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13 Attorneys for Plaintiffs Bradley B. Larsen, as
14 Trustee of the Brad and Cindy Larsen Loving
Trust; Jimmy R. Bunch, Jr.; Steven J. Woodward;
15 Sun Holdings, LLC; and Daniel Todd

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

18
19 BRADLEY B. LARSEN, as Trustee of
the BRAD AND CINDY LARSEN
20 LOVING TRUST, et al.

21 ,
22 Plaintiffs,
23 vs.

24 COLDWELL BANKER REAL
ESTATE CORPORATION, a
California corporation, doing business
25 as COLDWELL BANKER
COMMERCIAL AFFILIATES, INC.,
26 et al.

27 Defendants.
28

CASE NO. SACV 10-00401 AG
(MLGx)

**DECLARATION OF J. MARK
MOORE IN SUPPORT OF
PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

Date: December 5, 2011
Time: 10:00 a.m.
Crtrm.: 10D

1 DECLARATION OF J. MARK MOORE RE CLASS CERTIFICATION

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I, J. MARK MOORE, declare as follows:

1. I am an attorney with Spiro Moss LLP (“Spiro Moss”) and am one of the attorneys primarily responsible for representing the named Plaintiffs in this matter. We are co-counsel in this matter with Newhouse|Seroussi, Attorneys. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify thereto.

2. My practice consists, and has consisted since 1998, primarily of handling class action cases. The majority of the class actions I have handled have involved consumer fraud claims of one sort or another. Commencing in early 1998, I defended class action cases as an associate and then a partner at Barger & Wolen LLP, which has offices in Los Angeles, Newport Beach, San Francisco and other cities. I joined Spiro Moss in early 2006. Since then, I have represented plaintiffs in class actions involving consumer claims and, to a relatively small degree, employee claims. Attached hereto as **Exhibit A** and incorporated by reference is a true and correct copy of my current *curriculum vitae*, which also describes my firm’s practice. The statements therein are true.

3. Numerous judges in this District, and elsewhere in this Circuit, have found me well-qualified to serve as lead or co-lead class counsel in consumer class action cases, in the context of both contested and non-contested class certification proceedings. District court judges in California who have appointed me as class counsel include, at least, the Hon. Cormac J. Carney (nationwide settlement), the Hon. Claudia Wilken (pending, nationwide class certified after contested certification proceedings), the Hon. Steven V. Wilson (nationwide settlement), the Hon. Charles R. Breyer (nationwide settlement, following order granting class certification of a smaller class on contested basis), the Hon. Valerie Baker Fairbank (California settlement), the Hon. R. Gary Klausner (nationwide settlement), and the

1 Hon James V. Selna (nationwide class of 2 million-plus consumers certified on a
2 contested basis). I have also been appointed class counsel in connection with
3 approved state court nationwide settlements in cases against Microsoft Corp. and
4 Shuttle Computer, Inc.

5 4. In addition to the present case, I am currently litigating consumer
6 class actions in state and federal courts in California against well-funded and
7 defended companies including but not limited to Countrywide Home Loans, Inc.,
8 AT&T, First American EAppraisit, Bear Stearns Residential Mortgage Co., JP
9 Morgan Chase, Toyota Motor Corp., Home Loan Center, dba Lending Tree Loans,
10 Bank of America, and Residential Funding Corp. The majority of my ongoing
11 cases involve common law or statutory consumer fraud claims and/or UCL claims,
12 and a number of them involve claims for aiding and abetting fraud and/or UCL
13 violations.

14 5. Spiro Moss also has an accomplished appellate practice, as shown by
15 Exhibit A. Some of the firm's recent appellate successes include *Pineda v. Bank of*
16 *America*, 50 Cal.4th 1389 (2010); *Shersher v. Superior Court (Microsoft Corp.)*, 154
17 Cal.App.4th 1491 (2007) (reversing superior court ruling, holding that restitution
18 under the UCL may be recovered from defendants that did not directly acquire
19 money from the plaintiff); *Bateman v. American Multi-Cinema, Inc.*, 623 F.3d 708
20 (9th Cir. 2010) (reversing order denying class certification predicated on
21 "superiority" analysis previously applied by numerous district courts in this District
22 and elsewhere); and, in an appeal I recently argued before Division 3 of the Fourth
23 District Court of Appeal, *Boschma v. Home Loan Center*, --- Cal.Rptr.3d ----, 2011
24 WL 3486440 (Cal.App. 4 Dist. Aug. 10, 2011) (reversing order dismissing case in
25 class action case involving claims for fraud and unfair business practices arising out
26 of a lender's use of misleading "Option ARM" mortgage loan documents).

27 6. Co-counsel Ruth Seroussi formerly worked with me as "of counsel"
28 at Spiro Moss handling class action cases, also after years of defending class action

1 cases at a downtown Los Angeles law firm. Ms. Seroussi and I attended law school
2 together at UCLA.

