UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CASE NO.: CV 13-02939 SJO (JCx) **DATE:** November 3, 2014

TITLE: In re Hot Topic, Inc. Securities Litigation

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PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

Victor Paul Cruz	Not Present
Courtroom Clerk	Court Reporter

COUNSEL PRESENT FOR PLAINTIFFS:	**COUNSEL PRESENT FOR DEFENDANTS:**
Not Present	Not Present

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PROCEEDINGS (in chambers): ORDER GRANTING LEAD PLAINTIFF'S MOTION TO CERTIFY CLASS [Docket No. 74]

This matter is before the Court on Lead Plaintiff City of Livonia Employees' Retirement System's ("Lead Plaintiff") Motion to Certify Class ("Motion"), filed October 6, 2014. Defendants Hot Topic, Inc. ("Hot Topic" and the "Company"), and Lisa M. Harper ("Harper"), Steven R. Becker ("Becker"), Matthew A. Drapkin ("Drapkin"), Evelyn D'an ("D'an"), Terri Funk Graham ("Graham"), John Edward Kyees ("Kyees"), Andrew Schuon ("Schuon"), and Thomas G. Vellios' ("Vellios") (collectively, "Individual Defendants") filed a statement of non-opposition on October 14, 2014. Lead Plaintiff filed its Reply on October 20, 2014. The Court found this matter suitable for disposition without oral argument and vacated the hearing set for November 3, 2014. *See* Fed. R. Civ. P. 78(b). For the following reasons, the Court **GRANTS** Lead Plaintiff's Motion.

I. FACTUAL AND PROCEDURAL HISTORY

This case concerns an Agreement and Plan of Merger ("Merger Agreement"), dated March 6, 2013, in which Sycamore Partners agreed to acquire all of Hot Topic's outstanding stock for $14.00 per share in cash (the "Merger"). (Consolidated Compl. ¶¶ 1, 14, ECF No. 44.) Prior to the Merger, Hot Topic, a California corporation, was a mall and web-based specialty retailer operating Hot Topic, Torrid, and Blackheart stores. (Consolidated Compl. ¶¶ 2, 23.) Hot Topic stores offer apparel, accessories, music, and gift items for young men and women; Torrid retails fashion apparel, lingerie, and accessories designed for young women who wear size 12 and up; and Blackheart is a new test retail concept offering an expanded collection of lingerie, accessories, and beauty products. (Consolidated Compl. ¶ 2.) Before the Merger, Harper served as CEO and Chairman of Hot Topic's Board; the remaining Individual Defendants served as Hot Topic directors. (Consolidated Compl. ¶¶ 24-32.)

Sycamore Partners is a private equity firm based in New York specializing in consumer and retail investments. (Consolidated Compl. ¶ 3.) Sycamore Partners and its affiliates own 212F Holdings,

a Delaware limited liability company formed for the purpose of arranging financing transactions related to the Merger and owning Hot Topic after the Merger. (Consolidated Compl. ¶¶ 34-35.) 212F Holdings wholly owns HT Merger Sub, a California corporation created for the purpose of completing the Merger. (Consolidated Compl. ¶ 36.)

Starting in September 2010, Hot Topic embarked on a plan to revitalize the company and maximize shareholder value by reducing costs, stabilizing the brand, and increasing the number and efficiency of Torrid stores. (Consolidated Compl. ¶¶ 48-52.) Following these changes, Hot Topic's stock price rose from $5.33 per share on November 1, 2010, to $9.50 per share on November 1, 2012. (Consolidated Compl. ¶ 52.) Throughout this time period, Hot Topic consistently met or exceeded its own projections and goals. (Consolidated Compl. ¶ 60(a).) Plaintiff claims that these projections and goals included Hot Topic's long-range, non-United States generally accepted accounting principles financial projections ("LRP Projections"), which were prepared by at least early 2012. (Consolidated Compl. ¶ 59 n.3.)

