

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROHINI KUMAR, an individual, on behalf of
herself, the general public and those similarly
situated,

Plaintiff,

Case No. 4:14-cv-02411-YGR

v.

SALOV NORTH AMERICA CORP.; and
ITALFOODS, INC.,

Defendants.

Declaration

of

COLIN B. WEIR

May 16, 2017

REFERENCES MATERIALS DESIGNATED "CONFIDENTIAL" AND "CONFIDENTIAL
ATTORNEYS' EYES ONLY" UNDER PROTECTIVE ORDER

I, Colin B. Weir, declare as follows:

I am Vice President at Economics and Technology, Inc. ("ETI"), One Washington Mall, 15th Floor, Boston, Massachusetts 02108. ETI is a research and consulting firm specializing in economics, statistics, regulation and public policy.

I. QUALIFICATIONS, BACKGROUND, AND EXPERIENCE

1. I hold a Masters of Business Administration, with honors, from the High Technology program at Northeastern University, Boston, Massachusetts. I hold a Bachelor of Arts degree cum laude in Business Economics from The College of Wooster, Wooster, Ohio. I have provided expert testimony before federal and state courts, the Federal Communications Commission, and state regulatory commissions, and have contributed research and analysis to numerous ETI publications and expert testimony at the state, federal, and international levels. I have consulted on a variety of consumer and wholesale products cases, calculating damages relating to food products, household appliances, herbal remedies, health/beauty care products, electronics, furniture, and computers. My Statement of Qualifications, which outlines my professional experience, publications, and record of expert testimony, is annexed hereto as Exhibit 1. This includes a list of all cases in which, during the previous four years, I have testified as an expert at trial or by deposition. Prior to joining ETI, I worked at Stop and Shop Supermarkets for a period of seven years, working as a cash department head, grocery/receiving clerk, and price-file maintenance head.

2. I am the same Colin B. Weir who has previously submitted testimony in this litigation. I reference the contents of my January 19, 2016 Declaration ("Weir Declaration") and May 10, 2016 Declaration ("Weir Reply Declaration") throughout this report.

II. ENGAGEMENT

3. I was previously advised by Counsel for Plaintiff that individuals purchased certain Salov brand Products¹ which were labeled as being "Imported From Italy" ("the Claim") and that Plaintiff alleges that this Claim is false or misleading to reasonable consumers.² In the Weir Declaration and subsequent Weir Reply Declaration, I proposed "Price Premium Damages" as a method to determine damages on a Class-wide basis, and provided a preliminary estimate of damages to a Class of California consumers using hedonic regression. As I outlined in my first report, hedonic regression is an econometric model commonly used by economists to quantify the relationship between the price of a product and its attributes, and the technique has a long history in use for determining damages in class action litigation.³ This Court too recognized that Price Premium Damages can be calculated on a Class-wide basis using hedonic regression.⁴

4. Additionally, I was advised by Counsel for Plaintiff that Plaintiff and Defendants reached a Settlement Agreement⁵ for a nationwide Class, which amongst other things, provides for certain ongoing relief -- i.e., changed practices. In my April 11, 2016 Declaration ("Weir Settlement Declaration") I calculated the value of ongoing relief to the Class as at least \$19.91 million.

¹ "The Products."

² See, generally, Class Action Complaint, filed May 22, 2014 ("Complaint").

³ See, Weir Declaration, at 6-12; *Hedonic Prices and Implicit Markets: Product Differentiation in Pure Competition*. Rosen, Sherwin, *The Journal of Political Economy*, Vol. 82, No. 1. (Jan. - Feb., 1974); *The Use of Hedonic Analysis for Certification and Damage Calculations in Class Action Complaints*, Doane, Michael (Analysis Group) and Hartman, Raymond, *Journal of Law, Economics, & Organization*, Vol. 3, No. 2 (Autumn, 1987), pp. 351-372.

