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

MARC POSTELNEK, AS TRUSTEE OF THE MABEL ABRAMSON IRREVOCABLE TRUST #2, HOPE RATNER, MARY JANE FALES, BRIAN A. LILES, AS TRUSTEE OF THE BRIAN A. LILES LIVING TRUST, and STEVEN L. KEENHOLTZ, M.D., Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

ANTHONY E. MALKIN, PETER L. MALKIN, THOMAS N. KELTNER, JR. and MALKIN HOLDINGS L.L.C.,

Defendants.

Index No. 654456/2013
Part 49 (Hon. O. Peter Sherwood)

CONSOLIDATED CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Marc Postelnek, as Trustee of the Mabel Abramson Irrevocable Trust #2, Hope Ratner, Mary Jane Fales, Brian A. Liles, as Trustee of the Brian A. Liles Living Trust, and Steven L. Keenholtz, M.D., by their undersigned counsel, hereby bring this action on behalf of themselves and all persons or entities who held participations (or fractional interests therein) (the "Participants") in Empire State Building Associates, L.L.C. ("ESBA") as of October 1, 2013 (the "Class"). Plaintiffs bring suit for breaches of fiduciary duty and unjust enrichment against Defendants Anthony E. Malkin, Peter L. Malkin, Thomas N. Keltner, Jr., and Malkin Holdings L.L.C. ("Malkin Holdings," and together with the other Defendants, the "Malkins").

Plaintiffs allege the following based upon personal knowledge as to themselves and their own acts and upon information and belief as to all other matters. Plaintiffs' information and belief is based on, *inter alia*, the independent investigation of their counsel. This investigation

included, but was not limited to, a review and analysis of (i) ESBA's public filings with the Securities and Exchange Commission ("SEC"); (ii) letters sent from Defendants to Class members; (iii) discussions with and investigations of individuals with personal knowledge of pertinent events; (iv) consultation with financial experts; and (v) other publicly available material and data identified herein. Counsel's investigation into the factual allegations contained herein is continuing, and many of the relevant facts are known only to the Defendants or are exclusively within their custody or control. Plaintiffs believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for further investigation or discovery.

INTRODUCTION

1. This class action lawsuit is brought on behalf of the former passive investors in ESBA, known as the Participants. Plaintiffs are five of more than 2,800 investors in ESBA, a New York limited liability company that, at all relevant times, owned the Empire State Building (or "ESB"). As noted above, Plaintiffs seek relief for breaches of fiduciary duty and unjust enrichment by the individuals and entity that controlled the Empire State Building, namely Defendants Anthony E. Malkin, Peter L. Malkin, Thomas N. Keltner, Jr., and Malkin Holdings L.L.C.

2. As of June 2013, the Malkins were poised to complete a transaction that would provide them with hundreds of millions of dollars in unique and personal benefits not shared with the Participants. Specifically, the Malkins were on the verge of completing a roll-up of the iconic Empire State Building with 17 other Malkin-controlled properties into a real estate investment trust ("REIT"), which would then issue shares to the public through an initial public offering ("IPO"). As discussed below, the roll-up transaction (the "Consolidation") and related

IPO promised the Malkins a wide range of unique benefits, worth hundreds of millions of dollars in value, that would not be shared with their investors.

3. Beginning in June 2013, numerous interested bidders made premium all-cash offers for the Empire State Building and ESBA, threatening to derail the Malkins' favored deal. The Malkins spurned the all-cash premium offers to acquire the Empire State Building as a stand-alone property even though they knew or had reason to know that the prices offered by the bidders were hundreds of millions of dollars greater than the value that the Participants would achieve through the IPO. By refusing to legitimately entertain these offers, the Malkins unjustly enriched themselves at the expense of the Participants, whose interests the Malkins were required by fiduciary duty to safeguard and promote.

4. Before creating the REIT, the Malkins controlled a group of 18 separate buildings located in New York City and surrounding areas. Three of them, including the ESB, were acquired years ago through the issuance of securities that did not trade over a public exchange. The Malkins privately held and controlled the remaining 15 properties. In November 2011, the Malkins unilaterally determined to pursue a consolidation of all 18 properties into a REIT called the Empire State Realty Trust, Inc. ("ESRT"), which was to be listed on the New York Stock Exchange (the "NYSE").

5. The Consolidation and IPO provided the Malkins with a multitude of unique personal benefits that were not shared by the Participants. Among other things, the Malkins stood to garner approximately $143 million in so-called "override interests" by proceeding with the transaction, which were not shared with Participants. The transaction also provided the Malkins with a unique opportunity to liquidate their holdings in 17 of their other, inferior properties at values enhanced by their association with the iconic Empire State Building.

Indeed, the Malkins stood to receive more than $730 million worth of stock through the IPO – a sum that vastly exceeded the value of their holdings in the ESB or other properties in isolation.

6. By late May 2013, the Malkins had procured consent for the IPO plan from 80 percent of the Participants– a prerequisite for proceeding with the REIT. However, as noted above, beginning in June 2013, a threatening obstacle to the Malkins' preferred transaction emerged: a series of premium all-cash offers started rolling in for the Empire State Building and the ESBA. The ESBA was the specific entity in which the Participants held their interests, and it controlled the fee title and "master lease" to the Empire State Building. As such, it was the most valuable component of the Empire State Building ownership structure. Although the Malkins controlled its management, they held a minority share of the ESBA equity.

7. Between June and September 2013, as many as five prominent real estate developers submitted unsolicited eight offers for the Empire State Building, with bids topping $2.3 billion. In September 2013, Thor Equities submitted a $1.4 billion offer to acquire the ESBA alone. Significantly, as explained below, the all-cash offer for the ESBA was ***$200 million greater*** than the "exchange value" that the Malkins themselves allocated to the ESBA in the IPO, and several hundred million dollars greater than the consideration that the Participants actually received in the IPO when it launched.

8. The Malkins had a fiduciary obligation to evaluate, in good faith, any *bona fide* value maximizing offer for the benefit of ESBA Participants. Yet they faced a conflict of interest in light of their strong personal incentives to keep the ESB as part of the REIT. Indeed, the Malkins could never take their other 17 properties public without the ESB included in the REIT. And without the IPO of the ESB and the other 17 properties, the Malkins could not receive approximately $143 million in "override" interests, the $730 million in ESRT stock they stood to receive through the IPO, and other financial benefits set forth herein.

9. Acting to further their personal interests, the Malkins pursued the IPO at the expense of the ESBA Participants. Though the offers for the ESB came from experienced and well-financed investors, and would yield the ESBA Participants materially more than they were expected to realize in the IPO, the Malkins never seriously or in good faith considered any of the offers. None of the Defendants or their representatives ever engaged in meaningful discussions with any of the third-party bidders. For example, the Malkins never inquired, much less determined, whether any of the bidders were willing to further increase their bids, how much they were willing to pay as a down payment, or what assurances they could provide as to their ability to close.

