

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MACQUARIE CAPITAL (USA) INC.,

Plaintiff,

-against-

MORRISON & FOERSTER LLP,

Defendant.

Date Purchased: March 26, 2015

Index No.: _____

SUMMONSPlaintiff designates New York County as
the place of trial.

Venue is proper pursuant to CPLR § 503.

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded herein.

Dated: New York, New York
March 26, 2015KASOWITZ, BENSON, TORRES
& FRIEDMAN LLPBy: /s/ Marc E. Kasowitz
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Attorneys for Plaintiff
Macquarie Capital (USA) Inc.

To:

Morrison & Foerster LLP
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New York, New York 10019

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COMPLAINT

Plaintiff Macquarie Capital (USA) Inc. (“Macquarie” or “Plaintiff”), for its complaint against defendant Morrison & Foerster LLP (“Morrison & Foerster” or “Defendant”), alleges:

Introduction

1. This is an action for legal malpractice brought by Macquarie, a diversified financial services company, against its outside legal counsel, Morrison & Foerster. Morrison & Foerster, a leading international law firm that repeatedly represented itself as having particular expertise in China-related transactions, was retained to serve as underwriter’s counsel in connection with Macquarie’s underwriting of a December 2010 public equity offering (the “Offering”) by a company with its offices and operations in China, Puda Coal Inc. (“Puda”). As underwriter’s counsel, Morrison & Foerster was responsible for, among other things, providing legal advice to Macquarie in connection with the Offering. Critical to carrying out this duty, Morrison & Foerster was responsible for conducting legal due diligence on Macquarie’s behalf, including, specifically, due diligence concerning Puda’s ownership structure. Macquarie relied on Morrison & Foerster to employ its purported expertise in China-related offerings to provide expert legal advice concerning the scope and nature of the legal due diligence inquiry necessary,

and to execute that due diligence in order to verify the accuracy and completeness of Puda's representations in connection with the Offering.

2. Macquarie's claim against Morrison & Foerster arises out of Morrison & Foerster's egregious negligence in performing its duties, including its failure to perform any meaningful diligence concerning whether Puda actually owned its principal subsidiary, Shanxi Puda Coal Group Co., Ltd. ("Shanxi Coal"). Morrison & Foerster's malpractice culminated in its issuance of a false opinion letter attesting to the veracity of representations Puda made to investors in connection with the Offering. The fact is that Puda did not own its principal subsidiary, as it claimed it did, and Morrison & Foerster had a duty and obligation as Macquarie's counsel to diligence Puda's corporate structure and tell Macquarie if it identified information inconsistent with Puda's public representations. Morrison & Foerster, however, failed to carry out this most basic duty of underwriter's counsel.

3. Morrison & Foerster's failure to properly carry out its duties to Macquarie is all the more egregious because Morrison & Foerster vigorously touted its purportedly unique and special expertise in handling corporate transactions involving companies based in China. That purported expertise led Macquarie to retain Morrison & Foerster for this transaction. However, in spite of Morrison & Foerster's highly-promoted experience with complex China-related transactions, Morrison & Foerster failed to obtain the official ownership records relating to Shanxi Coal, which it knew or should have known existed, or demand that Puda provide them (if Morrison & Foerster was unable to take these steps, then, at the very least, it should have told Macquarie about its failure to do so and advised Macquarie of the potential consequences). The verification of the ownership of Puda and its subsidiaries was squarely within the duties

Morrison & Foerster undertook in its representation of Macquarie, yet Morrison & Foerster failed to comply with its obligations.

4. In addition to its due diligence obligations, Morrison & Foerster also was charged with obtaining from Puda's Chinese counsel an opinion verifying Puda's ownership of Shanxi Coal, as well as working with Puda's United States securities counsel, which was providing a negative assurance letter in connection with the Offering. Again, despite being directly involved in these tasks that required the review and confirmation of the ownership structure of Puda and its subsidiaries, Morrison & Foerster at no time sought to independently verify Puda's statements relating to Shanxi Coal and, in failing to do so, failed to exercise the care, skill, and diligence required of members of the legal profession.

