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1 HULETT HARPER STEWART LLP  
2 BLAKE MUIR HARPER, SBN: 115756  
3 DENNIS STEWART, SBN: 99152  
4 SARAH PICKERAL WEBER; SBN: 239979  
5 550 West C Street, Suite 1600  
6 San Diego, CA 92101  
7 Telephone: (619) 338-1133  
8 Facsimile: (619) 338-1139

6 GOLDMAN, SCARLATO & KARON P.C  
7 MARK S. GOLDMAN  
8 BRIAN D. PENNY  
9 101 West Elm Street, Suite 360  
10 Conshohocken, PA 19428  
11 Telephone: (484) 342-0700  
12 Facsimile: (484) 342-0701

Attorneys for Plaintiff  
[Additional Counsel on Signature Page]

HEINS MILLS & OLSON PLC  
STACEY MILLS  
BRYAN L. CRAWFORD  
BRIAN L. WILLIAMS  
3550 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
Telephone: (612) 338-4605  
Facsimile: (612) 338-4692

06 APR 18 PM 3:43  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CATHERINE CATTIE, on Behalf of Herself  
and All Others Similarly Situated,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

Case No.: 18-cv-0897 BEM CD

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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1 Plaintiff, on behalf of herself and all others similarly situated, by her undersigned counsel,  
2 upon knowledge as to her own acts and upon information and belief as to Defendant and its  
3 actions, bring the following complaint against Defendant Wal-Mart Stores, Inc. (“Wal-Mart” or  
4 the “Company”).

5 **NATURE OF THE ACTION**

6 1. This class action arises out of the misleading advertising and promotion of the  
7 “thread count” of bed linens sold by the Company on its proprietary website, walmart.com.

8 2. Thread count is the number of threads in a square inch of cotton. It is supposed to  
9 be an objective measure of the number of threads per square inch of fabric. There is a universal  
10 expectation that the higher the thread count, the softer and more luxurious the fabric.

11 3. Plaintiff and the members of the Class are consumers residing throughout the  
12 United States who purchased bed linens from Wal-Mart on its website, walmart.com, where the  
13 advertising and packaging stated that the bed linens have a thread count significantly in excess of  
14 the linens’ actual thread count.

15 4. To create the impression that the Company’s store brand bed linens are of better  
16 quality and are more affordable than bed linens manufactured by other brands, Defendant violated  
17 the industry standard for counting threads and guidelines established by ASTM International and  
18 the United States Federal Trade Commission (“FTC”) for reporting thread count.

19 5. Defendant has repeatedly misrepresented the thread count of its store brand bed  
20 linens to Plaintiff and members of the Class.

21 6. By reason of the above-alleged facts, Plaintiff and the Class have sustained  
22 damages in an amount to be proven at trial.

23 7. This Complaint consists of three Counts, alleging violations of the California  
24 Business and Professions Code, Cal. Bus & Prof Code § 17200, *et seq.* and § 17500, *et seq.*, as  
25 well as the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* To the  
26 extent recoverable pursuant to such claims Plaintiff intends to seek all relief permitted by law  
27 including, but not limited to, injunctive relief, damages, disgorgement, interest, restitution,  
28 attorneys’ fees, and expenses.

1 **JURISDICITON AND VENUE**

2 8. This Court has subject-matter jurisdiction over this class action pursuant to the  
3 Class Action Fairness Act of 2005, which amended 28 U.S.C. § 1332 to add a new subsection (d)  
4 conferring federal jurisdiction over class actions where, as here, “any member of a class of  
5 Plaintiffs is a citizen of a state different from any defendant and the aggregated amount in  
6 controversy exceeds \$5,000,000.00, exclusive of interest and costs,” because Plaintiff is a citizen  
7 of New Jersey, whereas Defendant is a Delaware corporation with its principal place of business in  
8 Arkansas, and the amount in controversy exceeds \$5,000,000.00.

9 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because Defendant  
10 resides, transacts business, or is found within this District, and a substantial part of the events  
11 giving rise to Plaintiff’s claims arose here.