In late 2012, Sycamore Partners first expressed interest in acquiring Hot Topic. (Consolidated Compl. ¶ 58.) On December 22, 2012, Harper rejected Sycamore Partners' initial $10-$12 per share offer; eight days later, Sycamore Partners upped its offer to $14 per share. (Consolidated Compl. ¶ 61.) Hot Topic retained Guggenheim Securities, LLC ("Guggenheim") as its financial advisor in connection with the proposed merger. (Consolidated Compl. ¶ 10.) As part of this process, between the second week of January and the first week of February 2013, Guggenheim contacted eleven private equity firms, only one of which ("Company A") executed a confidentiality agreement with Hot Topic. (Consolidated Compl. ¶¶ 64, 66.) Company A also offered to purchase Hot Topic for $13-$14 per share—a proposal rejected by Hot Topic's Board on March 1, 2013. (Consolidated Compl. ¶¶ 13, 83(b)(ii).) On March 4, 2013, the Board met telephonically with Guggenheim and legal representatives and decided to proceed with Sycamore Partners' proposed merger. (Consolidated Compl. ¶ 71.) On March 6, 2013, Sycamore Partners and Hot Topic signed the Merger Agreement. (Consolidated Compl. ¶ 83(b)(v).) That evening, Hot Topic stock closed at $10.75 per share. (Consolidated Compl. ¶ 89.) One day later, the Merger was announced. (Consolidated Compl. ¶ 72.)

Plaintiff alleges that after Sycamore Partners first expressed interest in acquiring Hot Topic, some Individual Defendants, including Harper and Drapkin, realized that Hot Topic's LRP Projections "would be problematic in any change-of-control situation." (Consolidated Compl. ¶ 59.) Plaintiff claims that these Individual Defendants therefore worked with Guggenheim between February 8, 2013, and March 4, 2013, to create a revised set of projections ("Revised Projections") that would "give the illusion that the Merger was fair from a financial perspective to Hot Topic's public shareholders." (Consolidated Compl. ¶¶ 70, 78(e).)

Compared to the LRP Projections, the Revised Projections assumed a slower build out of new stores and moderated the growth of outlet stores, gross margin expansion, and revenue and margin contributions from new concepts. (Consolidated Compl. ¶ 70.) The Revised Projections

also reduced growth from the Torrid and Blackheart franchises. (Consolidated Compl. ¶ 70.) Plaintiff argues that the assumptions and estimates made in the Revised Projections were contradicted by "every public statement made by [Hot Topic] and defendant Harper from 1Q2011 through 4Q2012." (Consolidated Compl. ¶ 70.) Furthermore, Plaintiff alleges that the LRP Projections, and not the Revised Projections, were provided to Sycamore Partners before the Merger. (Consolidated Compl. ¶ 70, 83(b)(i) n.5.) Nonetheless, in evaluating the fairness of the Merger to Hot Topic's shareholders (the "Fairness Opinion"), Hot Topic directed Guggenheim to consider the Revised Projections, and not the LRP Projections. (Consolidated Compl. ¶ 71.)

On May 10, 2013, after the merger was announced, Hot Topic filed a final version of its Proxy Statement with the SEC and disseminated the Proxy Statement to Hot Topic shareholders. (Consolidated Compl. ¶ 16; *see generally* Decl. of Courtney A. Dreibelbis in Supp. of Individual Defs.' Mot. ("First Dreibelbis Declaration") Ex. 1 ("Proxy Statement"), ECF No. 46-1.) The Proxy Statement described the Revised Projections as "better reflect[ing] what management believed the Company would be able to achieve during the next five years compared to the LRP Projections." (Consolidated Compl. ¶ 68; Proxy Statement 36.) The Proxy Statement also included Guggenheim's Fairness Opinion, which was based on the Revised Projections. (Consolidated Compl. ¶ 17; Proxy Statement 36.) Defendants obtained shareholder approval of the Merger on May 31, 2013, and the sale of Hot Topic to Sycamore Partners was completed on June 12, 2013. (Consolidated Compl. ¶¶ 75, 76.)

