



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE FACEBOOK INC.
DERIVATIVE LITIGATION

CONSOLIDATED
C.A. No. 2018-0307-JRS

**PUBLIC INSPECTION VERSION
FILED AUGUST 10, 2021**

**APPLICATION FOR APPOINTMENT OF LEAD PLAINTIFFS AND
CO-LEAD COUNSEL BY PLAINTIFFS CALIFORNIA STATE
TEACHERS' RETIREMENT SYSTEM, CONSTRUCTION AND
GENERAL BUILDING LABORERS' LOCAL UNION NO. 79
GENERAL FUND AND CITY OF BIRMINGHAM
RETIREMENT AND RELIEF SYSTEM**

PRICKETT, JONES & ELLIOTT, P.A.

Kevin H. Davenport (Bar No. 5327)
Samuel L. Closic (Bar No. 5468)
John G. Day (Bar No. 6023)
Elizabeth Wang (Bar No. 6620)
1310 King Street
Wilmington, Delaware 19801
(302) 888-6500

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TABLE OF KEY DEFINITIONS

#	Acronyms	Definition
1.	Board	Board of Directors of Facebook
2.	CalSTRS	California State Teachers' Retirement System
3.	Firemen's	Firemen's Retirement System of St. Louis
4.	Birmingham	City of Birmingham Retirement and Relief System
5.	Local 79	Construction and General Building Laborers' Local Union No. 79 General Fund
6.	CalSTRS Action	C.A. No. 2018-0307-JRS, the first filed action
7.	Local 79 Section 220 Action	C.A. No. 2018-0661-JRS
8.	Facebook or the Company	Facebook, Inc.
9.	Rhode Island	Employees' Retirement System of Rhode Island
10.	Warwick	City of Warwick Retirement System
11.	Rhode Island Action	C. A. No. 2020-0085-JRS
12.	RIC	Rhode Island Complaint
13.	FTC	Federal Trade Commission
14.	Individual Defendants	Defendants named in the CalSTRS Action: Mark Zuckerberg, Sheryl Sandberg, Peggy Alford, Marc Andreessen, Kenneth Chenault, Peter Thiel, Jeffrey Zients, Erskine Bowles, Susan Desmond-Hellmann, Reed Hastings, Jan Koum, Konstantinos Papamiltiadis, David Fischer, Michael Schroepfer, and David Wehner
15.	CalSTRS Plaintiffs	CalSTRS, Birmingham, Local 79, Firemen's, Karen Sbriglio and Lidia Levy

PRELIMINARY STATEMENT

The CalSTRS Plaintiffs represent a powerful alliance of Facebook shareholders who have been actively engaged in this action since 2018, and that have joined together to prosecute the serious wrongdoing that has gone unremediated at Facebook for years. The CalSTRS Plaintiffs move for an order appointing (i) CalSTRS, Birmingham and Local 79 as Co-Lead Plaintiffs; (ii) Kaplan Fox & Kilsheimer LLP, Prickett, Jones & Elliott, P.A., and Scott+Scott Attorneys at Law as Co-Lead Counsel; and (iii) Hach Rose Schirripa & Cheverie LLP and Dilworth Paxson LLP as Co-Chairs of an Executive Committee of shareholders who all agree that the CalSTRS Plaintiffs' approach to this litigation has been, and will continue to be, superior in representing the rights of Facebook. Each of the *Hirt*¹ factors favor the appointment of the CalSTRS Plaintiffs and their counsel team.

This action's importance cannot be overstated. It arises from a business plan, implemented and overseen by the Individual Defendants, that caused Facebook to operate in utter disregard for its legal obligation to protect the privacy of millions, if not billions, of users over time. ¶¶1, 3-10.² In 2012, as a result of the FTC's 2011

¹ *Hirt v. U.S. Timberlands Serv. Co. LLC*, 2002 WL 1558342, at *2-3 (Del. Ch. July 3, 2002).