12 10. In addition, under the “Terms of Use” of Wal-Mart’s website, under the “General”  
13 subsection, the Company explicitly chose the California Courts as the exclusive jurisdiction for  
14 any action arising out of use of the Company’s commercial website. Specifically, Wal-Mart  
15 stated, “This Agreement shall be governed by and construed under California law without regard  
16 to conflicts of law provisions. Any action or proceeding arising out of or related to this Agreement  
17 or your use of this Site must be brought in the state or federal courts of California and you consent  
18 to the exclusive personal jurisdiction of such courts.”

19 **PARTIES**

20 11. Plaintiff, Catherine Cattie (“Plaintiff” or “Plaintiff Cattie”), is an individual who  
21 purchased “luxury” bed linens from Wal-Mart on its website, walmart.com.

22 12. Defendant Wal-Mart and its subsidiaries operate a chain of stores throughout the  
23 world. Defendant’s stores offer a variety of goods including domestic merchandise and home  
24 furnishings, bed linens, giftware, household items, and health and beauty care items. As of  
25 March 29, 2006, the Company operated more than 3,800 stores in the United States alone and  
26 generated net sales of over \$300 billion in 2006. Wal-Mart’s business began in 1945 when Sam  
27 Walton opened his first variety store in Newport, Arkansas. The Company was later incorporated  
28 in Delaware in 1969. The Company maintains its principal offices at 702 S.W. 8th Street,

1 Bentonville, Arkansas 72716.

2 **CLASS ACTION ALLEGATIONS**

3 13. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil  
4 Procedure 23(a) and (b)(3) on behalf of the Class, consisting of all persons or entities who  
5 purchased store brand “luxury” bed linens on Wal-Mart’s website, which bed linens were  
6 advertised on Wal-Mart’s website and/or packaged as indicating thread counts in excess of the  
7 actual thread counts of the bed linens purchased. Excluded from the Class are Defendant, the  
8 officers and directors of the Company at all relevant times, members of their immediate families  
9 and their legal representatives, heirs, successors or assigns and any entity in which Defendant has  
10 or had a controlling interest.

11 14. The Class is so numerous that joinder of all members is impracticable. While the  
12 exact number of Class members is presently unknown to Plaintiff, and can only be ascertained  
13 through appropriate discovery, Plaintiff believes that there are thousands of members of the Class  
14 geographically dispersed throughout the United States.

15 15. Plaintiff’s claims are typical of the claims of the members of the Class as all  
16 members of the Class are similarly affected by Defendant’s wrongful conduct in violation of the  
17 California Business and Professions Code, as well as the California Consumer Legal Remedies  
18 Act.

19 16. Plaintiff will fairly and adequately protect the interests of the members of the Class  
20 and has retained counsel competent and experienced in class action litigation.

21 17. Common questions of law and fact exist as to all members of the Class and  
22 predominate over any questions solely affecting individual members of the Class. Among the  
23 questions of law and fact common to the Class are:

24 a. Whether the California Business and Professions Code and the California  
25 Consumer Legal Remedies Act were violated by Defendant’s acts and omissions as alleged herein;

26 b. Whether Defendant’s marketing of bed linens on its website, walmart.com,  
27 during the Class Period misrepresented the thread count of bed linens made available for sale on  
28 its website; and

1 c. To what extent the members of the Class are entitled to remedies under the  
2 claims alleged and the extent of those remedies.

3 18. A class action is superior to all other available methods for the fair and efficient  
4 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the  
5 damages suffered by the individual Class members may be relatively small, the expense and  
6 burden of individual litigation make it impossible for members of the Class to individually redress  
7 the wrongs done to them. There will be no difficulty in the management of this class action.

8 **SUBSTANTIVE ALLEGATIONS**

9 19. Defendant Wal-Mart and its subsidiaries operate a chain of stores throughout the  
10 world. Its stores offer a diverse selection of goods from domestic merchandise and home  
11 furnishings, including bed linens, to giftware, household items, and health and beauty care items.  
12 As of March 29, 2006, the company operated more than 3,800 stores in the United States.

