

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

In re J. EZRA MERKIN AND GABRIEL  
CAPITAL CORP. LITIGATION

Consolidated Case  
Master Docket No. 08 CV 10922 (DAB)  
09 CV 2001 (DAB) (*Nephrology* Action)  
09 CV 4407 (DAB) (*Finkelstein* Action)

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE**, that upon the annexed Declaration of Russell S. Miness, Memorandum of Law, and (Proposed) Order, movants, Jacob E. Finkelstein CGM IRA Rollover Custodian, supported by Nephrology Associates, PC Pension Plan, will move this Court located at the Courthouse, 500 Pearl Street, New York, New York 10007, as soon as counsel may be heard for an Order: (1) vacating the Court's Consolidation Order, dated June 25, 2009; (2) appointing Jacob E. Finkelstein CGM IRA Rollover Custodian Lead Plaintiff over claims by investors in Ariel Fund Ltd. pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"); and (3) for the approval of movants' choice of the law firm of Wolf Haldenstein Adler Freeman & Herz LLP as Lead Counsel.

**PLEASE TAKE FURTHER NOTICE**, that Jacob E. Finkelstein CGM IRA Rollover Custodian, as the proposed Lead Plaintiff has timely filed its motion and, pursuant to the PSLRA, is the most adequate Lead Plaintiff. Jacob E. Finkelstein CGM IRA Rollover Custodian satisfies the requirements of the PSLRA and Rule 23 of the Federal Rules of Civil Procedure in that its claims are typical of the claims of the Class, and it will fairly and adequately represent the interests of the Class. Movants' choice of counsel should be accepted by this Court because

it is a nationally recognized firm with extensive experience and expertise in securities fraud and other class actions.

Dated: July 6, 2009

Respectfully submitted,

**WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**

By: /s/  
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