10. On September 19, 2013, the Malkins peremptorily rejected the premium all-cash offers for the Empire State Building and the ESBA, thereby precluding an emerging bidding war that would have inured to the benefit of the Participants, but would not have enriched the Malkins as much as the IPO. After rejecting Thor's $1.4 billion offer for ESBA, the Malkins went so far as to publicly state in a September 19, 2013 letter that they "will ***not*** entertain any additional alternatives" – regardless of how much value they offered the Participants. In other words, rather than seeking to maximize value for the Participants, as their fiduciary duties required, the Malkins did the exact opposite: they aborted an escalating, all-cash bidding war that was driving the price of the Participants' units upward, greatly in excess of the consideration the Participants were to receive upon consummation of the REIT.

11. On the same day that the Malkins rejected Thor's $1.4 billion all-cash offer for the ESBA, they announced that the REIT shares would be priced between $13 and $15 in the IPO. Significantly, the $13 price point resulted in a total value for ESBA units of approximately $800 million – ***or nearly $600 million less*** than Thor's $1.4 billion offer that the Malkins had rejected that very day as inadequate. The $13 per share IPO price also resulted in a

valuation for the entire Empire State Building of $1.59 billion – several hundred million dollars less than the all-cash offers that the Malkins had recently rebuffed.

12. Confirming their bad faith, the Malkins launched the IPO on October 1, 2013. The IPO priced at $13 per share, the very bottom of the previously announced valuation range, resulting in value to Participants far below the offers that the Malkins had rebuffed just weeks prior. Plaintiffs, on behalf of themselves and other similarly situated ESBA Participants, now bring this action against the Malkins for breach of fiduciary duty and unjust enrichment.

THE PARTIES

13. Plaintiff Marc Postelnek, as Trustee of the Mabel Abramson Irrevocable Trust #2, was a Participant in ESBA whose units were converted into shares of ESRT upon consummation of the IPO.

14. Plaintiff Hope Ratner was a Participant in ESBA whose units were converted into shares of ESRT upon consummation of the IPO.

15. Plaintiff Mary Jane Fales was a Participant in ESBA whose units were converted into shares of ESRT upon consummation of the IPO.

16. Plaintiff Brian A. Liles, as Trustee of the Brian A. Liles Living Trust, was a Participant in ESBA whose units were converted into shares of ESRT upon consummation of the IPO.

17. Plaintiff Steven L. Keenholtz, M.D. was a Participant in ESBA whose units were converted into shares of ESRT upon consummation of the IPO.

18. Defendant Anthony E. Malkin is an individual with a business address at One Grand Central Place, 60 East 42nd Street, New York, New York 10165. Mr. Malkin is currently Chairman, Chief Executive Officer and President of ESRT. Prior to the IPO, Anthony Malkin was President of Malkin Holdings, L.L.C. and, as one of three Agents for the Participants, held

record title to a one-third ESBA membership interest in a strictly nominal and fiduciary capacity for the Participants.

19. Defendant Peter L. Malkin is an individual with a business address at One Grand Central Place, 60 East 42nd Street, New York, New York 10165. Mr. Malkin (Anthony Malkin's father) is currently Chairman Emeritus of ESRT. Prior to the IPO, Mr. Peter Malkin was a principal of Malkin Holdings, L.L.C. and, as one of three Agents for the Participants, held record title to a one-third ESBA membership interest in a strictly nominal and fiduciary capacity for the Participants.

20. Defendant Thomas N. Keltner, Jr. is an individual with a business address at One Grand Central Place, 60 East 42nd Street, New York, New York 10165. Mr. Keltner is currently Executive Vice President, General Counsel and Secretary of ESRT. Prior to the IPO, Mr. Keltner was general counsel to Malkin Holdings, L.L.C. and, as one of three Agents for the Participants, held record title to a one-third ESBA membership interest in a strictly nominal and fiduciary capacity for the Participants.

21. Defendant Malkin Holdings L.L.C. is or was a limited liability company organized under the laws of the State of New York law having a principal place of business at One Grand Central Place, 60 East 42nd Street, New York, New York 10165. Prior to the IPO, Malkin Holdings L.L.C. provided various management and administrative services to ESBA along with the other public and private companies owning the now consolidated properties. Malkin Holdings acted as supervisor of the Consolidation and IPO, and it directed all aspects of the solicitation of investor consents thereto, including those of Plaintiffs and the ESBA Participants. To the extent that Malkin Holdings L.L.C. has been formerly dissolved, it or its former members remain liable under New York law for the claims herein asserted because such

claims existed at the time of such dissolution, and Plaintiffs, on behalf of themselves and similarly situated ESBA Participants, reserved all rights in such claims.

JURISDICTION AND VENUE

22. This Court has personal jurisdiction over the Defendants pursuant to CPLR §§301 and 302.

23. Venue is proper in New York County under CPLR §503 because one or more of the parties resides in this county. All Defendants maintain a principal place of business in this county, and a majority of the acts and transactions described herein occurred wholly or in substantial part within New York County.

ALLEGATIONS

A. The Malkins Acquire Control Of The Empire State Building By Raising Capital From The Participants

24. For many years, the ESB had a two-tiered ownership structure. The ESBA owned both fee title and the tenant's position in a long-term master lease. Another company called Empire State Building Company ("ESBC") owned the tenant's interest in a long-term operating sublease, under which ESBA was landlord.

25. In August 1961, Lawrence A. Wien, Harry B. Helmsley and Defendant Peter Malkin acquired control of the ESB by purchasing the master lease. To fund a portion of the purchase price, Wien raised $33 million from approximately 2,800 largely unsophisticated real estate investors (*i.e.,* the Participants), each of whom paid $10,000 per ESBA unit or $5,000 for one-half unit.

26. ESBA was originally organized as a New York general partnership among three equal partners, Lawrence Wien, Henry W. Klein and Peter Malkin (Wien's son-in-law). The partners called themselves "Agents" because they held their respective one-third partnership

interests in ESBA strictly as fiduciary nominees on behalf of the Participants. Indeed, prior to the IPO, the Agents owned only approximately 8 percent of the membership interests of ESBA by virtue of actual ownership of ESBA Participations.

27. The largest equity holder of ESBC was the Estate of Leona Helmsley (the "Helmsley Estate"), the estate of the wife of deceased real estate scion Harry B. Helmsley, which owned 63.75 percent of the ESBC. The Malkins controlled an approximately 23.75 percent interest in ESBC. As operating lessee of ESB, ESBC managed and ran the day-to-day operations of the ESB. Though the Helmsley Estate owned a majority interest in ESBC, as a result of ten years of acrimonious litigation between the Malkin and Helmsley interests, the Malkins have exerted *de facto* operational control over the ESB and have managed the ESB for many years, deriving substantial fees therefrom.

