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12 *Proposed Lead Counsel*

13 **UNITED STATES DISTRICT COURT**  
 14 **NORTHERN DISTRICT OF CALIFORNIA**

16 In Re: Facebook Privacy Litigation

CASE NO. C 10-02389 JW

CLASS ACTION

18 **DECLARATION OF JEFF S.**  
 19 **WESTERMAN ISO PLAINTIFFS**  
 20 **BRYANT AND O’HARA’S REQUEST**  
 21 **TO:**

22 **(1) Consolidate the Zynga Actions as the**  
 23 **In re: Zynga Litigation**

24 **(2) Appoint O’Hara & Bryant Lead**  
 25 **Plaintiffs**

26 **(3) Appoint Milberg LLP and**  
 27 **Girard Gibbs LLP Lead Counsel**

26 THIS DOCUMENT ALSO RELATES TO:

27 Graf v. Zynga Game Network, Inc.

CASE NO. 10-4680

28 Albini v. Zynga Game Network, Inc., et al.

CASE NO. 10-4723

DEC. OF JEFF S. WESTERMAN ISO REQUEST TO (1) CONSOLIDATE ZYNGA ACTIONS, (2) APPOINT O’HARA &  
 BRYANT LEAD PLAINTIFFS, AND (3) APPOINT MILBERG & GIRARD GIBBS LEAD COUNSEL  
 CASE NO. C 10-02389-JW

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Gudac et al. v. Zynga Game Network, Inc.	CASE NO. 10-4793
Schreiber v. Zynga Game Network, Inc.	CASE NO. 10-4794
Swanson v. Zynga Game Network, Inc.	CASE NO. 10-4902
Carmel-Jessup v. Facebook, Inc., et al.	CASE NO. 10-4930
Phee et al. v. Facebook Inc., et al.	CASE NO. 10-4935
Bryant et al. v. Facebook, Inc. et al.	CASE NO. 10-5192

1 I, Jeff S. Westerman, hereby declare as follows:

2 1. I am a member in good standing of the State Bar of California and a partner in the law  
3 firm of Milberg LLP, counsel of record for Plaintiffs Iris Phee and William J. O'Hara in *Phee*, 10-cv-  
4 4935-JW (N.D. Cal.). I respectfully submit this declaration in support of Plaintiff O'Hara and Bryant's  
5 request to consolidate the Zynga Actions as the In re: Zynga Litigation, to appoint O'Hara and Bryant  
6 lead plaintiffs, and to appoint Milberg LLP and Girard Gibbs LLP lead counsel.

7 2. Milberg's practice focuses on the prosecution of class and complex actions in many fields  
8 including securities, consumer, corporate fiduciary, ERISA, insurance, antitrust, bankruptcy, mass tort,  
9 and human rights litigation. Attached hereto as **Exhibit A** is a true and correct copy of Milberg's  
10 current firm résumé, showing the firm's experience in complex and class action litigation.

11 3. I am the lead attorney for Milberg in the instant litigation. I have extensive experience  
12 litigating consumer actions and I have served as lead or co-lead counsel in cases resulting in significant  
13 corporate governance changes, and resulting in recoveries and recognized increased value to plaintiffs  
14 totaling more than \$800 million. I regularly serve as a moderator or speaker for programs on complex  
15 litigation, developments in class action practice and have served as Chair of the LA County Bar  
16 Complex Courts Bench-Bar Committee. In addition, I serve on the Central District of California, U.S.  
17 Magistrate Judge Merit Selection Panel (2003-present) and the standing committee on Attorney  
18 Discipline (2004-present).

19 4. Milberg has aggressively identified and investigated the claims brought against Facebook  
20 and Zynga. The firm has invested substantial time and resources to identify and investigate the facts  
21 alleged in their clients' complaints. The firm also interviewed a number of Facebook and Zynga users,  
22 investigated the technological aspects of the cases, and reviewed studies, reports, and articles concerning  
23 the underlying conduct. Milberg's attorneys also performed the legal research necessary to understand  
24 and develop a strategy for the issues likely to arise during the litigation. As a result of our post-filing  
25 investigation and research, and conversations with plaintiffs and defense counsel, we have concluded  
26 that the Zynga Actions would best be litigated separately from the *In re: Facebook Privacy Litigation*,  
27 albeit on a coordinated basis. If appointed lead counsel of the Zynga Actions, we presently intend to  
28 remove Facebook as a defendant, which will streamline and expedite the cases to the benefit of the class

1 and the Court.

2 5. Milberg has achieved outstanding recoveries for wronged consumers, businesses and  
3 investors, totaling over \$50 billion since the firm's inception. Importantly, Milberg has also  
4 successfully prosecuted a number of consumer class actions, including in California such as *In re*  
5 *NVIDIA GPU Litig.*, No. C 08-04312 (N.D. Cal.); *Messick v. Pioneer Electronics (USA), Inc., Pioneer*  
6 *Corp., and DOES 1-25 inclusive*, No. BC 323499 (Cal. Super. Ct., Los Angeles Cty.); and *Mikhail v.*  
7 *Toshiba Am. Info. Sys., Inc.*, No. BC 278163 (Cal. Super. Ct., Los Angeles Cty.). In *In re NVIDIA GPU*  
8 *Litig.*, Milberg's California office represented, before this Court, a consumer class on behalf of  
9 purchasers of defective notebook computers. The Court preliminarily certified a class for settlement  
10 purposes, and preliminarily approved a settlement. The case was resolved with only two motion-to-  
11 dismiss hearings (the second of which included the class certification hearing) and some status  
12 conferences, and discovery was completed with only one motion to compel which related to privilege  
13 and work product issues. This case demonstrates Milberg's ability to efficiently achieve good results for  
14 its clients in complex class cases.

15 6. Milberg was also lead counsel in a landmark consumer case that resulted in a recovery  
16 exceeding \$4 billion for a class of policyholders. See *In re Prudential Ins. Co. Sales Practice Litig.*, No.  
17 95-4704 (D.N.J.). And as lead counsel in the consumer class action *Santiago v. GMAC Mortg. Group,*  
18 *Inc.*, No. 02-cv-04048 (E.D. Pa.), Milberg negotiated a settlement on behalf of the class for 100% of  
19 plaintiffs' damages, which consisted of excessive fees paid under the Real Estate Settlement Procedures  
20 Act. Other examples of successful recoveries in consumer class actions include: *Friedman v. Samsung*  
21 *Elects. Am., Inc.*, No. BER-L-7250-01 (N.J. Super. Ct., Bergen Cty.), and *Summer v. Toshiba Am.*  
22 *Consumer Prods., Inc.*, No. BER-L-7248-01 (N.J. Super. Ct., Bergen Cty.).

23 7. Milberg has jointly prosecuted class action cases with Girard Gibbs LLP. For example,  
24 Milberg LLP and Girard Gibbs served as members of the executive committee in the *In re: Chase Bank*  
25 *USA, N.A. "Check Loan" Contract Litigation*, MDL No. 2032 (N.D. Cal.), and are co-counsel on other  
26 cases with leadership roles.

27 8. Milberg has unparalleled resources to assist it in litigating Plaintiffs' claims. The firm  
28 has over 70 lawyers coming from a variety of professional backgrounds including former judges,

1 professors, prosecutors, private defense attorneys, and government lawyers. Milberg’s professional staff  
2 also includes a team of full-time investigators, who are managed by a 27-year veteran of the Federal  
3 Bureau of Investigation, and four full-time forensic accountants. In one case, Milberg’s investigative  
4 team assisted counsel in being “at least eighteen months ahead of the United States Department of  
5 Justice in ferreting out” challenged unlawful conduct. *In re Rite Aid Corp. Sec. Litig.*, 269 F. Supp. 2d  
6 603, 611 (E.D. Pa. 2003). Milberg also has a team of in-house electronic discovery experts, assets likely  
7 to be of particular importance in a case against an operator of online network services.

8 9. The proposed leadership structure of Milberg LLP and Girard Gibbs as lead counsel  
9 enjoys the support of the following firms: Reese Richman LLP, Cohen Milstein Sellers & Toll PLLC,  
10 and Friedman Law Offices, PLLC. Attached hereto as **Exhibit B** is a true and correct copy of the firm  
11 resume of Reese Richman LLP.

12 10. In addition, **Exhibit C** is a true and correct copy of the 2010 Complex Court Symposium  
13 announcement indicating myself as moderator last week for the topic: Bringing Cases to Resolution:  
14 Trials, Settlement Techniques, and Issues in the Complex Courts.

15 I declare under penalty of perjury under the laws of the United States of America that the  
16 foregoing facts are true and correct. Executed this 22nd day of November, 2010, at Los Angeles,  
17 California.