⁴ *Rohini Kumar v. Salov North America Corp.*, 2016 WL 3844334, Case No.: 14-CV-2411-YGR, (N.D. Cal July 15, 2016).

⁵ Settlement Agreement between Plaintiff Rohini Kumar and Defendant Salov North America Corp. ("Settlement Agreement").

5. I have since been advised by Counsel for Plaintiff that Theodore H. Frank ("Objector") has objected to the terms of the Settlement Agreement and have asked to respond to objection pertaining to the value of injunctive relief for the Class.⁶

6. ETI is being compensated at the rate of \$600 per hour for my ongoing work on this case. The opinions expressed in this declaration are my own, and my compensation is not dependent upon the substance of these opinions or the outcome of the litigation.

7. The documents, data and other materials that I relied upon in forming my opinions are identified throughout my report and in Exhibit 1, attached hereto. In addition, I have relied upon my educational background and more than 13 years of experience.

III. RESPONSE TO OBJECTOR

8. Objector has objected to the Settlement Agreement, in part on the grounds that Plaintiffs have failed to establish the value of injunctive relief for the Class. I respectfully disagree. In the Weir Settlement Declaration I demonstrated that the total amount that will be paid by consumers for the Products during the period of Defendants changed practices will be at least \$19.91 million less than it would have been in the absence of the changes.⁷

9. Objector has challenged my valuation of ongoing relief to the Class almost entirely on the basis of Defendants' expert Keith Ugone's criticisms of my Price Premium methodology, which I responded to in the Weir Reply Declaration. Objector has proposed that valuation of ongoing relief can be determined using a "Before-and-After" price analysis, which it cannot, for all the reasons I discussed in my response to Ugone and also reiterated in the Weir Settlement Declaration.⁸ Below I discuss in detail why hedonic regression is an appropriate tool with which

⁶ Objection to Proposed Settlement and Fee Request, filed May 2, 2017, ("Settlement Objection").

⁷ Weir Settlement Declaration, at 7-8.

⁸ Weir Reply Declaration, at 18-19; Weir Settlement Declaration, at 8-9

to determine ongoing relief in this matter, as well as the reasons why a "Before-and-After" price analysis cannot be used to determine the value of Defendants changed practices.

The use of hedonic regression in litigation

10. As discussed in the Weir Declaration, a method that can reliably isolate the effect of a label change on the price of a product is the econometric technique referred to as hedonic regression. In general, a regression analysis identifies and quantifies the relationship between two or more variables. A regression analysis is used to identify the variation in the so-called "dependent variable" (such as the price of an olive oil) through its relationship with one or more "independent" or "explanatory" variables (such as, e.g., the Claim or the brand).⁹ A regression analysis can identify both whether a particular effect is present (such as to confirm that the Claim does increase the price of the Products) and the overall amount of such an effect (by how much does the Claim increase the cost of the Products).

11. Hedonic regression is an application of standard regression techniques that measure the value of various product attributes. Hedonic regression is based on the concept that each product attribute has a different and measurable impact on aggregate consumer utility.

12. First detailed by Rosen in 1974,¹⁰ hedonic regression is now widely used by economists. Indeed, there are numerous studies that apply the hedonic regression technique to myriad consumer products and the practice has been adopted by statistical agencies with a focus on measuring consumer prices (e.g., the U.S. Bureau of Economic Analysis, the U.S. Bureau of Labor Statistics).¹¹

⁹ An error term, also called the "disturbance" term, captures the effects of chance events, unmeasured variables, and other residuals as calculated by the regression model.

¹⁰ *Hedonic Prices and Implicit Markets: Product Differentiation in Pure Competition*. Rosen, Sherwin, *The Journal of Political Economy*, Vol. 82, No. 1. (Jan. - Feb., 1974) ("Rosen").

¹¹ The use of hedonic regression in individual studies is too widespread to exhaustively document in detail. *See, e.g., The Expanding Role of Hedonic Methods in the Official Statistics of the United States*, Moulton, Brent R., Bureau of Economic Analysis, U.S. Department of Commerce, June 2001.