5. Moreover, prior to Morrison & Foerster's issuance of a formal 10b-5 opinion letter (the "Opinion Letter") and completion of its legal due diligence, Morrison & Foerster was presented with a report of an investigative firm, obtained by Macquarie, that contained information contradicting Puda's public representations regarding its ownership of Shanxi Coal – information that Morrison & Foerster itself should have uncovered through its legal due diligence prior to receipt of that report. Yet, again in contravention of its duty to provide Macquarie with sound legal advice by responsibly conducting legal due diligence in the performance of its obligations as underwriter's counsel, Morrison & Foerster ignored that report and its contents (and/or failed to react to the report) and failed to conduct any follow-up review of the information presented therein, or to inform Macquarie that the information in the report contradicted what Morrison & Foerster was being told by Puda and its counsel regarding ownership of Shanxi Coal and of the consequences to Macquarie of proceeding to underwrite the Offering.

6. Memorializing its failure to carry out its duties as counsel to Macquarie, Morrison & Foerster falsely affirmed in the Opinion Letter that Morrison & Foerster's legal due diligence had not shown that the Prospectus contained any untrue statement of a material fact. Not only did Morrison & Foerster provide negative assurance to Macquarie by way of the Opinion Letter but, in addition, Morrison & Foerster affirmatively represented to Macquarie that it had completed the work necessary in order to form its opinion. At no time did Morrison & Foerster inform Macquarie that Morrison & Foerster had failed to (i) request the official ownership records relating to Shanxi Coal and (ii) read and/or react to the report prepared by the investigative firm that was sent to them by Macquarie. Nor did Morrison & Foerster tell Macquarie at any time that there was any issue or question regarding the ownership of Shanxi Coal. By failing to alert Macquarie that Puda's representations in the Prospectus that it owned Shanxi Coal were false, Morrison & Foerster caused substantial injury to Macquarie, as underwriter.

7. As a direct and proximate result of Morrison & Foerster's malpractice, Macquarie has suffered – and continues to suffer – substantial damages.

Parties

8. Plaintiff Macquarie Capital (USA) Inc. is a Delaware corporation with its principal place of business located at 125 West 55th Street, New York, New York. Macquarie is associated with the Macquarie Group, an international banking and financial services corporation headquartered in Australia.

9. Defendant Morrison & Foerster LLP is a California limited liability partnership, with its principal New York office located at 250 West 55th Street, New York, New York.

Morrison & Foerster is an international law firm with over 1,000 lawyers operating out of 17 offices throughout the United States, Europe, and Asia.

Jurisdiction and Venue

10. Jurisdiction is proper pursuant to CPLR § 301, because Morrison & Foerster resides, and regularly does or transacts business, in the State of New York and because this action arises out of tortious conduct committed by Morrison & Foerster within the State of New York.

11. Venue is proper pursuant to CPLR § 503 because Macquarie and Morrison & Foerster both reside in New York County.

Background

12. In the Fall of 2010, Puda hired Macquarie to underwrite the Offering of Puda stock in the U.S. market.

A. Macquarie's Retention of Morrison & Foerster to Provide Legal Advice

13. Macquarie engaged Morrison & Foerster to serve as underwriter's counsel in connection with the Puda Offering and to perform each and every one of the duties customarily performed by counsel, including, among other things, to provide legal advice regarding the Offering and to conduct legal due diligence. Puda's operations were in China, and Morrison & Foerster held itself out as having substantial China-related expertise that would enable it to provide services consistent with the standard of care needed in performing due diligence on a company such as Puda. Indeed, Morrison & Foerster claims, among other things, (i) that it is among the first U.S. law firms to establish an office or become locally qualified to practice in China's business centers; (ii) that it has a well-established practice in China including more than 70 multilingual legal professionals; and (iii) that it provides comprehensive coverage for

investment, finance, and regulatory matters to a wide spectrum of clients doing business in China.

14. Based on Morrison & Foerster's representations, Macquarie understood that Morrison & Foerster was an expert in the handling of China-based offerings, including the proper methodology for the performance of legal due diligence in China, and therefore decided to engage Morrison & Foerster as underwriter's counsel. Macquarie relied on Morrison & Foerster to do its job and properly conduct legal due diligence.