Plaintiff alleges that the Individual Defendants received special benefits for their role in the Merger. For example, Plaintiff claims that pursuant to a Rollover Letter Agreement, Harper and three other members of Hot Topic's management contributed an aggregate 33,838 shares of Hot Topic stock and approximately $7.7 million in cash, of which Harper contributed the majority, in exchange for "a preferred return of invested capital, a preferred rate of return on invested capital and to participate in the residual equity of 212F Holdings." (Consolidated Compl. ¶¶ 24, 83(c)-(d).) Thus, Plaintiff claims that "Harper chose to participate in Hot Topic's future upside as a Company rather than take the mere $14 in cash, indicating that she thought the Merger consideration offered to Hot Topic's public shareholders was not fair or adequate." (Consolidated Compl. ¶ 83(d)(vi).) In total, Plaintiff estimates that Harper received approximately $9.4 million in Golden Parachute payments in connection with the Merger, in addition to maintaining her position as Hot Topic's CEO. (Consolidated Compl. ¶ 83(d), (f).) Plaintiff also alleges that Hot Topic's other officers and directors "received millions of dollars in special payments . . . for currently unvested stock options, performance units and restricted shares, all of which became fully vested and exercisable upon completion of the Merger." (Consolidated Compl. ¶ 83(e).) Specifically, Plaintiff claims that each director received a lump sum payment between $110,000 to $295,000 in connection with the Merger. (Consolidated Compl. ¶ 83(g).)

On April 25, 2013, the first of three class action complaints was filed in this Court. (Class Action Compl., ECF No. 1.) On July 29, 2013, the Court consolidated the existing cases and any future related cases into a consolidated action for all purposes except for trial. (July 29, 2013 Minute

Order, ECF No. 21.) On August 20, 2013, the Court appointed City of Livonia Employees' Retirement System as Lead Plaintiff for the class. (ECF No. 38.) Plaintiff filed a Consolidated Complaint on October 3, 2013, alleging the following causes of action: (1) violations of § 14(a) of the Securities Exchange Act of 1934 ("the 1934 Act") and SEC Rule 14a-9 by all Defendants; (2) violations of § 20(a) of the 1934 Act by Individual Defendants and Sycamore Defendants; (3) breach of fiduciary duty by Individual Defendants; and (4) aiding and abetting breach of fiduciary duty by Hot Topic and Sycamore Defendants. (*See generally* Consolidated Compl.) On May 2, 2014, the Court dismissed the claims against the Sycamore Defendants and dismissed the third and fourth counts. Plaintiffs subsequently declined to amend the complaint.

II. DISCUSSION

"Class actions have two primary purposes: (1) to accomplish judicial economy by avoiding multiple suits; and (2) to protect the rights of persons who might not be able to present claims on an individual basis." *Haley v. Medtronic, Inc.*, 169 F.R.D. 643, 647 (C.D. Cal. 1996) (citing *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983)). Federal Rule of Civil Procedure 23(a) provides that a class action is only appropriate if four prerequisites are met: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). Even if all of these prerequisites—numerosity, commonality, typicality, and adequacy of representation—are satisfied, the court must then determine whether the class action is maintainable under Rule 23(b). Fed. R. Civ. P. 23(b).

A party seeking to certify a class may not merely rest on his pleadings. Rather, "[a] party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are **in fact** sufficiently numerous parties, common questions of law or fact, etc." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. __, 131 S. Ct. 2541, 2551 (2011) (emphasis in original). "[A]ctual, not presumed conformance with Rule 23(a) remains . . . indispensable." *Gen. Tel. Co. of SW v. Falcon*, 457 U.S. 147, 160 (1982). The trial court is expected to engage in a "rigorous analysis" to determine if the prerequisites of Rule 23 have been satisfied. *Dukes*, 131 S. Ct. at 2551 (quoting *Falcon*, 457 U.S. at 161). This rigorous analysis will often "overlap with the merits of the plaintiff's underlying claim. That cannot be helped." *Id.*

