litig., 94 Civ. 12177 (D. Mass.) (verdict for defendants); Peil v. Speiser, No. 82-1289 (E.D. Pa. 1985) (securities fraud class action, verdict for defendants after six-week trial, Court of Appeals affirms but adopts "fraud-on-the-market" rule for Third Circuit securities cases); Kumpis v. Wetterau, No. 83-0362-(C3) (E.D. MO Dec. 1985) (securities fraud class action, case settled in mid-trial); Upp v. Mellon, No. 91-5219 (E.D. Pa. 1992) (bench trial, court finds for class of trust beneficiaries in suit against trustee bank and orders disgorgement of fees; Third Circuit later reversed based on lack of jurisdiction). The firm has the reputation and experience to take a case through verdict and appeal.

PARTNERS

Boston Office

Glen DeValerio

Glen DeValerio has prosecuted federal securities law violations, chiefly class and derivative actions, since the early 1970s. A 1969 graduate of the University of Rhode Island, he received his law degree in 1973 from the Catholic University Law School and served on the Catholic University Law Review's editorial board for two years. In 1973 and 1974, he worked as a law clerk to the Honorable June L. Green, U.S. District Court for the District of Columbia. Mr. DeValerio was admitted to the bar of the District of Columbia in 1974 and to the Massachusetts Bar in 1982. He has tried cases and argued before appellate and district courts in the District of Columbia, the District of Massachusetts, Delaware, and elsewhere, earning favorable judicial comment for his work.

Mr. DeValerio frequently lectures on complex securities litigation issues at continuing legal education seminars sponsored by groups like PLI, ALI-ABA, and the Boston Bar Association. He served as the President of the National Association of Securities and Commercial Law Attorneys (NASCAT) from 1996 through 1998.

Norman Berman

Since the creation of the firm in 1982, Norman Berman has focused his activities principally on the complex litigation of cases filed under the federal securities and antitrust laws. Mr. Berman has acted as trial counsel in a number of successful cases, including In Re: ICN Securities Litigation, which was settled after trial for more than \$14.5 million in 1996. The trial team's work prompted positive judicial comment.

Mr. Berman graduated from Boston University in 1970 and from Suffolk University Law School in 1974. He was admitted to practice law in Massachusetts and Connecticut in 1974.

Peter A. Pease

Mr. Pease has been litigating cases under the federal antitrust and securities laws and state unfair trade practices laws for nearly 30 years. He received a B.A. from the University of Denver in 1972, and a J.D. from Suffolk University Law School in 1976. He is admitted to practice in Massachusetts, the U.S. District Courts of Massachusetts and the Eastern District of Michigan, and the U.S. Courts of Appeals for the First and Third Circuits. His effective and successful advocacy has elicited favorable judicial comment in courts throughout the nation.

For over 20 years Mr. Pease has written and lectured at various bar association CLE programs, trade group annual meetings and the Sloan School of Management at M.I.T. He has served as an editor of the American Bar Association's Franchise Law Journal. His

courtroom success and expertise have resulted in many appearances in the broadcast and print media.

Mr. Pease has served the community in many ways. He is currently Chair of the Board of Directors of Bay Cove Human Services, Inc. and was a Director of the Massachusetts Alliance for the Mentally Ill. He was Chair of the Town of Upton Planning Board 1981-1985, and a Deacon of the First Parish Church in Lincoln.

Jeffrey C. Block

Jeffrey C. Block graduated *cum laude* from the State University of New York at Albany in 1983 and received his J.D. in 1986 from Brooklyn Law School, where he finished in the top 10 percent of his class. He was admitted to the New York Bar in 1987 and is also admitted to practice in Massachusetts. From 1987 to 1995, Mr. Block was associated with the New York law firm of Pomerantz Haudek Block Grossman & Gross, representing shareholders in securities class actions brought under the federal securities laws and in state court actions involving claims of breaches of fiduciary duties by corporate directors.

A partner at Berman DeValerio since 1997, Mr. Block has been one of the firm's lead attorneys on a number of cases, including In Re: Prison Realty Sec. Litig., one of the 10 largest settlements in securities class-action history, and In Re: Digital Lightwave Sec. Litig., in which the class received more than twice its certified losses after payment of attorneys' fees. He has also represented institutional clients in class actions alleging securities fraud at Xerox and Bristol-Myers Squibb.

Kathleen M. Donovan-Maher

Kathleen Donovan-Maher became a partner at the firm's Boston office in 1999 and focuses her work in Berman DeValerio's antitrust and securities practices. Ms. Donovan-Maher served as discovery captain in In Re: Nasdaq Antitrust Litigation and was a member of the trial team in In Re: ICN Securities Litigation, which settled for \$14.5 million when the jury deadlocked after a 1996 trial. Ms. Donovan-Maher graduated from Suffolk University in 1988, receiving a B.S. degree in Business Administration, *magna cum laude*, and earning an award for maintaining the highest grade point average among students with concentrations in Finance. She graduated from Suffolk University Law School three years later after serving for two years on the *Transnational Law Review*.