28. By virtue of the ownership structure outlined above, the Participants were passive investors in the ESBA. As such, the Participants entirely relied on the Malkins to faithfully operate the ESB and make decisions about its ultimate disposition. In so doing, the Participants relied upon the Malkins to adhere to their fiduciary duties and maximize the value of the Participants' investments.

B. The Consolidation And IPO Provide The Malkins With Hundreds Of Millions Of Dollars In Unique Personal Benefits At The Expense Of The Participants

29. In 1997, Harry Helmsley died, commencing a nine-year struggle for control of the Empire State Building between (i) Peter and Anthony Malkin and (ii) Helmsley's widow Leona and his former business partners at Helmsley-Spear. In 2006, the Malkins wrested control of the management of the Empire State Building from Helmsley-Spear.

30. In August 2007, Leona Helmsley died. Pursuant to the terms of her will, the Helmsley Estate was required to liquidate the estate's interests in the Empire State Building and

contribute the proceeds to charity. The direct sale of the Helmsley Estate's interest in the Empire State Building threatened to transform the building's ownership structure and impact the Malkins' control of the property, as well as curtail their ability to extract significant benefits in connection with any large-scale liquidation or disposition.

31. To avoid this threat to their personal interests, the Malkins devised an alternative to the liquidation of the Helmsley Estate's interest. Specifically, they decided to contribute the Empire State Building to a REIT that would also contain numerous other Malkin-controlled properties, and then take the REIT public through a public offering. Thus, on November 29, 2011, the Malkins disclosed in an SEC Form 8-K that they had decided to consolidate 18 separate Malkin-controlled properties, including the ESB, into a publicly traded REIT.

32. The proposed Consolidation and public offering represented a golden opportunity for the Malkins to appropriate enormous value from the Participants and other investors to themselves, while allowing the Helmsley Estate to monetize its interests in the building.

33. *First*, the Malkins could leverage the Empire State Building's landmark status to boost the value and marketability of their other properties that were to be included in the Consolidation and IPO. In addition to their interests in the Empire State Building, the Malkins controlled a portfolio of other inferior commercial and retail properties in the New York Metro area, including:

a. Manhattan (Broadway) – 1333 Broadway, 1350 Broadway, 1359 Broadway, 501 Seventh Avenue;

b. Manhattan (Grand Central) – One Grand Central Place;

c. Manhattan (Columbus Circle) – 250 West 57th Street;

d. Manhattan (Other) – 10 Union Square East, 1010 Third Avenue, 77 West 55th Street, The Gotham (1542 Third Avenue);

e. Westchester County, New York – 10 Bank Street, 500 Mamaroneck Avenue; and

f. Fairfield County, Connecticut – First Stamford Place, Merritt View, Metro Center, 69-97 Main Street, 103-107 Main Street.

34. All of the above properties were to be rolled into the REIT along with the Empire State Building. Packaging the Malkins' inferior properties with the Empire State Building in a REIT would allow these other properties to siphon off some of the goodwill associated with the iconic 102-story tower. The "halo" effect associated with the roll-up is highlighted by the REIT's name – the Empire State Realty Trust. According to a list of REITs compiled by the National Association of REITs, there is not a single other REIT named after an individual building.

35. *Second*, the IPO would allow the Malkins to liquidate their otherwise illiquid real estate portfolio. This is because, upon consummation of the IPO, the Malkins' holdings in these 17 different properties would be converted into shares of a publicly-traded REIT. In effect, the Malkins saw an opportunity to "cash out" of all their real estate holdings in one fell swoop, while maintaining control and management fees going forward.

36. *Third*, the Malkins could benefit from the Consolidation and IPO by allocating hundreds of millions of dollars' worth of lucrative "override interests" and management fees to themselves. The override interests were essentially a profit sharing arrangement between the Malkins, the Participants and certain investors in the Malkins' other properties. Pursuant to the override interests, in the event of a sale, disposition or financing of the subject property – which the Malkins determined included the IPO – the Malkins were entitled to receive a percentage of the proceeds distributed to each participant in excess of their original capital contribution.

37. In connection with the IPO, the Malkins stood to receive an approximate total exchange value of ***$304 million*** in override interests, consisting of $161 million in override

interests attributable to the Empire State Building and $143 million in override interests attributable to the other Malkin-controlled properties consolidated into the REIT. None of the $143 million in override interest payments attributable to the other properties would have happened had the ESB been sold prior to the IPO, thus making the IPO of the other properties impossible.

38. In addition to hundreds of millions of dollars in override interests, the Malkins also allocated approximately $15 million of additional value to Malkin Holdings, L.L.C., Malkin Properties and Malkin Construction Corp. – three management and supervisory companies under their control – in connection with the IPO.

39. *Fourth*, as a result of similar benefits the Malkins derived from the liquidation of all the consolidated properties, the Malkins stood to receive a total of more than $730 million worth of ESRT stock though the IPO – a sum far larger than they would have received if the ESB were sold by itself, even at significantly higher values than the IPO.

40. *Finally*, defendants Anthony Malkin and Peter Malkin stood to enjoy significant compensation, in the form of salary, annual and long-term performance based bonuses and stock options, contingent on their plan to complete the IPO, and become Chairman, CEO and President and "Chairman Emeritus" of ESRT, respectively.

C. The Malkins Solicit Approval Of The Consolidation And IPO

41. The Participation Agreements setting forth the rights of the Participants prohibit consolidating ESBA into a real estate investment trust (or any other type of organization other than a partnership) without the consent of 100 percent of the ESBA Participants. Thus, in January 2013, the Malkins began to solicit the Participants' approval of the Consolidation and IPO.

42. To solicit Participant approval, the Malkins filed with the SEC several iterations of a Form S-4 Registration Statement, which was ultimately declared effective by the SEC on December 21, 2012. On January 21, 2013, the Malkins also filed ESRT's Prospectus/Consent Solicitation Statement (the "Prospectus") touting their planned Consolidation and IPO. The Malkins retained Duff & Phelps to value each of the properties to be consolidated. Based on this value, each property then received a so-called "exchange value" in the IPO, generally equal to its free-and-clear value, less the debt encumbering the property. Based on this exchange value, each unit of interest in the property also received an exchange value. The Registration Statement and Prospectus provided that the appraised value of the Empire State Building was approximately $2.53 billion as of June 30, 2012.

43. This appraisal, in turn, yielded an "exchange value" of between $323,800 and $358,670 for each ESBA Participation, depending upon whether the ESBA Participant had previously granted Malkin Holdings an override interest. Based on these valuations, the Malkins represented to Participants that the Consolidation and IPO were part of a plan to "increase the value of [the Participants'] investment."