15. Macquarie had previously retained Morrison & Foerster, including James Tanenbaum (a Morrison & Foerster partner and chair of the firm's Global Capital Markets practice), to serve as underwriter's counsel on another securities offering in which capital was raised for a Chinese energy company. Throughout Morrison & Foerster's work for Macquarie on that offering, Mr. Tanenbaum continuously touted the quality of the firm's services in Asia and Morrison & Foerster represented itself as the go-to firm for China-related offerings, including legal due diligence.

16. Thus, when the time came for Macquarie to engage what it thought would be appropriate, sophisticated counsel to assist in the legal due diligence of Puda, it was only natural for Macquarie to select Morrison & Foerster, the China experts. On or around November 2, 2010, Macquarie did just that, selecting attorneys from Morrison & Foerster, including Mr. Tanenbaum, to work on the Puda engagement.

B. Morrison & Foerster's Failure to Meet its Responsibilities as Underwriter's Counsel

17. The role and responsibilities of underwriter's counsel charged with conducting legal due diligence are clearly understood by participants in the securities industry. Underwriter's counsel are retained for their experience and expertise in carrying

out the necessary tasks and analysis to ensure the bona fides of a transaction, including, among other things, identifying, obtaining, and reviewing the appropriate corporate and governmental records.

18. Here, Morrison & Foerster accepted its charge to conduct the proper and appropriate legal due diligence on Puda, and played a key role in the entire due diligence effort. Specifically, Morrison & Foerster was tasked with obtaining, reviewing, and analyzing, among other things:

- (i) The ownership and corporate structure of Puda and its subsidiaries, and Puda's relevant organizational documents;
- (ii) Stock and securities ownership books and records for Puda and its subsidiaries, including Shanxi Coal;
- (iii) Puda's by-laws, as well as Board Minutes and related materials addressing, *inter alia*, any related party transactions; and
- (iv) All material filings and correspondence concerning Puda and its subsidiaries with Chinese regulators.

Fundamentally, Morrison & Foerster was charged with gaining a full understanding of the operating and ownership structure of Puda and its subsidiaries in order to confirm that Puda was what it claimed to be, and bringing any information to the contrary to Macquarie's attention. If it could not obtain any information relevant to this assignment, Morrison & Foerster was duty bound to so advise Macquarie.

19. Especially in light of Morrison & Foerster's purportedly extensive expertise in China-related offerings, and given that confirming Puda's ownership structure was at the very heart of the due diligence it was retained to perform, Morrison & Foerster should have

undertaken all necessary steps to carry out this task. Specifically, at the time of the Offering Morrison & Foerster knew, or should have known, that public filings regarding the ownership of Puda's subsidiaries, including Shanxi Coal, were available in China. Accordingly, Morrison & Foerster should have obtained these records independently, or, at a minimum, ensured that it received certified copies of the records directly from Puda. Morrison & Foerster did neither, and never, as it should have, advised Macquarie of the existence of such records, and of the consequences of Morrison & Foerster's failure to request the official ownership records of Shanxi Coal and independently verify Puda's statements regarding the ownership of Shanxi Coal.

20. From the outset of the due diligence process, however, Morrison & Foerster created the appearance that it was performing its legal due diligence obligations. For example, Morrison & Foerster communicated with Puda's counsel (based both in the U.S. and China) concerning, *inter alia*, Puda's ownership structure and subsidiaries. However, Morrison & Foerster never took the requisite steps to actually independently verify Puda's ownership of Shanxi Coal, something that was a critical element of Morrison & Foerster's representation of Macquarie.

21. In addition, Morrison & Foerster worked closely with Puda's counsel – including its China-based lawyers, the Shanxi Bingyu law firm – to obtain an appropriate opinion letter, prepared for Macquarie, attesting to, among other things, Puda's 90% purported ownership of Shanxi Coal. Morrison & Foerster's work on the Shanxi Bingyu opinion letter was in addition to Morrison & Foerster's own representations to Macquarie in its Opinion Letter, including that “nothing has come to [Morrison & Foerster's] attention that leads [it] to believe” that either the Registration Statement or Prospectus “contained an untrue

statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein . . . not misleading.” Morrison & Foerster knew or should have known that delivery of these opinion letters was necessary for Macquarie to participate in the Offering, and would serve to confirm to Macquarie that the legal due diligence investigation had been carried out with proper care.

