

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	x	
In re AMERICAN REALTY CAPITAL	:	Civil Action No. 1:15-mc-00040-AKH
PROPERTIES, INC. LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
_____	x	

DECLARATION OF JAMES S. NOTIS FILED ON BEHALF OF GARDY & NOTIS, LLP
IN SUPPORT OF APPLICATION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES

I, JAMES S. NOTIS, declare as follows:

1. I am partner with the firm of Gardy & Notis, LLP. I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses/charges ("expenses") in connection with services rendered in the above-entitled action.

2. My firm is counsel of record for Robert Shenker, who had sought appointment as lead plaintiff in the action. Mr. Shenker acquired American Realty Capital Properties, Inc. ("ARCP") common stock as part of the stock-for-stock merger between ARCP and Cole Real Estate Investments, Inc. ("Cole"). Plaintiffs' lead counsel in the action assigned my firm work relating to claims that might be pursued in this action on behalf of former Cole stockholders who received ARCP shares in connection with the acquisition of Cole by ARCP during the class period asserted in the action. That work included pursuing an objection to the proposed class action settlement in *Bernice Polage, et al. v. Christopher H. Cole, et al.*, Case no. 24-C-13-006665 (Md. Cir. Ct., Baltimore County) (the "ARCP/Cole Merger Class Action"), which threatened to release certain claims of former Cole stockholders. Among other things, my firm filed and argued an objection to the settlement in the Circuit Court for Baltimore City, Maryland, and an appeal to the Maryland Court of Special Appeals.

3. The information in this declaration regarding the firm's time and expenses is taken from time and expense printouts and supporting documentation prepared and/or maintained by the firm in the ordinary course of business. I am the partner who oversaw and/or conducted my firm's activities in the litigation and I reviewed these printouts (and backup documentation where necessary or appropriate) in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of this

review, reductions were made to both time and expenses in the exercise of billing judgment. As a result of this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

4. After the reductions referred to above, the number of attorney hours spent on this litigation by my firm is 252. A breakdown of the lodestar is provided in Exhibit A. The lodestar amount for attorney time based on the firm's current rates is \$198,931.25. The hourly rates shown in Exhibit A are the usual and customary rates set by the firm for each individual.

5. My firm seeks an award of \$3,574.43 in expenses and charges in connection with the prosecution of the litigation. Those expenses and charges are summarized by category in Exhibit B.

6. The following is additional information regarding certain of these expenses:

(a) Online Legal Research/PACER charges: \$445.06. This category includes charges for Westlaw research and fees for accessing Court files through the PACER system. This expense represents the expense incurred by my firm for use of these services in connection with this litigation.

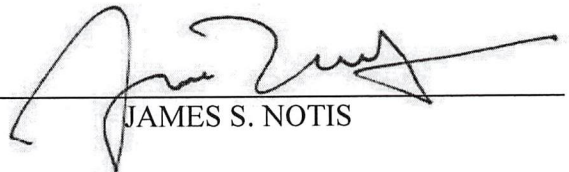
(b) Transportation, Hotels & Meals: \$890.88. In connection with the prosecution of this case, the firm has paid travel expenses for two trips to Maryland (Baltimore and Annapolis) for a Court hearing and for presenting appellate argument in connection with the ARCP/Cole Merger Class Action. The date, destination and purpose of each trip is set forth in Exhibit C.

(c) Appellate Printing/Filing: \$2,238.49. This category lists charges for the cost of printing, filing, and serving the briefs and related papers in connection with the appeal of the settlement and release of the claims in the ARCP/Cole Merger Class Action. The vendors used were Attorneys Appellate Services, Inc. and Towson Copy LLC. This expense represents the expense incurred by my firm for use of these services in connection with this litigation.

7. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from receipts, expense vouchers, check records and other documents and are an accurate record of the expenses.

8. The identification and background of my firm and its partners is attached hereto as Exhibit D.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 10th day of December, 2019, at New York, New York.


JAMES S. NOTIS

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on December 17, 2019, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Debra J. Wyman

DEBRA J. WYMAN

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Mailing Information for a Case 1:15-mc-00040-AKH In re American Realty Capital Properties, Inc. Litigation

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EXHIBIT A

EXHIBIT A

In re American Realty Capital Properties, Inc. Litigation
Civil Action No. 1:15-mc-00040-AKH (S.D.N.Y.)

Gardy & Notis, LLP

Inception through September 30, 2019

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Mark C. Gardy	(P)	8.25	\$875/hr.	\$7,218.75
James S. Notis	(P)	142.75	\$875/hr.	\$124,906.25
Meagan A. Farmer	(P)	80.25	\$725/hr.	\$58,181.25
Jennifer Sarnelli	(P)	1.00	\$725/hr.	\$725.00
Christopher A. Russo	(A)	19.75	\$400/hr.	\$7,900.00
<i>TOTAL</i>		<i>252.00</i>		<i>\$198,931.25</i>

(P) Partner

(A) Associate

EXHIBIT B

EXHIBIT B

In re American Realty Capital Properties, Inc. Litigation
Civil Action No. 1:15-mc-00040-AKH (S.D.N.Y.)