Ms. Donovan-Maher was admitted to the Massachusetts Bar in 1991, the United States District Court for the District of Massachusetts in 1992 and the United States Court of Appeals for the First Circuit in 1995. A frequent author on continuing legal education issues, Ms. Donovan-Maher is a member of Phi Delta Phi; Delta Mu Delta National Honor Society in Business Administration; and Omicron Delta Epsilon International Honor Society of Economics.

Michael G. Lange

Michael G. Lange became a partner with the firm in 1999. Until 1994, when he joined Berman DeValerio, he was a member of the defense bar as an attorney with Testa, Hurwitz & Thibault. Mr. Lange is a 1988 graduate of Swarthmore College, where he received his B.A. degree in Economics, *magna cum laude*. He graduated *cum laude* from Harvard Law School in 1991. He was admitted to the Massachusetts Bar in 1991 and the U.S. District Court for the District of Massachusetts in 1992. He is also admitted in the U.S. District Court of Colorado and the 1st, 3rd and 10th Circuit Courts of Appeal.

Mr. Lange has been involved in numerous class action cases on behalf of shareholders, insurance policyholders, and consumers. He was a member of the trial team in In Re: Biogen, Inc. Securities Litigation, the first securities class action tried in Massachusetts in nearly a decade. He was a co-chair and featured speaker for the February 2001 Class Action Litigation Summit in Washington, D.C., chair of the June 2001 MCLE Seminar "Class Action Practices in Massachusetts and Federal Court," and co-chair of the May 2002 BBA Seminar "The Life Cycle of a Class Action." He has spoken at investor conferences and serves as co-chair of the Boston Bar Association Class Action Committee. He is currently Vice President of the National Association of Shareholder and Consumer Attorneys (NASCAT), as well as a member of the Executive Committee, and previously served as the head of the media committee for the organization. He has written extensively on class action issues for professional and popular publications and has been quoted frequently in the national press.

Leslie R. Stern

Leslie R. Stern earned a B.S. degree in Finance from American University in 1991 and graduated, *cum laude*, from Suffolk University Law School in 1995. While at Suffolk, Ms. Stern served on the *Suffolk University Law Review's* editorial board and authored three publications. She was admitted to the Massachusetts Bar in 1995.

Before joining the firm, Ms. Stern practiced general civil litigation. She became associated with Berman DeValerio in 1998 and was named partner in 2003. Ms. Stern focuses her practice on securities litigation.

Patrick T. Egan

Patrick T. Egan received a B.A. in Political Science, *cum laude*, from Providence College in 1993. In 1997, Mr. Egan graduated *cum laude* from Suffolk University Law School. Mr. Egan served on the editorial board of the *Suffolk University Law Review* and authored a Note entitled: "Virtual Community Standards: Should Obscenity Law Recognize the Contemporary Community Standard of Cyberspace," 30 *Suffolk University Law Review* 117 (1996). Mr. Egan was admitted to the Massachusetts Bar in 1997, the Connecticut Bar in 1998 and the New York Bar in 1999.

Mr. Egan came to the firm from the U.S. Department of Labor, where he served as an attorney advisor with the Office of Administrative Law Judges. He became associated with the firm in 1999 and was named partner effective January 1, 2006.

San Francisco Office

Joseph J. Tabacco, Jr.

The managing partner of the firm's San Francisco office, Mr. Tabacco has actively litigated antitrust, securities fraud, commercial high tech, and intellectual property matters since the 1970s. He is a member of the bar in California, where he began his legal career, and is also a member in good standing of the bars of New York, Massachusetts, and the District of Columbia. Since entering private practice in the 1980s, Mr. Tabacco has served as trial or lead counsel in numerous antitrust and securities cases and has been involved in all aspects of state and federal securities and antitrust litigation.

Until 1981, he served as senior trial attorney for the U.S. Department of Justice, Antitrust Division, in both the Central District of California and the Southern District of New York. In that capacity, he had major responsibility for several criminal and civil matters including the antitrust trial of the U.S. v. IBM. He is a former teaching fellow of the Attorney General's Advocacy Institute in Washington, D.C., and has served on the faculty of ALI-ABA on programs about U.S.-Canadian business litigation and trial of complex securities cases. Author of numerous articles on securities and antitrust law issues, he is a member of the Advisory Board of the Institute for Consumer Antitrust Studies at Loyola University Chicago School of Law.

