

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

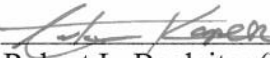
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NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law in Support of Lead Counsel’s Motion for Injunctive Relief Regarding Spectrum Settlement Recovery, LLC’s Misrepresentations to Class Members Concerning the Participation of the United States Government in the Claims Process, and on the accompanying Declarations, Lead Counsel on behalf of the Plaintiff Class hereby moves this Court, located at 225 Cadman Plaza East, Brooklyn, New York: (i) to declare void (or voidable) all Spectrum Settlement Recovery, LLC (“Spectrum”) contracts with Class Members that have sold their claims to Spectrum after being falsely told that the United States government’s application to participate in the claims process would somehow delay payment to Class Members; and (ii) for an Order requiring Spectrum to (a) immediately cease and desist from representing that the issue of the United States’ right to participate in the claims process will have any impact on the timing of payments to the Class, and (b) send at Spectrum’s expense a corrective notice, approved by Lead Counsel and the Court, to all Class Members that received Spectrum solicitations, written or verbal, that discussed the impact of the United States government’s “claims.”

Dated: New York, New York
February 15, 2006

CONSTANTINE CANNON, P.C.

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**MEMORANDUM IN SUPPORT OF LEAD COUNSEL’S MOTION FOR INJUNCTIVE
RELIEF REGARDING SPECTRUM SETTLEMENT RECOVERY, LLC’S
MISREPRESENTATIONS TO CLASS MEMBERS CONCERNING PARTICIPATION
OF THE UNITED STATES GOVERNMENT IN THE CLAIMS PROCESS**

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Lead Counsel, Constantine Cannon, P.C., hereby moves pursuant to the All Writs Act, 28 U.S.C. § 1651(a), and Fed. R. Civ. P. 23: (i) to declare void (or voidable) all Spectrum Settlement Recovery, LLC (“Spectrum”) contracts with Class Members that have sold their claims to Spectrum after being falsely told that the United States government’s application to participate in the claims process would somehow delay payment to Class Members; and (ii) for an Order requiring Spectrum to (a) immediately cease and desist from representing that the issue of the United States’ right to participate in the claims process will have any impact on the timing of payments to the Class, and (b) send at Spectrum’s expense a corrective notice, approved by Lead Counsel and the Court, to all Class Members that received Spectrum solicitations, written or verbal, that discussed the impact of the U.S. government’s “claims.”¹

PRELIMINARY STATEMENT

Spectrum has engaged in a deliberate campaign to deceive Class Members to attract their business. As this Court found two months ago, Spectrum’s solicitations included several critical misrepresentations about the Amended Plan of Allocation (the “Plan”) that warranted correction.² In particular, this Court found that Spectrum misrepresented that: (1) the Visa Transactional Database used to calculate Class Members’ share of the Settlement Fund “does not distinguish between credit card transactions and the more valuable [in terms of Class Member damages] off-line debit transactions,” thereby calling into question the data upon which the Plan is based (R&R, at 23-24) for the purpose of persuading Class Members that the only way for

¹ If the Court finds that Spectrum has engaged in an intentional campaign to deceive Class Members that included the solicitations that the Court previously found to be misleading, the Court should void (or declare voidable) Spectrum’s contracts with all Class Members.

² In its Order affirming the Special Master’s Report & Recommendation (“R&R”), which found that Spectrum’s solicitations were misleading, the Court left open the possibility that Spectrum should bear the cost of mailing corrective notices to Class Members that had received Spectrum’s misleading solicitations. After mailing close to 30,000 corrective notices, Lead Counsel hereby renews its request for an order requiring Spectrum to reimburse the Class for the costs of that mailing. The R&R and this Court’s Order are attached to the Declaration of Jeffrey I. Shinder (hereinafter “Shinder Decl.”, attached hereto as Ex. 1) as Exhibits A and B, respectively.

them to obtain their full recovery was by retaining Spectrum's services; (2) the estimated cash payment set forth in the claims forms mailed to Class Members was an "offer" or "partial offer" generated by, of all entities, Visa and MasterCard, thereby telling Class Members that their former adversaries were now the ones responsible for determining Class Members' distribution from the Settlement Fund (R&R, at 28-29); (3) the Claims Administrator, Garden City Group, was "adversarial" to the Class as it had been "paid to defend the Visa/MasterCard estimate" (R&R, at 26); and (4) Class Members would be eligible to collect \$100,000 to \$6,000,000. Spectrum knew (or should have known) that each of these statements was false.

