IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-02351-REB-KLM

In re Crocs, Inc. Securities Litigation

MEMORANDUM OF SHAHPOUR JAVIDZAD IN OPPOSITION TO THE MOTIONS OF MICHAEL ZALESKI, THE SANCHEZ GROUP, NATIONAL ROOFING INDUSTRY PENSION PLAN AND CAROL PROCHASKA FOR APPOINTMENT AS LEAD PLAINTIFFS AND FOR APPROVAL OF SELECTION OF LEAD COUNSEL

INTRODUCTION

Class member and movant Shahpour Javidzad respectfully submits this memorandum in opposition to the competing lead plaintiff appointment motions filed by Michael Zaleski, the Sanchez Group, National Roofing Industry Pension Plan, and Carol Prochaska.

It is clear from examination of the various motion papers that Shahpour Javidzad has the largest financial interest in the relief sought by the Class among the lead plaintiff movants, when the movants' interests are calculated pursuant to applicable law and judicial precedent.

As a result of class period transactions, Javidzad acquired 60,000 shares of Crocs common stock for which he spent $4,044,935.00. Javidzad did not sell any shares at artificially inflated class period prices, and his class period loss is $1,390,507.

Javidzad's financial stake in the litigation is materially larger than those of competing movants. Prochaska or the National Roofing Indsutry Pension Plan, who claim to have incurred losses of $647,917 and $260,000, respectively.

Movant Michael Zaleski claims to have a class period (LIFO) loss of $1,479,282.66. *See* Loss Calculation Analysis for Michael Zaleski (annexed as Ex. C to the 1/7/08 Decl. of Renee Taylor, Zaleski's counsel, in support of his motion). However, Mr. Zaleski too is atypical. Mr. Zaleski's claimed loss arises from a total of 9,890 separate trades during the class period; a period that encompasses only 68 trading days. Mr. Zaleski traded Crocs shares an average of 145 times per day during the class period. One cannot rely on the fraud-on-the-market presumption if he traded in a manner that is inconsistent with reliance on the integrity of the market or Crocs or upon the accuracy of the underlying representations. Mr. Zaleski's trades, which consist largely of small lots of a few hundred shares traded dozens or even hundreds of times a day, render him susceptible to a defense that his purchase and sales were motivated by something other than a reliance regarding the integrity of the market or reliance on the accuracy of defendants' public representations.

In addition to the foregoing, the majority of Mr. Zaleski's claimed losses stem from transactions that, pursuant to U.S. Supreme Court precedent, do not give rise to actionable securities claims, because the losses stem from shares that were sold before the alleged corrective disclosure of defendants' misconduct at the end of the class period. As a result, the losses were caused by something other than the corrective disclosure of the misconduct at issue in this action. Of the 1.5 million shares that Mr. Zaleski purchased during the class period, more than 1.44 million were sold prior to the October 31, 2007 corrective disclosure of the alleged misconduct. The only losses for which recovery is available are the losses on those 59,135 shares that Mr. Zaleski still held following the corrective disclosure. Mr. Zaleski claims that he lost an average $7.62 per share on these shares. This translates to a loss of $450,608 on those shares – less than one-third of the loss that Javidzad incurred.

While competing movants, the Sanchez Group, appear at first glance to have a larger financial stake than Javidzad, a closer examination reveals that the majority of Sanchez's claimed "losses" do not result from transactions in Crocs securities, but rather result from transactions in an instrument known as CFDs ("Contracts for Difference"), which are essentially private side bets entered into between two private parties. CFDs are <u>not</u> securities issued by Crocs, nor are they registered as securities. Accordingly, the Sanchez's private bets are not part of this action. In fact, CFDs are illegal in the U.S. The Sanchez's class period losses from class period transactions in Crocs securities are just $1,360,420. Moreover, the Sanchez Group is otherwise an improper lead plaintiff because the Sanchez Group is actually a net seller of Crocs common stock having purchased 176,831 shares during the class period while having sold 521,822 shares. Many courts have made it clear that net class period sellers are not suitable to serve as lead plaintiffs, because, when all is said and done, they actually *benefitted* from the artificial inflation of the stock.

Finally, the Sanchez Group has no losses from Crocs common stock trades that are recoverable under the federal securities laws because every single one of the

Sanchez Group's Crocs shares was sold prior to the October 31, 2007 corrective disclosure.