13. Hedonic regression also has a long history in use for determining damages in class action litigation.

We have proposed the use of hedonic regression analysis as a tool to assist the courts in dealing with the difficult procedural decisions involved in these certification proceedings. Our proposed use of hedonic analysis fundamentally links class certification to the estimation of damages. In our application, we have used hedonic analysis to help certify class *specifically* by estimating the uniform and common damage caused to plaintiffs by the tortious behavior of defendant.¹²

14. Recently, various courts (including federal courts in New York and California) have found that hedonic regression analysis is a suitable method for determining class-wide damages (and specifically price premium damages) in consumer class action lawsuits.¹³ This Court also recognized that Price Premium Damages can be calculated on a Class-wide basis using hedonic regression.¹⁴ I have conducted hedonic regressions numerous times in these and other cases. As such it is my opinion that hedonic regression is appropriate tool with which to calculate the value of ongoing relief to the Class in this matter.

Hedonic regression controls for confounding factors

15. Objector asserts that my hedonic regression cannot control for what he calls "underlying characteristics of the product" such as "taste."¹⁵ Objector is simply wrong. As I

¹² *The Use of Hedonic Analysis for Certification and Damage Calculations in Class Action Complaints*, Doane, Michael (Analysis Group) and Hartman, Raymond, *Journal of Law, Economics, & Organization*, Vol. 3, No. 2 (Autumn, 1987), pp. 351-372. [Emphasis original]

¹³ See, e.g., *In re: Scotts EZ Seed Litigation*, Case No. 12-cv-4727-VB, Dkt No. 127 (S.D.N.Y. January 26, 2015); *In re: ConAgra Foods Inc.*, Case No. 11-cv-05379-MMM, Dkt No 545 (C.D. Cal February 23, 2015); *Dei Rossi vs. Whirlpool*, Case No. 12-cv-00125-TLN, Dkt No. 160 (E.D. Cal April 28, 2015).

¹⁴ *Rohini Kumar v. Salov North America Corp.*, 2016 WL 3844334, Case No.: 14-CV-2411-YGR, (N.D. Cal July 15, 2016).

¹⁵ Settlement Objection, at 14.

discussed above, hedonic regression can account for multiple variables that may have an effect on price other than the main variable of interest, in this case the "Imported from Italy" Claim, through the inclusion of additional explanatory variables known as control variables. In the Weir Declaration, I produced a hedonic regression model that explicitly controls for the following aspects of the Products:

- brand;
- size;
- packaging;
- promotional pricing;
- flavor/scent;
- additives (e.g., natural or organic);
- olive oil category (e.g., Extra Virgin);
- geography claim.

16. While my hedonic regression model explicitly controls for the variables listed above, the model also controls for certain "experiential" aspects of the Products, not explicitly listed above, such as "taste" via the inclusion of "Brand" dummy variables.¹⁶ Since the taste of a product is subjective and requires the use of the Products to evaluate that attribute, "taste" is intrinsically tied to the individual brand and the consumer's experience with that brand. As such, a product's brand conveys multiple pieces of information to potential consumers. It is often useful to control for brand in a hedonic regression because brand captures the qualities of products that may go unseen by an econometrician but are observed by the consumer.

¹⁶ "Dummy" variable is a term of art in econometrics (and is not used in a pejorative sense), referring to a variable that takes the value 0 under one condition, or 1 in the alternate. The "Imported from Italy" Claim is coded as a dummy variable, where each observation will be coded as 1 if the products makes an "Imported from Italy" Claim and 0 if it does not. Likewise, categorical variables such as "Brand" are also coded in the same format.

17. Objector is simply wrong that my hedonic regression model does not control for so-called "underlying characteristics" of the Products such as taste.