If there ever was any doubt about Spectrum's intentional campaign of deception, that doubt has been dissipated by Spectrum's recent conduct. Over the past several months, as the claims process has unfolded, Lead Counsel, the Claims Administrator and the consultant retained to assist in the implementation of the Plan have made themselves available to Spectrum to ensure (as much as possible) that Spectrum's "clients" claims would not be prejudiced by Spectrum. In doing so, the Plan has been thoroughly explained to Spectrum, and all of Spectrum's questions have been answered. Yet, when the issue of the United States government's attempt to participate in the claims process surfaced in the press, Spectrum did not approach Lead Counsel to confirm what this development meant for Class Members. Instead, Spectrum immediately exploited merchant concern about the U.S. government's application to falsely pressure Class Members to sell their claims to Spectrum.

Spectrum is once again using misrepresentations – this time that the U.S. government's potential claim will delay payments to Class Members – to gin up business. This Court's resolution of the discrete issue of the United States' right to participate in the claims process will have no impact whatsoever on the timing of the Claims Administrator's ongoing processing of

the hundreds of thousands of claims that will be paid on a rolling basis this year. Distributions are made on a first-come/first-serve basis, and the hundreds of thousands of merchants who have submitted claims stand well ahead in line of the United States government, whose purported right to participate will not be adjudicated by this Court until May. Moreover, Spectrum's claim that the U.S. government's potential participation in the distribution will affect the residue in the fund, is both speculative and misleading, as its veracity depends on, among other things, this Court determining whether the U.S. can legally participate in the claims process in the first place.

Spectrum knows (or, with the exercise of minimal inquiry, should know) that its solicitations are false. It knows (or should know) that the Claims Administrator is processing and paying claims on an ongoing and rolling basis. It knows (or should know) that the deadline for claims (or requests for consolidations) was December 28, 2005 for the vast majority of the Class. It knows (or should know) that most (if not all) of the claims it is currently trying to purchase were submitted months ago. It knows (or should know) that the government's "claim" has yet to be briefed and will not be adjudicated until at least May when the matter is set for oral argument. It knows that the calculations of Class Members' current claims (which are based on volumes from the Visa Transactional Database) will be unaffected by the government's application. And it knows that, if it had any doubt concerning any of these issues, it could have approached Lead Counsel, the Claims Administrator, or their consultant to resolve those questions.

Spectrum has already improperly siphoned off a portion of Class Members' recovery by confusing and misleading tens of thousands of Class Members. Absent the injunctive relief requested by Lead Counsel, Spectrum will remain free to further mislead Class Members, enjoy the fruits of its past misconduct, and seize more of the Settlement Fund. The Special Master

found such injunctive relief to be within the Court's authority (R&R, at 30), yet declined to recommend its exercise because the record did not then evince Spectrum's intent to deceive Class Members. Spectrum's latest misrepresentations have made that intent unmistakable.

RELEVANT FACTS

1. Spectrum's Past Misrepresentations

In August 2005, it came to Lead Counsel's attention that Spectrum, a self-styled "claim filing and fund recovery service[]" for commercial and securities class-action settlements,"³ had been soliciting Class Members by making numerous misrepresentations regarding the Plan, the Visa Transactional Database used to calculate Class Members' share of the Settlement Fund, the Claims Administrator, and the claims process. (Declaration of Lloyd Constantine, Esq. in Support of Lead Counsel's Application for an Order to Show Cause ¶ 3 (filed Sep. 9, 2005).) Those Class Members that chose to enter into "agency" agreements with Spectrum assigned to Spectrum up to 30% of their ultimate recovery of their share of the Settlement Fund. (*Id.*)

On September 9, 2005, Lead Counsel applied for an order to show cause to void Spectrum's contracts with Class Members and to enjoin Spectrum pursuant to the All Writs Act, 28 U.S.C. § 1651(a), and Fed. R. Civ. P. 23(d) from soliciting Class Members using these misrepresentations. (Memorandum of Law in Support of Lead Counsel's Application for an Order to Show Cause, at 3, 17 (filed Sep. 9, 2005).) Lead Counsel further moved this Court pursuant to Rule 23(d) for an order compelling Spectrum to issue notice correcting its misrepresentations, at its own expense, to those Class Members with which Spectrum communicated. (*Id.* at 16-17.) On September 12, this Court referred Lead Counsel's Application to the Special Master.