ARGUMENT

I. MR. JAVIDZAD HAS THE LARGEST FINANCIAL INTEREST IN THE RELIEF SOUGHT IN THIS ACTION.

A. The Applicable Test

The Private Securities Litigation Reform Act of 1995 ("PSLRA") provides that the presumptive lead plaintiff is the movant who has "the largest financial interest in the relief sought by the class". *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb). Courts have noted that the "PSLRA does not define the term largest financial interest, nor provide a method of determining which plaintiff has the largest financial interest in the relief sought by the Class." *See Vladimir v. Bioenvision, Inc.*, 2007 WL 4526532, at *4 (S.D.N.Y. Dec. 21, 2007). In calculating the largest financial interest, courts have applied a variety of methods. Many look simply at the size of the class period "loss". *In re Bally Total Fitness Sec. Litig.*, 2005 WL 627960, at *4 (N.D.Ill. Mar. 15, 2005) (citing cases); *see e.g., In re Doral Financial Corp. Sec. Litig.*, 414 F.Supp.2d 398, 403 (S.D.N.Y.,2006). Loss, however, is subject to multiple interpretations. Specifically, when an investor is holding stock in a company in question at the start of the class period, the loss calculation will differ depending on when the sales during the class period are matched to purchases on a first-in-first-out ("FIFO") basis or whether a last-in-last-out ("LIFO") method is used. Under FIFO, class period sales will be matched to pre-class period purchases and therefore will not be included in the class period calculation. While courts have differed on the subject, many have held that LIFO is the preferred method. As the court noted in *In re Bausch & Lomb*, 244 F.R.D. 169, 173 n.4 (W.D.N.Y. 2007), "LIFO, not FIFO, is the preferred methodology in these determinations." FIFO "has fallen out of favor in this District because of its tendency to overstate the losses of institutional investors and to understate gains made from stock during the class period." *In re Pfizer Sec. Litig.*, 233 F.R.D. 334, 338 n.3 (S.D.N.Y. 2005). *See also Vladamir v. Bioenvision, Inc.,* 2007 WL 4526532, at *5 (S.D.N.Y. Dec. 21, 2007); *Richardson v. TVIA, Inc.*, 2007 WL 1129344, at *4 (N.D.Cal. Apr. 16, 2007); *Johnson v. Dana Corp.*, 236 F.R.D. 349, 352-53 (N.D.Ohio 2006); *In re Mills Corp.*, 2006 WL 2035391, at *3 n.1 (E.D.Va. May 30, 2006); *Arenson v. Broadcom Corp.*, 2004 WL 3253646 at *1-2 (C.D.Cal. Dec. 6, 2004); *In re Cable & Wireless, PLC Sec. Litig.*, 217 F.R.D. 372, 378-379 (E.D.Va. 2003).[1]

Under the LIFO method, the claimed financial stake of the movant groups are as follows: (1) Zaleski, $1,479,282; (2) Javidzad $1,390,507; (3) Sanchez Group, $1,360,420; (4) Prochaska $647,917; (5) National Roofing, $266,355.

Insofar as Mr. Zaleski has a marginally higher loss than Javidzad, that loss is so inconsequential as to render the movants "roughly equal." *See, e.g., In re Doral,* 414

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[1] Taken to its logical extreme, FIFO would compel treating as equals the investor who purchased 1,000 shares during the class period (at artificially inflated prices) and sold none, with the investor who purchased 1,000 shares while also selling 10 million shares at the artificially inflated prices, if the latter investor held 10 million shares at the start of the class period. Consequently, in *In re Comdisco Sec. Litig.*, 150 F. Supp. 2d 943 (N.D. Ill. 2001), the court rejected FIFO methodology as "a mirage" designed to mask the fact that the movant's "Class Period sales at inflated prices caused it to derive unwitting benefits rather than true losses from the alleged securities fraud." 150 F. Supp. 2d at 945. In a subsequent opinion, the *Comdisco* court provided further explanation of the reason why FIFO accounting cannot justify ignoring Class Period sales when calculating a lead plaintiff movant's loss. See *In re Comdisco Sec. Litig.*, 2004 WL 905938 (N.D. Ill. Apr. 26, 2004).