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20 /s/ Jeff S. Westerman  
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# **EXHIBIT A**

## THE FIRM'S PRACTICE AND ACHIEVEMENTS

Milberg LLP, founded in 1965, was one of the first law firms to prosecute class actions in federal courts on behalf of investors and consumers. The Firm pioneered this type of litigation and is widely recognized as a leader in defending the rights of victims of corporate and other large-scale wrongdoing. The Firm's practice focuses on the prosecution of class and complex actions in many fields of commercial litigation, including securities, corporate fiduciary, ERISA, consumer, insurance, antitrust, bankruptcy, mass tort, and human rights litigation. The Firm has offices in New York City, Los Angeles, Tampa, and Detroit.

In its early years, the Firm built a new area of legal practice in representing shareholder interests under the then recently amended Rule 23 of the Federal Rules of Civil Procedure, which allowed securities fraud cases, among others, to proceed as class actions. In the following decades, the Firm obtained decisions establishing important legal precedents in many of its areas of practice and prosecuted cases that set benchmarks in terms of case theories, organization, discovery, trial results, methods of settlement, and amounts recovered and distributed to clients and class members.

Important milestones in the Firm's early years include the Firm's involvement in the *U.S. Financial* litigation in the early 1970s, one of the earliest large class actions, which resulted in a \$50 million recovery for purchasers of the securities of a failed real estate development company; the Ninth Circuit decision in *Blackie v. Barrack* in 1975, which established the fraud-on-the-market doctrine for securities fraud actions; the Firm's co-lead counsel position in the *In re Washington Public Power Supply System ("WPPSS") Securities Litigation*, a seminal securities fraud action in the 1980s in terms of complexity and amounts recovered; the representation of the Federal Deposit Insurance Corporation in a year-long trial to recover banking losses from a major accounting firm, leading to a precedent-setting global settlement; attacking the Drexel-Milken "daisy chain" of illicit junk-bond financing arrangements with numerous cases that resulted in substantial recoveries for investors; representing life insurance policyholders defrauded by "vanishing premium" and other improper sales tactics and obtaining large recoveries from industry participants; and ground-breaking roles in the multi-front attack on deception and other improper activities in the tobacco industry.

Milberg remains at the forefront in its areas of practice. Significant litigation results include: *In re Vivendi Universal, S.A. Securities Litigation* (estimated \$9 billion judgment, claims procedure pending); *Tyco International Ltd. Securities Litigation* (\$3.2 billion settlement); *Nortel Networks Litigation* (settlement for cash and stock valued at \$1.142 billion); *Lucent Technologies Securities Litigation* (\$600 million recovery); *Raytheon Co. Securities Litigation* (\$460 million recovery); *Managed Care Litigation* (recoveries over \$1 billion and major changes in HMO practices); the *WPPSS Securities Litigation* (settlements totaling \$775 million), and the *NASDAQ Market-Makers Antitrust Litigation* (\$1 billion in recoveries). Milberg has been responsible for recoveries valued at approximately \$55 billion during the life of the Firm.

Milberg is consistently active in *pro bono* litigation, highlighted by its leadership role in the *Swiss Bank Litigation*, which led to the recovery of \$1.25 billion from Swiss banks to benefit victims of the Holocaust, and the Firm's efforts representing claimants of the September 11 Victim Compensation Fund.

The Firm's lawyers come from many different professional backgrounds. They include former judges, professors, prosecutors, private defense attorneys, and government lawyers. The Firm's ability to pursue claims against defendants is augmented by its team of investigators, headed by a 27-year veteran of the Federal Bureau of Investigation, a full-time staff of forensic accountants and financial analysts, and an in-house litigation support department with data hosting capabilities, staffed by electronic discovery specialists.

For more information, please visit [www.milberg.com](http://www.milberg.com).

## JUDICIAL COMMENDATIONS

Milberg has been commended by countless judges throughout the country for the quality of its representation.

Milberg partners played leading roles in representing class plaintiffs in the three-month jury trial in *In re Vivendi Universal, S.A. Securities Litigation*, No. 02-5571 (S.D.N.Y.), which in January 2010 resulted in the largest verdict on record in that type of case (totaling as much as \$9 billion; claims procedure pending). At the close of the trial, Judge Richard Holwell commented:

I can only say that this is by far the best tried case that I have had in my time on the bench. I don't think either side could have tried the case better than these counsel have.

In approving a \$3.2 billion securities fraud settlement, one of the largest in history, in *In re Tyco International, Ltd. Securities Litigation*, No. 02-1335 (D.N.H. Dec. 19, 2007), Judge Barbadoro lauded Milberg's efforts as co-lead counsel:

This was an extraordinarily complex and hard-fought case. Co-Lead Counsel put massive resources and effort into the case for five long years, accumulating [millions of dollars in expenses] and expending [hundreds of thousands of hours] on a wholly contingent basis. But for Co-Lead Counsel's enormous expenditure of time, money, and effort, they would not have been able to negotiate an end result so favorable for the class. . . . Lead Counsel's continued, dogged effort over the past five years is a major reason for the magnitude of the recovery. . . .

In *Simon v. KPMG LLP*, No. 05-3189, 2006 U.S. Dist. LEXIS 35943, at \*18, 30-31 (D.N.J. June 2, 2006), a case in which Milberg served as class counsel, Judge Cavanaugh, in approving the \$153 million settlement, found that "Plaintiffs . . . retained highly competent and qualified attorneys" and that "[t]he Initial Complaint . . . demonstrates that [Milberg] expended considerable time and effort with the underlying factual and legal issues in this case before even filing this lawsuit. . . . Settlement discussions were conducted over a period of some fourteen months with the supervision and guidance of Judges Politan and Weinstein, and are evidence of [Milberg's] appreciation of the merits and complexity of this litigation."

In *In re Lucent Technologies, Inc. Securities Litigation*, No. 00-621, slip op. at 14-15, 26 (D.N.J. Feb. 24, 2004), Judge Pisano issued an opinion approving the \$600 million settlement and complimenting Milberg's work as co-lead counsel for the class as follows:

[T]he attorneys representing the Plaintiffs are highly experienced in securities class action litigation and have successfully prosecuted numerous class actions throughout the United States. They are more than competent to conduct this action. Co-Lead Counsel diligently and aggressively represented the Plaintiffs before this Court and in the negotiations that resulted in the Settlement. . . . [T]he efforts and ingenuity of Lead Plaintiffs and Lead Counsel resulted in an extremely valuable Settlement for the Benefit of the Class.

In *In re Rite Aid Corp. Securities Litigation*, 269 F. Supp. 2d 603, 611 (E.D. Pa. 2003), Judge Dalzell commented on the skill and efficiency of the Milberg attorneys litigating this complex case:

At the risk of belaboring the obvious, we pause to say a specific word about . . . the skill and efficiency of the attorneys involved. [Milberg was] extraordinarily deft and efficient in handling this most complex matter. [T]hey were at least eighteen months ahead of the United States Department of Justice in ferreting out the conduct that ultimately resulted in the write-down of over \$1.6 billion in previously reported Rite Aid earnings. . . . In short, it would be hard to equal the skill class counsel demonstrated here.

In *In re IKON Office Solutions, Inc. Securities Litigation*, 194 F.R.D. 166, 195 (E.D. Pa. 2000), Judge Katz commented on Milberg's skill and professionalism as one of plaintiffs' co-lead counsel:

First, class counsel is of high caliber and has extensive experience in similar class action litigation. . . . Each of the co-lead counsel firms has a national reputation for advocacy in securities class actions, and there is no doubt that this standing enhanced their ability both to prosecute the case effectively and to negotiate credibly. . . .

Of particular note in assessing the quality of representation is the professionalism with which all parties comported themselves. The submissions were of consistently high quality, and class counsel has been notably diligent in preparing filings in a timely manner even when under tight deadlines. This professionalism was also displayed in class counsel's willingness to cooperate with other counsel when appropriate. . . . This cooperation enabled the parties to focus their disputes on the issues that mattered most and to avoid pointless bickering over more minor matters.

In *In re NASDAQ Market-Makers Antitrust Litigation*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998), in an opinion approving settlements totaling over \$1.027 billion, Judge Sweet commented:

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

Judicial recognition of Milberg's excellence is not limited to courts within the United States. In *In re Flag Telecom Holdings, Ltd. Securities Litigation*, No. 02-3400 (S.D.N.Y. 2009), Milberg litigated a discovery dispute before the English Royal High Court of Justice, Queens Bench Division, which recognized the Milberg attorney handling the matter as a "Grade A" lawyer and a "vital cog in the machine." Likewise, in *Sharma v. Timminco Ltd.*, 09-378701 (Can. Ont. Sup. Ct. 2009), Canada's Ontario Superior Court of Justice recognized Milberg's "fine reputation and excellent credentials" in connection with Milberg's representation in a securities case pending in Canada.