44. Notably, however, the stated exchange values did not reflect the actual value of the ESRT securities that ESBA Participants stood to receive in the Consolidation and IPO. This was because the public markets do not value REIT securities based on the appraised values of the properties comprising the REIT. Rather, the public markets value REIT securities based on a variety of other valuation metrics, such as dividend yield rates and fund-from-operations multiples. Further, Participants' REIT shares were subject to a lock-up agreement, which provided that Participants may not sell their shares for six months, and then may sell only half their stake, and must wait a full year from the date of the IPO to cash out the balance. During

the restricted period, Participants were subject to the risks of the marketplace, which required a significant discount to the price of the ESRT shares that they were slated to receive.

45. The Registration Statement provided that the consummation of the Consolidation was conditioned on: (i) the closing of the IPO and the listing of the stock on the NYSE; (ii) ESBA and ESBC's participation in the Consolidation, and (iii) the closing of the Consolidation no later than December 31, 2014.

46. For the avoidance of doubt, the Malkins admitted in the Registration Statement that they owed a "fiduciary duty" to ESBA Participants, along with "duties of loyalty and due care," and were required to "exercise good faith and fair dealing," in their capacities as Agents and supervisors of the ESB. Specifically, the Registration Statement provided that:

> The agents hold their membership interests in [ESBA] as agents for the participants in their respective participating group. The agents for each participating group ***are fiduciaries for the participants*** in their respective participating group and ***owe such participants a duty of loyalty and a duty of care***, *and* ***are required to exercise good faith and faith dealing*** in conducting the affairs of [ESBA] in which they hold membership interests. The operating agreement of [ESBA] appoints [Malkin Holdings] to provide supervisory and other services for [ESBA]. ***[Malkin Holdings] is accountable to [ESBA] as a fiduciary and owes [ESBA] a duty of loyalty and a duty of care. [Malkin Holdings] is required to exercise good faith and fair dealing*** in providing supervisory and other services. ***[Malkin Holdings'] fiduciary duty to [ESBA] also runs to the participants,*** as holders of participation interests in the membership interests of [ESBA]. The operating agreement of [ESBA] does not limit the liability of [Malkin Holdings] in connection with providing supervisory and other services to [ESBA].

(Emphasis added)

47. Indeed, the Malkins' own counsel concluded, after reviewing the relationship between the Malkins and the Participants, that the Malkins owed the Participants a fiduciary duty. In Exhibit A to a letter dated November 2, 2012 that was filed with the SEC, lawyers representing the Malkins from Clifford Chance LLP and Proskauer Rose LLP, opined that:

> ***[W]e are of the opinion that you [the Malkins] could not successfully deny that you had a fiduciary duty to the Participants were the issue properly presented to a New York court applying the internal law of New York State if the consolidation and related initial public offering of Empire State Reality [sic] Trust, Inc. were consummated****.*

48. After disseminating the Registration Statement and Prospectus to Participants, the Malkins engaged in a relentless campaign of harassment to obtain the Participants' votes. Although the process employed by the Malkins to obtain the Participants' consent is not the basis of the claims asserted in this action, it provides context for how the Malkins obtained approval of their favored transaction. Professional telemarketers incessantly called the thousands of ESBA Participants, threatening that if they did not approve the Proposed Consolidation, their Participations would be confiscated for $100 apiece.

49. As noted above, the Participation Agreements prohibit the conversion of ESBA to a REIT without the consent of 100 percent of the Participants. However, the Participation Agreements contain another provision stating in substance that if the Agents obtain the consent of 80 percent or more of the Participants in their group, they may force the buy-out of the dissenting (or abstaining) Participants at a formula, which now calculates to $100 per whole Participation – *i.e.*, hundreds of thousands dollars less than the value of the investment.

50. The Malkins also personally called Participants to assure them that, if they supported the deal, they would receive stock in an amount equal to the exchange values set forth in the Registration Statement. In one such recorded voicemail, Defendant Peter Malkin said:

> Hi … It's Peter Malkin, uh, a voice from the past and an old friend … calling just to follow-up with regard to the consent we're awaiting from you with regard to the proposal to, uh, create a real estate investment trust, uh, which would give you, uh, we think some terrific advantages. Um, the results of it would be that your existing $35,000 interest [i.e., over 3 Participations], uh, in Empire State Building Associates, uh, actually, technically $33,750, uh, would be converted into over $1 million of stock listed on, uh, the exchange, uh, and New York Stock Exchange, um, and, uh, you have the papers.

> I'd be happy to speak to you. Uh, It's Peter Malkin, uh, Larry Wien's son-in-law, and you can get me at my office at 212-850-2650. Um, I'd be happy to answer any question you have. I just want to be sure you know, and that when this program does go forward, in addition to the shares that you would receive, uh, you would receive a bonus distribution of approximately $40,000, uh, and, and I can give you the details on that when we speak. So, once again, Peter Malkin. Uh, best to you, …. Take care.

However, this investor received under $700,000 worth of ESRT stock on the day of the IPO.

51. Ultimately, the Malkins' campaign proved successful. On June 12, 2013, the Malkins announced they had achieved the requisite 80 percent consent level and promptly issued forced buy-out notices to all ESBA Participants who voted against the Consolidation and IPO or abstained. These notices threatened to buy out Participants for $100 if they failed to change their vote and consent to the Consolidation and IPO within ten days of receiving the notice. Thereafter, all or nearly all of the non-consenting ESBA Participants changed their no-votes to yes-votes.

D. Numerous Premium Bids For The Empire State Building Emerge, But The Malkins Refuse To Seriously Entertain Them, In Violation Of Their Fiduciary Duties

52. Six days after the Malkins announced that they had attained the requisite consents to proceed with the Consolidation and IPO, a series of premium, all-cash bids to acquire the ESB began to emerge. Given the unique personal benefits that the Malkins stood to receive through the Consolidation and IPO, the Malkins were conflicted in assessing these bids. Indeed, rather than truly consider these offers, the Malkins summarily rejected them – even though the offers provided greater value for the Participants, whose interests the Malkins were required to protect and prioritize over their own.

53. On or about June 18, 2013, Cammeby's International, through its President, Rubin Schron, offered to purchase the Empire State Building for $2 billion in cash, including a $50 million non-refundable deposit. Under the terms of Cammeby's offer, Mr. Schron agreed

to close the transaction in 90 days, with no due diligence period, and agreed to be responsible for the commission of Cammeby's broker.