³ Memorandum of Law in Opposition to Lead Counsel's Motion Regarding Spectrum Settlement Recovery LLC, at 2 (filed Sep. 26, 2005) (hereinafter "Spectrum Opp.").

The Special Master found that Spectrum had made several misleading and inaccurate statements in soliciting Class Members. By Order filed December 13, 2005, this Court affirmed the Special Master's findings. (Shinder Decl. Ex. B.) First, the Special Master and this Court found that Spectrum had misrepresented that the Visa Transactional Database used to calculate Class Members' share of the Settlement Fund "does not distinguish between credit card transactions and the more valuable [in terms of Class Member damages] off-line debit transactions." (R&R, at 23.) Because the Plan allocates more for Visa/MasterCard off-line debit volumes than it does for Visa/MasterCard credit volumes, Spectrum misled Class Members into believing that the Visa Transactional Database would systematically underestimate their damages, and therefore that Class Members needed Spectrum's services to obtain their full recovery. (R&R, at 23-24.) Spectrum *conceded* that both the Original Plan of Allocation and the Fisher Allocation Declaration – both of which had been readily available to Spectrum – stated that claim estimates are calculated separately for credit and off-line debit transactions. (R&R, at 24.)⁴

Second, the Special Master and this Court found that Spectrum misrepresented the nature of the estimated cash payment set forth in the claims forms mailed to Class Members. Spectrum misled Class Members by telling them that the estimate is an "offer" or "partial offer" generated by Visa/MasterCard, leaving Class Members with the impression that their former adversaries were determining their distribution from the Settlement Fund. (R&R, at 28-29.) Again, the plain

⁴ See Original Plan of Allocation (Shinder Decl. Ex. C), at ii-iii, 3-4 (describing Fisher Allocation Methodology), 9-10 (same); Fisher Allocation Declaration (Shinder Decl. Ex. D), at 12-13 (describing *separate* credit and off-line debit transaction data).

language of the Plan and the Fisher Allocation Declaration to the contrary evince Spectrum's intent.⁵

Third, the Special Master and this Court found that Spectrum misrepresented the role of the Claims Administrator in the claims process. According to Spectrum, "once the estimates are mailed, the settlement administrator goes into defense mode and becomes adversarial. They are paid to defend the Visa/MasterCard estimate." (R&R, at 26.) The Special Master rejected Spectrum's argument that this was mere opinion. Rather, the Special Master held that Spectrum's statements were "predicated on an assertion of fact – namely, that the Plan of Allocation specifically requires the Claims Administrator to defend the estimate against challenges filed by Class Members." (R&R, at 27.) This misrepresentation further evidences Spectrum's intent: if Spectrum is truly "one of the nation's largest claim filing and fund recovery services,"⁶ it had to know that *third party* settlement claims administrators in a large, court-supervised settlement such as this one could not be "paid to defend" estimates generated by the defendants without being censured by the court.

Fourth, the Special Master and this Court found that Spectrum misrepresented that Class Members would be eligible to collect \$100,000 to \$6,000,000 because the Plan provides neither a floor nor a ceiling to Class Members' recovery (R&R, at 25-26), nor any other fixed amount or range of recovery. Spectrum had absolutely no basis for these arbitrary figures.

Despite finding that Spectrum's misrepresentations harmed the Class because they were "likely to confuse Class Members and therefore to disrupt the claims process" (R&R, at 29, 32),

⁵ See Original Plan of Allocation (Shinder Decl. Ex. C), at iv ("Working with these Visa and MasterCard databases, Lead Counsel, Garden City Group, Inc. (the 'Claims Administrator') and the merchants' economic experts also have devised a method for estimating the dollar amount of Visa and MasterCard off-line debit and credit transactions . . . The calculation of these off-line debit and credit card damages will be done by the Claims Administrator"); Fisher Allocation Declaration (Shinder Decl. Ex. D), at 3 ("In Section III, I present a method . . . for apportioning the monetary settlements among class members.").

⁶ Spectrum Opp., *supra note* 3, at 2.

the Special Master declined to recommend enjoining Spectrum from engaging in such conduct in the future. (R&R, at 31.) The Special Master did, however, recommend that a notice be issued, at the Class' own expense, to Class Members contacted by Spectrum correcting Spectrum's misrepresentations. (R&R, at 31-32.) This Court affirmed the Special Master's recommendation "without prejudice to a renewed application by Lead Counsel for the costs of the corrective notice to be shared with or paid by Spectrum." 12/13/05 Order, at 3-4.