Milberg has also been recognized for its commitment to public service. In lauding Milberg's work representing victims of the September 11th attack on the World Trade Center in connection with the September 11 Victims Compensation Fund, Special Master Kenneth R. Feinberg stated the following:

Once again, as I have learned over the years here in New York, the [Milberg] firm steps up to the plate in the public interest time and time again. The social conscience of the [Milberg] firm, acting through its excellent associates and partners, help deal with crises that confront the American people and others, and I am personally in the debt of Milberg . . . for the work that it is doing . . . . [T]hey are second among none in terms of the public interest, and I'm very, very grateful, not only to you guys for doing this, but . . . for the firm's willingness to help out. I wanted to let everybody know that.

*In re September 11 Victim Compensation Fund*, Preliminary Hearing, Claim No. 212-003658 (Dec. 9, 2003).

## NOTEWORTHY RESULTS

The quality of Milberg's representation is further evidenced by the Firm's numerous significant recoveries, some of which are described below.

- In *In re Vivendi Universal, S.A. Securities Litigation*, No. 02-5571 (S.D.N.Y.), Milberg lawyers were instrumental in obtaining a jury verdict for an international class of defrauded investors after a trial lasting nearly four months. The jury found Vivendi liable for 57 false or misleading class period statements. The claims procedure is pending and could potentially result in a judgment of up to \$9 billion. The district court had previously certified a class of purchasers from the U.S., France, England, and the Netherlands. See *In re Vivendi Universal, S.A. Sec. Litig.*, 242 F.R.D. 76 (S.D.N.Y. 2007).
- *In re Initial Public Offering Securities Litigation*, No. 21-92 (S.D.N.Y.). Milberg represented investors in 310 consolidated securities actions arising from an alleged market manipulation scheme. Plaintiffs alleged, among other things, that approximately 55 defendant investment banks, in dealing with certain of their clients, conditioned certain allocations of shares in initial public offerings on the subsequent purchase of more shares in the aftermarket, thus artificially boosting the prices of the subject securities. This fraudulent scheme, plaintiffs alleged, was a major contributing factor in the now infamous technology "bubble" of the late 1990s and early 2000s. As a member of the court-appointed Plaintiffs' Executive Committee, and with certain partners appointed by the court as liaison counsel, Milberg oversaw the efforts of approximately 60 plaintiffs' firms in combating some of the most well-respected defense firms in the nation. In granting final approval to a \$586 million settlement on October 5, 2009, the court described the law firms comprising the Plaintiffs' Executive Committee as the "cream of the crop."
- *Carlson v. Xerox*, No. 00-1621 (D. Conn). Milberg served as co-lead counsel in this lawsuit, which consolidated 21 related cases alleging violations of the federal securities laws. Plaintiffs alleged that Xerox and several of its top officers reported false financial results during the class period and failed to adhere to the standard accounting practices the company claimed to have followed. In the course of litigating plaintiffs' claims, Milberg engaged in arduous and exhaustive factual discovery, including review and analysis of more than four million pages of complex accounting and auditing documents and thousands of pages of SEC deposition transcripts. Plaintiffs' claims survived three motions to dismiss and a motion for summary judgment, ultimately resulting in a \$750 million settlement, which received final approval on January 14, 2009.
- *In re Tyco International Ltd., Securities Litigation*, MDL 1335 (D.N.H.). Milberg served as co-lead counsel in this litigation, which involved claims under the Securities Act of 1933 and the Securities Exchange Act of 1934 against Tyco and its former CEO, CFO, general counsel, and certain former directors arising out of allegations of Tyco's \$5.8 billion overstatement of income and \$900 million in insider trading, plus hundreds of millions of dollars looted by insiders motivated to commit the fraud. Plaintiffs also asserted claims under the 1933 and 1934 Acts against PricewaterhouseCoopers LLP for allegedly publishing false audit opinions on Tyco's financial statements during the class period and failing to audit Tyco properly, despite knowledge of the fraud. On December 19, 2007, the court approved a \$3.2 billion settlement of the plaintiffs' claims and praised the work of co-lead counsel.
- *In re Sears, Roebuck & Co. Securities Litigation*, No. 02-7527 (N.D. Ill.). This case involved allegations that Sears concealed material adverse information concerning the financial condition, performance, and prospects of Sears' credit card operations, resulting in an artificially inflated stock price. The approved

settlement provided \$215 million to compensate class members.

- ***In re General Electric Co. ERISA Litigation***, No. 04-1398 (N.D.N.Y.). This ERISA class action was brought on behalf of current and former participants and beneficiaries of the General Electric (“G.E.”) 401(k) Plan. Milberg, serving as co-lead counsel, achieved a \$40 million settlement on behalf of current and former G.E. employees who claimed that the company’s 401(k) Plan fiduciaries imprudently invested more than two-thirds of the Plan’s assets in company stock. The settlement included important structural changes to G.E.’s 401(k) plan valued at more than \$100 million.
- ***In re Biovail Corp. Securities Litigation***, No. 03-8917 (S.D.N.Y.). Milberg, representing Local 282 Welfare Trust Fund and serving as co-lead counsel, litigated this complex securities class action brought on behalf of a class of defrauded investors, alleging that defendants made a series of materially false and misleading statements concerning Canadian company Biovail’s publicly reported financial results and the company’s then new hypertension/blood pressure drug, Cardizem LA. This was a highly complex case in which counsel took numerous depositions across the U.S. and Canada and obtained documents from defendants and several third-parties, including, among others, UBS, McKinsey & Co., and Merrill Lynch. Milberg obtained a \$138 million settlement for the class, and Biovail agreed to institute significant corporate governance changes.
- ***In re Nortel Networks Corp. Securities Litigation***, No. 01-1855 (S.D.N.Y.). In this federal securities fraud class action, Milberg served as lead counsel for the class and the court-appointed lead plaintiff, the Trustees of the Ontario Public Service Employees’ Union Pension Plan Trust Fund. In certifying the class, the court specifically rejected the defendants’ argument that those who traded in Nortel securities on the Toronto Stock Exchange (and not the New York Stock Exchange) should be excluded from the class. The Second Circuit denied the defendants’ attempted appeal. On January 29, 2007, the court approved a settlement valued at \$1.142 billion.
- ***In re American Express Financial Advisors Securities Litigation***, No. 04-1773 (S.D.N.Y.). This case involved allegations that American Express Financial Advisors violated securities laws by representing to class members that the company would provide tailored financial advice, when the company actually provided “canned” financial plans and advice designed to steer clients into American Express and certain nonproprietary mutual funds. The case settled for \$100 million, with the settlement agreement requiring that the company institute remedial measures.
- ***In re Lucent Technologies, Inc. Securities Litigation***, No. 00-621 (D.N.J.). In this federal securities fraud action in which Milberg served as co-lead counsel, plaintiffs alleged, *inter alia*, that Lucent and its senior officers misrepresented the demand for Lucent’s optical networking products and improperly recognized hundreds of millions of dollars in revenues. The settlement provided compensation of \$600 million to aggrieved shareholders who purchased Lucent stock between October 1999 and December 2000.
- ***In re Raytheon Securities Litigation***, No. 99-12142 (D. Mass.). This case, in which Milberg served as lead counsel, concerned claims that a major defense contractor failed to write down assets adequately on long term construction contracts. In May 2004, Raytheon and its auditor, PricewaterhouseCoopers LLP, settled for a total of \$460 million.
- ***In re Rite Aid Securities Litigation***, No. 99-1349 (E.D. Pa.), in which Milberg served as co-lead counsel, the plaintiffs asserted federal securities fraud claims arising out of allegations that Rite Aid failed to disclose material problems with its store expansion and modernization program, resulting in artificially inflated earnings. Judge Dalzell approved class action settlements totaling \$334 million against Rite Aid (\$207 million), KPMG (\$125 million), and certain former executives of Rite Aid (\$1.6 million).
- ***In re CMS Energy Corp. Securities Litigation***, No. 02-72004 (E.D. Mich.), a federal securities fraud case arising out of alleged round-trip trading practices by CMS Energy

Corporation, Judge Steeh approved a cash settlement of more than \$200 million. Milberg served as co-lead counsel in this litigation.