F.Supp.2d at 403 (Movants whose class period losses were within 15% of one another were "roughly equal."); *see also In re Pfizer Sec. Litig.,* 233 F.R.D. 334, 338 (S.D.N.Y. 2005) (Movants with small loss differential considered to be "roughly equal."); *Police & Fire Retirement System of the City of Detroit v. SafeNet, Inc.*, No. 1:06cv5797 at p. 4 (S.D.N.Y. Feb. 21, 2007) (same) (January 28, 2008 Declaration of Ira Press ("Press Decl.") Ex. A.). Moreover, Sanchez and Zaleski are otherwise inadequate for reasons discussed below. It is also clear from the foregoing that National Roofing and Pochaska clearly do not have the largest financial interest, and thus, clearly are not entitled to the "most adequate plaintiff" presumption under the PSLRA. [2]

II. MR. ZALESKI'S MOTION MUST BE DENIED.

A. Most of Zaleski's Alleged Losses Were Not Caused By Defendants' Alleged Fraud.

Most of Mr. Zaleski's claimed losses stem for trades that are not eligible for recovery in this action because they were not caused by the alleged fraud. This is because Mr. Zaleski sold the shares before any public "corrective disclosure." In *Dura Pharmaceuticial Inc. v. Broudo*, 544 U.S. 336 (2005), the Supreme Court held that in order to plead loss causation, it is not enough that an investor demonstrate that it purchased the shares at artificially inflated prices, the investor must be still holding the shares when they

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[2] The text of the PSLRA makes no mention whatsoever of "institutional investors" or a presumption afforded to them. The presumption lies with whichever investor has the largest financial interest. Accordingly, courts have made it clear that an institutional investor is not entitled to the lead plaintiff presumption if an individual has the largest financial interest and has filed a competing motion. *Kapur v. USANA*, 2007 WL 3046664, at *2 (D. Utah Oct. 17, 2007); *In re Vonage IPO Sec. Litig.*, 2007 WL 2683636, at *11 n. 15 (D.N.J. Sept. 7, 2007).

declined in reaction to a disclosure (complete or partial). 544 U.S. at 342-44. As a result, several courts have held that when evaluating the financial interest of lead plaintiff movants, the court does not consider losses that result from sales made prior to any "corrective disclosures." *In re Mckesson HBOC, Inc. Sec. Litig*., 97 F.Supp.2d 993, 997-98 (N.D. Cal. 1999); *In re Cable & Wireless Sec. Litig.,* 217 F.R.D. 372, 379 (E.D. Va. 2004); *In re Boyd Sec. Litig.*, 2007 WL 2026130, at *4 (W.D. Mo. July 9, 2007); *In re Northfield Laboratories, Inc. Sec. Litig.,* No. 06-1493, at *7 (N.D. Ill. June 19, 2006) (Press Decl. Ex. B); *In re Comverse Tech., Inc.,* 06cv1825, at *6-11 (E.D.N.Y. Mar. 7, 2007) (Press Decl. Ex. C). The complaints in the actions that are consolidated under the above caption all allege that the first "corrective disclosure" of Crocs' condition came on October 31, 2007, and they triggered an immediate decline in Crocs' share price from $74.75 on October 31, 2007 to $47.74 on November 1, 2007. Press Decl. Ex. D-H (Stewart Compl. ¶¶31-33; Hutchinson Compl. ¶¶21-23; Swanson Compl. ¶¶ 43-46; Dhingra Compl. ¶¶ 26-28; Muller Compl. ¶¶ 15-17).

Under *Dura* and its progeny, losses from sales prior to October 31, 2007 cannot be shown to have been "caused" by the October 31, 2007 "corrective disclosure" and such losses cannot be included in the calculation of largest financial interest.

Of the 1,552,459 shares that Zaleski purchased during the class period, all but 59,135 shares were sold prior to the end of the class period. *See* Loss Calculation Analysis for Michael Zaleski (annexed as Ex. C to the 1/7/08 Decl. of Renee Taylor, Zaleski's counsel, in support of his motion). Furthermore, Zaleski's loss calculation chart makes clear that the 59,452 properly-considered shares were sold at an average price of $52.80 per share, or $7.62 per share below the $60.42 average price of his class period purchases. Thus, Mr. Zaleski's loss from shares sold following the "corrective disclosure," (i.e., the only loss that may be recoverable in this action) is just $450,608.70 (59,135 times $7.62).