Plaintiffs seek certification of the following proposed Class to pursue their claims:

> All holders of Hot Topic, Inc. (“Hot Topic”) common stock on the record date, May 3, 2013, who were harmed by defendants’ violations of §14(a) and §20(a) of the Securities Exchange Act of 1934 in connection with the Merger of Hot Topic and Sycamore Partners as alleged in the litigation (the “Class”). Excluded from the Class are defendants, the officers and directors of the Company at all relevant times, members of their immediate families and their legal representatives, heirs,

successors or assigns and any entity in which defendants have or had a controlling interest.

(Pl.'s Mem. 1.) The Court addresses the four Rule 23(a) factors, along with the Rule 23(b) requirements, in turn.

A. Numerosity

Rule 23(a)(1) requires that the proposed class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "While Plaintiff need not allege the exact number or identity of class members, mere speculation of the number of class members involved does not satisfy the requirement of Rule 23(a)(1)." *In re LDK Solar Sec. Litig.*, 255 F.R.D. 519, 525 (N.D. Cal. Jan. 28, 2009). In *Jordan v. County of Los Angeles*, 669 F.2d 1311 (9th Cir. 1982), the Ninth Circuit held that a class of 100 satisfies the numerosity requirement. *Id.* at 1319, *vacated on other grounds*, 459 U.S. 810 (1982); *see Patrick v. Marshall*, 460 F. Supp. 23, 26 (N.D. Cal. 1978) (holding that the numerosity requirement is satisfied when there are as few as thirty-nine potential class members); *see also In re Brokerage Antitrust Litig.*, 579 F.3d 241, 273 (3d Cir. 2009) (holding that the numerosity requirement is satisfied when the number of potential class members exceeds forty).

Plaintiffs note that there were more than 40.6 million outstanding shares of common stock entitled to vote at the Special Meeting on the Merger. (Pl.'s Mem. 7.) Plaintiffs assert that there were at least 337 institutional investors who held Hot Topic at various times between 2010 and 2013 when the merger was consummated and likely hundreds of retail investors as well. (Pl.'s Mem. 7; Decl. of Danielle S. Myers in Supp. of Pl.'s Mot. ("Myers Decl."), Ex. A.) The Court is satisfied that the proposed class contains at least hundreds of members. Accordingly, the Court is satisfied that the Class and Subclasses are sufficiently numerous under Rule 23(a).

B. Commonality

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This commonality requirement is "construed permissively," and "all questions of fact and law need not be common to satisfy the [R]ule." *Hanlon*, 150 F.3d 1011, 1019 (9th Cir. 1998). Rather, "the existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Dukes*, 509 F.3d at 1177 (quoting *Hanlon*, 150 F.3d at 1019); *see Parra v. Bashas', Inc.*, 536 F.3d 975, 978 (9th Cir. 2008).

"[C]ommonality is easily met in cases where class members all bought or sold the same stock in reliance on the same disclosures made by the same parties," even if damages vary. *In re Verisign, Inc. Sec. Litig.*, No. 02-02270, 2005 U.S. Dist. LEXIS 10438, at *17 (N.D. Cal. Jan. 13, 2005). In this case, Plaintiffs' allegations include whether defendants violated §14(a) and §20(a) of the 1934

Act and SEC Rule 14a-9 by preparing, reviewing and disseminating a materially false and misleading Proxy Statement and whether Lead Plaintiff and the Class members have been damaged as a result. (Pl.'s Mem. 8.) The allegations apply to all class members who held Hot Topic stock on the record date, and the relevant questions of law and fact are common to the class. Accordingly, the Court finds that Plaintiffs have established commonality with regard to their claims.