The expert relied upon by Objector also recognizes that hedonic regression is a generally accepted tool

18. While Objector is quick to point out that Defendants' expert advocates the use of a "Before-and-After" price comparison, Objector fails to mention that this expert also recognizes that hedonic regression is widely accepted tool commonly used in the economics profession to determine price premiums. When asked at deposition whether hedonic regression is a valid methodology to isolate the price premium of a product attribute, the expert agreed that hedonic regression is a generally accepted methodology:

Q. And I -- is it correct that hedonic regression, in your view, is a scientifically valid method to determine if a deceptive label on a consumer product led to a price premium?

A. Hedonic regression attempts to, in a sense, decompose observed prices into components that are associated with various attributes of products. I would not criticize the use of hedonic regression in the sense that I think it is generally accepted.¹⁷

19. In his deposition, Ugone also testified that hedonic regression is one tool that could be used to evaluate whether consumers paid a price premium for the "Imported from Italy" Claim in the context of this litigation:

Q. And based on what you said a few minutes ago, do you agree that hedonic regression would be a generally accepted methodology for determining if that phrase, "Imported from Italy," in fact, led to a price premium?

A. Somebody could --

¹⁷ Deposition of Keith R. Ugone, Ph.D., April 19, 2016 ("Ugone Deposition"), at 15-16.

A. Someone could use that technique, one of many, to evaluate the issue, so...

Q. When you say could use, do you mean it would be appropriate from the perspective of an expert in the field to use that technique?

A. Actually, what I meant was one of many. In other words, there's a number of different ways that you could approach the problem, one of which could be, if you chose to use it, hedonic regression, if it was appropriate to do so.¹⁸

[...]

Q. Okay. Well, we talked generally that -- what you can use it for. Is there anything about Filippo Berio Olive Oil that --

A. Would prevent its use?

Q. Right. That makes it inappropriate.

A. Sitting here kind of a priori, no, there's nothing where I'd say just because of this brand, no, you can't do it.¹⁹

20. Ugone and I are in agreement that there is nothing exceptional about this litigation which would prevent the use of hedonic regression to evaluate Filippo Berio olive oils.

21. Likewise, the value of ongoing relief to the Class can be evaluated using hedonic regression.

A simple "Before-and-After" price analysis is confounded by myriad factors

22. Objector claims that "only before-and-after data show whether *actual* benefits flow to class members."²⁰ While it may be possible to successfully perform a "Before-and-After" price analysis in theory, isolating the effect of a label change on the price of a product is often exceedingly difficult due to the influence of other factors on price. Such confounding factors include, but are not necessarily limited to, the following:

¹⁸ *Id.*, at 19. [objections omitted]

¹⁹ *Id.*, at 102.

²⁰ Settlement Objection, at 15.

- The pricing of other competing products in the marketplace;
- The actions of other competitors, including product development, and packaging changes such as other labeling changes;
- The promotional activities of Filippo Berio;
- The promotional activities of competitors;
- The effects on price of products being put "on sale";
- The effects of advertising;
- The effects of any and all other marketing efforts of Filippo Berio and competitors.²¹

23. Objector characterizes my assessment that a "Before-and-After" price analysis cannot be used to isolate the effect of a label change on price as a "refusal" to perform such an analysis.²² This is a gross mischaracterization of my prior testimony on the matter. It is my opinion that such an analysis is problematic in this case due to the presence of confounding factors, and Defendants' expert's failure to control for such factors. While a "Before-and-After" shelf-price price comparison is conceptually appealing because it seems easy to understand, such a price comparison cannot be interpreted as isolating the effect of any single change without additional controls and analysis.

24. As I discussed in the Weir Reply Declaration, unlike my hedonic regression, the "Before-and-After" price comparison relied upon by Objector does not control for any variables that could account for changes in the prices of competing products or any other competitive behavior by a rival firm, which could potentially affect the price of the products at issue. For example, it is standard economic theory that firms price their products based on competitors' prices, among other competitive behavior. Even in a market with a high degree of product

²¹ The factors that need to be controlled for in a "Before-and-After" analysis differ from those in a hedonic regression, as these are distinct methodologies with different mechanisms and data requirements.