2. The Cost to the Class of Correcting Spectrum's Misrepresentations

Approximately 30,000 merchant locations received Spectrum's misleading solicitations. The cost to the Class of sending the corrective notice has been substantial, and includes the attorneys' fees incurred in securing the relief, paralegal time and the time spent by the Claims Administrator in mailing the notice, and approximately \$17,000 in copying and postage. (Shinder Decl. ¶ 6 and Ex. E.) As the party harmed by Spectrum's misconduct, the Class should not be required to pay for redressing that harm. Lead Counsel therefore renews its application for an order requiring Spectrum to pay the entire cost of sending corrective notice for its prior misrepresentations.

3. Lead Counsel and the Claims Administrator Have Made Themselves Available to Spectrum for Clarification of the Claims Process

Even before the Special Master addressed Lead Counsel's previous application regarding Spectrum, Lead Counsel and the Claims Administrator had made themselves available to answer Spectrum's questions concerning the Plan and the claims process. (Declaration of Neil L. Zola of The Garden City Group, Inc. (hereinafter "Zola Decl.") ¶ 2 (attached hereto as Ex. 2).)

In addition, beginning in October 2005, Lead Counsel made available to Spectrum Noblett & Associates, the payment systems consulting firm retained by Lead Counsel to support the distribution of the settlement funds in this case. (Declaration of Michael McCormack

(hereinafter “McCormack Decl.”) ¶¶ 1, 5 (attached hereto as Ex. 3).) Lead Counsel asked Noblett to assist Spectrum with any issues or questions it had concerning the claims process or the data required to consolidate the claims of large merchants. (McCormack Decl. ¶ 5.) At Lead Counsel’s request, Noblett participated in a meeting in mid-October at Lead Counsel’s offices in New York with representatives from Spectrum. (*Id.*) During that meeting, Lead Counsel and Noblett answered a series of questions posed by Spectrum concerning the claims process, the underlying transaction and merchant data used in the claims process, and the Plan. (*Id.*) They specifically explained the deadlines in the Plan, how claims were calculated using the Visa Transactional Database and the Fisher Methodology, which claims qualified for participation and which did not, and the anticipated timeline for payments to the Class. (*Id.*)

Lead Counsel further authorized Spectrum to contact Noblett directly following the meeting with additional claims-related issues or questions. (McCormack Decl. ¶ 5.) Since that time, Noblett has been available and has repeatedly worked with employees and representatives of Spectrum to answer inquiries and questions concerning their clients’ claims, consolidation efforts, and related elements of the plan of allocation. (*Id.*)

However, as described below, Spectrum contacted neither Lead Counsel, the Claims Administrator, nor Noblett & Associates regarding the government’s application to participate in the claims process. (McCormack Decl. ¶ 9 (“Spectrum has not contacted me to confirm the accuracy of its claims regarding the Federal government’s potential participation in the distribution.”); Zola Decl. ¶ 2 (“Even though it has contacted us on numerous occasions in the past, Spectrum did not contact us to ask whether we believe their assertion to be true.”).)

4. Spectrum's Current Misrepresentations

In December 2005, Spectrum began purchasing Class Members' claims outright as opposed to attaching up to 30% of their ultimate recovery from the Settlement Fund in exchange for Spectrum's services. (See McCormack Decl. ¶ 6.) Over the course of the last two weeks, it has come to Lead Counsel's attention that Spectrum is currently repeating its practice of using false statements to persuade Class Members to cede their claims to Spectrum. This time, Spectrum is exploiting the issue of the United States government's recent application to participate in the claims process. Spectrum is misleading Class Members by telling them that their distributions from the Settlement Fund will be delayed by the government's application, and to avoid that delay Class Members should immediately sell their claims to Spectrum, likely at a substantial discount from what the Class Member would ultimately recover in the distribution.

On February 1, 2006, Lead Counsel requested this Court to set a briefing schedule to address the serious legal questions raised by the government's application. Oral argument on this issue is currently set for May 5. The Wall Street Journal reported on this development on February 2, and since then numerous merchants have raised concerns about the effect of the government's application on their claims. (Declaration of Mallory Duncan (hereinafter "Duncan Decl.") ¶ 4 (attached hereto as Ex. 4).)