- ***In re Deutsche Telekom AG Securities Litigation***, No. 00-9475 (S.D.N.Y.). Milberg served as co-lead counsel in this securities class action alleging that Deutsche Telekom issued a false and misleading registration statement, which improperly failed to disclose its plans to acquire VoiceStream Wireless Corporation and materially overstated the value of the company's real estate assets. On June 14, 2005, Judge Buchwald approved a \$120 million cash settlement.
- ***In re CVS Corp. Securities Litigation***, No. 01-11464 (D. Mass.). Milberg served as co-lead counsel in this class action alleging that defendants engaged in a series of accounting improprieties and issued false and misleading statements which artificially inflated the price of CVS stock. On September 7, 2005, Judge Tauro approved a \$110 million cash settlement for shareholders who acquired CVS stock between February 6, 2001, and October 30, 2001.
- ***Scheiner v. i2 Technologies, Inc.***, No. 01-418 (N.D. Tex.). Milberg served as lead counsel in this securities fraud case, filed on behalf of certain purchasers of i2 common stock. The plaintiffs alleged that certain of the company's senior executives made materially false and misleading statements and omissions in i2's public statements and other public documents regarding i2's software, thereby artificially inflating the price of i2's common stock. In May 2004, Milberg recovered a settlement of \$84.85 million.
- ***In re Royal Dutch/Shell Transport ERISA Litigation***, No. 04-1398 (D.N.J.). This was an ERISA breach of fiduciary duty class action against the Royal Dutch/Shell Oil Group of Companies on behalf of certain of the companies' U.S. employee investment plan participants. Notably, the \$90 million settlement included important provisions regarding the monitoring and training of individuals appointed to be ERISA fiduciaries.
- Milberg served as co-lead counsel in ***Irvine v. ImClone Systems, Inc.***, No. 02-0109 (S.D.N.Y.), in which a \$75 million cash settlement was approved by the court in July 2005. Plaintiffs alleged that ImClone issued a number of misrepresentations and fraudulent statements to the market regarding the likelihood of approval of the drug Erbitux, thereby artificially inflating the price of ImClone stock.
- ***In re W.R. Grace & Co. (Official Committee of Asbestos Personal Injury Claimants v. Sealed Air Corp. and Official Committee of Asbestos Personal Injury Claimants v. Fresenius Medical Care Holdings, Inc.)***, Nos. 02-2210 and 02-2211 (D. Del.), Milberg acted as lead counsel for the asbestos personal injury and property damage committees in two separate fraudulent conveyance actions within the W.R. Grace bankruptcy. The actions sought to return the assets of Sealed Air Corporation and Fresenius Medical Care Holdings (each of which had been Grace subsidiaries pre-bankruptcy) to the W.R. Grace bankruptcy estate. Complaints in both cases were filed in mid-March 2002, and agreements in principle in both cases were reached on November 27, 2002, the last business day before trial was set to begin in the Sealed Air matter. The two settlements, which consisted of both cash and stock, were valued at approximately \$1 billion.
- ***Nelson v. Pacific Life Insurance Co.***, No. 03-131 (S.D. Ga.). Milberg served as lead counsel in this securities fraud class action arising from allegations of deceptive sales of deferred annuity tax shelters to investors for placement in retirement plans that are already tax-qualified. The court approved a \$60 million settlement of claims arising from such deception.
- The Firm was lead counsel in ***In re Prudential Insurance Co. Sales Practice Litigation***, No. 95-4704 (D.N.J.), a landmark securities case that resulted in a recovery exceeding \$4 billion for certain Prudential policyholders. The settlement was approved in a comprehensive Third Circuit decision.
- ***In re NASDAQ Market-Makers Antitrust Litigation***, No. 94-3996 (S.D.N.Y.), Milberg served as co-lead counsel for a class of investors. The class alleged that the NASDAQ

market-makers set and maintained wide spreads pursuant to an industry-wide conspiracy in one of the largest and most important antitrust cases in recent history. After more than three years of intense litigation, the case settled for a total of \$1.027 billion, one of the largest antitrust settlements at that time.

- ***In re Washington Public Power Supply System Securities Litigation***, MDL 551 (D. Ariz.) was a massive securities fraud litigation in which Milberg served as co-lead counsel for a class that obtained settlements totaling \$775 million, the largest-ever securities fraud settlement at that time, after several months of trial.
- ***In re Exxon Valdez***, No. 89-095 (D. Alaska) and ***In re Exxon Valdez Oil Spill Litigation***, 3 AN-89-2533 (Alaska Sup. Ct. 3d Jud. Dist.). Milberg was a member of the Plaintiffs' Coordinating Committee and co-chair of the Plaintiffs' Law Committee in the massive litigation resulting from the Exxon Valdez oil spill in Alaska in March 1989. Plaintiffs obtained a jury verdict of \$5 billion, which, after years of appeals by Exxon, was reduced to approximately \$500 million by the United States Supreme Court. Recently the United States Court of Appeals for the Ninth Circuit held that plaintiffs are entitled to post judgment interest on the award in the amount of approximately \$470 million.
- In ***In re Managed Care Litigation***, MDL 1334 (S.D. Fla.). Final approval of a settlement between a nationwide class of physicians and defendant CIGNA Healthcare, valued in excess of \$500 million, was granted on April 22, 2004. A similar settlement valued in excess of \$400 million involving a nationwide class of physicians and Aetna was approved by the court on November 6, 2003. The settlements stem from a series of lawsuits filed in both state and federal courts by physicians and medical associations against many of the nation's largest health insurers arising from allegations that the insurers engaged in a fraudulent scheme to systematically obstruct, reduce, delay, and deny payments and reimbursements to health care providers. These settlements brought sweeping changes to the health care industry and significant improvements to physician-related business practices.
- ***In re Sunbeam Securities Litigation***, No. 98-8258 (S.D. Fla). Milberg acted as co-lead counsel for the class. Plaintiffs alleged that Sunbeam, its auditor, and its management engaged in a massive accounting fraud which led to a restatement of over three years of previously reported financial results. The court approved a combined settlement of more than \$140 million, including a \$110 million settlement with Arthur Andersen LLP, Sunbeam's auditor. At that time, the Andersen settlement was one of the largest amounts ever paid by a public accounting firm to settle federal securities claims. The settlement with the individuals was achieved on the eve of trial, and ended almost four years of litigation against Andersen and Sunbeam's insiders, including Albert Dunlap, Sunbeam's former Chairman and CEO. The settlement included a personal contribution from Dunlap of \$15 million.
- ***In re Triton Energy Limited Securities Litigation***, No. 98-256 (E.D. Tex.). Plaintiffs alleged that defendants misrepresented, among other things, the nature, quality, classification, and quantity of Triton's Southeast Asia oil and gas reserves during the period March 30, 1998 through July 17, 1998. The case settled for \$42 million.
- In ***In re Thomas & Betts Securities Litigation***, No. 00-2127 (W.D. Tenn.), the plaintiffs, represented by Milberg as co-lead counsel, alleged that Thomas & Betts engaged in a series of accounting improprieties while publicly representing that its financial statements were in compliance with GAAP, and failed to disclose known trends and uncertainties regarding its internal control system and computer and information systems. The case settled for \$46.5 million dollars in cash from the company and \$4.65 in cash from its outside auditor, KPMG.
- ***In re MTC Electronic Technologies Shareholder Litigation***, No. 93-0876 (E.D.N.Y.). Plaintiffs alleged that defendants issued false and misleading statements concerning, among other things, purported joint venture agreements to establish telecommunications systems and manufacture telecommunications equipment in China. The court approved a settlement of \$70 million,

including \$65 million in cash and \$5 million worth of MTC Class A shares with “put” rights.

- In *In re PaineWebber Limited Partnerships Litigation*, No. 94-8547 (S.D.N.Y.). Milberg represented investors alleging that PaineWebber developed, marketed, and operated numerous investment partnerships as part of an ongoing conspiracy to defraud investors and enrich itself through excessive fees and commissions over a twelve-year period. On March 20, 1997, Judge Sidney Stein approved a \$200 million settlement, consisting of \$125 million in cash and \$75 million worth of guarantees and fee waivers.
- In *Andrews v. AT&T*, No. 91-175 (S.D. Ga.) the Firm represented a class of persons who paid for premium-billed “900-number” calls that involved allegedly deceptive games of chance, starting in 1993. Defendants included major long-distance companies, which approved the call programs and billed for the calls. Defendant MCI settled for \$60 million in benefits. The class against AT&T was decertified on appeal and the Firm prosecuted the individual plaintiffs’ claims, obtaining a jury verdict in 2003 for compensatory and punitive damages.

In the context of shareholder derivative actions, Milberg has protected shareholder investments by effectuating important changes in corporate governance as part of the global settlement of such cases. Cases in which such changes were made include:

- *In re Comverse Technology, Inc. Derivative Litigation*, No. 601272/2006 (N.Y. Sup. Ct. N.Y. Cty.). On December 28, 2009, Milberg announced a \$62 million settlement for the derivative plaintiffs, which was approved by the Court on June 23, 2010. The settlement also resulted in significant corporate governance reforms, including the replacement of the offending directors and officers with new independent directors and officers; the

amendment of the company’s bylaws to permit certain long-term substantial shareholders to propose, in the Company’s own proxy materials, nominees for election as directors (proxy access); and the requirement that all equity grants be approved by both the Compensation Committee and a majority of the non-employee members of the Board.