²² Settlement Objection, at 14.

differentiation, such as the market for olive oil, where firms wield some level of market power, in order to be competitive firms must respond to price changes by competitors.²³

25. Salov itself has noted that competition in the olive oil market is strong enough to have had adverse effects on the sales of the Products. "Sales volume has essentially remained flat since the label change, aside from a *slight decrease due to aggressive promotional activities by key competitors*."²⁴

26. While Objector raises the issue of confounding variables in the context of my regression model, he does not acknowledge that a "Before-and-After" price comparison cannot isolate the impact of the label change on price due to the presence of confounding factors. This evaluation of both methods is inconsistent, and unfairly de-emphasizes the troubles associated with "Before-and-After" analysis.

Sales forecasting is reasonable when actual sales data is unavailable

27. Objector criticizes my analysis of Defendants' sales because I used pre-May 2015 sales data.²⁵ However, it is common practice for businesses to forecast sales of their products using historical data. In this instance, the value of the ongoing relief to the Class extends until August 31, 2020. Even a "Before-and-After" analysis conducted today is necessarily going to require a projection into the future. As such it is necessary to perform a forecast of Defendants' sales, and the market conditions surrounding the label change. In order to perform my sales forecast I relied on Defendants assumptions about their business. Counsel for Plaintiffs requested that Defendants detail various assumptions about sales of the Product post the

²³ Carlton, D. W. & J. M. Perloff, Modern Industrial Organization (2nd ed.). New York: HarperCollins College Publishers, 1994 ("Carlton & Perloff"), at 303-312.

²⁴ March 13, 2017 email from Sean Commons (Counsel for Defendant) to Adam Gutride. [emphasis supplied]

²⁵ Settlement Objection, at 14.

available IRI data in order to properly perform a sales forecast. I discussed these assumptions in the Weir Settlement Declaration:

- Since the label change in 2015, sales of Salov Products in California have continued to make up approximately 3% of Defendant's nationwide sales.
- Since the label change in 2015, sales have essentially remained flat or slightly decreased.
- Of the three types of oil at issue in this case: "Extra Virgin," "Extra Light," and "Olive Oil," the mix of Product sales in California is slightly more weighted towards "Extra Virgin" oil.

28. As discussed in the Weir Settlement Declaration, I incorporated each of these assumptions into my estimation of Salov's nationwide retail sales of the Products. I then reran my hedonic regression model to determine the likely value of the settlement relief for the period in question using the IRI data available to me.

29. Moreover, Objector did not conduct his own review of the data relied upon by Ugone to determine its suitability for use in this matter. I have compared my original IRI dataset with that relied upon by Ugone, and find several issues with the alternate data. The dataset that extends into mid-February 2016 is less complete than the data set that I relied upon, in that it does not contain data as far into history as the original set, it does not include any product attribute information, and is missing data on nearly 200 products that were contained in the original data set. Given that the Ugone data set only includes nine additional months (only 4.5 months of data post-label change given Objector's tolling date of "after September 2015") of less-than-complete data, on balance, I believe the use of the original data set, in combination with the economic forecasting techniques that have been used to estimate total sales for the settlement period, is the correct choice for estimating the value of the settlement.

30. Objector's criticism of my use of the original IRI data and forecast is misplaced, given that it ignored the frailties of the Ugone data, Defendants' own projections of its sales, and the market conditions being evaluated by the hedonic regression.