13 20. Wal-Mart maintains a website, <http://www.walmart.com>. The website allows  
14 consumers all over the United States to shop for and to purchase goods sold by Wal-Mart.

15 21. One of the menus appearing on the Home page of the website lists a category of  
16 items "For the Home." Clicking this link leads to a sub-menu for "Bed & Bath." This page  
17 contains a menu on the left side of the page, while featured products are showcased down the  
18 center of the page. Among the featured items on this page is the heading, "Our Highest Quality  
19 Sheets Ever," which advises potential customers to "Discover our high-threadcount sheets and feel  
20 true luxury."

21 22. Under this heading and sub-heading are three "luxury" bed linen sets offered for  
22 sale. The first bed linen set is advertised as having "440-Threadcount," the second purportedly has  
23 "550-Threadcount," and the third purportedly has a luxurious "1,000-Threadcount."

24 23. These bed linens are made for Wal-Mart and sold exclusively by Wal-Mart. The  
25 descriptions of these products appearing on Wal-Mart's website are created by the Company for  
26 the explicit purpose of selling these "luxury" bed linens.

27 24. Clicking on links to either the 440, 550, or 1,000 thread count bed linen sets brings  
28 you to a page containing a description of the bed linens being sold, as well as further links to

1 purchase those goods.

2 25. The website description of the “440-Threadcount” bed linens boasts, “this  
3 luxurious bedding provides a lush 440 threadcounts per inch for the ultimate in sleeping comfort.”  
4 Prices for bed linen sets made of this fabric begin at \$59.88 on Wal-Mart’s website.

5 26. The website description of the “550-Threadcount” bed linens boasts, “Made  
6 buttery soft with 550-threadcounts per inch, this top-of-the-line bedding softens with each washing  
7 to create enduring comfort.” Prices for bed linen sets made of this fabric begin at \$89.88 on Wal-  
8 Mart’s website.

9 27. The website description of the “1,000-Threadcount” bed linens states, “This  
10 amazing set provides a plush 1,000 threadcounts per inch, at an unprecedented price.” Prices for  
11 bed linen sets made of this fabric begin at \$99.88 on Wal-Mart’s website.

12 28. Misrepresentations of the advertised thread counts also appear on the packaging  
13 for these products.

14 29. Wal-Mart also sells “non-luxury” bed linen sets from Springmaid© with thread  
15 counts of 350. Prices for these bed linen sets start as low as \$35.64 a set.

16 30. Wal-Mart’s generic “luxury” bed linen sets, described in paragraphs 25-27, have  
17 thread counts that are the same as, or lower than, the “non-luxury” name brand bed linens,  
18 described in paragraph 29, that are sold on Defendant’s website. Defendant, however, sells these  
19 “luxury” sheet sets at prices that are 68% to 280% higher than the “non-luxury” name brand sheets  
20 offered on its website.

21 31. For decades, the common practice in the United States textile bedding industry has  
22 been to count thread, or yarns, as one yarn, regardless of whether the yarn was a single ply or  
23 multi-ply yarn. A multi-ply yarn is one yarn that has been created by twisting two or more yarns  
24 together.

25 32. ASTM International, an international standards writing organization, addressed the  
26 thread count issue in standard D3775-03a, stating that “ends” and “picks” are to be counted as  
27 single units regardless of whether they are comprised of single or plied yarns.

28 33. As reported in the April 2006 edition of *Good Housekeeping* magazine, tests on

1 the bed linens sold exclusively by walmart.com showed that the advertised thread counts were  
2 significantly exaggerated:

3 Did you recently buy bedding from Bed Bath & Beyond, Linens 'n Things, Linen  
4 Source, or Walmart.com? If so, you may be in for a surprise. GH Institute tests  
5 found that some brands sold exclusively at these retailers carry exaggerated thread  
6 counts (the number of threads per square inch of fabric). Of the eight brands we  
7 tested, only one delivered the count it advertised: JCPenney Home Collection.