- *In re Topps Co., Inc. Shareholder Litig.*, No. 600715/2007 (N.Y. Sup. Ct. N.Y. Cty. Apr. 17, 2007). Milberg served as co-lead counsel in this transactional case, which led to a 2007 decision vindicating the rights of shareholders under the rules of comity and the doctrine of *forum non conveniens* to pursue claims in the most relevant forum, notwithstanding the fact that jurisdiction might also exist in the state of incorporation. This case was settled in late 2007 in exchange for a number of valuable disclosures for the class.
- *In re Marketspan Corporate Shareholder Litigation*, No. 15884/98 (N.Y. Sup. Ct. Nassau Cty.). The settlement agreement in this derivative case required modifications of corporate governance structure, changes to the audit committee, and changes in compensation awards and to the nominating committee.
- *In re Trump Hotels Shareholder Derivative Litigation*, No. 96-7820 (S.D.N.Y.). In this case, the plaintiff shareholders asserted various derivative claims on behalf of the company against certain Trump entities and senior Trump executives in connection with the self-serving sale of a failing casino to the company in which the plaintiffs held stock. Milberg negotiated a settlement on behalf of the plaintiffs that required Donald Trump to contribute a substantial portion of his personal interest in a pageant he co-owned. In addition, the settlement required the company to increase the number of directors on its board, and certain future transactions had to be reviewed by a special committee.

## PRECEDENT-SETTING DECISIONS

Milberg has consistently been a leader in developing the federal securities, antitrust, and consumer protection laws for the benefit of investors and consumers. The Firm has represented individual and institutional plaintiffs in hundreds of class action litigations in federal and state courts throughout the country. In most of those cases, Milberg has served as lead or co-lead counsel. The Firm has also been responsible for establishing many important precedents, including the following:

- In *Merck & Co., Inc. v. Reynolds* (U.S. 2010), Milberg, along with other co-lead counsel, won a significant victory before the U.S. Supreme Court, which issued a decision addressing when an investor is placed on “inquiry notice” of a securities fraud violation sufficient to trigger the statute of limitations under 28 U.S.C. § 1658(b). The Court unanimously ruled that the two-year statute of limitations was not triggered because plaintiffs did not have actual or constructive knowledge of “the facts constituting the violation,” and as such, the case was not time-barred. Importantly, the Court held that the plaintiff must be on actual or constructive notice of facts concerning the defendants’ scienter in order to trigger the statute of limitations. This decision is significant in that it potentially enables plaintiffs to bring claims based on misstatements that are more than two years old.
- *In re Lord Abbett Mutual Funds Fee Litigation*, 553 F.3d 248 (3d Cir. 2009). This important decision set significant precedent regarding the scope of preemption under the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”). In reversing the District Court’s dismissal of the plaintiffs’ claims, the Third Circuit held that “SLUSA does not mandate dismissal of an action in its entirety where the action includes only some pre-empted claims.” In so holding, the court explained that “nothing in the language, legislative history, or relevant case law mandates the dismissal of an entire action that includes both claims that do not offend SLUSA’s prohibition on state law securities class actions and claims that do . . . .”
- *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 170 (2d Cir. 2009). In this matter, the plaintiffs, Nigerian children and their families, asserted claims under the Alien Tort Statute (“ATS”) in connection with Pfizer’s clinical trial of the drug, Trovan, without their knowledge. In January 2009, the Second Circuit reversed the District Court’s dismissal for lack of jurisdiction. The court held that the plaintiffs pled facts sufficient to state a cause of action under the ATS for a violation of international law prohibiting medical experimentation on human subjects without their consent. Pfizer’s petition for review of the Second Circuit’s ruling by the United States Supreme Court is currently pending.
- *In re Comverse Technology, Inc. Derivative Litigation*, 866 N.Y.S.2d 10 (App. Div. 1st Dep’t 2008). In this derivative case in which Milberg serves as co-lead counsel, plaintiff shareholders sued certain of the company’s officers and directors based on allegations of illegal options backdating. The lower court dismissed the plaintiffs’ claims, holding that the plaintiffs failed to make a pre-suit demand on the company’s board, and that in any event, the board had already formed a special committee to investigate the misconduct. In this significant opinion reversing the lower court’s dismissal, the Appellate Division clarified the standards of demand futility and held that a board of directors loses the protection of the business judgment rule where there is evidence of the directors’ self-dealing and poor judgment. The court noted that the mere creation of a special committee did not justify a stay of the action and did not demonstrate that the board took appropriate steps. Rather, “the picture presented in the complaint is that of a special committee taking a tepid rather than a vigorous approach to the misconduct and the resultant harm. Under such circumstances, the board should not be provided with any special protection.”
- *South Ferry LP #2 v. Killinger*, 542 F.3d 776 (9th Cir. 2008). The important opinion issued by the Ninth Circuit in this securities fraud class action clarified, in the post-*Tellabs* environment, whether a theory of scienter based on the “core operations” inference satisfies the

PSLRA's heightened pleading standard. In siding with the plaintiffs, represented by Milberg, the Ninth Circuit held that "[a]llegations that rely on the core operations inference are among the allegations that may be considered in the complete PSLRA analysis." The court explained that under the "holistic" approach required by *Tellabs*, all allegations must be "read as a whole" in considering whether plaintiffs adequately plead scienter. After remand, the District Court found that the plaintiffs sufficiently alleged scienter under the Ninth Circuit's analysis.

- ***In re Gilead Sciences Securities Litigation***, 536 F.3d 1049 (9th Cir. 2008). In this securities fraud class action in which Milberg represents the plaintiffs, the Ninth Circuit reversed the District Court's dismissal of the complaint in this opinion clarifying loss causation pleading requirements. In ruling that the plaintiffs adequately pled loss causation, the Ninth Circuit held that the plaintiffs' complaint identified a "specific economic loss" following the issuance of a specific press release, along with allegations of misrepresentations that were described in "abundant detail." The opinion established that plaintiffs in a securities fraud action adequately plead loss causation where they provide sufficient detail of their loss causation theory and some assurance that the theory has a basis in fact. Based on this analysis, the dismissal was reversed, and the case was remanded to the District Court for further proceedings.
- In ***Tellabs, Inc. v. Makor Issues & Rights, Ltd.***, 551 U.S. 308 (2007), in which Milberg is lead counsel for the class, the United States Supreme Court announced a uniform standard for evaluating the sufficiency of a complaint under the PSLRA. The court held that on a motion to dismiss, a court "must consider the complaint in its entirety," accepting "all factual allegations in the complaint as true," as well as "tak[ing] into account plausible opposing inferences." On remand, the Seventh Circuit concluded that "the plaintiffs have succeeded, with regard to the statements identified in our previous opinion as having been adequately alleged to be false and material, in pleading scienter in conformity with the requirements of the PSLRA. We therefore adhere to our decision to reverse the judgment of the district court dismissing the suit." The unanimous decision was written by Judge Richard A. Posner.
- ***Asher v. Baxter International, Inc.***, 377 F.3d 727 (7th Cir. 2004). In reversing and remanding the District Court's dismissal, the Seventh Circuit resolved in plaintiffs' favor an important issue involving the PSLRA's "safe harbor" for forward-looking statements. The court held that whether a cautionary statement is meaningful is an issue of fact, because whether a statement is meaningful or not depends in part on what the defendant knew when the statement was made as well as other issues of fact. Thus, this issue is not appropriately resolved on a motion to dismiss.
- ***Gebhardt v. ConAgra Foods, Inc.***, 335 F.3d 824 (8th Cir. 2003). This important decision strongly reaffirmed the principle that whether an undisclosed fact would have been material to investors cannot ordinarily be decided on a motion to dismiss. The Eighth Circuit, stressing that "[t]he question of materiality hinges on the particular circumstances of the company in question," observed that even relatively small errors in financial statements might be material if they concern areas of particular importance to investors and raise questions about management integrity.
- ***In re Cabletron Systems, Inc.***, 311 F.3d 11 (1st Cir. 2002). In this opinion, the First Circuit joined the Second Circuit in allowing a complaint to be based on confidential sources. The court also accepted the argument made by plaintiffs, represented by Milberg, that courts should consider the amount of discovery taken place prior to deciding a motion to dismiss, with a lack of discovery resulting in a correspondingly less stringent standard for pleading securities fraud claims with particularity.
- In ***Puckett v. Sony Music Entertainment***, No. 108802/98 (N.Y. Sup. Ct. N.Y. Cty. 2002), a class action was certified against Sony Music Entertainment on behalf of a class of recording artists who were parties to standard Sony recording or production agreements entered into during the class period. The complaint alleged

that Sony had a policy of treating the value added tax on foreign sales of recordings improperly thereby impermissibly reducing the royalties paid or credited to the class members. Justice DeGrasse of the New York State Supreme Court determined that class certification was appropriate and that Gary Puckett (of Gary Puckett & the Union Gap) and jazz musician and composer Robert Watson were appropriate class representatives to represent the class of artists and producers to whom Sony accounts for foreign record royalties.