B. Mr. Zaleski Is Otherwise Unfit to Serve as the Lead Plaintiff.

Even if Mr. Zaleski had the "largest financial interest" in the litigation, he is subject to unique defenses that render him incapable of adequately representing the Class. *See* 15 U.S.C. § 78u-4(a)(a)(3)(B)(iii)(II)(bb). Courts have made it clear that competing movants need not prove conclusively that such defenses would prevail but need only show that a potentially valid defense or conflict exists. *See In re Bally Total Fitness Sec. Litig.*, 2005 WL 627960, at *6 (N.D. Ill. Mar. 15, 2005) ("The PSLRA ... provides that we ask simply whether [a movant] ***is likely*** to be 'subject to' ... unique defenses ... [not that] the defense is likely to succeed.".

Zaleski's inadequacy or atypicality stems from his unique trading patterns. During the class period, Mr. Zaleski purportedly purchased more than 1.5 million shares of Crocs and sold nearly 1.5 million shares. Amazingly, these purchases and sales came in the form of 9,890 separate transactions during the class period; a class period that spanned just 68 trading days. In the overwhelming majority of instances, Mr. Zaleski's sold the Crocs shares a day (or less) after purchasing. In fact, of the 9,890 class period trades, Mr. Zaleski only engaged in 332 purchases in which he held the shares for more than four days.

This bizarre trading pattern – an average of 145 Crocs trades per day – subjects Zaleski to likely defenses on the all-important issue of reliance. In order to prevail in a securities action, investors must demonstrate that they relied on either the integrity of the market price of the securities in question under the "fraud on the market" theory or that they directly relied on defendants' misrepresentations. *In re Intelcom Group, Inc. Sec. Litig.*,169 F.R.D. 142 (D.Colo.1996). Mr. Zaleski's trading pattern subjects him to the charge that he relied on neither. After all, he engaged in thousands of trades during the course of the period, buying and selling more than 1.5 million shares at an average trade size of just 305 shares per trade. It is unclear what motivated Mr. Zaleski's purchases and sales. Was he a market maker who was contractually obligated to act as a counter-party on the trades? Was he trying to exploit minor fleeting decimal shifts in the market price? Regardless, he is subject to challenges that he was not buying or selling in reliance on the accuracy of the market price or in reliance on the accuracy of Crocs' class period representations.[3]

III. THE SANCHEZ MOVANTS ARE UNFIT TO SERVE AS LEAD PLAINTIFFS.

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[3] Notations on Mr. Zaleski's trading records suggest that most, if not all, of the 9,890 trades he made during the class period were short sales. *See* Cert. of Michael Zaleski (annexed as Ex. B to the Taylor Decl.). Some courts have found short sellers to be unfit as lead plaintiffs "reasoning that short sales are inconsistent with the fraud on the market theory upon which most securities fraud claims are based." *See In re Dell Inc. Sec. Litig.*, No. 06-cv-726, at *12-13 (W.D. Tex. Apr. 9, 2007) (Press Decl. Ex. I); *see also In re Critical Path Sec. Litig.,* 156 F.Supp.2d 1102, 1109-10 (D. Cal. 2001); *In re Bank One Shareholders Class Actions,* 96 F.Supp.2d 780, 784 (N.D. Ill. 2000). In addition, "[s]hort sales raise the question of whether the seller was actually relying on the market price, and the class is not served by its representative coming under such scrutiny." *In re Criticial Path, supra,* 156 F.Supp.2d at 1109; *accord Dell, supra.*

The Sanchez movants are brothers who claim a loss in excess of $47 million. However, upon closer examination, it is clear that the vast majority of their claimed losses stem from transactions that were not made in Crocs securities, but were made in private side bets known as CFDs, which are illegal in the U.S.

A. Sanchez's CFD Transactions Are Not Part of this Lawsuit.

This lawsuit is on behalf of purchasers of Crocs securities or purchasers of Crocs common stock.[4] The CFDs that comprise the bulk of the Sanchez's losses are neither. Whether or not CFD purchases can give rise to a 10(b) suit against Crocs, those purchases are not part of this suit.