8 Our textile experts got suspicious because of the prices. High thread count  
9 indicates that a sheet is exceptionally soft and luxurious, which usually means it's  
10 also expensive – but these brands were going for as little as \$149 for a queen-size  
11 set. (The JCPenney line, which did have the 600 count it claimed, was only \$110  
12 for a queen set). How much did the others exaggerate? Bed Bath & Beyond's  
13 Synergy brand boasts a thread count of 1,000 – but our tests found only 368. (All  
14 results were confirmed by an outside lab.) Other offenders: Royal Heritage,  
15 Interiors Sunham Home Fashions, Hotel Fine Linens, The Grand, Distinctive Home  
16 and Regency Collection.

17 34. On information and belief, Wal-Mart has inflated the thread count of the bed  
18 linens it offers on an exclusive basis by counting each “ply” of a thread of yarn as a separate  
19 thread. This has the effect of doubling, tripling, or even quadrupling the actual thread count.

20 35. The misleading representations of thread count, as made by Wal-Mart on its  
21 website, was brought to the attention of the FTC. In an opinion dated August 2, 2005, the FTC  
22 opined:

23 “A representation about thread count, like other objective, material claims about a  
24 product, must be supported by a ‘reasonable basis.’ In determining what  
25 constitutes a reasonable basis for claims, we consider what experts in the field  
26 believe is appropriate, including whether there are relevant consensus based test  
27 procedures, such as an ASTM test procedure, or other widely accepted industry  
28 practices that apply to the matter. If so, we give such procedures or practices great  
weight in determining whether the advertiser has met its substantiation burden.

“Based upon the ASTM standard, as well as the information you have provided  
about standard industry practices with regard to disclosing thread count, we  
believe that consumers could be deceived or misled by the practice of stating an  
inflated thread count, achieved by multiplying the actual count by the number of  
plies within the yarn. A possible non-deceptive way to disclose both the thread  
count and the yarn ply would be to state, for example, ‘300 thread count, 2 ply  
yarn.’ A representation of ‘600 thread count’ for this same product would likely  
mislead consumers about the quality of the product being purchased.”

(emphasis added).





1           42. Defendant's advertisements for "luxury" bed linens containing the same or lower  
2 thread counts as other "non-luxury" bed linens sold on Defendant's website, contain untrue or  
3 misleading statements, and fail to disclose, conceal, suppress or omit material facts, in that the  
4 thread counts are misrepresented and bed linens advertised as "luxury" bed linens are not different  
5 products, and contain the same or lower thread counts as less expensive bed linens sold on  
6 Defendant's website.

7           43. Defendant knew, or in the exercise of reasonable care should have known, that the  
8 statements, representations and omissions set forth in this Complaint were untrue and/or  
9 misleading.

10           44. Defendant's conduct of misrepresenting and overstating the thread count of their  
11 "luxury" bed linens in Defendant's advertising disseminated in California constitutes multiple,  
12 separate violations of Cal. Bus. & Prof Code § 17500 (2006).

13           45. Defendant's conduct in failing to disclose, concealing, suppressing or omitting  
14 material facts, including the true, lower thread count of Defendant's "luxury" bed linens in  
15 Defendant's advertising disseminated in California constitutes multiple, separate violations of Cal.  
16 Bus. & Prof. Code § 17500 (2006).

17           46. Defendant's conduct in overstating the thread counts of its bed linens and  
18 advertising in California its "luxury" bed linens containing the same or lower thread count as less  
19 expensive "non-luxury" bed linens, without disclosing the material fact that the "luxury" bed  
20 linens contained the same or lower thread counts as the "non-luxury" bed linens, and  
21 misrepresenting and failing to disclose, concealing, suppressing or omitting the true, lower thread  
22 count of such bedding, constitutes multiple, separate violations of Cal. Bus. & Prof. Code § 17500  
23 (2006).

24           47. Plaintiff Cattie and members of the Class have been injured in their money or  
25 property as a result of Defendant's false or misleading advertising practices as set forth in this  
26 Complaint.