22. Further, throughout the legal due diligence process, Morrison & Foerster also worked with Puda’s U.S. counsel – Goodwin Procter LLP (“Goodwin Procter”) – to obtain relevant due diligence information, including obtaining information from Puda regarding its corporate records. Morrison & Foerster was well aware that this work needed to be carried out in a diligent, thorough manner so as to ensure that the relevant, accurate information regarding Puda was collected and reviewed by its legal professionals in a competent manner.

23. In performing its role as underwriter’s counsel, including its required review of Puda’s ownership records and its work with Puda’s counsel at Shanxi Bingyu and Goodwin Procter, Morrison & Foerster was obligated to meet the standard of professional care required of legal professionals. This included using its superior knowledge – including, but not limited to, its legal expertise and access to its own on-the-ground lawyers in China – to conduct a thorough review of Puda’s ownership structure and to alert Macquarie, its client, to any and all material issues arising in the due diligence process. Yet, in failing to properly verify Puda’s ownership structure and uncover Puda’s fraud, Morrison & Foerster egregiously failed in that regard.

C. Morrison & Foerster’s Deficient Legal Advice and Due Diligence

24. The Prospectus for the Offering stated, among other things, that Puda’s “operations are conducted exclusively by an entity in China, Shanxi Puda Coal Group Co., Ltd.

(‘Shanxi Coal’), which [Puda] controls through 90% indirect equity ownership.” Prior to September 2009, this statement would have been accurate: Puda indirectly owned a 90% equity interest in Shanxi Coal. Ownership of the remaining 10% of Shanxi Coal was divided between two individuals. The first individual, Ming Zhao (“Zhao”), served as the Chairman of Puda’s Board of Directors and a major Puda shareholder. Zhao owned 8% of Shanxi Coal. The second individual was his brother, Yao Zhao (“Y. Zhao”), who owned the remaining 2% and served as the legal representative of Shanxi Putai Resources Limited – the company through which Puda owned Shanxi Coal.

25. Although unknown to Macquarie at the time of the Offering, as reflected in Chinese records concerning the ownership of Shanxi Coal, on or around September 3, 2009 – more than a year prior to the Offering and Morrison & Foerster’s legal due diligence related thereto – Zhao and his brother caused Puda’s 90% ownership in Shanxi Coal to be transferred to Zhao personally, leaving Puda with no ownership interest in Shanxi Coal.¹ Morrison & Foerster failed to investigate Puda’s ownership structure and inform Macquarie of these critical facts. Instead, throughout the due diligence process Morrison & Foerster continued to check items off its due diligence list and reported to Macquarie that everything was proceeding in due course, failing to raise any flags concerning Puda’s ownership of Shanxi Coal.

26. Had Morrison & Foerster conducted proper legal due diligence, it would have advised Macquarie that Puda had no ownership interest in Shanxi Coal or that it had been unable to properly complete the work it needed to do to verify Puda’s ownership structure, and Macquarie would have withdrawn from the Puda engagement and ceased all work on the Offering. Instead Macquarie proceeded with the underwriting under the false belief that

¹ Also pursuant to Chinese records, at this time Y. Zhao also divided his 2% interest in Shanxi Coal, transferring 1% to a Shanxi Coal employee – Wei Zhang – and 1% to his brother, leaving Zhao with a 99% ownership interest in Shanxi Coal.

Morrison & Foerster had conducted reasonable due diligence as it promised that it would, and represented that it had.

D. Morrison & Foerster’s Receipt of the Kroll Report

27. Prior to the Offering, Macquarie also engaged Kroll Inc. (“Kroll”), an international private investigation firm, to investigate the character, integrity, and reputation of the individuals associated with Puda.