The ongoing relief to the Class has value regardless of whether the shelf price of the Products decreased

31. Objector asserts that the "Before-and-After" price analysis conducted by the expert it relies upon demonstrates that there was no substantial change to the shelf price of the products after the removal of the "Imported from Italy" Claim. Objector further argues that if this analysis showed no change because other changes were made to the Products' labels that caused the price of the products to stay the same after the removal of the "Imported from Italy" Claim then the value of the ongoing relief to the Class would be zero. Objector has cherry-picked a portion of my previous testimony discussing this price analysis to give the appearance that my testimony on the matter is inconsistent. In fact, I testified that other changes made by Defendants to the Products' labels was only one of many confounding factors that would need to be controlled for in a "Before-and-After" price comparison.²⁶

32. As I have discussed at length, a "Before-and-After" price comparison--while conceptually appealing--is often confounded by numerous factors that do not allow for the identification of the effect of a label change, holding all else constant while controlling for other sources of value. For example, the shelf prices of the Products may not have decreased after the label change because prices in the market overall were on the rise. In this situation, there could be a simultaneous increase in price associated with other market forces, and a decrease in price associated with the label change. In other words, even if the shelf price remained constant, it may have been higher absent the label change, and the Defendants' "Before-and-After" analysis

²⁶ Weir Reply Declaration, at 18-19.

is incapable of making this determination (in the way that my hedonic regression is capable of isolating the premium solely attributable to the label Claim).

33. The "Before-and-After" analysis would not be able to independently measure these unique effects, and as conducted, would actually mask these effects by looking at the aggregate shelf price without controls in place to isolate the impact of the label change, all else equal and controlling for other sources of value (as my hedonic regression does).

34. In any event, regardless of whether the price of the Products decreased or not, ongoing relief still has value to the Class, because consumers are no longer being misled by Defendants' alleged misconduct. As such, consumers can make the informed choice not to buy Berio Olive Oil at all if they so choose. Based upon Defendants' measurements of its ongoing sales as "slightly decreasing," this effect may be having an impact in the marketplace that Objector conveniently ignores.

Salov does not set the retail price of the Products

35. Objector has asserted that the fact that the "Before-and-After" price analysis did not demonstrate a material change in the price of the Products after the removal of the "Imported from Italy" Claim "is unsurprising because Berio hasn't changed the wholesale price of the products."²⁷ Whether or not Defendants changed the wholesale price of its Products has no bearing on the value of injunctive relief given, because it is retailers, not Defendants, who set the price of the Products.

36. Many of the retailers of Filippo Berio publicly identify their willingness to adjust prices in response to changing economic conditions and consumer preferences. For example, Safeway, a major grocer in California, notes:

²⁷ Settlement Objection, at 15.

Competitive Industry Conditions: We face strong competition from traditional grocery retailers, non-traditional competitors such as supercenters and club stores, as well as from specialty and niche supermarkets, drug stores, dollar stores, convenience stores and restaurants. Increased competition may have an adverse effect on profitability as the result of lower sales, lower gross profits and/or greater operating costs.

Our ability to attract customers is dependent, in large part, upon a combination of location, quality, price, service, selection and condition of assets. In each of these areas, traditional and non-traditional competitors compete with us and may successfully attract our customers to their stores by aggressively matching or exceeding what we offer. In recent years, many of our competitors have increased their presence in our markets. ***Our responses to competitive pressure, such as additional promotions and increased advertising,*** could adversely affect our profitability. We cannot guarantee that our actions will succeed in gaining or maintaining market share. Additionally, we cannot predict how our customers will react to the entrance of certain non-traditional competitors into the grocery retailing business.

Because we face intense competition, ***we need to anticipate and respond to changing consumer demands more effectively than our competitors.*** We strive to achieve and maintain favorable recognition of our unique private-label brands, effectively market our products to consumers, ***competitively price our products*** and maintain and enhance a perception of value for consumers.²⁸

IV. RESERVATION OF RIGHTS

My testimony is based upon the information and data presently available to me.

Additional, different and/or updated data including market research data may be obtained in advance of trial. I therefore reserve the right to amend or modify my testimony.

²⁸ Safeway 2015 10-K Annual Report filed with the US Securities and Exchange Commission [emphasis supplied].

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief, and that this declaration was executed at Boston, Massachusetts, this 16th day of May, 2017.

A handwritten signature in black ink, appearing to read 'C. B. Weir', is written over a solid horizontal line.