27           48. As a result of Defendant's false or misleading advertising, Plaintiff Cattie and  
28 members of the Class are entitled to injunctive relief, restitution of all amounts paid for

1 Defendant's "luxury" bed linens, disgorgement, interest, and attorneys' fees and costs, pursuant to  
2 California law.

3 **COUNT 2**

4 **Violations of the California Consumer Legal Remedies Act,**  
5 **California Civil Code Sections 1750, et seq**

6 49. Plaintiff repeats and re-alleges each and every allegation above, as if set forth in  
7 full herein.

8 50. The California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1770(a)(5) and  
9 (7) (2006), provides, in part, as follows:

10 (a) The following unfair methods of competition and unfair or deceptive acts  
11 or practices undertaken by any person in a transaction intended to result or  
12 which results in the sale or lease of goods or services to any consumer are  
unlawful:

13 \* \* \*

14 (5) Representing that goods or services have sponsorship, approval,  
15 characteristics, ingredients, uses, benefits or quantities which they  
do not have . . . .

16 \* \* \*

17 (7) Representing that goods or services are of a particular standard,  
18 quality, or grade, or that goods are of a particular style or model, if  
they are of another.

19 51. Defendant's business practices, in advertising, marketing and selling their "luxury"  
20 bed linens, of misrepresenting and overstating the thread count of their "luxury" bed linens, when,  
21 in fact, the actual thread count of Defendant's "luxury" bed linens is less than as represented by  
22 Defendant, constitute multiple, separate violations of Cal. Civ. Code §§ 1770(a)(5) and (7) (2006),  
23 including:

24 a. Falsely representing that Defendant's "luxury" bed linens have  
25 characteristics, uses, benefits or quantities of threads per square inch, when, in fact, they do not;

26 b. Falsely representing that Defendant's "luxury" bed linens are of a  
27 particular standard, quality or grade, made with fabric of a certain advertised thread count, when in  
28 fact, they are not.

1           52. Defendant's business practices, in advertising, marketing and selling their "luxury"  
2 bed linens, of failing to disclose, concealing, suppressing or omitting material information  
3 concerning the true, lower thread count of their "luxury" bed linens, constitute multiple, separate  
4 violations of Cal. Civ. Code §§ 1770(a)(5) and (7) (2006).

5           53. Defendant's business practices of advertising, marketing and selling other bed  
6 linens containing the same or higher thread counts than the "luxury" bed linens sold on  
7 Defendant's website, while misrepresenting the thread count of such products and concealing,  
8 suppressing or omitting material facts, including the facts that such "luxury" bed linens contain the  
9 same or lower thread counts than the "non-luxury" bed linens sold on Defendant's website,  
10 constitute multiple, separate violations of Cal. Civ. Code §§ 1770(a)(5) and (7) (2006), including:

11           a. Falsely representing that such "luxury" bed linens have characteristics,  
12 uses, benefits, or quantities, including that they are different products and that they contain higher  
13 thread counts than less expensive "non-luxury" bed linens, when, in fact, they do not;

14           b. Falsely representing that such "luxury" bed linens are of a particular  
15 standard, quality, grade or style, including that they are of a higher quality than "non-luxury" bed  
16 linens sold on Defendant's website, or that Defendant's "luxury" bed linens have a higher thread  
17 count, when, in fact, they do not.

18           54. Plaintiff Cattie and members of the Class are consumers, as defined by Cal. Civ.  
19 Code § 1761(d) (2006), in that they purchased "luxury" bedding from Defendant for personal,  
20 family or household purposes.

21           55. Defendant engaged in the unfair or deceptive acts or practices set forth in this  
22 Complaint in transactions intended to result, and which did result, in the sale of goods or services  
23 to consumers, including Plaintiff Cattie and members of the Class.

24           56. Plaintiff Cattie and members of the Class have been injured in their money or  
25 property by Defendant's unfair or deceptive acts or practices set forth in this Complaint.

26           57. As a result of Defendant's violations of Cal. Civ. Code § 1770 as set forth in this  
27 Complaint, Plaintiff Cattie and members of the Class are entitled to injunctive relief.

28           58. Additionally, if Defendant does not respond to Plaintiff's notice pursuant to Cal.