Christopher T. Heffelfinger

Christopher T. Heffelfinger is a 1984 graduate of the University of San Francisco School of Law, where he was a member of the law review. He graduated from Claremont Men's College in 1977 with a B.A. in Economics. He has an AV rating from Martindale-Hubbell. He specializes in corporate, securities, derivative and antitrust litigation, and has acted as a principal attorney in a number of such cases. Prior to joining the firm, he was associated with the San Francisco firm of Gold & Bennett from 1990 to 1994, where he practiced securities and bankruptcy litigation. Before that, he practiced securities litigation and bankruptcy law for five years with a small firm in Marin County with an emphasis on Chapter 11 reorganizations, representing both debtors and creditors. He has litigated securities cases involving real estate limited partnerships, the mortgage banking and insurance industries, and companies engaged in the high-tech arena where the allegations involved both non-disclosed product problems and accounting fraud issues.

Mr. Heffelfinger has also lectured on discovery as a panelist in the Federal Court Northern District of California Practice Program. In addition, he served as a Captain (infantry) in the U.S. Marine Corps from 1990-1991, when he was recalled to active duty in support of Operations Desert Shield/Storm.

Nicole Lavallee

Nicole Lavallee is a 1989 graduate of the French Civil Law School at Université de Montréal in Canada. In 1991, she was admitted to the Quebec Bar (currently inactive) and obtained her Common Law degree from Osgoode Hall Law School in Toronto. Ms. Lavallee joined Berman DeValerio shortly after being admitted to the California Bar in 1993 and was elevated to partner in 2002.

Ms. Lavallee focuses her practice primarily on securities and derivative litigation and has been responsible for the prosecution of a number of the firm's high profile securities cases. She recently represented the pension funds of Colorado, Minnesota and Utah in a successful opt-out action against McKesson/HBOC brought in San Francisco Superior Court.

West Palm Beach Office

C. Oliver Burt, III

C. Oliver Burt, a partner in the West Palm Beach office, launched his legal career with a major Philadelphia law firm. In 1971, he began prosecuting white-collar criminal cases as an assistant U.S. attorney for the Eastern District of Pennsylvania and, two years later, was appointed chief of the Civil Division of the United States Attorney's Office. He later returned to private practice in Philadelphia, focusing primarily on antitrust, unfair competition, and securities cases. He also briefly served as a special assistant U.S. attorney.

Mr. Burt has extensive litigation experience. He was trial co-counsel for plaintiffs in Peil v. Speiser, and argued the appeal. In its landmark opinion in that case, the Third Circuit adopted the "fraud-on-the-market" presumption of reliance as the law of the Circuit. Mr. Burt also argued numerous appeals in class action cases in the Third, Eighth, and Eleventh Circuits and in the Delaware Supreme Court. He is a member of the Florida and Pennsylvania Bars and is admitted to practice before the Supreme Court of the United States. Mr. Burt graduated from Swarthmore College in 1964 and from the Law School of the University of Pennsylvania in 1967.

Michael J. Pucillo

Michael J. Pucillo is the managing partner of the firm's West Palm Beach office. A member of the Florida Bar since 1978, he is admitted to practice before the United States Court of Appeals for the Fifth and Eleventh Circuits, and the United States District Courts for the Southern and Middle Districts of Florida and the District of Arizona. He has been active in numerous class actions and shareholder derivative actions throughout the United States since 1989. He acted as sole lead counsel in In Re: UCAR International, Inc. Securities Litigation, Case No. 98-CV-0600-JBA (D. Conn.), an action in which the Florida State Board of Administration was the lead plaintiff. That action settled in 2000 for a \$40 million cash payment and the right to appoint a new member to UCAR's Board of Directors, one of the first times such significant corporate governance relief was achieved as part of a securities class action.

A graduate of Williams College (1975) and Georgetown University Law School (1978), Mr. Pucillo worked as law clerk to two federal judges before serving as an enforcement attorney with the U.S. Securities and Exchange Commission in Washington. Mr. Pucillo has lectured frequently on class actions and litigation. In 1994, he became a member of the faculty of the College of Advanced Judicial Studies ("AJS"), where he taught "Managing the Complex Civil Case" to Florida circuit court judges in 1994 and in 1996. He taught again at the 2002 AJS. A member of the Academy of Florida Trial Lawyers, he has lectured for the Academy on class actions and on recent developments in commercial and business tort litigation. He served as president of the Gold Coast Chapter of the Federal Bar Association during 1989-1990, and served from 1994 to 1997 as chairman of the Palm Beach County Bar Association Federal Court Practice

Committee. He also appeared on the PBS Nightly Business Report on issues relating to investor fraud.

Wendy H. Zoberman

Wendy Zoberman is admitted to practice before the United States District Court for the Middle and Southern Districts of Florida, as well as all Florida State Courts. Ms. Zoberman is a 1981 graduate of Wellesley College, where she was a Durant Scholar, and was elected to the Phi Beta Kappa Society. She received her law degree from Columbia University in 1984. At Columbia she served as an Articles Editor of the Columbia University - Volunteer Lawyers for the Arts Journal of Art and the Law and is a co-author of "An Introduction to the New York Artists' Authorship Rights Act," appearing at Vol. 8, No. 3 Columbia - VLA Journal of Art and the Law 369.