² Unless otherwise stated herein, references to "¶¶__" are to paragraphs of the CalSTRS Plaintiffs' Second Amended Verified Stockholder Derivative Complaint ("CalSTRS Complaint").

charges against Facebook for deceiving users and sharing their information without consent, Facebook entered into a consent order (the “Consent Order”) that set forth Facebook’s legal obligations with respect to user privacy and requisite consent for sharing user data. ¶¶81-93. Incredibly, **mere months** after the Consent Order was entered, the Individual Defendants caused and allowed Facebook to violate the express obligations of the Consent Order with increasingly brazen illegal business practices. ¶¶6, 100. As the FTC later found when it levied a **\$5 billion fine** on the Company for violating the Consent Order, Facebook intentionally and repeatedly shared users’ personal information without obtaining consent while deceiving users with respect to how their and their friends’ data was monetized by Facebook. ¶282. The Individual Defendants’ misconduct has inflicted extensive damages upon the Company. The CalSTRS Plaintiffs (a) have demonstrated that their approach and vigor are, and will continue to be, most efficient and effective to hold individuals responsible for Facebook’s troubling business practices; (b) have the largest interest and incentive to continue to do so; and (c) are most qualified to lead this litigation.

Every *Hirt* factor favors appointment of the CalSTRS Plaintiffs:

- Relative Economic Stake: This *Hirt* factor is accorded “great weight” when selecting lead plaintiffs.³ Here, the CalSTRS Plaintiffs are incentivized to closely monitor the activities of counsel and ensure a superior result. The CalSTRS Plaintiffs have combined holdings of more than 4.5 million Facebook shares, an economic interest more than 28 times greater than Rhode Island and Warwick (hereafter “Rhode Island”), who collectively hold 160,000 shares.⁴ The CalSTRS Plaintiffs’ interest in the outcome of this litigation is materially greater than that of Rhode Island.

- Quality of the Pleadings: the CalSTRS Complaint analyzes and incorporates many critical documents obtained after trial in the Local 79 Section 220 Action, and coherently explains the Board’s failure to rein in an illegal business plan—factors necessary to overcome a demand futility challenge under Rule 23.1. Rhode Island’s complaint (hereafter the “RIC”) does not adequately contend with the Board’s oversight failures and disregard for its compliance obligations.

³ As stated in *Hirt*, the economic interest in the outcome is “to be accorded ‘great weight’.” See 2002 WL 1558342, at *2. CalSTRS has held Facebook shares prior to Facebook’s initial public offering, and thus has the longest holding period of any proposed Lead Plaintiff to pursue derivative claims. Compare ¶36 with RIC at ¶¶19-20.

⁴ RIC at ¶¶19-20.

- Vigorousness of Prosecution: the CalSTRS Plaintiffs have consistently and reliably pursued the claims against the Individual Defendants. CalSTRS has a long history of leading the battle for governance improvements at Facebook. And in the present litigation, the CalSTRS Plaintiffs served Section 220 demands; sought to enforce their inspection rights; and promptly instituted litigation, long before any other plaintiff made an appearance to litigate these claims.

- Competence of Counsel: successful prosecution of this action requires experienced counsel with significant resources. The CalSTRS Plaintiffs are represented by proposed Co-Lead Counsel and an Executive Committee who have extensive experience in representative litigation and a stellar track record of recovery in this Court and courts nationwide. The CalSTRS Plaintiffs have demonstrated their ability to lead an effective prosecution by organizing a leadership structure appointing co-lead plaintiffs, co-lead counsel and executive committee members.

BACKGROUND

In March 2018, news stories chronicling the Cambridge Analytica data scandal were published.⁵ Immediately thereafter, the CalSTRS Plaintiffs sought to inspect the potential wrongdoing at the Company. On April 11, 2018, Local 79 served a books and records demand on Facebook,⁶ as did Birmingham and Levy on April 13, 2018 and June 21, 2018. Karen Sbriglio initiated her plenary action on April 25, 2018, challenging the Board's misconduct, in which CalSTRS intervened in September 2019.⁷ After Facebook declined large parts of the demands, Local 79, Birmingham, and Levy (the "Local 79 Plaintiffs") filed separate actions to enforce their inspection rights.⁸ The actions were consolidated and a trial was held on March 7, 2019.⁹ On May 30, 2019, this Court issued its post-trial opinion ordering Facebook to produce five categories of documents, including Board materials and director e-mails.¹⁰ After protracted negotiations, Facebook began a rolling

⁵ *In re Facebook Section 220 Litig.*, 2019 WL 2320842, at *4-5 (Del. Ch. May 30, 2019).

⁶ *Id.* at *9.

⁷ Dkts. 1, 111 & 113 in the CalSTRS Action.

⁸ *In re Facebook*, 2019 WL 2320842, *1.

⁹ *Id.* at *10.

¹⁰ *Id.* at *18.

production of documents and completed the production in March 2020 (the “Section 220 Production”).