Gardy & Notis, LLP

Inception through September 30, 2019

<i>CATEGORY</i>	<i>AMOUNT</i>
Online Legal Research/PACER	\$445.06
Transportation, Hotels & Meals	\$890.88
Appellate Printing/Filing	\$2,238.49
<i>TOTAL</i>	<i>\$3,574.43</i>

EXHIBIT C

EXHIBIT C

In re American Realty Capital Properties, Inc. Litigation
Civil Action No. 1:15-mc-00040-AKH (S.D.N.Y.)

Gardy & Notis, LLP

Transportation, Hotels & Meals: \$890.88

<i>NAME</i>	<i>DATE</i>	<i>DESTINATION</i>	<i>PURPOSE</i>
James S. Notis	December 12, 2014	Baltimore, MD	Presented objection to the ARCP/Cole Merger Class Action settlement and release
James S. Notis	December 10, 2015	Annapolis, MD	Presented appellate argument regarding the ARCP/Cole Merger Class Action settlement and release

EXHIBIT D

GARDY & NOTIS, LLP
FIRM RESUME

Gardy & Notis, LLP, with offices in New York City and Englewood Cliffs, New Jersey, is a boutique law firm dedicated to representing shareholders in securities class actions, derivative actions, mergers and acquisitions, and consumer class actions. The attorneys at Gardy & Notis, LLP have served as plaintiffs' lead counsel in some of the largest securities class actions and shareholder derivative action recoveries, including *In re BankAmerica Corp. Securities Litigation* (\$156.8 million recovery), *In re Adelphia Communications Corporation Securities and Derivative Litigation* (\$455 million recovery), *In re Waste Management Inc., Securities Litigation* (\$220 million recovery), and *In re UnitedHealth Group Incorporated Derivative Litigation* (\$930 million recovery).

The attorneys at Gardy & Notis, LLP have represented shareholders as lead counsel, co-lead counsel, or played a significant role in numerous high-profile cases in state and federal courts across the country. The firm's representative matters and the biographies of the firm's professionals are set forth below.

Among the more prominent of the securities fraud class actions litigated by the firm's attorneys are:

- *In re BankAmerica Corp. Securities Litigation* (E.D. Mo.) (\$156.8 million recovery);
- *In re Adelphia Communications Corporation Securities and Derivative Litigation* (S.D.N.Y.) (\$455 million recovery);
- *In re Waste Management, Inc. Securities Litigation* (N.D. Ill.) (\$220 million recovery);
- *Rubenstein v. Gonzalez (AbbVie Inc. Securities Litigation)* (N.D. Ill.) (\$16.75 million recovery);
- *Hirsch v. PSS World Medical, Inc.* (M.D. Fl.) (\$16.5 million recovery);
- *Cheney v. Cyberguard Corp.* (S.D. Fla.) (\$10 million recovery); and
- *In re Adaptive Broadband Securities Litigation* (N.D. Cal.) (\$8.2125 million recovery).

The attorneys at Gardy & Notis, LLP also have extensive experience in litigating corporate governance, derivative, bondholder and M&A transactional cases. Our reputation for excellence and creativity in the area of director liability for breach of fiduciary duty and corporate governance are demonstrated by cases such as:

- *In Re Primedia, Inc. Stockholder Litigation* (Del. Ch.) (\$39 million recovery, representing a per-share recovery of approximately \$2.35 per share, or 33% more than the \$7.10 per share price accepted by the board of directors);
- *In re UnitedHealth Group Incorporated Derivative Litigation* (D. Minn.) (\$930 million recovery for stock options backdating);
- *In re Aramark Corporation Shareholders Litigation* (Delaware Court of Chancery) (\$222 million increase in purchase price, and management voting control reduced from 37% to 3.5%);
- *FIC, L.P. v. Bear Stearns Asset Management Inc.* (S.D.N.Y.) (\$18.148 million recovery for hedge fund investors);
- *Danner v. Caesars Entertainment Corporation* (S.D.N.Y.) (\$34.5 million recovery for bondholders alleging violations of the Trust Indenture Act of 1939);
- *In re Orchard Enterprises, Stockholder Litigation* (Del. Ch.) (\$10.75 million recovery to stockholders, representing a 95% increase over the price accepted by the board of directors);
- *In re The Student Loan Corporation Litigation* (Del. Ch.) (\$10 million increase in purchase price, representing an 8.3% increase over the price accepted by the board of directors);
- *In re Sauer-Danfoss, Inc. Stockholder Litigation* (Del. Ch.) (\$10 million recovery to public minority shareholders);
- *Kahn v. Buttner (Value Line, Inc. Derivative Litigation)* (N.Y. Sup. Ct.) (\$2.9 million recovery to public minority shareholders, representing 85% of maximum potential damages, and a 20% increase over the common stock market price);

- *Kahn v. Falcone, et al. (Harbinger Group, Inc. Derivative Litigation)* (Del. Ch.) (\$3.75 million recovery to public minority shareholders); and
- *Lang v. The Reader's Digest Association, Inc.* (Del. Ch.) (\$21 million increase to shareholders in recapitalization).