54. Cammeby's offer also provided investors critical advantages. Specifically, it granted ESBA Participants the right to exchange their Participations for an ownership interest *in just the ESB*, not in a homogenized mass of 18 buildings, including many far inferior to the iconic ESB. Thus, Cammeby's offered two things the Consolidation did not – immediate cash to those who wanted to cash-out or a continuing undiluted interest in the ESB to those who wanted to remain invested.

55. Mr. Schron is a billionaire and owner of millions of square feet of New York City buildings. He is regarded as a shrewd buyer. Cammeby's offer set off an avalanche of other third-party all-cash offers for the iconic tower from other well-known and reputable New York City real estate owner and developers – precisely the type of situation that should have inured greatly to the benefit of the Participants.

56. Indeed, a few days later, a $2.1 billion all-cash bid emerged from a joint venture between Philip Pilevsky, chairman of Philips International, and Joseph Tabak, CEO of Princeton Holdings. Messrs. Pilevsky and Tabak are also wealthy and well-regarded developers/owners known for their business savvy. As reported by the *New York Daily News*, Pilevsky stated that his investors were prepared to wage a bidding war. Specifically, Pilevsky stated "[t]hese people want this asset badly. If they want something, they'll get it."

57. With news of these multi-billion dollar offers swirling in the press, the Malkins were forced to publicly respond. Rather than meaningfully engaging with these bidders and encouraging a series of escalating offers, however, the Malkins released a terse statement. In a June 24, 2013 letter to ESBA Participants advising them that two unsolicited bids to purchase the ESB had been received, the Malkins stated:

> We consider all matters, including unsolicited offers, consistent with our fiduciary duties, to form a judgment on what action is appropriate. We do not intend to issue a comment until after our review.

58. Downplaying the significance of the newly disclosed, and potentially lucrative alternatives, in their June 24, 2013 letter, the Malkins reiterated the threat of confiscation to dissenting Participants and their unwavering commitment to proceed with the Consolidation and IPO:

> We are proceeding with the necessary steps to prepare for the IPO. In two recently concluded entities, [ESBA] and 60 East 42nd Street Associates LLC, 10-day buyout notices have been sent to non-consenting investors as provided in the organizational documents, and we continue our efforts to assist affected investors to avoid buyout by joining the supermajority consent. Except for the small number of such investors still subject to these notices, no action is needed from any investor at this time.

59. Glaringly absent from the Malkins' June 24, 2013 letter was any reference to the Participants' continuing right to withdraw consents to the Proposed Consolidation – which ran until consents were obtained from 100 percent of the Participants– in order to explore the potential benefits of a cash sale. The ESBA Participants would not hear from the Malkins regarding the third-party bids for another two months.

60. Real estate investors' enthusiasm for the Empire State Building nevertheless continued to build. On June 27, 2013, Joseph Sitt, CEO of Thor Equities, upped the ante by bidding over $2.1 billion in cash for the ESB. Thor Equities' bid – similar to Cammeby's bid – provided an option for ESBA Participants wanting to remain invested to exchange their Participation on a tax-deferred basis for a membership interest in the acquiring entity, which, as with Cammeby's offer, would own only the ESB.

61. On July 2, 2013, Defendant Thomas Keltner, one of the Agents, sent identical form letters to bidders Schron, Sitt and Pilevsky, in which he simply stated, "[w]e are reviewing your proposal and will respond in due course." The Malkins provided no substantive response

whatsoever. The Malkins asked no questions and made no offer to meet or discuss the multi-billion dollars bids they had received.

62. Nonetheless, serious investors continued to make premium all-cash offers for the ESB. On or about July 3, 2013, an investor named Reuven Kahane submitted a bid for the ESB of $2.25 billion all cash. On or about July 12, 2013, Brazil-based investor Moni Shababo offered $2.3 billion all cash for the ESB. Again, however, the Malkins provided no substantive response.

63. As the Malkins knew, if they agreed to sell the Empire State Building as a standalone property, their REIT plan, which facilitated the monetization of many of the Malkins' other controlled properties, would fall apart. The Empire State Building was unquestionably the prized property in the REIT given its iconic status. It also was the financial engine of the REIT, generating 47.1 percent of the REIT's pro-forma revenue in 2012. Without the Empire State Building serving as the REIT's anchor, the REIT would not be nearly as financially attractive to public investors, and there simply would not be sufficient demand for a public offering of the other Malkin properties.

64. Derailing the REIT would, in turn, prevent the Malkins from realizing all the personal and financial benefits noted above (which were not equally shared by Participants). In particular, if the REIT fell apart, the Malkins would lose their ability to collect lucrative override interests on the other properties that would be consolidated with the Empire State Building. While the Malkins may have been able to collect override interests in connection with a sale of the Empire State Building to a third-party, an additional $143 million in override interests, which was attributable to other Malkin properties, was contingent upon consummation of the Consolidation and IPO.

65. Additionally, if the REIT fell apart, the Malkins would need to sell their other properties individually to achieve a comparable level of liquidity. Selling these assets piecemeal would have taken years and significant additional work. Moreover, it was highly likely that the prices at which the Malkins could sell these buildings individually would be lower than the prices they could garner by packaging the buildings together with the iconic Empire State Building. It was much more lucrative and efficient for the Malkins to package these other properties into the REIT, where they would benefit from the "halo" effect of the Empire State Building, and take it public in a single transaction which would yield them $730 million in ESRT stock.

66. In response to the Malkins' silence, on July 24, 2013, Mr. Sitt sent a letter to Defendant Keltner noting the value of REIT stocks was declining and offering to meet to discuss his bid. In his letter, Mr. Sitt stated:

> My offer is now twenty-seven days old and we are awaiting your response. As you know, the rates on the 10-year treasury bond are climbing and REIT stocks have suffered. The Bloomberg REIT Index has declined 11 percent since late May 2013. I am still very much interested in pursuing the acquisition of the Empire State Building.
>
> I am happy to meet to discuss your requirements and find a solution in the best interest of yourself and your investors. Please let me know when you are available to meet.

67. Despite the Malkins' silence, the offers kept coming for the Empire State Building. Having received no substantive response whatsoever, on August 8, 2013, Thor Equities made two new offers: one offer for ESBA's interest – at $1.25 billion – and one offer for only the Helmsley 63.8 percent interest in ESBC – at $557,812,500. Yet again, the Malkins provided no substantive response to these offers.

68. By the end of August 2013, the Malkins' stonewalling of the all-cash bidders and lack of transparency triggered an inquiry from the SEC's Division of Corporate Finance.

Specifically, on August 30, 2013, the SEC sent a letter to Anthony Malkin stating, among other things:

> We note the recent public information in regards to offers to purchase the Empire State Building…. Please advise us whether you plan to consider such current offers after the offering and formation transactions. We may have further comment.