On May 13, 2020, *just weeks* after Facebook completed its production, the Local 79 Plaintiffs filed their plenary complaint,¹¹ which contained particularized allegations of misconduct by Facebook’s Board and executive officers gleaned from the expeditious and diligent review of the Section 220 Production.

Rhode Island first served its books and records demand on Facebook on September 20, 2019,¹² over *one and a half years* after news of the Cambridge Analytica scandal first broke. On February 12, 2020, Rhode Island filed its books and records action, and trial was held on June 24, 2020.¹³ On February 10, 2021, this Court issued its post-trial opinion in the Rhode Island Action, ordering Facebook to produce certain materials related to its 2019 settlement with the FTC, but not the privileged materials Rhode Island sought.¹⁴

On July 16, Rhode Island filed their plenary complaint. On July 20, the CalSTRS Plaintiffs filed the CalSTRS Complaint.

¹¹ 2020-0363-JRS, Dkt. 1.

¹² *Employees’ Retirement Sys. of Rhode Island v. Facebook, Inc.*, 2021 WL 529439, at *1 (Del. Ch. Feb. 10, 2021).

¹³ *Id.* at *1, 4.

¹⁴ *Id.* at *5-10.

ARGUMENT

Criteria for appointing leadership of stockholder actions is well established and based on:

- (1) the quality of the pleadings;
- (2) the parties' relative economic stakes (to be accorded great weight);
- (3) the willingness and ability to vigorously litigate a representative action;
- (4) the absence of any conflict between institutional and smaller stockholders;
- (5) the enthusiasm or vigor with which the contestants have prosecuted the lawsuit; and
- (6) counsel's competence and access to resources necessary to prosecute the claims.¹⁵

Each of these factors strongly favor appointing the CalSTRS Plaintiffs as Lead Plaintiffs and their counsel as Co-Lead Counsel.

I. THE PARTIES' RELATIVE ECONOMIC INTERESTS STRONGLY FAVOR THE CALSTRS PLAINTIFFS.

Relative economic stake of competing litigants is "to be accorded great weight."¹⁶ As of its last fiscal year ending on June 30, 2021, CalSTRS held 4,496,706 Facebook shares. CalSTRS has been a Facebook

¹⁵ See *Hirt*, 2002 WL 1558342, at *2-3; *TCW Tech. Ltd. P'ship v. Intermedia Commc'ns, Inc.*, 2000 WL 1654504, at *4 (Del. Ch. Oct. 17, 2000).

¹⁶ *In re Del Monte Foods Co. Shareholders Litig.*, 2010 WL 5550677, at *8 (Del. Ch. Dec. 31, 2010); see also *TCW Tech.*, 2000 WL 1654504, at *4.

stockholder continuously since its IPO. Local 79 holds 1,490 Facebook shares, and Birmingham holds 17,514 Facebook shares. Rhode Island/Warwick purportedly hold 160,000 Facebook shares. The CalSTRS Plaintiffs have an economic interest more than 28 times greater than Rhode Island/Warwick. Furthermore, CalSTRS' longstanding ownership of Facebook stock, and history of involvement in matters affecting stockholder rights, as well as Local 79's and Birmingham's proven record of enforcing and protecting stockholder rights, demonstrates that the CalSTRS Plaintiffs' interest in the litigation is greater than that of competing movants.

II. THE CALSTRS COMPLAINT IS THE SUPERIOR PLEADING.

This Court has found a complaint to be superior when it “appears to meaningfully broaden the scope of the breach of fiduciary duty claims, and to be more supported by company documents and potentially more remunerative for stockholders.”¹⁷ In addition, when a “complaint provides a factually detailed and coherent narrative in support of the key claim in the case . . . and contains significantly more factual allegations relevant to demand futility,” it is superior.¹⁸

¹⁷ *In re Match Grp., Inc.*, 2021 WL 979542, at *2 (Del. Ch. Mar. 15, 2021) (ORDER).

¹⁸ *See In re Kraft Heinz Co.*, 2020 WL 1248471, at *2 (Del. Ch. Mar. 13, 2020) (ORDER).

The CalSTRS Complaint is superior because it provides a compelling factual narrative, with particularized allegations gleaned from an extensive investigation, including internal Facebook board materials and e-mails. “Delaware courts recognize a public policy interest favoring the submission of thoughtful, well-researched complaints—rather than ones regurgitating the morning’s financial press.”¹⁹ The CalSTRS Complaint reflects detailed research into the processes underlying Facebook’s monetization of its user data, the violation of the Consent Order, and a close examination of the Individual Defendants’ role in perpetuating Facebook’s illegal business practices. *See, e.g.*, ¶¶100-143, 338-344.