- *Novak v. Kasaks*, 216 F.3d 300 (2d Cir. 2000). The Firm was lead counsel in this seminal securities fraud case in which the Second Circuit undertook an extensive analysis of the statutory text and the legislative history of the PSLRA and pre-existing Second Circuit case law. Among other things, the Second Circuit held that the PSLRA's pleading standard for scienter was largely equivalent to the pre-existing Second Circuit standard and vacated the District Court's dismissal which sought to impose a higher standard for pleading scienter under the PSLRA. The Second Circuit also rejected any general requirement that plaintiffs' confidential sources must be disclosed to satisfy the PSLRA's newly-enacted particularity requirements.
- *In re Advanta Corp. Securities Litigation*, 180 F.3d 525 (3d Cir. 1999). Here, the plaintiffs, represented by Milberg, successfully argued that under the PSLRA, scienter is sufficiently pled by making an adequate showing that the defendants acted knowingly or with reckless disregard for the consequences of their actions. The Third Circuit specifically adopted the Second Circuit's scienter pleading standard for pleading fraud under the PSLRA.
- In *Hunt v. Alliance North American Government Income Trust, Inc.*, 159 F.3d 723 (2d Cir. 1998), the Second Circuit reversed the District Court's ruling, which denied plaintiffs leave to amend to assert a cause of action against defendants for failing to disclose that the defendant Trust was unable to utilize proper "hedging" techniques to insure against risk of loss. In the court's view, taken together and in context, the Trust's representations would have misled a reasonable investor.
- In *Shaw v. Digital Equipment Corp.*, 82 F.3d 1194 (1st Cir. 1996), the First Circuit remanded plaintiffs' action after affirming, in part, Milbergs' position that in association with the filing of a prospectus related to the issuance of securities, a corporate-issuer must disclose intra-quarter, materially adverse changes in its business, if such adverse changes constitute "material changes" the disclosure of which is required pursuant to the Securities Act of 1933.
- *In re Salomon, Inc. Shareholders Derivative Litigation*, 68 F.3d 554 (2d Cir. 1995). The Second Circuit affirmed the District Court's holding that derivative federal securities claims against defendants would not be referred to arbitration pursuant to the arbitration provisions of the Rules of the New York Stock Exchange, but would be tried in District Court. Shortly thereafter, the case settled for \$40 million.
- *Kamen v. Kemper Financial Services*, 500 U.S. 90 (1991). The Supreme Court upheld the right of a stockholder of a mutual fund to bring a derivative suit without first making a pre-suit demand. Specifically, the Court held that "where a gap in the federal securities laws must be bridged by a rule that bears on the allocation of governing powers within the corporation, federal courts should incorporate state law into federal common law unless the particular state law in question is inconsistent with the policies underlying the federal statute. . . . Because a futility exception to demand does not impede the regulatory objectives of the [Investment Company Act], a court that is entertaining a derivative action under that statute must apply the demand futility exception as it is defined by the law of the State of incorporation."
- *Mosesian v. Peat, Marwick, Mitchell & Co.*, 727 F.2d 873 (9th Cir. 1984), *cert. denied*, 469 U.S. 932 (1984). The Ninth Circuit upheld an investor's right to pursue a class action against an accounting firm, adopting statute of limitation rules for Section 10(b) suits that are favorable to investors.
- *Hasan v. CleveTrust Realty Investors*, 729 F.2d 372 (6th Cir. 1984). The Sixth Circuit very strictly construed, and thus narrowed, the ability

of a “special litigation committee” of the board of a public company to terminate a derivative action brought by a shareholder.

- ***Fox v. Reich & Tang, Inc.***, 692 F.2d 250 (2d Cir. 1982), *aff’d sub nom, Daily Income Fund, Inc. v. Fox*, 464 U.S. 523 (1984). The court held that a Rule 23.1 demand is not required in a shareholder suit brought pursuant to Section 36(b) of the Investment Company Act.
  - ***Rifkin v. Crow***, 574 F.2d 256 (5th Cir. 1978). The Fifth Circuit reversed an order granting summary judgment for defendants in a Section 10(b) case, paving the way for future acceptance of the “fraud-on-the-market” rationale in the Fifth Circuit.
  - ***Blackie v. Barrack***, 524 F.2d 891 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976). This is the seminal appellate decision on the use of the “fraud-on-the-market” theory of reliance, allowing investors who purchase stock at artificially inflated prices to recover even if they
- were personally unaware of the false and misleading statements reflected in the stock’s price. In so holding, the court noted that class actions are necessary to protect the rights of defrauded purchasers of securities.
- ***Bershad v. McDonough***, 300 F. Supp. 1051 (N.D. Ill. 1969), *aff’d*, 428 F.2d 693 (7th Cir. 1970). In this case, the plaintiff, represented by Milberg, obtained summary judgment on a claim for violation of Section 16(b) of the Securities Exchange Act, where the transaction at issue was structured by the defendants to look like a lawful option. The decision has been cited frequently in discussions as to the scope and purpose of Section 16(b).
  - ***Heit v. Weitzen***, 402 F.2d 909 (2d Cir. 1968). The court held that liability under Section 10(b) of the Securities Exchange Act extends to defendants, such as auditors, who were not in privity with the named plaintiffs or the class represented by the named plaintiffs.



**SABRINA KIM**  
**Practice Areas:**  
Securities Litigation



Ms. Kim has extensive public and private sector experience in various areas of complex commercial litigation, including securities, corporate fiduciary, and consumer cases.

Ms. Kim came to Milberg from the California Department of Justice, where she was a deputy attorney general in the Consumer Law Section for several years. During that time, Ms. Kim served as lead prosecutor in complex state and federal fraud cases, including those against predatory lenders, insurance companies, annuity mills, and other corporate defendants who engaged in large financial fraud schemes.

At Milberg, Ms. Kim has litigated numerous securities fraud and other class actions resulting in substantial recoveries for investors and consumers. Ms. Kim is also one of the principal attorneys responsible for two major California Supreme Court cases involving consumer rights and class action procedure: *Pioneer Electronics (USA) v. Superior Court (Olmstead)*, 40 Cal.4th 360 (Cal. 2007); *Branick v. Downey Savings & Loan Assn.*, 39 Cal.4th 235 (Cal. 2006).

Ms. Kim has served as a speaker for programs on class action procedure, tactics and strategies in consumer class actions, substantive changes in unfair and deceptive practices statutes, and trends in complex business litigation. Her speaking engagements include: Consumer Attorneys Association of Los Angeles (CAALA) Convention, *Unfair Business Practices Act, What Is Left?* (September 2007); American Bar Association (ABA) Litigation Section Annual Conference, *Tactics and Strategies for Consumer Cases After Proposition 64 and Class Action Fairness Act* (April 2006); LexisNexis Mealey's Section 17200 Conference, *What is the Future of 17200 Claims in Light of Proposition 64?* (November 2005); Los Angeles County Bar Association (LACBA) 25th Annual Labor and Employment Law Symposium, *Minding Your Own Business (And Professions Code §17200) After Proposition 64* (February 2005).

As an adjunct professor at Loyola Law School, Ms. Kim developed and taught a consumer law course which explored federal and state laws that attempt to strike a balance between businesses' need to effectively market goods and services and consumers' right to accurate information and full disclosure. The course emphasized California's unfair competition and false advertising laws and the Consumer Legal Remedies Act.

Ms. Kim is a board member of the Association of Business Trial Lawyers (ABTL) and a member of the Consumer Attorneys of California (CAOC). Ms. Kim was named a Southern California Super Lawyer Rising Star in securities litigation by Los Angeles Magazine from 2006 through 2009.

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## JEFF S. WESTERMAN

**Practice Areas:**  
Securities Litigation



Mr. Westerman's practice is primarily in the areas of securities fraud class actions, shareholder derivative actions, corporate mergers and acquisition litigation, antitrust and consumer claims. He has served as lead or co-lead counsel in cases resulting in significant corporate governance changes, and resulting in plaintiff recoveries and recognized increased value to plaintiffs totaling more than \$800 million. In 2005, The Daily Journal recognized him as one of the top 30 securities litigators in California.

Mr. Westerman has also been the moderator or speaker for programs on complex litigation, developments in class action practice, settlements, the Sarbanes-Oxley Corporate Responsibility Act, shareholder derivative actions and trends in business litigation.

Mr. Westerman was a member (2001-2003) and Co-Chair (2002-2003) of the Central District of California Attorney Delegation to the United States Ninth Circuit Judicial Conference. He serves on the Central District of California, U.S. Magistrate Judge Merit Selection Panel (2003-present) and the standing committee on Attorney Discipline (2004-present). He is also a member of the Central District of California Attorney Settlement Officer Panel (1998-present).

Mr. Westerman was the president of the Association of Business Trial Lawyers (2004-2005); a member of the Board of Governors (1997-2005), Treasurer (2001-2002), Secretary (2002-2003) and Vice President (2003-2004). He is also on the Board of Governors of the Consumer Attorneys Association of Los Angeles (2003-present).