Ms. Zoberman has practiced law in Florida since 1984, originally concentrating on First Amendment litigation and commercial litigation. Since 1990, Ms. Zoberman has prosecuted numerous securities class actions and shareholder derivative actions both throughout Florida and in other jurisdictions, including In Re: John Alden Financial Corp. Securities Litigation, Ehrenreich, et al. v. Sensormatic Electronics Corp. and In Re: Brothers Gourmet Coffees, Inc. Securities Litigation. She was also instrumental in the prosecution of In Re: UCAR International, Inc. Securities Litigation.

R. Scott Palmer

Scott Palmer, a graduate of the University of Michigan and a 1976 honors graduate of the University of Miami School of Law, began his career as an assistant state attorney in Orlando, Florida. From 1976 to 1979, he served as a misdemeanor and felony trial attorney as well as a legal advisor to the Organized Crime Strike Force. In 1980, Mr. Palmer was appointed chief field counsel for the Florida Department of Law Enforcement and later became director of executive investigations, responsible for the security of Florida's governor and internal affairs at the Department of Law Enforcement. In 1982, then-Gov. Bob Graham appointed him chief prosecutor of the Statewide Grand Jury, a post he held until 1986. After two years in private practice, Mr. Palmer was appointed an assistant attorney general for the Antitrust Section of the Economics Crimes Litigation Unit, handling all major antitrust litigation for Florida, including trials.

Mr. Palmer has continued to represent Florida since joining Berman DeValerio's West Palm Beach office in 1997. He is a member of the Florida Bar and the bars of the Eleventh Circuit Court of Appeals, Northern, Middle, and Southern Districts of Florida. A certified Circuit Court mediator, he has authored a law review article on statewide prosecution and a chapter on unfair trade practices in Matthew Bender's "Florida Forms of Jury Instruction." In addition, Mr. Palmer has taught litigation skills at the Florida State University College of Law and has studied antitrust law under Philip Areeda at Harvard Law School.

Manuel J. Dominguez

Manuel Dominguez graduated with honors from the Florida State University Law School in 1995 and was a member of the *Transnational Journal of Law and Policy*. He received his undergraduate degree from Florida International University in 1991. Mr. Dominguez is admitted to practice law in the State of Florida as well as the United States District Courts for the Northern, Middle, and Southern Districts of Florida.

Mr. Dominguez served as an assistant attorney general with the State of Florida from 1995 to 1997 in the Department of Economic Crimes. He participated in the prosecution and investigation of corporations and business entities for violations of Florida's RICO statute, Florida's antitrust statute and Florida's Unfair and Deceptive Trade Practices Act. In private practice from 1997 through 2000 Mr. Dominguez litigated and tried cases involving Florida's Unfair and Deceptive Trade Practices Act, the Florida Consumer Collection Practices Act, Federal Debt Collection Practices Act, and Truth In Lending. Mr. Dominguez was named a partner at Berman DeValerio Pease Tabacco Burt & Pucillo effective January 1, 2006.

ASSOCIATES

Boston Office

John A. Dziamba

John A. Dziamba is a graduate of Southern Connecticut State University and the University of Connecticut School of Law, where he authored: "The Free Press Fair Trial Controversy", 2 *Connecticut Law Review* 351.

Mr. Dziamba contributes experience in business, government and large class action litigation. He was lead counsel in successful argument before the US Supreme Court in *Vlandis v. Kline*, 412 U.S. 443 (1973), which invalidated tuition residency laws in Connecticut and set the standard for in-state tuition residency nationwide. He has also been counsel on a number of class action cases in the areas of investment, consumer and civil rights. He is admitted to practice in Massachusetts and Connecticut.

Mr. Dziamba has been a partner with the Boston firms of Gray & Wendell and Warner & Stackpole. He served as interim general counsel of Teradyne, Inc. and as general counsel of Gammatel, Inc., an international telecommunications company. Mr. Dziamba was Chief Regional Attorney for the Office of Civil Rights of the U.S. Department of Education. He has also served as an arbitrator for the American Arbitration Association and a mediator for the U.S. District Court in Boston.

Mr. Dziamba is an Adjunct Professor at Boston University. He was also an Adjunct Professor at Albertus Magnus College and on the Faculty Trial Practice Seminar of the Connecticut Bar Association, and on the faculty of the national Legal Services Corporation.

Mr. Dziamba joined Berman DeValerio in 2005 and focuses his practice on securities litigation.

Audley Fuller

Audley Fuller received his law degree from Boston College Law School in 1985 and a double degree in English and Mass Communications, *cum laude*, from the University of Hartford in 1981. Mr. Fuller was admitted to practice in Massachusetts in 1985, the U.S. District Court for the District of Massachusetts in 1987, and the U.S. Supreme Court in 2000.