The CalSTRS Complaint sets forth detailed allegations that will likely overcome Individual Defendants’ prospective motion to dismiss under Rule 23.1. The CalSTRS Complaint details the deficiencies in the Board’s oversight, with particularized allegations that the Board failed to engage in any meaningful inquiry into whether Facebook’s business practices complied with the legal obligations under the Consent Order. *See, e.g.*, ¶¶337-453. Critically, the CalSTRS Complaint identifies severe deficiencies in Facebook’s internal control and reporting systems, including, *inter alia*: biennial reports, internal audit functions, “SOC” audits, and

¹⁹ *In re CytRx Corp. S’holder Derivative Litig. II*, 2017 WL 697656, at *4 (Del. Ch. Feb. 22, 2017).

legal and regulatory updates. None of this purported “reporting” actually discussed Facebook’s business practices in light of its legal obligations under the Consent Order; nor did the Board review Facebook’s practices of data sharing with third parties, whitelisting agreements, data reciprocity, or other misconduct as detailed in the CalSTRS Complaint. ¶¶338-58.

The CalSTRS Complaint further describes the time and manner in which the Board learned that Facebook lacked proper controls to protect its users’ privacy, including the repeated “red flags” before, during and after the Cambridge Analytica scandal. ¶¶359-404. The CalSTRS Complaint also details how the Board was complicit in Facebook’s illegal business plan by approving cosmetic changes to its data sharing practices while attempting to conceal the fact that the Company continued in its wrongdoing. ¶¶405-56. Furthermore, the CalSTRS Complaint also seeks to recover \$20.6 billion in insider trading proceeds via a *Brophy*²⁰ claim on behalf of the Company. ¶¶ 483-496.

In contrast, the RIC contains only a cursory overview of the Board’s involvement in the underlying wrongdoing and, as such, does not meaningfully address demand futility. Rather than focusing—as the CalSTRS Plaintiffs do—on how the Board failed to monitor Facebook’s compliance with the obligations under

²⁰ *Brophy v. Cities Service Co.*, 70 A.2d 5 (Del. Ch. 1949).

the Consent Order, the RIC focuses instead on actions taken by (i) Palantir; (ii) Facebook’s outside counsel, Gibson Dunn; (iii) the FTC; and (iv) Zuckerberg and Sandberg in a management capacity—without ever explaining how these allegations could impair a majority of the Board’s disinterestedness or independence for consideration of the breach of fiduciary duty claims. *See, e.g.*, RIC ¶¶62-94; 111-280.

The RIC also ineffectively focuses on the actions concerning the FTC settlement but fails to attend to the broader breach of fiduciary duty claims at issue: the Board’s failure to ensure the Company operated within the bounds of the law. Having previously noted that the Board’s approval of the FTC settlement could be reviewed under the entire fairness standard, Rhode Island has prematurely explicated on this portion of the CalSTRS Plaintiffs’ pleadings, repackaging it as their own claim, while leaving other viable claims behind.

III. THE CALSTRS PLAINTIFFS HAVE DEMONSTRATED VIGOR AND ABILITY TO LITIGATE EFFECTIVELY.

The enthusiasm and vigor of the CalSTRS Plaintiffs favors the appointment of CalSTRS, Local 79 and Birmingham as Co-Lead Plaintiffs. At the outset, CalSTRS has been demanding governance changes at Facebook for years, specifically relating to Zuckerberg’s control over the Company and concerns over user privacy. ¶¶37-40. After not receiving satisfactory responses to its demands,

and following Facebook’s well-publicized violations of the Consent Order, CalSTRS initiated suit by intervening.

Similarly, Local 79 and Birmingham prepared for litigation by making Section 220 demands, and coordinated thereafter with CalSTRS. *See e.g.*, ¶¶15-17 (referencing Section 220 demands). “Pursuing books and records exemplifies diligence, demonstrates enthusiasm and vigor, and also enables counsel to craft a detailed complaint.”²¹ The CalSTRS Plaintiffs’ dogged pursuit and receipt of the Section 220 Production, including officer-level documents and certain email communications directly implicating Facebook’s senior executives in the alleged misconduct, equipped the CalSTRS Plaintiffs with the information necessary to withstand a demand futility challenge at the pleading stage.