28. Kroll completed its investigation and issued a report on December 2, 2010 (the “Kroll Report”). The Kroll Report contained, among other things:

- (i) The statement that “[a]ccording to records, [Shanxi Coal] currently has RMB500 million in registered capital. Zhao Ming is its legal representative, sole executive director, and 50% shareholder”;
- (ii) A chart in a section entitled “Chinese Corporation Registration Information” citing records identifying the shareholders of “Shanxi Puda Coal Group Co., Ltd” as Zhao Ming (50%), Zhang Wei (1%), and CITIC Trust (49%); and
- (iii) An appendix, entitled “Changes to Shanxi Puda Coal Group, Ltd’s registration records,” that reflected registered capital, paid-in capital, Puda’s “business scope” as well as the changes of Puda’s shareholders on March 25, 2010, April 14, 2010, April 26, 2010, and July 22, 2010 that were engineered by Zhao.

29. Kroll provided the report to Macquarie’s Equity Capital Markets team, which assisted in the gathering of due diligence materials for the Offering. William Fang, an associate in that group, promptly emailed the report to Macquarie’s primary day-to-day due diligence

contact at Morrison & Foerster so that Morrison & Foerster could review the report for any information relevant to Morrison & Foerster's tasks. Morrison & Foerster was duty bound to review the Kroll Report as part of its obligations as underwriter's counsel.

30. Despite these obligations, no one at Morrison & Foerster ever responded to Macquarie concerning any aspect of the Kroll Report, including the information referred to in paragraph 28 above, which information was inconsistent with Puda's statements regarding its ownership of Shanxi Coal. Had its attorneys reviewed the Kroll Report with the appropriate level of professional care, they immediately would have reacted to the revelations regarding Shanxi Coal's ownership. Morrison & Foerster's failure to review and/or react to the Kroll Report itself constituted legal malpractice.

31. Indeed, just the day before receiving the Kroll Report, Morrison & Foerster was actively engaged in revising the opinion letter from Puda's Chinese law firm that itself attested to Puda's purported 90% ownership of Shanxi Coal. Morrison & Foerster was therefore in a unique position to react to the information referred to in paragraph 28 above as it knew that the ownership issue was critical, and that the opinion letter from the Chinese firm on that issue was necessary for Macquarie to proceed with underwriting the Offering. Nonetheless, Morrison & Foerster either ignored or failed to react to the contradictory information it received the very next day.

32. Prior to the closing of the Offering, Morrison & Foerster had several additional opportunities to sound the alarm concerning Puda's misstatements. Those opportunities included, among other things, bring-down due diligence calls, repeated communications with the Macquarie deal team both by phone and over email, and its review of Puda's draft Prospectus

and the draft press release announcing the Offering that incorrectly identified Shanxi Coal as a 90% subsidiary of Puda.

E. Morrison & Foerster's False Opinion Letter

33. The culmination of Morrison & Foerster's work on the Offering, and provision of legal advice in connection therewith, was its issuance of the Opinion Letter, also known as a negative assurance letter or 10b-5 opinion, confirming its diligence findings and its comfort with the contents of the Prospectus and Registration Statement. As Morrison & Foerster was well aware, Macquarie would not proceed with underwriting the Offering without a negative assurance letter from counsel, and it is essential that the letter be accurate to assure underwriters that the proper legal due diligence has been completed. Morrison & Foerster knew and intended that Macquarie, as underwriter for the Offering, would rely on the Opinion Letter.

34. In the Opinion Letter, Morrison & Foerster stated, among other things, that: "nothing has come to our attention" that caused Morrison & Foerster to believe that the Registration Statement or Prospectus "contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein . . . not misleading." In fact, as explained above, Puda's lack of *any* ownership interest in Shanxi Coal was discoverable by legal professionals such as those at Morrison & Foerster had they reviewed the operative corporate and governmental records. However, having failed to competently carry out its due diligence duties, Morrison & Foerster proceeded to issue the false Opinion Letter.

35. The Opinion Letter itself was addressed to "Macquarie Capital (USA) Inc. as Representative of the several Underwriters," and Morrison & Foerster knew and intended that Macquarie would rely on the Opinion Letter. Not only did Morrison & Foerster provide negative

assurance to Macquarie by way of the Opinion Letter but, in addition, Morrison & Foerster affirmatively represented to Macquarie that the firm had completed the work necessary in order to form its opinion. At no time did Morrison & Foerster inform Macquarie that Morrison & Foerster had failed to (i) request the official ownership records relating to Shanxi Coal and (ii) read and/or react to the Kroll Report. Nor did Morrison & Foerster otherwise raise any issue as to the ownership of Shanxi Coal. Had Morrison & Foerster competently performed its duties as underwriter's counsel and alerted Macquarie to the ownership issues within Puda, Macquarie would not have underwritten the Offering, which caused injury to Macquarie.