Mr. Fuller began his legal career as an assistant district attorney for Middlesex County, Massachusetts. Later, he worked as an associate with Fitzhugh & Associates, a Boston insurance defense firm.

Allison K. Jones

Allison K. Jones graduated, *magna cum laude*, from Suffolk University Law School in 2002, where she was executive editor of the Suffolk University Law Review 2001-2002 and a recipient of the Rehnquist Award for Excellence in Professional Responsibility in 2002. Her published articles include *New Property in a New Age of Federalism: the Fight over Intellectual Property Protection* (Suffolk University Law Review, 2002) and *Trade Secret Litigation* (Intellectual Property Conference, 2001). She earned a Master of Arts in History from the University of Florida at Gainesville in 1999 and a Bachelor of Arts from Florida State University in 1988.

Ms. Jones was admitted to the Massachusetts Bar in 2002 and also is admitted to practice before the U.S. District Court for the District of Massachusetts and the U.S. Court of Appeals for the First Circuit. Prior to becoming an associate at Berman DeValerio, she was a litigation associate at Greenberg Traurig, LLP, in Boston. She focuses her practice on securities litigation.

Richard F. Malloy, Jr.

Richard F. Malloy, Jr. graduated from the University of North Texas in 1991 with a B.A. in philosophy and religion studies and a minor in music performance. Mr. Malloy received a J.D. from Suffolk University Law School in 1994, where he received the Award for Outstanding Oral Advocacy in the first-year mock trial competition. While studying at Suffolk Law, Mr. Malloy worked as an advocate at the New England Center for Homeless Veterans and clerked at Adelson Golden & Loria PC, where he assisted in the firm's bankruptcy and real estate practices.

After being admitted to the Massachusetts Bar in 1994, Mr. Malloy worked as a consultant for Tufts and Harvard Universities, where he coordinated the reaccreditations of both universities' medical schools. Mr. Malloy joined Berman DeValerio Pease Tabacco Burt & Pucillo as an associate in 2005.

Joseph C. Merschman

Joseph C. Merschman earned a BBA in Accounting in 1998 from the University of Iowa. In 2001, Mr. Merschman graduated from the University of Connecticut School of Law, where he was articles editor for the *Connecticut Law Review*. Mr. Merschman was admitted to the Massachusetts and Connecticut Bars in 2002.

Prior to joining Berman DeValerio in 2003, Mr. Merschman was a law clerk for the Honorable Judge Richard Roberts in the U.S. District Court for the District of Columbia. Mr. Merschman is also a former law clerk of Connecticut Supreme Court Justice Christine Vertefeuille and a summer/fall associate at the law firm of Rogin, Nassau, Caplan, Lassman & Hirtle, LLC.

Julie A. Richmond

Julie A. Richmond graduated *magna cum laude* from Tufts University in 1995 with a B.A. in Economics. In 1998, Ms. Richmond received her J.D. from the American University Washington College of Law, *summa cum laude*, where she served as an Articles Editor on the American University Law Review. Ms. Richmond has been a member of the Massachusetts Bar since 1998 and was admitted to practice before the U.S. District Court for the District of Massachusetts in 1999.

Prior to joining Berman DeValerio Pease Tabacco Burt & Pucillo, Ms. Richmond practiced securities litigation and corporate law at Goodwin Procter LLP. She focuses her activities in the firm's securities litigation practice.

Abigail R. Romeo

Abigail R. Romeo received her undergraduate degree in Government from Skidmore College in 2000, graduating *summa cum laude*. In 2003, Ms. Romeo earned a J.D., *magna cum laude*, from Pepperdine University School of Law, where she received the Witkin Award for Academic Excellence in Contracts I, Torts II, and Evidence. Ms. Romeo was also editor of the Pepperdine Law Review. She was admitted to the Massachusetts State Bar in 2003.

Prior to joining Berman DeValerio in 2005, Ms. Romeo worked as a litigation associate with Palmer & Dodge LLP in Boston and as a legal intern with the U.S. Department of Justice, Executive Office for Immigration Review. Ms. Romeo focuses her practice on securities litigation.

Jonathan Simpson

Jonathan Simpson graduated *cum laude* from Harvard University in 1999 with an A.B. in Environmental Science and Public Policy. He received his J.D. in 2004 from New York University School of Law, earning honors on the Casebook Division of the Moot Court Board. Prior to attending law school, Mr. Simpson worked as an account coordinator at Candelori Communications and as a research assistant at the Public Policy Institute of California. During the summer of 2003, Mr. Simpson worked as a summer associate for Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo PC, where he was later hired as an

associate in the fall of 2004. As an associate, Mr. Simpson practiced in the Intellectual Property litigation section, where he managed discovery for complex patent litigation involving software and computer technology. He also served on the Firm Associate Committee. He was admitted to the Massachusetts Bar in 2004.