69. The Malkins responded to the SEC inquiry by stating that they had "no current intention" to recommend a sale of the ESB. In a letter dated September 5, 2013, the Malkins wrote the following:

> In response to the Staff's comment, the Company [ESRT] supplementally advises the Staff that certain pre-formation entities have received indications of interest from third parties to purchase the Empire State Building . . . (the "Proposals"). The Proposals were not addressed or submitted to the Company (or its operating partnership). If the proposed purchasers were to amend the Proposals after the offering, the full board of directors of the Company, including the independent director nominees, would have to consider the revised Proposals. The Company cannot speculate as to how the full board of directors would respond to any proposal it may receive after the offering relating to all or any portion of the Company's portfolio, including the Proposals if they were submitted to the Company. In addition, the Company supplementally advises the Staff that management has no current intention to recommend to the Company's board of directors that they sell these assets following the offering, although the board of directors will consider any offers it receives in accordance with their fiduciary duties.

70. On September 6, 2013, the Malkins issued a letter to the ESBA Participants, stating that they had declined to pursue or accept any of the offers thus far made, and disclosing that they had, on ESBA's behalf, previously retained Lazard as advisor to evaluate the offers:

> As fiduciaries, we review all matters concerning the investment groups we serve. In our review…, we engaged [Lazard] as an independent financial advisor. After our review, we have concluded it is in your best interest to proceed with the Consolidation and IPO…

71. The Malkins' perfunctory and self-interested response not only failed to provide the rationale for their rejection of the offers, but it failed to include a copy or summary of Lazard's analysis purportedly supporting the Malkins' refusal to entertain these premium offers.

72. Accordingly, certain Plaintiffs and other ESBA Participants demanded that the Malkins provide a copy of Lazard's report and opinion. In a violation of their fiduciary duties, the Malkins refused – and, to date, have continued to refuse – to disclose Lazard's report and opinion. Lazard's report constitutes an ESBA corporate record which was paid for with ESBA funds, and is directly relevant to Participants' decisions.

73. The Malkins' refusal to disclose the Lazard report was especially opportunistic and disloyal because, at the time that the Participants requested the report, the Participants still had the contractual right to revoke their consents to the Consolidation and IPO. Participants could not exercise that revocation right properly or intelligently without the ability to assess Lazard's analysis. By refusing to provide the Lazard analysis, the Malkins deprived Participants of the ability to make an informed choice as to which option – the IPO or the all-cash offers – would maximize the value of their investments.

74. In response to demands for the Lazard report, the Malkins offered a series of pretextual excuses for why they could not disclose the Lazard report. For example, the Malkins stated in a September 19, 2013 email to an investor that:

a. "Lazard was not engaged to prepare a report for public dissemination…" – in other words, the Malkins did not want the investors to know what ESBA's supposed independent financial advisor concluded was the best course of action for investors;

b. The Lazard report was not disclosed "to protect the confidentiality of the information"– in other words, the advice as to the value of the ESBA could not be shared with ESBA's owners; and

c. The Lazard report had to be withheld "to comply with the federal securities laws"– yet the Malkins failed to offer any reason why disclosure of the Lazard report would violate the law, and, of course, any such assertion is baseless.

75. Despite the Malkins' best efforts to dampen interest, the Empire State Building's many suitors were undeterred. On September 9, 2013, trying to overcome the Malkins' refusal

to entertain any of its previous proposals, Thor Equities extended a third offer to purchase ESBA's interest in the ESB (to which the Malkins had assigned an exchange value of $1.18 billion in the Registration Statement) at the increased purchase price of $1.4 billion. Significantly, Thor's all-cash offer was more than $200 million greater than even the Malkins' own exchange valuation of the ESBA in the IPO.

76. By letter dated September 9, 2013, Thor Equities' $1.4 billion offer was transmitted to counsel for the Malkins, stating:

> Enclosed please find a revised offer from an affiliate of Thor … offering to purchase fee title to the [ESB] (and the Master Lease) from [ESBA] for $1.4 billion. ***This offer is materially greater than the allocated portion of the [ESB] appraised value.***
>
> * * *
>
> ***Given that Thor's offer now well exceeds the exchange value***, … my clients urge Malkin Holdings to give earnest and serious consideration to Thor's offers, as they believe their fiduciary duties compel under the circumstances.
>
> In all events, my clients hereby demand that you furnish them (by delivering to my office) a copy of the report of [Lazard] referenced in Malkin Holdings' September 6, 2013 Form 8-K.

77. Critically, Thor Equities' increased offer also included the option for ESBA Participants to remain invested in the acquiring entity rather than accepting a *pro rata* portion of the purchase price in cash. This was a meaningful benefit to Participants because the Malkins' own projections called for significant increases in distributions payable to the ESBA Participants should the Consolidation be abandoned.

78. In fact, the ESB has experienced strong financial performance. As disclosed in a November 11, 2013 ESRT press release, the ESB Observatory revenue grew 15.7 percent to $33.1 million in the most recent quarter. Moreover, for the nine months ending September 30, 2013, Observatory revenue was $76.7 million, a 12 percent increase over the year-ago period.

Thus, it was a crucial benefit that Thor Equities' offer permitted ESBA Participants to remain invested in just the ESB (in contrast to the Consolidation, which forced Participants to remain invested in a multi-property REIT involving numerous inferior properties).

79. On September 18, 2013, the Malkins filed a Form 8-K with the SEC announcing that consents to the Proposed Consolidation had been received from 100 percent of the ESBA Participants.

80. In short, between June and mid-September 2013, an all-out bidding war had begun to erupt involving 8 unsolicited bids for the ESB from a host of different bidders. All of those bids were received while the right to revoke consents was open – that is, before consents from 100 percent of the ESBA Participants had been obtained.

81. Despite these numerous premium offers, not a single substantive response was offered to any of the bidders by the Malkins. None of the bids was definitively rejected by a communication to the bidder. Not one question was asked of any bidder. Not one inquiry to change a term was made. Not one offer to meet was extended. Not a single telephone call was made to any of the bidders to engage in substantive discussion of the bids.

82. The Malkins' refusal to meaningfully engage with the bidders for the Empire State Building and related ESBA interests, and to instead push forward with their self-interested plan to launch the IPO, evidences a complete disregard for their fiduciary duties.

83. Although not at issue in this lawsuit, the Malkins received and failed to seriously consider additional premium bids for other properties included in the REIT. On July 24, 2013, Andrew Penson of Argent Ventures submitted a bid for 60 East 42nd Street (also known as the Lincoln Building) for $710 million. Mr. Penson's offer was substantially in excess of the $704 million appraised value of the Lincoln Building set forth in the Registration Statement. On October 1, 2013, a company called OticRoyce LLC made an offer for the third publicly held

building, 250 West 57th Street (formerly known as the Fisk Building) for $391,100,000 all cash. OticRoyce LLC's proposed purchase price exceeded 115 percent of the free-and-clear value listed in the Registration Statement for this property. Consistent with their refusal to entertain the premium offers for the ESB and ESBA, the Malkins ignored these offers as well.