Colin B. Weir

Exhibit 1

**Statement of Qualifications
of**

COLIN B. WEIR

Statement of Qualifications

COLIN B. WEIR

Colin B. Weir is Vice President at Economics and Technology, Inc. Mr. Weir conducts economic, statistical, and regulatory research and analysis, and testifies as an expert witness. Mr. Weir's work involves econometric and statistical analysis, multiple regression, surveys, statistical sampling, micro- and macroeconomic modeling, accounting and other economic analysis. Such analysis often involves analysis of databases, call detail records, and other voluminous business records. Mr. Weir is familiar with common statistical and econometric software packages such as STATA and SHAZAM. Mr. Weir assists with analysis of economic, statistical and other evidence; and preparation for depositions, trial and oral examinations. Mr. Weir has provided expert testimony before federal and state courts, the FCC, and state regulatory commissions, and has contributed research and analysis to numerous ETI publications and testimony at the state, federal, and international levels. Prior to joining ETI, Mr. Weir worked at Stop and Shop Supermarkets as a cash department head, grocery/receiving clerk, and price-file maintenance head.

Mr. Weir's experience includes work on a variety of issues, including: economic harm and damage calculation; liquidated damages provisions; lost profits; false claims; diminution in value; merger/antitrust analysis; diminution in value; Early Termination Fees (ETFs); Late Fees; determination of Federal Excise Tax burden; and development of macroeconomic analyses quantifying the economic impact of corporate actions upon the US economy and job markets.

Mr. Weir has conducted research and analysis in numerous litigation and regulatory matters on behalf of corporate, government and individual clients, including AT&T, MTS Allstream (Canada), The US Department of Justice, Office of the Attorney General of Illinois, Pennsylvania Department of Revenue, *Thomas v. Global Vision*, (class action litigation, Superior Court, County of Alameda), *Ayyad v. Sprint* (class action litigation, Superior Court, County of Alameda), *Forcellati v. Hylands* (class action, U.S. District Court, Central District of California), and *Ebin v. Kangadis Foods* (class action, U.S. District Court, Southern District of New York).

Mr. Weir holds an MBA with honors from Northeastern University. He also holds a Bachelor of Arts degree *cum laude* in Business Economics from The College of Wooster.

Mr. Weir is a member of the Boston Economic Club, a business member of the Boston Bar Association, and serves as the comptroller for the Sybaris Investment Partnership.

Publications and Testimony of Colin B. Weir

Mr. Weir has co-authored the following:

Interoperability and Spectrum Efficiency: Achieving a Competitive Outcome in the US Wireless Market (with Lee L. Selwyn) Economics and Technology, Inc., prepared on behalf of United States Cellular Corporation, July 2012.

The Price Cap LECs' "Broadband Connectivity Plan": Protecting Their Past, Hijacking the Nation's Future (with Lee L. Selwyn and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of United States Cellular Corporation, September 2011.

Regulation, Investment and Jobs: How Regulation of Wholesale Markets Can Stimulate Private Sector Broadband Investment and Create Jobs (with Lee L. Selwyn, Susan M. Gately, and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of Cbeyond, Inc., Covad Communications Company, Integra Telecom, Inc., PAETEC Holding Corp, and tw telecom inc., February 2010.

Revisiting Us Broadband Policy: How Re-regulation of Wholesale Services Will Encourage Investment and Stimulate Competition and Innovation in Enterprise Broadband Markets, (with Lee L. Selwyn, Susan M. Gately, and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of MTS Allstream, February 2010.

Longstanding Regulatory Tools Confirm BOC Market Power: A Defense of ARMIS (with Lee L. Selwyn, Susan M. Gately, and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of the AdHoc Telecommunications Users Committee, January 2010.

Choosing Broadband Competition over Unconstrained Incumbent Market Power: A Response to Bell and TELUS (with Lee L. Selwyn, Susan M. Gately, and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of MTS Allstream, April 2009.