Mr. Simpson joined Berman DeValerio Pease Tabacco Burt & Pucillo as an associate in 2006 and focuses his practice on securities litigation.

Nicole R. Starr

Nicole R. Starr earned a B.A., *magna cum laude*, in Political Science and a minor in Spanish in 1999 from Providence College. In 2002, Ms. Starr graduated, *summa cum laude*, from Suffolk University Law School, where she served as an Associate Production Editor for the *Suffolk University Law Review* and authored an article entitled: "The Curtailment of the Doctrine of Equivalents: Courts Emphasize the Public Notice Function of Patent Claims," 35 *Suffolk U.L. Rev.* 323 (2001). While at law school, Ms. Starr received the Best Brief and Best Oral Advocate Award in the First Year Legal Practice Skills Program and the Jurisprudence Award for Civil Procedure and Commercial Paper. In 2001, Ms. Starr was a summer associate at the Boston firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., where she researched and prepared memoranda on a variety of legal matters, including litigation, corporate, real estate, and trusts and estates issues. Ms. Starr was admitted to the Massachusetts Bar in 2002.

Ms. Starr joined Berman DeValerio Pease Tabacco Burt & Pucillo in 2002 and focuses her practice on securities litigation.

Patrick F. Welch

Patrick F. Welch earned a Bachelor of Arts in International Relations and Economics in 1999 from Connecticut College and a J.D. in 2005 from New England School of Law, where he was named to the Dean's List for four semesters. Mr. Welch also was awarded the CALI Excellence Award (Corruption in International Business Transactions), a PLI Scholarship for the 36th Annual Institute on Securities Regulations, and an ABA Scholarship for the 18th Annual National Institute on White Collar Crime. In addition, he contributed to the 2005 ALI/ABA Securities Litigation Program and served as Associate Editor for the New England Journal of International and Comparative Law. While in law school, Mr. Welch interned for the United States Attorney's Office, Criminal Division, the United States Securities and Exchange Commission, Division of Enforcement, and for the Honorable Michael C. Lauranzano, Massachusetts District Court Judge. He was admitted to the Massachusetts Bar in 2005.

Mr. Welch joined Berman DeValerio Pease Tabacco Burt & Pucillo in 2005 as a law clerk and became an associate later in the year. He focuses his practice on securities litigation.

Bryan A. Wood

Bryan A. Wood graduated, cum laude, from the University of Massachusetts in 1991 with a B.A. in Sociology. In 1995, he earned an M.S., summa cum laude, in Public Policy from the Eagleton Institute of Politics at Rutgers University and graduated, cum laude, from the Temple University School of Law in 1998. While at law school, Mr. Wood was the Managing Editor of the Temple Law Review and a board member of the Temple Law Moot Court Honor Society. Mr. Wood was admitted to the Pennsylvania bar in 1998 and the Massachusetts bar in 2001. In addition, Mr. Wood completed a one-year internship for the Honorable Edward R. Becker, then Chief Judge for the U.S. Court of Appeals for the Third Circuit. He was also admitted to the U.S. District Court for the Districts of Pennsylvania (in 1998), Massachusetts (in 2001) and Colorado (in 2004), as well as the U.S. Circuit Court of Appeals for the First Circuit (in 2003). Mr. Wood is a member of the Boston and American bar associations.

Prior to joining Berman DeValerio Pease Tabacco Burt & Pucillo in 2003, Mr. Wood was a litigation associate at both Montgomery McCracken Walker & Rhoads in Philadelphia, and Schnader Harrison Goldstein & Manello in Boston, where he represented corporations and directors in shareholder and other class action lawsuits as well as businesses and municipalities in general contract and employment discrimination cases. Mr. Wood focuses his activities in the Firm's securities litigation practice.

San Francisco Office

Julie J. Bai

Julie J. Bai earned a B.S. in Economics and a minor in Japanese in 1995 from the University of Pennsylvania, Wharton School of Business. In 2003, Ms. Bai received her J.D. from the University of California, Davis, School of Law. While in law school, Ms. Bai worked on family law matters with low-income victims of domestic violence at the Family Protection Clinic in Woodland, California. Ms. Bai was admitted to the California Bar in 2003. She is a member of the American Bar Association.

Ms. Bai is also a Certified Public Accountant and has worked as a business assurance associate and senior tax accountant at two major public accounting firms. Ms. Bai joined Berman DeValerio as an associate in 2004.

Matthew D. Pearson

Matthew D. Pearson is a 1999 graduate of the University of California, Los Angeles, where he earned a B.A. in political science. Mr. Pearson received his J.D. from the University of California, Davis, King Hall School of Law in 2004. While in law school, Mr. Pearson completed the King Hall Public Service Law Program and worked as a legal intern assigned to a felony trial team at the Sacramento County District Attorney's Office.