By contrast, Rhode Island served their own Section 220 demand *over eighteen* months after the CalSTRS Plaintiffs began investigating these claims, and filed the Rhode Island Action *twenty* months and *eighteen* months after Local 79 and Birmingham, respectively, sought to enforce their inspection rights through trial. Furthermore, the CalSTRS Plaintiffs are committed to, and have actively participated in, this litigation. For example, Brian J. Bartow, CalSTRS’ General

²¹ *In re Dell Techs. Inc.*, 2019 WL 1259867, at *2 (Del. Ch. Mar. 18, 2019).

Counsel, has attended Court conferences in this action and will actively participate in and lead this action going forward.

CalSTRS has a history of governance activism, notably having its own Corporate Governance unit and often issuing public statements concerning its views on issues such as dual-class voting shares. *See* ¶39. CalSTRS has repeatedly petitioned the Board on governance issues since as early as 2012 (seeking a larger, more diverse board), including in making attempts in 2018 to “learn more about what controls are in place . . . to protect users’ data into the future.” ¶¶37-39. CalSTRS specifically targeted Facebook’s dual-class voting shares in an editorial in the *Financial Times* in May 2018. *Id.* at ¶39. Mr. Bartow, as well as Local 79’s Business Manager, Mr. Prohaska, and Birmingham’s Fund Counsel, Mr. Turner, have been—and will continue to be—involved in all litigation strategies with Co-Lead Counsel and will report on the progress of this action.²²

The CalSTRS Plaintiffs have demonstrated a record of acting as a safeguard to protect the interests of the Company and its shareholders. The plaintiffs’ alliance that filed the CalSTRS Complaint includes large institutional investors, as well as retail investors, ensuring that all stockholders’ interests are represented.²³

²² *See* Declarations from Mr. Bartow, Mr. Prohaska, and Mr. Turner. *See* Exs. 1–3.

²³ *See, e.g., Hirt*, 2002 WL 1558342, at *2-3 (referencing the absence of conflict between institutional and smaller stockholders).

Moreover, as demonstrated in their respective firm resumes, the CalSTRS Plaintiffs’ proposed Co-Lead Counsel (Kaplan Fox, Prickett Jones, and Scott+Scott) are well known to this Court, having achieved significant monetary recoveries and other valuable relief on behalf of stockholders in representative litigation (both in class and derivative actions), again favoring the CalSTRS Plaintiffs under *Hirt*.²⁴ The proposed Co-Lead Counsel have demonstrated the capability and willingness to cooperate and work together, including by coordinating the efforts of additional counsel to create a powerful team to litigate the claims on behalf of Facebook.

CONCLUSION

For the foregoing reasons, the CalSTRS Plaintiffs’ application should be granted in its entirety.

Dated: August 3, 2021

²⁴ *See In re Ebix, Inc. Stockholder Litig.*, C.A. No. 8526-VCS, at 103 (Del. Ch. Apr. 5, 2019) (V.C. Slights) (TRANSCRIPT) (“The lawyers involved here are the top of the class of lawyers who appear in this Court on behalf of plaintiffs in representative litigation, and the work they did here demonstrates why they’ve earned the reputations that they have.”). *See also* Exs. 4–11.

**PRICKETT, JONES &
ELLIOTT, P.A.**

OF COUNSEL:

**SCOTT+SCOTT
ATTORNEYS AT
LAW LLP**

Geoffrey M. Johnson
12434 Cedar Road
Suite 12
Cleveland Heights, OH
44106
Tel: 216-229-6088

Donald A. Broggi
William C. Fredericks
Scott R. Jacobsen
Jing-Li Yu (#6483)
The Helmsley Building
230 Park Avenue,
17th Floor
New York, NY 10169
Tel: 212-223-6444

*Proposed Co-Lead
Counsel and Counsel
for Plaintiff City of
Birmingham Retirement
and Relief System*

OF COUNSEL:

**KAPLAN FOX &
KILSHEIMER LLP**

Frederic S. Fox
Laurence D. King
Hae Sung Nam
Donnie Hall
Aaron Schwartz
850 Third Avenue
New York, NY 10022
Tel: 212 687-1980

Kathleen A. Herkenhoff
Kaplan Fox & Kilsheimer
LLP
1999 Harrison Street
Suite 1560
Oakland, CA 94612
Tel: 415-772-4700

*Proposed Co-Lead Counsel
and Counsel for Plaintiffs
California State Teachers'
Retirement System and
Firemen's Retirement System
of St. Louis*

By: /s/ Samuel L. Closic
Kevin H. Davenport (#5327)
Samuel L. Closic (#5468)
John G. Day (#6023)
Elizabeth Wang (#6620)
1310 King Street
Wilmington, DE 19801
Tel: 302-888-6500