84. On September 19, 2013, the Malkins formally snuffed out the bidding war for the ESB and ESBA, summarily ending their consideration of any other offers, regardless of how value-enhancing they might be. That day, the Malkins filed a Form 8-K with the SEC, attaching a copy of their letter of the same date, which set forth certain meritless purported reasons for rejecting Thor's latest offer. The letter further advised ESBA Participants that, "While it is possible that additional proposals will be made, from this point we [*i.e.*, the Malkins] are fully committed to effecting the consolidation and IPO transaction and ***will not entertain any additional alternative***."

85. The Malkins' flat refusal to entertain any additional offers as of September 19, 2013 – no matter how value-enhancing they might be – epitomizes bad faith. Rather than attempting to maximize Participant value, as they were obligated to do, the Malkins told bidders to stay away. Fiduciaries cannot lawfully blind themselves to value maximizing opportunities.

86. The Malkins refused to consider the third-party offers even though there was plenty of time to do so – as stated above, the Registration Statement did not require that the IPO and Consolidation close until the end of 2014. And, of course, merely considering the offers would not have required derailing the Consolidation and IPO. That is, unless acceptable terms were reached and a third-party offer was accepted – whereupon an appropriate at-risk deposit could have been demanded. (As stated above, the initial Cammeby's offer included a $50 million at-risk deposit.)

87. On September 19, 2013, the same day that the Malkins announced they would not consider any value enhancing offers for the Empire State Building, they also announced that the REIT shares would be priced between $13 and $15 in the IPO. Significantly, the $13 price point resulted in a valuation of the ESBA that was far below the value provided by the offers that the Malkins had rejected. In particular, the $13 price point resulted in a valuation for the ESBA interest of approximately $800 million – or nearly $600 million less than Thor's last offer.

88. At the time that the Malkins refused to engage in meaningful discussions with any of the bidders and determined to proceed with the REIT, they knew that the bids they rejected materially exceeded the value Participants were likely to receive in the REIT for several reasons.

89. First, when the Malkins rejected the bids, they knew that the bids provided greater value for Participants than even the Malkins' own "exchange values." In particular, when the Malkins rejected Thor's $1.4 billion bid for the ESBA interests, they knew that this bid materially exceeded the approximately $1.18 billion exchange value assigned to the ESBA interests by the Malkins' own appraisal.

90. Second, as noted above, when the Malkins rejected the bids, they knew that the bids exceeded the actual value that the Participants were likely to receive in the IPO. Although the ESBA Participants were kept in the dark until after their revocation right had expired, the $13 per share IPO price yielded a total value (or consideration actually paid) for the REIT's assets of $2.8 billion, as set forth in ESRT's Form 10-Q filed with the SEC on November 11, 2013. ESBA's share of this consideration, at approximately 28 percent of the REIT, was approximately $804 million – nearly $600 million less than what Thor was prepared to pay for ESBA. Similarly, the $13 per share IPO price meant that the entire Empire State Building was

valued at only $1.59 billion – or $700 million less than the highest all-cash offer that the Malkins had rejected just weeks before. Thus, based on the $13 per share IPO price, Participants received far less in the IPO than third parties were willing to pay in cash.

91. Third, the value Participants would supposedly receive based on the REIT price was itself artificially high. As noted above, Participants' REIT shares are subject to a lock-up agreement. No Participant can cash out for six months, and then for only half his stake; he must wait a year to cash out the balance. During that restricted period, the Participants are not only deprived of the use of their money, they are subject to the vagaries of the marketplace. Indeed, Participants are locked in and unable to sell if any number of value-decreasing events occur, such as if interest rates spike, or a major tenant in the ESB files for bankruptcy, or a property in the REIT suffers significant damage – all of which could cause the REIT shares to decline.

92. This lock up requires a substantial discount to the value of the Participants' interest based on the $13 per share IPO price to provide a meaningful apples-to-apples comparison to Thor's *cash* offer. The lock-up and its attendant risks means that Participants' units were worth substantially less than the $13 per freely tradable share sold to new investors in the IPO, and thus, that their interest was actually worth meaningfully less than the $800 million figure noted above. This illiquidity discount further shows why the third-party offers were worth so much more to Participants relative to what Participants stood to receive in the IPO.

93. On October 1, 2013, the Malkins' two-year quest for a public listing came to fruition. That day, the Malkins priced the REIT at $13 per share – the very bottom of the range – yielding a valuation of the ESBA that was materially below the offers that the Malkins had rebuffed, as noted above. On October 2, 2013, ESRT shares began trading on the New York Stock Exchange.

94. Because of the Malkins' selfish desires to effectuate the Consolidation and IPO, the Participants have been deprived of the opportunity to cash out of their investments at the substantial premiums offered for the Empire State Building and the ESBA.

CLASS ACTION ALLEGATIONS

95. Plaintiffs, all former ESBA Participants whose ESBA participation interests were converted to ESRT common stock and/or Operating Partnership Units ("OPUs") upon consummation of the Consolidation and IPO, bring this action as a class action pursuant to New York Civil Practice Law and Rules 901. As noted above, Plaintiffs bring this action on behalf of themselves and all persons or entities who held participations (or fractional interests therein) in ESBA as of October 1, 2013 (the "Class"). Excluded from the Class are (i) Defendants; (ii) the lineal descendants and spouses of Defendants Peter Malkin, Anthony Malkin and Thomas Keltner, Jr.; (iii) any successor or assign of the individuals or entities identified in (i) to (ii) above; (iv) any entity in which the individuals or entities identified in (i) to (ii) above is a beneficial owner; and (v) any trust in which the individuals or entities identified in (i) to (ii) above is a remainder beneficiary

96. This action is properly maintainable as a class action.

97. The Class is so numerous that joinder of all members is impracticable. The ESBA had thousands of Participants located throughout the United States.

98. There are questions of law and fact that are common to members of the Class and predominate over any questions affecting any individual members. The common questions include, *inter alia*, the following:

(a) Whether Defendants breached their fiduciary duties owed by them to the Plaintiffs and the members of the Class by virtue of their refusal to legitimately entertain premium offers to acquire the Empire State Building and ESBA;

(b) Whether Defendants breached their fiduciary duties owed by them to the Plaintiffs and the members of the Class by publicly stating in the midst of a bidding war that they would not entertain offers for the Empire State Building or ESBA;

(c) Whether Defendants breached their fiduciary duties owed by them to the Plaintiffs and the members of the Class by refusing to disclose the Lazard report;

(d) Whether Defendants breached their fiduciary duties owed by them to the Plaintiffs and the members of the Class by pushing forward with the IPO after receiving the premium offers for the Empire State Building and ESBA;

(e) Whether Defendants engaged in a plan to enrich themselves at the expense of the Participants;

(f) Whether Plaintiffs and the other members of the Class have been damaged by the breaches of duty complained of herein; and

(g) Whether Defendants are liable to Plaintiffs and the Class and, if so, what measure of damages is proper.