Mr. Pearson is a member of the California Bar and joined Berman DeValerio Pease Tabacco Burt & Pucillo as an associate in 2005.

Todd A. Seaver

Todd A. Seaver graduated *magna cum laude* from Boston University in 1994 with a B.A. in International Relations. He earned a M.Sc. from the London School of Economics in 1995 and graduated *cum laude* from the American University Washington College of Law in 1999. While in law school, Mr. Seaver worked as a law clerk at the Federal Trade Commission's Bureau of Competition, as a judicial extern for the Honorable Ricardo M. Urbina of the U.S. District Court for the District of Columbia, and as a law clerk in the antitrust practice group in the law firm Morgan, Lewis & Bockius.

Mr. Seaver was admitted to the New Hampshire Bar in 1999 and to the Massachusetts Bar in 2000, and is a member of the American Bar Association's Antitrust Section. Mr. Seaver joined the firm in 2000 and focuses his practice on both antitrust litigation and securities litigation.

Lesley Ann Hale

Lesley Ann Hale graduated *cum laude* with a Bachelor of Arts in Government from Harvard College in 1993, where she was named to the Dean's List (1991-1992) and received the Harvard College Scholarship of Academic Achievement and the Elizabeth C. Agassiz Merit Award for Academic Achievement. In 1998, Ms. Hale received her J.D. from Georgetown University Law Center. While studying at Georgetown, Ms. Hale worked as an assistant to a Partner at Russell & Russell P.C., drafting pleadings and conducting legal research, and also represented domestic violence victims in the District of Columbia Superior Court. Ms. Hale was admitted to the Massachusetts State Bar in 1998 and the California State Bar in 2005.

Following her admittance to the Massachusetts Bar in 1998, Ms. Hale served as Special Assistant to the United States Attorney, where she conducted misdemeanor bench trials before the District Columbia Superior Court, and as a Trial Attorney in the Criminal Enforcement Section of the U.S. Department of Justice Tax Division. Most recently, Ms. Hale has served as a Senior Motions Attorney for the 9th Circuit U.S. Court of Appeals in San Francisco, where she worked on a class-action 'discriminatory pay and promotion policy' lawsuit in *Dukes v. Walmart*, and a preliminary injunction appeal challenging the government's "stop-loss" policy, which would facilitate the unwelcome deployment of an Army National Guard soldier, in *John Doe v. Rumsfeld*. She joined Berman DeValerio Pease Tabacco Burt & Pucillo in 2005.

James C. Magid

James C. Magid earned a Bachelor's degree, with honors, from the University of California at Berkeley in 2000, majoring in Political Economy of Industrial Societies. In 2004, Mr. Magid received his J.D. from the University of California, Hastings College of the Law. While at U.C., he earned a number of honors, including the William J. Riegger Memorial Student Prize, for outstanding work in international law, and the Class of 1969 Scholarship, for demonstration of leadership in community service. Mr. Magid also participated in the Spring 2003 Jessup International Law Moot Court Competition and was Notes Editor for the *Hastings' Constitution Law Quarterly*, 2003-2004. He was admitted to the California Bar in 2004 and began work as a Staff Attorney for the U.S. Court of Appeals for the Ninth Circuit. He became associated with the California office of Berman DeValerio in 2006.

West Palm Beach Office

Kyle G. DeValerio

Kyle G. DeValerio graduated from Colby College in 1999 with a B.A. in Government. In his junior year, he studied at the London School of Economics and Political Science, concentrating in European politics and the English legal System. Mr. DeValerio received his J.D. from the Suffolk University School of Law in 2004.

Prior to joining Berman DeValerio Pease Tabacco Burt & Pucillo as an associate, Mr.

DeValerio worked as a legal intern in the Civil Division of the United States Attorney's Office in Boston and as a law clerk and paralegal in the firm's Boston office. Mr. DeValerio focuses his practice on securities litigation.

Jay W. Eng

Jay W. Eng graduated from Florida State University in 1994 with a B.S. in Economics. In 1998, he graduated from Tulane Law School with a J.D. and certificate of specialization in maritime law. He was awarded the book award for the top grade in Contracts II – the Uniform Commercial Code. He also served as a Notes and Comments Editor to the *Tulane Maritime Law Journal* and authored a note entitled, "The 'Something More' Requirement under Section 5(b) of the Longshore Act: Singleton v. Guangzhou Ocean Shipping Co.," 21 Tul. M. L.J. 205 (1996). Jay is a member of the Florida Bar, the Southern District of Florida, Middle District of Florida, Northern District of Florida, and the Eleventh Circuit Court of Appeals.

Prior to joining the firm, Jay was a commercial litigation associate at a major Florida law firm. He also served a judicial law clerk to Magistrate Judge Ann E. Vitunac, United States District Court for the Southern District of Florida, and as a trial court law clerk to the Fifteenth Judicial Circuit Court in and for the State of Florida.