C. Typicality

Under Rule 23(a)'s "permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. The typicality requirement seeks to determine "whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Gen. Tel. Co. of SW.*, 457 U.S. at 158 n.13. "The purpose of the typicality requirement is to assure that the interest of the named representatives aligns with the interests of the class." *Hanon*, 976 F.2d at 508 (internal citations omitted). In other words, "a court must ensure that the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented," and that the absentee class members' claims will be adequately pursued." *In re Graphics Processing Units Antitrust Litig.*, 253 F.R.D. 478, 489-90 (N.D. Cal. 2008) (internal citation and quotations omitted).

Lead Plaintiff argues that its claims are identical to the claims of the absent Class members, are based on the same theories of liability, and will be proved by the same evidence. (Pl.'s Mem. 9.) Because the Complaint in this case is focused on alleged misrepresentations from a single, widely disseminated SEC filing rather than alleged misrepresentations to individual plaintiffs. These alleged misrepresentations would have similarly harmed all investors in Hot Topic stock, including Lead Plaintiff. Lead Plaintiffs bring no individual claims, but rather have the same incentive as other Plaintiffs to pursue their claims on behalf of the class. Accordingly, the Court finds that Plaintiffs are typical of the Class such that the interests of the absent Class Members will be fairly and adequately protected.

D. Adequacy of Representation

Representation is adequate if: (1) class counsel is qualified and competent; and (2) neither the class representatives nor their counsel are disqualified by conflicts of interest. *See Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). Class counsel must be experienced and competent. *See Hanlon*, 150 F.3d at 1021. When certifying a class, a court is required to appoint class counsel, unless a statute provides otherwise. Fed. R. Civ. P. 23(g)(1)(A).

Lead Plaintiff proposed that Robbins Geller be appointed as class counsel. The Court finds that proposed class counsel is both qualified and competent, and has no known conflicts of interest

with the proposed class representatives. Other courts have stated that the firm, under its prior name Coughlin Stoia, "is comprised of probably the most prominent securities class action attorneys in the country." *See In re Enron Corp. Sec. Litig.*, No H-01-3624, 2005 WL 3504860 (S.D. Tex. Dec. 22, 2005). The firm has submitted a detailed resume showing its qualifications to serve as lead counsel on the behalf of the class. (Myers Decl. Ex. D.)

The Court has no reason to believe that Plaintiffs or their counsel will be inadequate to represent the Classes in this case. Accordingly, the Court finds that Plaintiffs have established adequacy of representation, and thus Plaintiffs has satisfied all the requirements of Rule 23(a).

E. Rule 23(b)(3) Requirements

Plaintiffs argue for class certification under the third subdivision of Rule 23(b). (Pl.'s Mem. 12-15.) Subsection (b)(3) contains two distinct elements that courts refer to as the "predominance" and "superiority" requirements. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 615 (1997). In order to be certified, the Class must satisfy both.

1. Predominance

The first requirement of Rule 23(b) requires "that the questions of law or fact common to all members of the class predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). "The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. The predominance inquiry is similar to the one for commonality under Rule 23(a)(2) but it is more rigorous. *Hanlon*, 150 F.3d at 1019. The "main concern in the predominance inquiry . . . [is] the balance between individual and common issues." *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 959 (9th Cir. 2009). "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Hanlon*, 150 F.3d at 1022. In contrast, when "claims require a fact-intensive, individual analysis," then class certification will "burden the court" and be inappropriate. *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 947 (9th Cir. 2009). The inquiry requires a district court to "predict[] . . . how specific issues will play out in order to determine whether common or individual issues predominate in a given case." *Dukes*, 603 F.3d at 593 (citation and internal quotation marks omitted); *see also Erica P. John Fund, Inc. v. Halliburton Co.*, 131 S. Ct. 2179, 2184 (2011).