99. Plaintiffs' claims are typical of the claims of other Class members and Plaintiffs have no interests that are antagonistic or adverse to the interest of other Class members. Plaintiffs will fairly and adequately protect the interest of the Class.

100. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature.

101. Defendants have engaged in acts and omissions that affect Plaintiffs and all members of the Class alike, and Plaintiffs and the Class have been similarly damaged as a result of such acts and omissions.

102. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications among the members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect

to individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty Against Defendants)

103. Plaintiffs repeat and reallege each and every paragraph above as though fully set forth herein.

104. At all times relevant, Defendants owed Plaintiffs and other members of the Class fiduciary duties of utmost loyalty, fair dealing and due care. Defendants, acting in concert, violated their fiduciary duties owed to the Participants and put their own personal interests ahead of the interests of the Plaintiffs and other Class members, and used their control positions as principals of the supervisor for the purpose of reaping personal benefits at the expense of Plaintiffs and other Class members.

105. At all times relevant, Defendants were obligated to exercise good faith and fair dealing in considering alternative transactions involving the ESB and/or ESBA to maximize Plaintiffs' return on their investment.

106. Defendants have breached their fiduciary duties to Plaintiffs by, *inter alia*, failing to meaningfully consider numerous all-cash premium offers for the Empire State Building and/or ESBA in favor of pushing forward with the IPO; publicly stating in the midst of a bidding war that they would not entertain offers for the Empire State Building; and refusing to disclose the Lazard report, all in order to enable Defendants to reap hundreds of millions of dollars in unwarranted self-dealing benefits for themselves at the expense of Class members.

107. As a result of the Malkins' self-dealing and willful breaches of their fiduciary duties, Plaintiffs and other members of the Class have been damaged in an amount to be proven at trial, but believed to be hundreds of millions of dollars.

SECOND CAUSE OF ACTION
(Unjust Enrichment Against The Malkins)

108. Plaintiffs repeat and reallege each and every paragraph above as though fully set forth herein.

109. Through the wrongful course of conduct and actions complained of herein, Defendants have been and will continue to be unjustly enriched at the expense of Plaintiffs.

110. The circumstances are such that equity and good conscience require Defendants to make restitution to Plaintiffs.

111. By reason of the foregoing, Plaintiffs have been and will continue to be damaged in an amount to be proven at trial, but believed to be hundreds of millions of dollars.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

A. Certifying this case as a class action, certifying the proposed Class, designating Plaintiffs as representatives of the Class, and appointing proposed Co-Lead Counsel as identified herein;

B. On the First Cause of Action, a judgment against Defendants, jointly and severally, in an amount to be determined at trial, but believed to be hundreds of millions of dollars;

C. On the Second Cause of Action, judgment against Defendants, jointly and severally, in an amount to be determined at trial, but believed to be hundreds of millions of dollars;

D. Awarding Plaintiffs pre-and post-judgment interest;

E. Awarding Plaintiffs the costs, expenses and disbursements of this action, including attorneys' and experts' fees and, if applicable, pre-judgment and post-judgment interest;

F. Awarding an incentive award to Plaintiffs for serving as the Class representatives; and

G. Awarding Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, New York
February 7, 2014

MEISTER SEELIG & FEIN, LLP

/s/ *Stephen B. Meister*

Stephen B. Meister
James M. Ringer
Remy J. Stocks
2 Grand Central Tower
140 East 45th Street, 19th Floor
New York, NY 10017
Tel: (212) 655-3500
Fax: (212) 655-3535

Counsel for Plaintiffs Hope Ratner and Mary Jane Fales, and Proposed Co-Lead Counsel for the Class

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

/s/ *John J. Rizio-Hamilton*

Mark Lebovitch
John J. Rizio-Hamilton
Katherine Stefanou
1285 Avenue of the Americas
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444

Counsel for Plaintiff Marc Postelnek, as Trustee of the Mabel Abramson Irrevocable Trust #2, and Proposed Co-Lead Counsel for the Class

BLOCK & LEVITON LLP
Jeffrey C. Block
Jason M. Leviton
Joel Fleming
155 Federal Street
Boston, MA 02110
Tel: (617) 398-5600
Fax: (617) 507-6020

KESSLER TOPAZ MELTZER & CHECK LLP
Lee Rudy
Michael Wagner
Tamara Gavrilova
280 King of Prussia Road
Radnor, PA 19087
Tel: (610) 667-7706
Fax: (610) 667-7056

Additional Counsel for Plaintiff Steven L. Keenholtz, M.D.

Counsel for Plaintiff Brian A. Liles, as Trustee of the Brian A. Liles Living Trust, and Proposed Co-Lead Counsel for the Class

ATTORNEY VERIFICATION

John J. Rizio-Hamilton, an attorney duly admitted to practice law in the State of New York, under penalties of perjury affirms the following:

That deponent is the attorney for the Plaintiffs in this action with offices at 1285 Avenue of the Americas, 38th Floor, New York, New York 10019; that deponent has read the foregoing Consolidated Class Action Complaint and knows the contents thereof; that the same is true to the deponent's own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters believes it to be true; that the reason this verification is made by deponent instead of Plaintiffs is that Plaintiffs are not presently located in the county where the deponent-attorney maintains his office. Deponent further states that the grounds of his belief as to all matters in the Consolidated Class Action Complaint not stated to be upon his knowledge are based upon conversations with the Plaintiffs, other witnesses and a review of writings relevant to this action.

/s/ *John J. Rizio-Hamilton*
John J. Rizio-Hamilton

ATTORNEY VERIFICATION

Stephen B. Meister, an attorney duly admitted to practice law in the State of New York, under penalties of perjury affirms the following:

That deponent is the attorney for the Plaintiffs in this action with offices at 2 Grand Central Tower, 140 East 45th Street, 19th Floor, New York, New York 10017; that deponent has read the foregoing Consolidated Class Action Complaint and knows the contents thereof; that the same is true to the deponent's own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters believes it to be true; that the reason this verification is made by deponent instead of Plaintiffs is that Plaintiffs are not presently located in the county where the deponent-attorney maintains his office. Deponent further states that the grounds of his belief as to all matters in the Consolidated Class Action Complaint not stated to be upon his knowledge are based upon conversations with the Plaintiffs, other witnesses and a review of writings relevant to this action.

/s/ *Stephen B. Meister*
Stephen B. Meister