Mr. Westerman is a member of the Los Angeles County Bar Executive Committee for the Litigation Section and the Board of the Los Angeles Chapter of the Federal Bar Association. He is past Chair of the LA County Bar Complex Courts Bench-Bar Committee, and a member of the Bench-Bar Civil Courts Committee; and served as Judge Pro Tem in the Los Angeles Small Claims Court in 1987-1988, 1990, 1992-1993 and 1996-1997. He is a member of the Los Angeles County and Federal Bar Associations. He was on the California State Bar Task Force on Complex Litigation, and Chair of the Judicial Education Subcommittee (1997). In 2007, he was named one of Lawdragon's 3000 Leading Plaintiffs' Lawyers In America; and he has been named a "superlawyer" for the past several years.

Mr. Westerman is admitted to practice in the courts of the State of California, as well as the United States District Courts in California, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court.

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**EXHIBIT B**

## REESE RICHMAN LLP

Reese Richman LLP represents investors, consumers and employees in a wide-array of class action litigation throughout the nation. The attorneys of Reese Richman LLP are skilled litigators with years of experience in federal and state court. Reese Richman LLP is based in New York, New York with attorneys also in Austin, Texas and San Francisco, California.

Recent and current cases litigated by the attorneys of Reese Richman LLP on behalf of investors and consumers include the following:

*Yoo v. Wendy's International, Inc.*, 07-cv-04515 FMC (C.D. Cal.): class action for violation of California's consumer protection laws; *Ackerman v. The Coca-Cola Co. et al.*, 09-cv-0395 (JG) (RML) (E.D.N.Y.): class action for violation of California and New York's consumer protection laws; *Chin v. RCN Corporation*, 08-cv-7349 RJS (S.D.N.Y.): class action for violation of Virginia's consumer protection law; *Gaines v. Home Loan Center Inc.*, 08-cv-667 DOC (C.D. Cal.): class action for violation of the Racketeer Influenced and Corrupt Organizations Act; *Bodoin v. Impeccable L.L.C.*, Index No. 601801/08 (N.Y. Sup. Ct.): individual action for conspiracy and fraud; *Tan v. Comcast Corp.*, 2:08-cv-02735 LDD (E.D. Pa.): class action for violation of the federal Computer Abuse and Fraud Act; *Young v. Wells Fargo & Co. et al.*, 08-cv-507 (S.D. Iowa): class action for violation of the Racketeer Influenced and Corrupt Organizations Act; *Murphy v. DirecTV, Inc.*, 07-cv-06545 FMC (C.D. Cal.): class action for violation of California's consumer protection laws; *Bain v. Silver Point Capital Partnership LLP*, Index No. 114284/06 (N.Y. Sup. Ct.): individual action for breach of contract and fraud; *Siemers v. Wells Fargo & Co. et al.*, No. C-05-4518 WHA (N.D. Cal.): class action for violation of §10(b) of the Securities Exchange Act of 1934; *Kastin v. AMR Corp. et al.*, 06-CV-5726 (S.D.N.Y.): class action for violation of the Sherman Antitrust Act; *In re Orbitz Taxes and Fees Litigation*, No 05 CH 00442 (Cook County, Illinois): class action for violation of Illinois' consumer protection laws; *In re Korean Air Antitrust Litigation*, 07-cv-01891 SJO (C.D. Cal.): class action for violation of the Sherman Antitrust Act; *Dover Capital Ltd. v. Galvex Estonia OU*, Index No. 113485/06 (N.Y. Sup. Ct.): individual action for breach of contract involving an Eastern European steel company; *All-Star Carts and Vehicles Inc. v. BFI Canada Income Fund et al.*, 2:08-cv-1816 LDW (E.D.N.Y.): class action for violation of the Sherman Antitrust Act; *In re American Funds Securities Litigation*, CV-06-7815-GAF (C.D. Cal.): class action for violations of §12(a)(2) of the Securities Act of 1933 and §10(b) of the Securities Exchange Act of 1934; *Fink v. Time Warner Cable*, 08-cv-9628 LTS (S.D.N.Y.): class action for violation of New York's consumer protection law; *Serrano v. Cablevision Systems Corporation*, 09-cv-1056 DI (E.D.N.Y.): class action for violation of the Computer Abuse and Fraud Act and New York's consumer protection law; *S.K. v. General Nutrition Corporation*, 08-cv-9263 LAK (S.D.N.Y.): class action for violation of New York's consumer protection laws; *Kreek v. Wells Fargo Securities*, 08-cv-1830 WHA (N.D. Cal.): class action for violation of §10(b) of the Securities Exchange Act of 1934; *Petlack v. S.C. Johnson & Son, Inc.*, 08-cv-00820 CNC (E.D. Wisconsin): class action for violation of Wisconsin consumer protection law; *Hill v. Roll International Corp.*, CGC-09-487547 (San Francisco County Superior Court): class action for violation of California's consumer protection laws; and *L'Ottavo Ristorante v. Ingomar Packing Co. et al.*, 09-cv-01427 (E.D. Cal.): class action for violation of the Sherman Antitrust Act.

## The Attorneys of Reese Richman LLP

### Michael R. Reese

Mr. Reese litigates securities, consumer and antitrust cases as class actions and on behalf of individual clients. Prior to joining private practice in 2000, Mr. Reese served as an assistant district attorney at the Manhattan District Attorney's Office where he served as a trial attorney prosecuting both violent and white-collar crime. Mr. Reese has extensive trial experience.

Achievements by Mr. Reese on behalf of consumers span a wide array of actions. For example, in *Yoo v. Wendy's International Inc.*, 07-cv-04515 FMC (C.D. Cal.) Mr. Reese was appointed class counsel by the court and commended on achieving a settlement that eliminated trans-fats from a popular food source. *See Yoo v. Wendy's International Inc.* CV-04515-FMC (JCx) (C.D. Cal. 2007) (stating that counsel “**has conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy**”). In *Chin v. RCN Corp.*, 08-cv-7349 RJS (S.D.N.Y.), Mr. Reese was appointed class counsel and commended by the court for stopping RCN's practice of throttling its internet customers through adverse network management practices. *Chin v. RCN Corp.*, 08-cv-7349 RJS, 2010 U.S. Dist. LEXIS 96302 (S.D.N.Y. Sept. 8, 2010) (stating that “**class counsel is qualified, experienced, and able to conduct the litigation**”).

Victories by Mr. Reese on behalf of investors include *Siemers v. Wells Fargo, Inc.* CV05-4518 (WHA) (N.D. Cal.) that resulted in settlement soon after the class was certified; *In re Sears Roebuck and Co. Securities Litigation*, No. 02 C 07527 (N.D. Ill.) which resulted in a \$215 million recovery for shareholders; *In re American Express Financial Services Securities Litigation*, No. 04 Civ. 1773 (S.D.N.Y.) and *Spahn v. Edward D. Jones & Co. L.P.*, 04-cv-0086-HEA (E.D. Mo.), both of which were actions against brokerages for alleged receipt of kickbacks from mutual fund companies that resulted in settlements of \$100 million and \$127.5 million, respectively.

Mr. Reese also has had great success at the appellate level advocating for consumers and investors. For example, in *Olmstead v. Pioneer Electronics (USA), Inc.*, No. BC257222 (Los Angeles Superior Court), Mr. Reese successfully litigated before the Supreme Court of California on behalf of consumers in a ground breaking case that gave named plaintiffs the right to obtain unredacted records of similarly situated consumers who had complained to defendants about deceptive practices. *See Pioneer Electronics (USA), Inc., v. the Superior Court of Los Angeles County*, 40 Cal. 4th 360 (2005). Likewise, in *Masters v. DirecTV, Inc.*, Mr. Reese successfully litigated before the Ninth Circuit that California laws can apply to consumers nationwide when the defendant corporation is headquartered within the state. *See Masters v. DirecTV, Inc.* 08-55825, 2009 U.S. App. LEXIS 25479 (9<sup>th</sup> Cir. 2009).

Mr. Reese is a member of the state bars of New York and California as well as numerous federal courts. Mr. Reese received his juris doctorate from the University of Virginia in 1996 and his bachelor's degree from New College in 1993.

### **Kim E. Richman**

Mr. Richman is with the New York offices of Reese Richman LLP from where he litigates consumer and securities fraud class actions. Mr. Richman also specializes in civil rights litigation. Mr. Richman is an accomplished trial attorney with experience both in federal and state courts.

Mr. Richman draws his class action expertise from previously working at both a small think tank in San Francisco and a large class action firm. His experience includes litigating cases ranging from protecting the privacy rights of consumers and fair use rights of the public to corporate fraud and insider trading.

Mr. Richman is experienced in handling both state and federal matters and has litigated dozens of trials to verdict.

Mr. Richman has also handled various federal civil rights claims, representing clients both individually and on a class-wide basis. These matters have spanned from protecting the wrongfully accused and victims of excessive force to the human rights of factory laborers and civil liberties of hundreds of protestors arrested at a political march.

Mr. Richman is a member of the state bar of New York and the federal bars of the Southern and Eastern Districts of New York. Mr. Richman received his juris doctorate from Brooklyn Law School in 2001 and his bachelor's degree from the University of Massachusetts in 1996, from where he graduated *summa cum laude*.