Just days after the Wall Street Journal article, Lead Counsel began to see a steady stream of merchants raising questions based on Spectrum's misinformation. For example, on February 3, 2006, Monica Contaxes of Spectrum solicited a large Class Member by e-mail, stating that "the government has filed a hefty claim (100 mil) and that [sic] push back the payout date as well and affect the residual." (Shinder Decl. Ex. F; McCormack Decl. ¶ 7.) On February 9, the

Claims Administrator, Garden City Group (“GCG”), received an email from a Class Member stating that “Spectrum settlement is stating that the claim by the government for \$100 million is going to delay our payment, so we should take Spectrum’s offer to be paid now. Is this true?” (Zola Decl. ¶ 2 and Ex. A (emphasis added).) And on February 13, an operator at GCG’s call center received a telephone call from a representative of Dollar-Thrifty Automotive Group, who stated that Spectrum had informed him that the Government’s filing of its “claim” would delay payments to other Class Members. (Zola Decl. ¶ 2.) When GCG explained that there would be no delay, the representative offered that, “Spectrum is spreading this information to shake up claimants to have them sell their claims.” (*Id.*)

Spectrum’s claims are again false. As this case’s docket shows, the U.S. government’s application will not be adjudicated until May at the earliest. The deadline for filing claims or submitting requests for consolidation was December 28, 2005 for the vast majority of the Class. GCG is currently processing the vast majority of anticipated claims. (*See* Zola Decl. ¶ 3.) Further, GCG does not intend to process any potential claims by the United States until this Court resolves the issue of whether the government is entitled to submit claims in the first place. (*Id.*) As distributions are made on a first-come/first-serve basis, the government’s hypothetical claim will not impact the timing of payments to Class Members even if the Court grants the government’s application. (*Id.*) Much of this information was readily available to Spectrum, and to the extent that it was not, Spectrum could have obtained the facts with a quick phone call or e-mail to either Lead Counsel, GCG, or Noblett & Associates.

Lead Counsel also has reason to believe that Spectrum is citing the Settlement Fund’s securitization as a reason why payments ought to be delayed. On February 14, 2005, Lead Counsel received an e-mail from a large Class Member seeking comment on five reasons an

unidentified firm looking to purchase the Class Member's claim had cited for why payments may be delayed. (Shinder Decl. Ex. G.) (Given that Spectrum is the only firm, of which Lead Counsel is aware, that is pushing merchants to sell their claims, the unidentified firm is almost certainly Spectrum.) The five reasons include: (1) the U.S. government's application; (2) possible state government applications; (3) consolidation of Class Members' claims; (4) securitization; and (5) disputes over which entities are entitled to the distribution where a merchant has been sold/acquired. There is no basis to conclude that any of these "reasons" will materially impact the timing of payments to Class Members.

While none of these assertions can withstand scrutiny, the representation concerning securitization is especially damaging. Any false statements concerning securitization could unnecessarily confuse merchants and potentially undermine the terms of the securitization. This latest gambit by Spectrum further reinforces the need for injunctive relief to stop Spectrum from inflicting further injury on the Class.

5. Spectrum's Misrepresentations Have Engendered and Exploited Uncertainty Among the Class for the Purpose of Generating Business for Itself

Spectrum's solicitations have succeeded in confusing Class Members and undermining the integrity of the Plan and the claims process. Numerous merchants have contacted the National Retail Federation, a major merchant trade association, because, after hearing Spectrum's misrepresentations, they feared that the Plan was designed to minimize or underestimate their recovery. (Duncan Decl. ¶¶ 3, 4; *see also* McCormack Decl. ¶ 6 ("On many occasions I have had to address concerns or issues the merchant had with incorrect information Spectrum had provided the merchant with regard to the claims process or the structure of the Plan.")). Many merchants "thought that the distribution process was either flawed or poorly

conceived and feared that they would not get their fair share without retaining Spectrum's services." (Duncan Decl. ¶ 3.)

ARGUMENT

A. This Court Should Grant the Injunctive Relief Requested by Lead Counsel.

The Special Master found injunctive relief to be within this Court's authority (R&R, at 30), but declined to recommend enjoining Spectrum for its prior misrepresentations because she did not find that, on the record at that time, Spectrum had "intentionally embarked on a campaign to deceive Class Members." (R&R, at 3.)⁷ Spectrum's recent conduct should dissipate any doubt concerning its motives.