To establish a claim for violation of §14(a), Lead Plaintiff "must establish that (1) a proxy statement contained a material misrepresentation or omission which (2) caused the plaintiff injury and (3) that the proxy solicitation itself, rather than the particular defect in the solicitation materials, was an essential link in the accomplishment of the transaction." *N.Y.C. Emps.' Ret. Sys. v. Jobs*, 593 F.3d 1018, 1022 (9th Cir. 2010) (citation omitted), *overruled on other grounds by Lacey v. Maricopa*

Cnty., 693 F.3d 896 (9th Cir. 2012). These elements depend on evidence common to the class. *See Amgen Inc. v. Conn. Ret. Plans & Trust Funds,* 133 S.Ct. 1184, 1195-96 (2013). Lead Plaintiff must prove that certain allegedly fraudulent statements were falsely made, that $14 per share was not a fair value for Hot Topic shareholders, and that Hot Topic's merger resulted in shareholders receiving too low a price for Hot Topic's value. (Order re: Mot. to Dismiss 12, ECF No. 57. These issues are identical across all class members, and if they are proved, shareholders should receive an identical amount per share. Thus, the Court finds that common issues predominate over individual ones.

2. Superiority

Finally, the Court must determine whether class treatment is superior to individual suits. *See* Fed. R. Civ. P. 23(b)(3). In determining whether class action is the superior method, courts consider the four non-exclusive factors enumerated in Rule 23(b)(3):

> (A) the class members' interest in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

see Fed. R. Civ. P. 23(b)(3); *see Zinser v. Accufix Res. Inst., Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001). Principally, the Rule 23(b)(3) class action is intended to vindicate "the rights of groups of people who individually would be without effective strength to bring their opponents into court at all," such as those whose individual recoveries would be too small to warrant an individual suit." *Amchem Prods., Inc.*, 521 U.S. at 617. The first matter is "most relevant where each class member has suffered sizeable damages or has an emotional stake in the litigation." *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001). Similarly, certification is favored "where damages suffered by each putative class member are not large." *Id.*; *see Haley v. Medtronic, Inc.*, 169 F.R.D. 643, 652 (C.D. Cal. 1996). "This superiority inquiry requires a comparative evaluation of alternative mechanisms of dispute resolution." *Hanlon*, 150 F.3d at 1023.

Here, the class format is superior in that it would avoid duplicative lawsuits and the possibility of inconsistent judgments. The remedies available to each individual Plaintiff in this case are small enough to discourage individual actions, making the class action a superior vehicle to address Plaintiffs' claims. Class actions are typical for cases brought under the PSLRA. Finally, Defendants have provided no additional reasons why individual actions would be preferable in this case. Accordingly, the Court finds that Plaintiffs have satisfied Rule 23(b)'s requirements of predominance and superiority.

III. RULING

For the foregoing reasons, Lead Plaintiff's Motion for Class Certification is **GRANTED**. The Court certifies this action as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) and appoints City of Livonia Employees' Retirement System as Class Representative and Robbins Geller as Class Counsel. The following Class is hereby certified:

> All holders of Hot Topic, Inc. ("Hot Topic") common stock on the record date, May 3, 2013, who were allegedly harmed by defendants' violations of §14(a) and §20(a) of the Securities Exchange Act of 1934 in connection with the Merger of Hot Topic and Sycamore Partners[1] as alleged in the litigation (the "Class"). Excluded from the Class are defendants, the officers and directors of the Company at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.[2]

IT IS SO ORDERED.

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[1] "Sycamore Partners" refers collectively to the following entities identified in the Definitive Proxy Statement filed with the Securities and Exchange Commission ("SEC") on May 10, 2013 (the "Proxy Statement"): 212F Holdings LLC, a Delaware limited liability company (also referred to as the "Parent"), HT Merger Sub Inc., a California corporation and a wholly owned subsidiary of Parent (referred to as the "Merger Sub"), both of which are beneficially owned by affiliates of Sycamore Partners Management, L.L.C.

[2] "Defendants" refers collectively to Hot Topic, Lisa Harper, Matthew Drapkin, Steven Becker, Evelyn D'An, Terri Funk Graham, John Kyees, Andrew Schuon, and Thomas Vellios.