Post-Offering Events

A. Uncovering of Puda's Fraud in 2011

36. Subsequent to the Offering, Puda's fraud was uncovered and made public by the financial press in April of 2011. Thereafter, the value of Puda's stock dropped precipitously, and by September 22, 2011, Puda was de-listed from the New York Stock Exchange.

B. Suit Against Macquarie by Investors

37. On April 15, 2011, just days after the public revelation of the Puda fraud, a class action complaint was filed in the Southern District of New York, Civil Action No. 11-CIV-2598 (the "Southern District Action"), which included claims against Macquarie for violations of sections 11 and 12(a)(2) of the Securities Act and eventually added a claim against Macquarie for violation of section 10(b) of the Securities Exchange Act. The Southern District Action was later consolidated with other similar investor actions and currently is pending before the Honorable Denise Cote. In connection with defending against the allegations in the Southern District Action, Macquarie has paid significant legal fees and related costs and, as the case currently remains pending, is exposed to a potential adverse judgment and an attendant award of

damages for the putative plaintiff class, as well as costs and certain payments associated with related investigations.

38. Macquarie has incurred and will continue to incur liability as a result of Morrison & Foerster's failure to carry out its duties to Macquarie as underwriter's counsel, including its negligent failure to uncover Puda's ownership fraud in its legal due diligence related to the Offering.

CAUSE OF ACTION
(Legal Malpractice)

39. Macquarie repeats and realleges each and every allegation contained above as if fully set forth herein.

40. Morrison & Foerster, a law firm hired to represent Macquarie, provide Macquarie with legal advice in connection with the Puda Offering, and conduct due diligence on Macquarie's behalf as underwriter's counsel for the Puda Offering, failed to exercise the care, skill, and diligence commonly possessed and exercised by members of the legal profession in negligently and incompetently conducting the legal due diligence it had undertaken in connection with the Offering.

41. Morrison & Foerster also failed to exercise the care, skill, and diligence commonly possessed and exercised by members of the legal profession in submitting the Opinion Letter at the Offering's closing and affirmatively representing to Macquarie that Morrison & Foerster had completed the work necessary in order to form its opinion.

42. Morrison & Foerster's incompetent due diligence, and false assurances to Macquarie, constituted legal malpractice.

43. Morrison & Foerster's issuance of the Offering's formal Opinion Letter, and its failure to otherwise advise Macquarie of any issues regarding Puda's stated ownership of Shanxi

Coal, constituted legal malpractice. Indeed, the Opinion Letter stated that nothing had come to Morrison & Foerster's attention that caused it to believe the Prospectus contained an untrue statement of material fact, including Puda's statements regarding its ownership interest in Shanxi Coal, notwithstanding that Morrison & Foerster knew of, or should have known of, documents explicitly stating that Puda's ownership interest in Shanxi Coal was not what Puda purported it to be.

44. Morrison & Foerster's failure to perform the task it was hired to perform (*i.e.*, *inter alia*, conduct due diligence on Puda) constituted legal malpractice.

45. As a direct and proximate result of Morrison & Foerster's legal malpractice, Macquarie has suffered actual damages, including costs and fees associated with defending the Southern District Action, and costs and certain payments associated with related investigations, as well as potential liability in the Southern District Action given the pendency of the action, in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully demands judgment against Defendant as follows:

- (a) Awarding Plaintiff actual damages in an amount to be determined at trial (plus prejudgment interest), including, but not limited to, costs and fees associated with defending, as well as any damages or settlement costs that may be incurred in, the Southern District Action, and costs and certain payments associated with related investigations;
- (b) Awarding Plaintiff its costs, expenses, and reasonable attorneys' fees in connection with this action; and

(c) Awarding Plaintiff such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: New York, New York
March 26, 2015

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP

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