CFDs are devices that are somewhat popular overseas, but are illegal here in the U.S. *See Board of Trade of City of Chicago v. S.E.C.*, 187 F.3d 713, 716 (7th Cir. 1999) ("Options on single securities are allowed, but futures contracts on single securities are not.")).[5] It is not entirely clear whether CFDs are even "securities" under U.S. law. 15 U.S.C. §78c(a)(10); *see Caiola v. Citibank, N.A., New York*, 295 F.3d 312 (2d Cir. 2002) (addressing question of whether synthetic instruments based on equity securities meet the definition of "security" under Section 3(a)(10)). CFDs are essentially private contracts entered into by two private parties who place opposing bets on the direction that a common stock will move. Unlike convertible debentures, they are not issued by the issuer of the

[4]Stewart Compl. ¶¶1, 22; Hutchinson Compl. ¶¶1, 24; Swanson Compl. ¶ 28; Dhingra Compl. ¶¶1, 15-16; Muller Compl. ¶¶ 1, 10.

[5]The Commodity Futures Modernization Act of 2000 permitted limited trading in certain "security futures", however CFD's are not "security futures" and thus remain illegal. *See* 7 U.S.C. §1a(31).

common stock, and unlike options, CFDs do not carry the right or the obligation to buy or sell the underlying common stock.[6] In any event, they clearly are not securities issued by Crocs. As such, even if Crocs CFD purchasers had standing to sue in U.S. Court under the federal securities laws, their suit would be separate from the case at bar. *See Zelman v. JDS Uniphase Corp.*, 376 F.Supp.2d 956, 959 (N.D.Cal. 2005) (purchaser of equity-linked debt securities in action separate from related action of direct shareholders); *In re UnumProvident Corp. Sec. Litig.*, No. 1:03-cv-49 (E.D.Tenn. Feb. 18, 2004) (Press Decl. Ex. J) (memorandum at *18-19) ("If the [derivative securities] are deemed to involve a different issuer ... the Court finds no precedent supporting consolidation")); *In re AT&T Corp. Sec. Litig.*, No. 01-1883 (D.N.J. Sep. 25, 2002) (stipulation and order concerning class certification) (certifying class of tracking stock purchasers separately from purchasers of issuer's stock)) (Press Decl. Ex. K); *see also, In re Williams Sec. Litig.*, 2002 WL 32153476 (N.D.Okla. Jul. 8, 2002) (appointing separate lead plaintiffs for sub-class of purchasers of parent issued and subsidiary issued securities).

Any attempt to bring suit against Crocs for losses on this private bet also raises two important jurisdictional issues. First is the issue of whether Crocs could have liability to a foreign purchaser who suffered losses in a private contract that it entered into overseas with another foreign entity that did not involve the purchase or sale of securities

[6] By way of contrast, Javidzad's transactions in Crocs options obligated him to purchase Crocs common stock, and Javidzad's losses result from those Crocs stock purchases, In any event, if one were to exclude the option trades from this action, Javidzad's loss would <u>increase</u>, as he made a total of $295,700 from his class period trades in the options themselves (but then suffered huge losses when, pursuant to those option trades, he was forced to buy Crocs common stock after the class period at the artificially inflated class period prices).

issued by Crocs or by any other U.S. entity. The foreign contract simply has no jurisdictional connection to Crocs, a U.S.-based company.

Second, Crocs can assert due process defenses to its liability to private CFD investors. It is hornbook law that a defendant's liability in tort is limited to foreseeable plaintiffs. *Palsgraf v. Long Island R. Co.*, 248 N.Y. 339 (N.Y. 1928) (J. Cardozo). Similarly, courts have held that 10(b)'s loss causation requirement means that a defendant is only liable to a plaintiff whose investment losses are foreseeable. *AUSA Life Ins. Co. v. Ernst & Young,* 206 F.3d 202, 217 (2d Cir.2000) ("loss causation is a foreseeability finding [that] turns on fairness, policy, and 'a rough sense of justice.'"); *In re WorldCom, Inc. Sec. Litig.*, 219 F.R.D. 267, 292 (S.D.N.Y. 2003). While the impact of Crocs' misconduct upon its securities or even other publicly-traded securities that are linked to Crocs securities is foreseeable, Crocs will likely argue that the same cannot be said for losses suffered by parties who entered into private side bets. Imposing liability in that instance, would raise questions of fundamental constitutional fairness.

