

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK

CITY OF PITTSBURGH COMPREHENSIVE  
 MUNICIPAL PENSION TRUST FUND,  
 Individually and on Behalf of All Others Similarly  
 Situated,

Plaintiff,

v.

BENEFITFOCUS, INC., THE GOLDMAN SACHS  
 GROUP, INC., GS CAPITAL PARTNERS VI  
 PARALLEL, L.P., GS CAPITAL PARTNERS VI  
 OFFSHORE FUND, L.P., GS CAPITAL PARTNERS  
 VI FUND, L.P., GS CAPITAL PARTNERS VI  
 GMBH & CO. KG, MERCER LLC, MARSH &  
 MCLENNAN COMPANIES, INC., MERCER  
 CONSULTING GROUP, INC., MASON R.  
 HOLLAND, JR., RAYMOND A. AUGUST,  
 JONATHON E. DUSSAULT, DOUGLAS A.  
 DENNERLINE, JOSEPH P. DISABATO, A.  
 LANHAM NAPIER, FRANCIS J. PELZER V,  
 STEPHEN M. SWAD, ANA M. WHITE, J.P.  
 MORGAN SECURITIES LLC, GOLDMAN SACHS  
 & CO. LLC, MERRILL LYNCH, PIERCE, FENNER  
 & SMITH INCORPORATED, PIPER JAFFRAY &  
 CO., RAYMOND JAMES & ASSOCIATES, INC.,  
 WEDBUSH SECURITIES, INC., AND FIRST  
 ANALYSIS SECURITIES CORPORATION,

Defendants.

Index No. 651425/2021

CLASS ACTION

**AMENDED CLASS ACTION  
 COMPLAINT FOR  
 VIOLATIONS OF THE  
 SECURITIES ACT OF 1933**

DEMAND FOR JURY TRIAL

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 Comprehensive Municipal Pension Trust Fund*

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City of Pittsburgh Comprehensive Municipal Pension Trust Fund (“Plaintiff”), individually and on behalf of all other similarly situated persons and entities, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, the investigation undertaken by Labaton Sucharow LLP, which included review and analysis of: (a) regulatory filings made by Benefitfocus, Inc. (“Benefitfocus” or the “Company”) with the U.S. Securities and Exchange Commission (“SEC”), (b) public reports and news articles; (c) research reports by securities and financial analysts; (d) press releases, transcripts of earnings calls, and other public statements issued by and disseminated by the Company; (e) other publicly available material and data; (f) interviews with former employees of Benefitfocus and others with knowledge of the matters alleged herein; and (g) consultation with relevant consulting experts. Plaintiff believes that further substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

## **I. NATURE AND SUMMARY OF THE ACTION**

1. The claims asserted herein are solely strict liability and negligence claims for violations of Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the “Securities Act”) relating to Benefitfocus’s secondary public offering commenced on or about March 1, 2019 of 6,560,472 shares of common stock, including an executed underwriters’ overallotment of 855,714 shares, at a price of \$48.25 per share (the “SPO” or the “Offering”). This securities class action is brought on behalf of a Class (as defined herein) of all persons or entities who purchased or otherwise acquired Benefitfocus common stock pursuant and/or traceable to the Offering Documents (as defined herein) issued in connection with the SPO, and who were damaged thereby.

2. Congress passed the Securities Act in the hopes of restoring investor confidence after corporate scandals and the stock market crash of 1929. It requires that those who sell

securities to the investing public do so on the basis of accurate and fulsome disclosures. The Securities Act creates liability for false, misleading, and incomplete statements made in connection with public securities offerings in order to protect investors and maintain confidence in our public markets.

3. Defendant Benefitfocus describes itself as a “leading cloud-based benefits management platform” that “simplifies how organizations and individuals transact benefits.” The Company’s broker customers use its platform to manage employer portfolios; employer customers use the platform to streamline benefit processes, control costs, and keep up with regulatory requirements; and insurance carrier and supplier customers use the platform to market offerings to consumers, simplify billing, and improve the enrollment process.

4. Benefitfocus’s self-described target market comprises both the employer segment and the insurance carrier segment, and the Company works closely with brokers as partners in the benefits management ecosystem. Mercer Health & Benefits, LLC (“Mercer Health”) is one such broker partner, a key participant in the benefits market.

5. Since 2013, Mercer Health was one of Benefitfocus’s most important customers. Mercer Health used the Company’s software and platform to power its private health insurance exchange (the “Mercer Marketplace”), designed as an online site for employers to lower their costs through comparisons and competitive bargaining. Through a long-term commercial agreement (the “Mercer Health Agreement”), Mercer Health paid Benefitfocus fees for providing the software to power the Mercer Marketplace.

6. In 2015, Mercer Health announced an expanded commercial relationship with Benefitfocus, through which it became a related party by virtue of beneficially owning more than 10% of the total outstanding shares of Benefitfocus common stock. In 2016, Mercer Health

accounted for 11% of Benefitfocus's total revenues, and the Mercer Health Agreement continued to contribute a substantial portion of Benefitfocus's total revenues in 2017 and 2018.

7. On or about March 1, 2019, Benefitfocus conducted the SPO and the Selling Stockholder Defendants (as defined herein)—including Mercer LLC, an entity related to Mercer Health—raised more than **\$316 million** in gross proceeds for the shares they offered to the public, while the banks that underwrote the Offering collected over **\$9.4 million** in fees. In other words, the SPO was a great success for Defendants; however, the SPO was disastrous for investors.

8. Just prior to and in connection with the SPO, Benefitfocus disclosed it had **amended** the Mercer Health Agreement to, among other things, take advantage of increased opportunities in the broker channel. Benefitfocus claimed that any reduction in revenue associated with the amended Mercer Health Agreement would be limited to 2019 and would have no material impact on the Company's financial condition and results.