3 7. My firm has the resources and ability to litigate this case vigorously
4 to its conclusion, through and including trial and any necessary appeals, and we
5 intend to do so.

6 8. Plaintiffs are submitting 127 declarations from putative class
7 members with their motion for class certification, along with their own declarations.
8 We believe these class member declarations are germane to the Court's analysis.
9 However, lest any contrary suggestion or argument be made by Coldwell Banker, I
10 note that we are not submitting these declarations because we in any way believe
11 that unnamed class member testimony, in a case like this one involving a centralized
12 investment fraud scheme, is in fact *legally required* either to obtain class
13 certification or to prove liability on a class-wide basis. The named Plaintiffs'
14 declarations demonstrate that Coldwell Banker's role and/or asserted role in the
15 investment funds substantially motivated their investment decisions. The
16 declarations of the additional declarants (who, alone, are sufficiently numerous as to
17 satisfy Rule 23(a) numerosity) simply confirm that the same is in fact true of other
18 class members.

19 9. Plaintiffs reserve the right to propose sub-classes in their reply in
20 response to any arguments made in opposition to class certification. At present, we
21 do not believe subclasses need to be proposed, and Plaintiffs therefore are seeking
22 certification solely of a nationwide class of investors in the REP funds at issue.

23 I declare under penalty of perjury under the laws of the United States of
24 America and the State of California that the foregoing is true and correct.

25 Executed on August 22, 2011, at Los Angeles, CA.

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/s/ J. Mark Moore
J. MARK MOORE

EXHIBIT A

J. Mark Moore

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Mr. Moore graduated from the UCLA School of Law in 1995 and has substantial experience in all facets of litigation in state and federal court. Before joining Spiro Moss in March 2006, he was an associate and then a partner at the firm of Barger & Wolen LLP, which has offices in Los Angeles, San Francisco, and elsewhere. His practice at Barger & Wolen, commencing in 1998, consisted primarily of defending lawsuits brought as class actions, involving, *inter alia*, allegations of securities violations, unfair, unlawful and fraudulent business practices, and wage and hour violations.

Mr. Moore's current practice consists mostly of litigating class actions on behalf of consumers and employees. Since joining Spiro Moss, he has been appointed lead counsel or co-lead counsel on numerous occasions in state and federal court. Cases in which he was appointed after contested class certification proceedings include: *Plascencia v. Lending 1st Mortgage, et al*, USDC N.D. Cal. Case No. 4:07-4485-CW (case alleging wrongful lending practices; pending); *McGee v. Ross Stores, Inc.*, USDC N.D. Cal. Case No. C06-7496 CRB (consumer case; final approval of national class settlement granted in January 2009); *Kesler v. Ikea U.S., Inc, et al*, USDC C.D. Cal. Case No. SACV 07-0568-JVS (RNBx) (consumer case; more than two million class members); and *Vargas v. Ceradyne, Inc.*, Orange County Superior Court Case No. 07CC01232 (wage/hour class action; final approval granted). Mr. Moore also has been appointed class counsel in connection with numerous approved class settlements, including, for example, *Shersher v. Microsoft Corp.*, Los Angeles Superior Court Case No. BC 340630 (nationwide settlement; final approval granted in December, 2009).

At present, Mr. Moore is litigating class actions against numerous companies alleged to have engaged in consumer fraud or other unlawful conduct, including Countrywide Home Loans, Inc., Cingular, Bear Stearns Residential Mortgage Co., Toyota, Home Loan Center, Residential Funding Corp., Bank of America, and Coldwell Banker. He recently secured a published appellate victory in one of those cases, *Boschma v. Home Loan Center*, --- Cal.Rptr.3d ----, 2011 WL 3486440 (Cal.App. 4 Dist. Aug. 10, 2011) (reversing trial court decision in case involving claims for fraud and unfair business practices arising out of a lender's use of misleading "Option ARM" mortgage loan documents). Mr. Moore's views regarding class action matters have been published by media outlets including the Wall Street Journal and the Los Angeles Daily Journal. He is a member of the Consumer Attorneys of California and an active member of its *amicus* group. Mr. Moore is admitted to practice in all federal courts in California and has practiced on a *pro hac vice* basis in a number of other states.

About the Firm: Spiro Moss was founded a decade ago as a boutique law firm focusing almost exclusively on prosecuting class actions. Since its founding, the firm has recovered more than \$500 million on behalf of employees and consumers. Its successful appellate practice has resulted in published victories in cases including *Pineda v. Bank of America*, 50 Cal.4th 1389 (2010); *Pastoria v. Nationwide Ins.*, 112 Cal.App.4th 1490 (2003); *Shersher v. Superior Court (Microsoft Corp.)*, 154 Cal.App.4th 1491 (2007); and *Bateman v. American Multi-Cinema, Inc.*, 623 F.3d 708 (9th Cir. 2010). The firm presently has seven attorneys, all but one with substantial class action experience.