B. The Sanchez Group Was A Net Seller of Crocs Securities During the Class Period.

The Sanchez Group was a net seller of Crocs stock during the class period. The Group purchased approximately 180,000 shares while selling more than 500,000 shares. Sanchez Group Consolidated Loss Calculations annexed as Ex. C. to the Declaration of Joseph C. Cohen (Cohen Decl.). Several courts have held that net sellers cannot serve as lead plaintiffs, because net sellers benefitted more from the class period inflation of the shares (through their sales) than they were harmed (from their purchases).

"Courts have consistently rejected applications for lead plaintiff status made by 'net sellers' and 'net gainers" recognizing that they may in fact have profited, rather than suffered, as a result of the inflated stock prices." *In re Bausch & Lomb Inc. Sec. Litig.*, 244 F.R.D. 169, 173 (S.D.N.Y. 2007), citing *Frank v. Dana Corp.*, 237 F.R.D. 171, 172 (N.D. Ohio 2006); *In re Cardinal Health Inc. Sec. Litig.*, 226 F.R.D. 298, 308 (S.D. Ohio 2005). In *Weisz v. Calpine*, 2002 WL 32818827, at *7 (N.D.Cal. Aug. 19, 2002):

> The Court notes that [plaintiff] purchased 64,100 shares of Calpine stock, *but sold almost twice that amount* – 152,000 shares – during the Class Period. (*Id*. Ex. 1.) This fact undermines [plaintiff's] contention that it has the largest financial interest in this case aside from [competing movant]. *See In re Critical Path*, 156 F. Supp. at 1108 ("the number of net shares purchased during the class period is determinative" of which party has the "largest financial interest"). Indeed, it is apparent that [plaintiff] may have actually profited, not suffered losses, as a result of the allegedly artificially inflated stock price. *See Comdisco*, 150 F. Supp. at 945-46 (finding that plaintiff which sold more shares than it purchased during the class period was "totally out of the running for designation as lead plaintiff"). Therefore, the court removes [plaintiff] from consideration for appointment as lead plaintiff.

Id. (emphasis in original). *See also In re Cable & Wireless, PLC Sec. Litig.*, 217 F.R.D. 372, 378 (E.D. Va. 2003), where the court, following *Weisz* and *Comdisco*, rejected the lead plaintiff application of a fund that sold more shares than it purchased.

Similarly, in *In re McKesson, supra*, the court reasoned that "a net purchaser will, presumably, have a greater interest in the litigation because he or she was induced by the fraud to purchase shares, and has been left 'holding the bag' when the fraudulent inflation is revealed." 97 F. Supp. 2d at 996-997. "By contrast a net seller has arguably profited more from the fraud than it has been injured, possibly reducing its incentive to litigate." *Id* at 997.[7]

C. The Sanchez Group's Crocs Stock Losses Were Not Caused By the Alleged Fraud

Pursuant to the *Dura* line of cases as detailed above, at Sec. II. A., none of the Sanchez common stock loss is recoverable. Specifically, *all* of the Sanchez Group's common stock loss results from sales prior to the end of the class period. The Sanchez Group had disposed of *all* of its Crocs common stock at the artificially inflated class period prices, prior to the corrective disclosure. See Exhibit C to January 7, 2008 Decl. Of Joseph Cohen. Thus, the Sanchez Group has no "financial interest in the relief sought by the class."

CONCLUSION

For the foregoing reasons, the Sanchez, Zaleski, Prochaska, and National Roofing motions should be denied, and the motion of Shahpour Javidzad should be granted.

Dated: January 28, 2008

Respectfully submitted,

JONES & KELLER, P.C.

By: s/ Thomas McMahon

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[7] *See also, Borochoff v. Glaxosmithkline PLC,* 246 F.R.D. 201, 205 (S.D.N.Y. 2007); *In re Mills Corp. Inc.,* 2006 WL 2035391, at *3 (E.D. Va. May 30, 2006); *Andrada v. Atherogenics Inc.*, 2005 WL 912359, at *4 (S.D.N.Y. Apr. 19, 2005); *In re The Goodyear Tire & Rubber Co. Sec. Litig.*, 2004 WL 3314943, at *4 (N.D. Ohio 2004).

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CERTIFICATE OF ELECTRONIC SERVICE

I HEREBY CERTIFY THAT ON JANUARY 28, 2008 I ELECTRONICALLY FILED THE FOLLOWING DOCUMENTS:

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