The Role of Regulation in a Competitive Telecom Environment: How Smart Regulation of Essential Wholesale Facilities Stimulates Investment and Promotes Competition (with Lee L. Selwyn, Susan M. Gately, and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of MTS Allstream, March 2009.

Special Access Overpricing and the US Economy: How Unchecked RBOC Market Power is Costing US Jobs and Impairing US Competitiveness (with Lee L. Selwyn, Susan M. Gately, and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of the AdHoc Telecommunications Users Committee, August 2007.

The AWS Spectrum Auction: A One-Time Opportunity to Introduce Real Competition for Wireless Services in Canada (with Lee L. Selwyn and Helen E. Golding) Economics and Technology, Inc., prepared on behalf of MTS Allstream, June 2007.

Comparison of Wireless Service Price Levels in the US and Canada (with Lee L. Selwyn) Economics and Technology, Inc., prepared on behalf of MTS Allstream, May 2007.

Hold the Phone! Debunking the Myth of Intermodal Alternatives for Business Telecom Users In New York (with Susan M. Gately and Lee L. Selwyn) Economics and Technology, Inc., prepared for the UNE-L CLEC Coalition, August 2005.

Mr. Weir has submitted the following testimony:

United States District Court, Southern District of California, Preston Jones and Shirin Delalat, on behalf of themselves, all others similarly situated, and the general public, v. Nutiva Inc., Case No. 16-cv-00711 HSG, on behalf of Law Offices of Jack Fitzgerald, PC, Declaration submitted May 9, 2016.

United States District Court, Central District of California, Southern Division, Billy Glenn, Kathy Warburton, Kim Fama, and Corinne Kane, on behalf of themselves and all others similarly situated, v. Hyundai Motor America And Hyundai Motor Company, Case No. 15-cv-02052-DOC-KES, on behalf of Gibbs Law Group, LLP, Declaration submitted May 1, 2017.

United States District Court, Southern District Of California, Sherry Hunter, on behalf of herself, all others similarly situated, and the general public, v. Nature's Way Products, LLC, and Schwabe North America, Inc., Case No. 3:16-cv-00532-WQH-BLM, on behalf of Law offices of Jack Fitzgerald, PC, Declaration submitted March 24, 2017.

United States District Court, Southern District Of New York, Joanne Hart, and Sandra Bueno, on behalf of themselves and all others similarly situated, v. BHH, LLC d/b/a Bell + Howell and Van Hauser LLC, Case No. 1:15-cv-04804-WHP, on behalf of Bursor & Fisher, P.A., Declaration submitted March 16, 2017.

United States District Court, Eastern District Of New York, Brooklyn Division, Reply All Corp., v. Gimlet Media, Inc., Case No. 15-cv-04950-WFK-PK, on behalf of Wolf, Greenfield & Sacks, P.C., Declaration submitted March 15, 2017; Deposition on April 26, 2017.

United States District Court, Northern District of California, James P. Brickman, individually and as a representative of all others similarly situated, v. Fitbit, Inc., Case No. 3:15-cv-02077-JD, on behalf of Dworken & Bernstein LPA, Declaration submitted February 28, 2017; Deposition on March 8, 2017.

United States District Court, Northern District of California, Jamie Pettit, an individual, on behalf of herself, the general public and those similarly situated, v. Procter & Gamble Company; and Does 1 Through 50, Case No. 15-cv-02150-RGS, on behalf of Gutride Safier LLP, Declaration submitted February 14, 2017; Deposition on March 3, 2017.

United States District Court, Southern District of New York, Alan Gulkis, individually and on behalf of all others similarly situated, Zicam LLC and Matrixx Initiatives, Inc., Case No. 7:15-cv-09843-CS, on behalf of Bursor & Fisher, P.A., Declaration submitted on February 8, 2017.

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Mr. Weir has served as a consultative expert in numerous proceedings that did not result in testimony, and has contributed research and analysis to numerous additional publications and testimony at the state, federal, and international levels.

Exhibit 2

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