Marc J. Greenspon

Marc J. Greenspon graduated from the State University of New York at Buffalo in 1999 with a B.A. in Political Science and received a J.D. from Nova Southeastern University in 2002. Mr. Greenspon authored an article entitled, *Securities Arbitration: Bankrupt, Bothered & Bewildered*, 7 STAN. J.L. BUS.& FIN.131(2002). He was admitted to the Florida Bar in 2002. In 2003, he received an LL.M. in Securities & Financial Regulation at Georgetown University Law Center. He joined Berman DeValerio that same year.

Of Counsel

Anne F. O'Berry

Anne F. O'Berry, of counsel to the firm, was admitted to the New York bar in 1987 and the Florida Bar in 1995. She obtained her B.A., *summa cum laude* and Phi Beta Kappa, from the University of Pennsylvania in 1983. She received her J.D. in 1986 from New York University School of Law, where she was an articles editor on the *Annual Survey of American Law* and authored an article entitled, "Prisoners' Rights: Judicial Deference to Prison Administrators," 1985 *Ann. Surv. Am. Law*. 325.

Upon graduating from law school, Ms. O'Berry served as a law clerk for the Honorable Dickinson R. Debevoise, United States District Court for the District of New Jersey. She then served as a research and teaching associate for the Honorable A. Leon Higginbotham, Jr., of the United States Court of Appeals for the Third Circuit, and later co-authored, with Judge Higginbotham, a law review article entitled, "'The Law Only As An Enemy': The Legitimization of Racial Powerlessness Through The Colonial and Antebellum Criminal Laws of Virginia," 70 *N.C. L. Rev.* 969 (1992).

From 1988 to 1991, Ms. O'Berry was as a commercial litigation associate with a major New York law firm. From 1991 to 1996, she was a staff attorney for a federally funded agency in Tallahassee, Florida, where she represented death row inmates in state and federal post-conviction proceedings. From 1996 to 1997, she served as co-director of an agency representing battered women seeking executive clemency. She then taught as an adjunct professor at St. Thomas University Law School in Miami, Florida, and from 1997 until she joined the firm in 2000, she was a central staff attorney at the Fourth District Court of Appeal in West Palm Beach, Florida.

OTHER KEY PERSONNEL

Christopher A. Szechenyi, Director of Investigations

Christopher A. Szechenyi is the Firm's director of investigations. Prior to joining the firm, he worked for 60 Minutes as a Paris-based producer, investigating stories all over the world for correspondent Mike Wallace. He also has conducted investigations for Dateline NBC, A&E, and the Discovery Channel and he has contributed stories to the New Yorker magazine and the Boston Globe. During his 25 years in journalism, he received more than two-dozen journalism awards, including two regional Emmys and national recognition from Investigative Reporters and Editors. Among other things, he has exposed a pattern of deadly safety violations on a giant construction project, uncovered design flaws in defibrillators and, most recently, interviewed Osama Bin Laden's half-brother. He earned a B.A. in journalism from Lehigh University in 1975. Mr. Szechenyi is an adjunct professor of journalism at Emerson College in Boston.

Jeannine M. Scarsciotti, Chief Paralegal

Jeannine M. Scarsciotti is Berman DeValerio's senior paralegal and, as such, coordinates portfolio monitoring and loss calculation for institutional clients. Ms. Scarsciotti joined the Firm as a paralegal in 1995. Ms. Scarsciotti attended Bentley College, where she graduated, *summa cum laude*, in 1995. She earned a B.S. in Professional Studies and an ABA-Accredited Certificate of Paralegal Studies.

Robert I. Francis, Forensic Accountant

Robert I. Francis graduated from Bentley College with a Bachelor of Science in Accountancy and received a Masters in Business Administration from Northeastern University. Mr. Francis is a Certified Public Accountant. He is a member of the American Institute of Certified Public Accountants, the Massachusetts Society of CPAs, and the East Coast Committee of the National Investment Company Service Association (NICSA).

Mr. Francis has an extensive accounting background. He has worked as an audit senior manager specializing in financial services at KPMG Peat Marwick and PricewaterhouseCoopers LLP, and served as vice president for Global Accounting Policy/External Reporting for State Street Corporation. Mr. Francis also has experience as an independent consultant, providing accounting support services related to compliance requirements of the Sarbanes-Oxley Act of 2002.

Van C. Khang, Forensic Accountant

Van C. Khang graduated from the University of Massachusetts in 1998 with a B.S. in Accounting and Finance. In 1993, Ms. Khang also earned a B.S. in Molecular Biology from the University of Connecticut. Ms. Khang is a Certified Public Accountant in Massachusetts. She has worked as a Manager of Global Investigations and Dispute Advisory for the accounting firm of Ernst & Young. Prior to holding that position, Ms. Khang was a senior consultant and staff auditor for the firm.

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