First, like its previous misleading solicitations, Spectrum's recent misrepresentations are designed to engender uncertainty among the Class concerning the Plan and its execution, and then exploit that uncertainty to generate business for itself.

Second, Spectrum knows (or, with the exercise of minimal inquiry, should know) that its solicitations are false. A cursory review of this case's docket shows that this Court has yet to adjudicate whether the U.S. government may participate in the claims process, and will not do so until at the earliest May 5, when the Court will hear oral argument on the matter. Spectrum also knows (or should know) that the deadline for claims (or requests for consolidations) was December 28, 2005 for the vast majority of the Class. Spectrum also knows (or should know) that Class Members are being paid on a rolling basis, as an initial distribution has already been made to the Class. And Spectrum knows (or should know) that, even if this Court allows the

⁷ It should be noted that an injunction under the All Writs Act, 28 U.S.C. § 1651(a), does not require the enjoined party to have engaged in any wrongdoing. *United States v. New York Tel. Co.*, 434 U.S. 159, 174 (1977) (issuing mandatory injunction to telephone company to assist federal prosecutors in surveillance of telephone company's customers). An injunction may issue wherever the enjoined party is "in a position to frustrate . . . the proper administration of justice." *Id.* See also *In re McKesson HBOC, Inc. Secs. Litig.*, 126 F. Supp. 2d 1239, 1242 (N.D. Cal. 2000) (enjoining misleading communications because purpose of injunction was to "protect [class members] from undue interference").

government to submit a claim, virtually all Class Members will be in line ahead of the government by late spring.

Third, with a simple phone call or e-mail, Spectrum could have determined any of these facts. Spectrum could have easily ascertained that the government's application would have no effect whatsoever on the vast majority, if not the entirety, of the Class. Since the Special Master's R&R, Spectrum has had frequent discussions with Lead Counsel, GCG, and Noblett & Associates. (Zola Decl. ¶ 2; McCormack Decl. ¶ 5.) This time, however, Spectrum elected to rush to the marketplace and spread false information that created uncertainty among the Class, uncertainty that falsely pressured Class Members to sell their claims to Spectrum. From this, Spectrum's deliberate campaign to deceive the Class is evident.

If Spectrum is not enjoined, it will continue to engender uncertainty among the Class concerning the Plan and the claims process – and to exploit that uncertainty to leech a substantial portion of Class Members' recovery. This Court should not permit such a result.

B. The Class Should Not Be Required to Bear the Costs of Sending Corrective Notice.

The Class should not be required to bear the costs of sending corrective notice to those Class Members who have been contacted by Spectrum and to whom Spectrum has misrepresented the Plan and the claims process. These costs are substantial. Corrective notice for Spectrum's prior misrepresentations had to be sent to over 30,000 merchant locations. It is therefore likely that Spectrum has made its recent misrepresentations to tens of thousands of merchant locations. Spectrum – not the Class – should bear the costs of Spectrum's misconduct. *See Manual for Complex Litigation (Fourth)* § 21.313, at 297 (2004) (“Those who made the misstatements should bear the cost of a notice to correct misstatements.”). Spectrum should also be required to submit a declaration to the Court certifying that it has provided Lead Counsel and

the Claims Administrator with a complete list of the names and addresses of the Class Members with which Spectrum has communicated.


Where a party has made misleading statements to actual or potential class members, courts have routinely required that party to bear the costs of sending corrective notice. *See In re Lupron[®] Mktg. and Sales Pracs. Litig.*, MDL No. 1430, 2004 WL 3049754 (D. Mass. Dec. 21, 2004); *Veliz v. Cintas Corp.*, Civ. A. No. 03-1180 SBA, 2004 WL 2623909, at *3 (N.D. Cal. Nov. 12, 2004); *Belt v. EmCare Inc.*, 299 F. Supp. 2d 664, 669-70 (E.D. Tex. 2003); *Ralph Oldsmobile Inc. v. General Motors Corp.*, Civ. A. No. 99-4567(AGS), 2001 WL 1035132, at *7 (S.D.N.Y. Sept. 7, 2001).

CONCLUSION

For the foregoing reasons, Lead Counsel for the Plaintiff Class respectfully requests that this Court grant the relief requested by Lead Counsel in its Notice of Motion.

Dated: New York, NY
February 15, 2006

CONSTANTINE CANNON, P.C.

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