### **Belinda L. Williams**

Ms. Williams is based in New York from where she focuses her practice on class actions on behalf of defrauded consumers and investors. Ms. Williams has extensive experience in litigating complex commercial cases.

Ms. Williams is admitted to the bars of several federal courts as well as the state bars of New York and Maryland. Ms. Williams received her juris doctorate from the University of Virginia School of Law in 1986 and her undergraduate degree from Harvard University in 1982.

### **Kate J. Stoia**

Ms. Stoia is based in San Francisco from where she litigates securities and consumer class actions. Ms. Stoia previously worked at the law firms of Brobeck Phleger & Harrison LLP and Gibson Dunn & Crutcher LLP. Prior to her work as a civil litigator, Ms. Stoia clerked for the Hon. Charles A. Legge of the Northern District of California.

Ms. Stoia is a member of the state bar of California and several federal courts. Ms. Stoia received her juris doctorate from Boalt Hall School of Law, University of California at Berkeley and her bachelor's degree from Columbia University.

**Lance N. Stott**

Mr. Stott is based in Austin, Texas from where he litigates consumer class actions. Previous and current consumer fraud class actions litigated by Mr. Stott include *Davis v. Toshiba America Consumer Products* for allegedly defective DVD players; *Bennight v. Pioneer Electronics (USA) Inc. et al.* for allegedly defective television sets; *Spencer v. Pioneer Electronics (USA) Inc. et al.* for allegedly defective DVD players; and, *Okland v. Travelocity.com, Inc.*, for deceptive pricing for online hotel reservations.

Mr. Stott is a member of the state bar of Texas. Mr. Stott received his juris doctorate from the University of Texas in 1996 and his bachelor's degree from New College in 1993.

**EXHIBIT C**

## View Calendar

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### Complex Court Symposium: How to Handle the Complex Case Without Making it Complex

**11/19/2008**

*Presented by: Litigation Section*

**Program Information:  
Special Program Sponsors**

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This program is co-sponsored by the Los Angeles County Bar Labor & Employment and Real Property Law Sections, the Los Angeles and Orange County Chapters of the Association of Business Trial Lawyers, the Association of Southern California Defense Counsel, and the Consumer Attorneys Association of Los Angeles.

If you practice in any of the Complex Courts in California, plan to join us for this unique opportunity to hear how the judges approach their cases. Many of the 19 judges from the Complex Courts in California--including Los Angeles Complex Court judges--are scheduled to attend and participate in this program. This is the first time a larger number of the California Complex Court judges from different counties will be available for a single program to present their views and take questions from the bar. Judges from the different courts that attend, but are not on specific panels, will still participate in the sessions listed below, from the audience.

The program will provide insight into all aspects of complex court litigation. Judges from Los Angeles and other counties will share their philosophy and procedures for case control, class certification, discovery, attaining and approving settlements, and conduct at trial.

*3:00pm - 3:15pm*

**OPENING SESSION:**

A report on the state of the complex courts, including a summary of the questionnaire responses received on financial savings from the courts.

Hon. Carolyn Kuhl, *Los Angeles Superior Court*

Hon. Peter Lichtman, *Los Angeles Superior Court*

*3:30pm - 4:45pm*

**FIRST GROUP SESSIONS:** (Please pick one track)

**TRACK ONE: Case Control**

*Panel:*

Hon. Carl West, *Los Angeles Superior Court*  
Hon. Peter Lichtman, *Los Angeles Superior Court*  
Hon. David Flinn, *Contra Costa Superior Court*  
Walter Cochran-Bond, *Law Offices of Walter Cochran-Bond*

*Moderator:*

Jim Robie, *Robie & Matthai*

**TRACK TWO: Nuts and Bolts and Judicial Philosophies**

*Panel:*

Hon. William Highberger, *Los Angeles Superior Court*  
Hon. Emilie Elias, *Los Angeles Superior Court*  
Hon. Richard Kramer, *San Francisco Superior Court*  
Daria Dub Carlson, *Markun Zusman & Compton LLP*

*Moderator:*

Rick McKnight, *Jones Day*

**BREAK**

5:00pm - 6:15pm

**SECOND GROUP SESSIONS:** (Please pick one track)

**TRACK ONE: Trials in the Complex Courts**

*Panel:*

Hon. Emilie Elias, *Los Angeles Superior Court*  
Hon. Victoria Chaney, *Los Angeles Superior Court*  
Hon. Robert Freedman, *Alameda Superior Court*  
Michael Piuze, *Law Offices of Michael J. Piuze, a Professional Corporation*  
Tom Nolan, *Skadden, Arps, Slate, Meagher & Flom LLP*

*Moderator*

Paul Kiesel, *Kiesel, Boucher & Larson*

Litigation Section Chair

**TRACK TWO: Settlements in the complex courts**

*Panel:*

Hon. Peter Lichtman, *Los Angeles Superior Court*  
Hon. Carolyn Kuhl, *Los Angeles Superior Court*  
Hon. Ronald Bauer, *Orange County Superior Court*  
Ray Boucher, *Kiesel, Boucher & Larson*

David J. Murray

*Assistant Vice President* *AIG Domestic Claims, Inc*

*Moderator:*

Richard Goetz, *O'Melveny & Myers*

6:15pm - 6:45pm

**RECEPTION**

6:45pm - 8:00pm

**Dinner and CLOSING SESSION:**

A panel of the judges and lawyers will answer questions from the day and from the audience, and “cross talk” on major panel topics to provide views of different judges to provides the audience with useful information about practicing before all the judges present.

*Moderators:*

Paul Kiesel, *Kiesel, Boucher & Larson*

Litigation Section Chair

Jeff Westerman, *Milberg LLP*

Complex Court Symposium Program Chair

**Speakers:**

Raymond P. Boucher, Kiesel Boucher & Larson  
 Hon. Steven Brick, Alameda Superior Court  
 Daria D. Carlson, Markun, Zusman & Compton LLP  
 Hon. Victoria G. Chaney, Judge of the Los Angeles Superior Court  
 Walter Cochran-Bond, Cochran-Bond Law Offices  
 Hon. Emilie H. Elias, Los Angeles Superior Court  
 Hon. David Flinn, Contra Costa Superior Court  
 Hon. Robert Freedman, Alameda Superior Court  
 Richard B. Goetz, O'Melveny & Myers LLP  
 Hon. William F. Highberger, Los Angeles Superior Court  
 Paul R. Kiesel, Kiesel Boucher & Larson  
 Hon. Richard Kramer, San Francisco County Superior Court  
 Hon. Carolyn B. Kuhl, LA Superior Court  
 Hon. Peter D. Lichtman, Los Angeles Superior Court  
 Frederick L. McKnight, Jones Day  
 David Murray, AIG Domestic Claims  
 Thomas J. Nolan, Skadden, Arps, Slate, Meagher & Flom LLP  
 Michael J. Piuze, Michael J. Piuze, A Professional Corporation  
 James R. Robie, Robie & Matthai APC  
 Hon. Stephen J. Sundvold, Orange County Superior Court  
 Hon. David C. Velasquez, Orange County Superior Court  
 Hon. Carl J. West, Los Angeles Superior Court  
 Jeff S. Westerman, Milberg LLP

**Location:**

Omni Los Angeles Hotel, 251 South Olive Street , Los Angeles

**Parking:**

Valet parking: \$12

**Times:**

**Registration:** 2:30 - 3:00 pm

**Meal/Reception:** 6:45 - 8:00 pm

**Program:** 3:00 - 8:00 pm

**Prices:**

Judicial Officers with Meal	FREE
CLE+Plus Members with Meal	\$80.00
Litigation Section Members with Meal	\$160.00
ABTL, CAALA and SCDC Members with Meal	\$160.00
LACBA Members with Meal	\$180.00
All Others with Meal	\$225.00
Labor and Employment Members with Meal	\$160.00
Real Property Section Members with meal	\$160.00

3.25 hrs CLE credit

**Registration Code:** 010073

**Space is limited. Advance payment required to guarantee seating. Attendees must arrive within the registration period. If this program does not state that it is sold out, please feel free to register at the door. 48-hours (2 business days) cancellation notice required.**

The LACBA Online Event Registration System will not allow multiple registrations (e.g. one person registering multiple people), although one person may register him or herself for multiple events.

For assistance with multiple registrations or if you wish to register by Phone with Visa, MasterCard or American Express please call our Member Services Department at (213) 896-6560 Mon-Fri, 9 a.m.-4:30 p.m.

For questions about programs or program registration, send e-mail to our Member Service Department: [msd@lacba.org](mailto:msd@lacba.org)

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**Event Start Date:** 11/19/2008 **Time:** 03:00 PM  
**Event End Date:** 11/19/2008 **Time:** 08:00 PM

Categories:

- LACBA Event
- Labor and Employment Law
- Litigation
- Real Property

◀ Nov 2010 ▶

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