1 Civ. Code § 1982 with corrective action within thirty days of its receipt, Plaintiff and the Class  
2 will also be entitled to their actual damages, or at least one thousand dollars (\$1,000), restitution,  
3 punitive damages, costs and attorney's fees, interest and any other relief the court deems proper,  
4 pursuant to Cal. Civ. Code § 1780(a) (2006) and Plaintiff will amend its Complaint to so allege.

5 **COUNT 3**

6 **Violations of California Business & Professions Code Sections 17200, et seq.**

7 59. Plaintiff repeats and re-alleges each and every allegation above, as if set forth in  
8 full herein.

9 60. California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 (2006),  
10 provides as follows:

11 As used in this chapter, unfair competition shall mean and include any unlawful,  
12 unfair or fraudulent business act or practice and unfair, deceptive, untrue or  
13 misleading advertising and any act prohibited by Chapter 1 (commencing with  
Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

14 61. Defendant's business practices of advertising, marketing and selling their "luxury"  
15 bed linens by misrepresenting and overstating the thread count of those bed linens, are:

16 a. Unlawful, as proscribed by, *inter alia*, California Civil Code §§ 1704,  
17 1710, Cal. Bus. & Prof. Code § 17200 (2006), § 5 of the Federal Trade Commission Act, 15 USCS  
18 § 45, the Consumer Legal Remedies Act, and/or common law fraud, in that Defendant's  
19 advertisements and packaging contain untrue or misleading statements which are known by  
20 Defendant, or which by the exercise of reasonable care should be known, to be untrue or  
21 misleading;

22 b. Fraudulent business practices under Cal. Bus. & Prof Code § 17200, in that  
23 members of the public are likely to be deceived by Defendant's acts and practices into believing  
24 that Defendant's "luxury" bed linens contain the thread count represented by Defendant when, in  
25 fact, they do not;

26 c. Unfair business practices in violation of Cal. Bus. & Prof. Code § 17200,  
27 because they offend the public policy of California, are unethical, oppressive, unscrupulous or  
28 substantially injurious to consumers or, alternatively, the harm caused by Defendant's actions



1 fraudulently took money, including accrued interest, in addition to other unjust enrichment of  
2 Defendant, in an amount to be proven at trial (Counts 2 and 3);

3 E. For interest at the maximum rate allowed by law;

4 F. For costs of suit;

5 G. For Plaintiff to be awarded attorneys' fees and all litigation expenses pursuant to  
6 California Civil Code § 1780(d) and California Code of Civil Procedure § 1021.5. Alternatively,  
7 for all attorneys' fees and all litigation expenses to be awarded pursuant to the substantial benefit  
8 doctrine, the common fund doctrine, or any other provision of law; and

9 H. For such other and further relief as the Court may deem just and proper.

10 **JURY TRIAL DEMANDED**

11 Plaintiff hereby demands a trial by jury on all issues so triable.

12 DATED: April 18, 2006

HULETT HARPER STEWART LLP  
BLAKE MUIR HARPER  
DENNIS STEWART  
SARAH PICKERAL WEBER

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BLAKE MUIR HARPER

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550 West C Street, Suite 1600  
San Diego, CA 92101  
Telephone: (619) 338-1133  
Facsimile: (619) 338-1139

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GOLDMAN, SCARLATO & KARON P.C  
MARK S. GOLDMAN  
BRIAN D. PENNY  
101 West Elm Street, Suite 360  
Conshohocken, PA 19428  
Telephone: (484) 342-0700  
Facsimile: (484) 342-0701

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HEINS MILLS & OLSON PLC  
STACEY MILLS  
BRYAN L. CRAWFORD  
BRIAN L. WILLIAMS  
3550 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
Telephone: (612) 338-4605  
Facsimile: (612) 338-4692

THORNTON & NAUMES LLP  
GARRETT J. BRADLEY  
100 Summer Street, 30th Floor  
Boston, MA 02110  
Telephone: (607) 720-1333  
Facsimile: (607) 720-2445

Attorneys for Plaintiff