Gardy & Notis also prosecutes cases across the entire spectrum of consumer rights, consumer fraud, and consumer protection issues. The firm's ability to lead and zealously represent consumers is demonstrated in cases such as:

- *Orlander v. Staples Inc.* (S.D.N.Y.) (Gardy & Notis served as sole lead counsel and obtained a \$3.95 million cash recovery for consumers who bought extended warranty plans);
- *In re Apple iPhone4 Products Litigation* (N.D. Cal.) (Gardy & Notis served as co-lead counsel to a class over 25 million iPhone 4s and obtained cash and injunctive relief for consumers); and
- *Marc Opperman et al. v. Kong Technologies, Inc. et al.* (N.D. Cal.) (Gardy & Notis served on Plaintiffs' steering committee and obtained \$5.3 million recovery for Apple device owners whose data was secretly accessed by app developers).

The attorneys at Gardy & Notis, LLP have decades of litigation experience and are committed to litigating with the highest level of excellence and integrity and to protecting victims of corporate wrongdoing:

MARK C. GARDY

Mr. Gardy received his B.A. from Rutgers University in 1981 where he graduated Phi Beta Kappa, with high honors. He received his J.D., *cum laude*, from New York Law School in 1984. Mr. Gardy is admitted to the Bar of the State of New York, the State of New Jersey and the United States District Courts for the Southern and Eastern Districts of New York and the District of New Jersey.

Mr. Gardy has served on panels for the Council of Institutional Investors and on a panel on D&O Liability Insurance for the American Conference Institute. He has been featured on CNBC's *Squawk Box* and in *The New York Times*. Mr. Gardy was also listed as a New Jersey Super Lawyer in 2008, 2009, 2010, 2011, 2012, 2013, and 2014.

Prior to forming Gardy & Notis, LLP, Mr. Gardy was a named partner in the law firm Abbey Gardy, LLP.

JAMES S. NOTIS

Mr. Notis received his B.A. from Brandeis University in 1991, and his J.D. from Benjamin N. Cardozo School of Law in 1994. Mr. Notis is admitted to the Bar of the State of New York, the State of New Jersey, the United States District Courts for the Southern and Eastern Districts of New York and the District of New Jersey, and the United States Court of Appeals for the Second Circuit and the Third Circuit.

Mr. Notis has served as a panelist for the Practicing Law Institute for Securities Litigation and Enforcement.

Prior to forming Gardy & Notis, LLP, Mr. Notis was a partner in the law firm Abbey Gardy, LLP.

JENNIFER SARNELLI

Ms. Sarnelli received her B.A. from The American University in 1996, and her J.D. from Seton Hall University School of Law in 2002, where she was a comments editor for the *Seton Hall Law Review*. Ms. Sarnelli is admitted to the Bars of the State of New York, the State of New Jersey, the State of California, the District of Columbia, the United States District Courts for the Southern and Eastern Districts of New York, District of New Jersey and the Northern, Southern and Central Districts of California, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court.

MEAGAN A. FARMER

Ms. Farmer received her B.A. from Eastern Illinois University in 1993, and her J.D., *cum laude*, from New York Law School in 2003, where she served as Editor-in-Chief of the *New York Law School Law Review*. Ms. Farmer is admitted to the Bar of the State of New York and the United States District Courts for the Southern and Eastern Districts of New York, and the United States Court of Appeals for the Second Circuit.

ORIN KURTZ

Mr. Kurtz received his B.S. from the State University of New York, New Paltz, in 1998, and his J.D., *magna cum laude*, from New York Law School in 2004. During law school, Mr. Kurtz served as an Executive Articles Editor on the *New York Law School Law Review*. Mr. Kurtz is admitted to the Bar of the State of New York, the United States District Court for the Southern District of New York, the United States Court of Appeals for the Second Circuit, the United States Court of

Appeals for the Third Circuit, and the Supreme Court of the United States. Mr. Kurtz was an author of the American Bar Association Review of Consumer Protection Law Developments for the years 2010, 2013, and 2015, and is a regional editor of the American Bar Association Employment At Will Treatise.