*Proposed Co-Lead Counsel
and Counsel to Plaintiffs
Construction and General
Building Laborers' Local
Union No. 79 General Fund,
City of Birmingham Retirement
and Relief System and Lidia
Levy*

WORDS: 2,749

**HACH ROSE
SCHIRIPA &
CHEVERIE LLP**

Daniel B. Rehns
Frank R. Schirripa
Kurt M. Hunciker
Kathryn Hettler
112 Madison Avenue
10th Floor
New York, NY 10016
Tel: 212-213-8311

*Counsel to Plaintiff
Construction and
General Building
Laborers' Local Union
No. 79 General Fund,
and Additional Counsel
to Plaintiffs*

ROBBINS LLP

Brian J. Robbins
Stephen J. Oddo
Gregory E. Del Gaizo
Robbins LLP
5040 Shoreham Place
San Diego, CA 92122
Tel: 619-525-3990

*Additional Counsel for
Plaintiffs*

**DILWORTH PAXSON
LLP**

Catherine Pratsinakis (#4820)
1500 Market Street,
Suite 3500E
Philadelphia, PA 19012
Tel: 215-575-7013

*Counsel to Plaintiff Karen
Sbriglio*

**GAINEY McKENNA
& EGGLESTON**

Thomas J. McKenna
Gregory M. Egleston
501 Fifth Avenue
19th Floor
New York, NY 10017
Tel: 212 983-1300

*Additional Counsel for
Plaintiffs*

BERMAN TABACCO

Joseph J. Tabacco, Jr.
Daniel E. Barenbaum
44 Montgomery Street
Suite 650
San Francisco, CA 94104
Tel: 415-433-3200

*Additional Counsel for
Plaintiffs*

DILWORTH PAXSON LLP

Thaddeus J. Weaver (#2790)
704 King Street
Suite 500
P.O. Box 1031
Wilmington, DE 19899
Tel: 302-571-8867

*Counsel to Plaintiff Karen
Sbriglio and Additional
Plaintiffs*

**ANDREWS & SPRINGER,
LLC**

Peter B. Andrews (#4623)
Craig J. Springer (#5529)
David M. Sborz (#6203)
4001 Kennett Pike, Ste 250
Wilmington, DE 19807
Tel: 302-504-4957

**COTCHETT PITRE
& McCARTHY
LLP**

Joseph W. Cotchett
Mark Molumphy
Julia Peng
840 Malcolm Road
Suite 200
Burlingame, CA 90410
Tel: 650-697-6000

*Additional Counsel for
Plaintiffs*

CERTIFICATE OF SERVICE

I, Samuel L. Closic, do hereby certify on this 10th day of August, 2021, I caused a copy of the foregoing to be served via File and ServeXpress upon the following counsel:

David E. Ross, Esq.
R. Garrett Rice, Esq.
**ROSS ARONSTAM & MORITZ
LLP**
100 S. West Street, Suite 400
Wilmington, Delaware 19801

Nathan A. Cook, Esq.
BLOCK & LEVITON LLP
3801 Kennett Pike, Suite C-305
Wilmington, Delaware 19807

Kurt M. Heyman, Esq.
Aaron M. Nelson, Esq.
**HEYMAN ENERIO GATTUSO
& HIRZEL LLP**
300 Delaware Avenue, Suite 200
Wilmington, Delaware 19801

Thaddeus J. Weaver, Esq.
DILWORTH PAXSON LLP
704 King Street
Suite 500
P.O. Box 1031
Wilmington, DE 19899

Jon E. Abramczyk, Esq.
Alexandra Cumings, Esq.
**MORRIS, NICHOLS, ARSHT &
TUNNEL LLP**
1201 North Market St., 16th Floor
Wilmington, Delaware 19801

Blake A. Bennett, Esq.
COOCH AND TAYLOR, P.A.
The Brandywine Building
1000 West Street, 10th Floor
Wilmington, Delaware 19899

Daniel K. Astin, Esq.
CIARDI CIARDI & ASTIN
1204 N. King St.
Wilmington, Delaware 19801

Peter B. Andrews, Esq.
Craig J. Springer, Esq.
David M. Sborz, Esq.
ANDREWS & SPRINGER, LLC
4001 Kennett Pike, Ste 250
Wilmington, DE 19807

/s/ Samuel L. Closic

Samuel L. Closic (Del. No. 5468)