9. However, within months of the SPO, Benefitfocus disclosed materially adverse and previously existing but undisclosed conditions, trends, uncertainties, and risks at the Company that pre-dated the SPO, including the **complete runoff** of significant, recurring, high-margin Mercer Health revenues, significant losses and earnings misses, and the inability to replace lost Mercer Health revenues with new broker channel revenues.

10. Former Benefitfocus employees ("FEs")<sup>1</sup> substantiate the allegations concerning the material undisclosed terms and financial impact of the amended Mercer Health Agreement.

11. According to Former Employee 1 ("FE-1"), the negotiations with Mercer Health over their contract renewal began around September 2018, because it was at that time when he was

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<sup>1</sup> For ease of comprehension and readability, the Amended Complaint uses the pronoun "he" and possessive "his" in connection with former Benefitfocus employees. This convention, however, is not meant to identify the actual gender of any of the former employees.

tasked to be part of the Mercer Health contract renewal group. FE-1 suggested that Benefitfocus already knew that Mercer Health was not going to be retained in the same capacity as a reseller like they had been, because his responsibility was to research and provide analysis on the savings that may be realized by Benefitfocus if they were to lose the Mercer Health account all together.

12. FE-1 recalled that his analysis showed that the savings to Benefitfocus would be relatively negligible because the costs associated with maintaining the Mercer Health account, including a customer service team dedicated to that client, was de minimis in comparison to the very high end margins that the Mercer Health account provided.

13. FE-1 recalled the financial planning and analysis (“FP&A”) team laughing in derision when Chief Executive Officer (“CEO”) Raymond A. August (“August”) suggested to shareholders at Investor Day 2019 that retaining Mercer Health as a broker—instead of a reseller—would lead to long-term financial advantages for Benefitfocus. FE-1 identified Investor Day 2019 as the day in early 2019 when CEO August provided the market with positive guidance for full-year 2019, suggested that there would not be any reduction in revenue material to the Company’s results as a product of losing Mercer Health as a reseller, and discussed the upcoming offering. FE-1 advised that there was laughter because the feeling amongst the FP&A team was that CEO August’s guidance and positive comments about the loss of Mercer Health did not reflect reality.

14. FE-1 went on to recall that there was normally a sizeable gap on the financial projections for each approaching quarter between FP&A’s reality-based numbers and the higher ones that CEO August was telling FP&A that he wanted to present to the market. FE-1 described it as a constant battle between FP&A and CEO August. According to FE-1, each quarter there was a big push to make up the difference between FP&A’s projections and CEO August’s demands, and that internally this difference was referred to as the “gap target.”

15. FE-1 recalled that there was always a push to finish jobs to recognize sales for that quarter in order to make up for the gap target, but that this was taking revenues from future quarters. FE-1 explained that this made it more difficult to make up the gap target each subsequent quarter. FE-1 described the actual Mercer Health forecast as way off and that the data was so bad.

16. According to Former Employee 2 (“FE-2”), he first came to believe that Benefitfocus was going to lose the Mercer Health account in early 2018, and that was when he started to become concerned for the future employment of those who reported to him on his Mercer Health team. FE-2 explained that it was at that time when he realized that Mercer Health was not likely going to renew their 7-year contract when it was coming due around October 2018 for a few reasons.

17. FE-2 explained that by Spring 2018 Mercer Health had started taking over coding for and configuration of their platform, which were responsibilities that were historically conducted by the Mercer Health team at Benefitfocus. FE-2 recalled that Mercer’s 6- or 7-year-long contract was coming up for renewal around October 2018, and according to FE-2, the fact that Mercer Health was taking over these tasks (configuration) was a clear sign that Mercer Health was not going to renew their contract with Benefitfocus.

18. FE-2 recounted how he and his team were increasingly not being invited by Mercer Health to what had previously been regularly scheduled calls with that client, as well as being asked to do less projects and upgrades for Mercer Health. FE-2 advised that he also had a close working relationship with his counterparts at Mercer Health, and when he asked them whether changes were being made regarding their relationship with Benefitfocus, they responded with general and cryptic answers such as “I can’t talk about it” (as an example). FE-2 added that he had

previously experienced this with other clients when working at previous employers and that he had gotten used to picking up on the indicators by early 2018.

19. FE-2 further recalled that his counterparts at Mercer Health were saying cryptic things to him in Summer 2018 such as “You do know what’s happening, don’t you?” which he took as an indication at that time that Mercer Health was planning on not renewing their contract.

20. According to FE-2, he first made his concerns (that Mercer Health would not renew their contract) known in a meeting around Spring 2018 that was attended by senior executives, including Director – Implementation, Meghan Hugus, Director of Implementation – Mercer Marketplace Jon Bonoma, Senior Director – Professional Services Jason Reese, Vice President and Account General Manager Robert Mercorelli, Director of Business Development, BenefitsPlace Integrators Alex Shortridge, Director of Engineering Scott Martin, and others. FE-2 advised that CEO August and Chief Financial Officer (“CFO”) Jonathon E. Dussault (“Dussault”) were not present, but that at least some of the executives present reported directly to the CEO. FE-2 believed that at least some of the senior executives may have made his concerns known to CEO August.

21. FE-2 further recalled being in a meeting in October 2018 that was called for when Mercer Health revealed to Benefitfocus that they were not going to renew their contract. According to FE-2, this meeting involved the more senior people on the Mercer Health account, including FE-2. FE-2 recalled meeting attendees asking the group something similar to, “How did this happen and how did we not know this was going to happen?” FE-2 advised that he did not speak up in this meeting about having warned others that Mercer Health was not going to renew, since he did not want to put his supervisors in an uncomfortable position.

22. FE-2 recalled Director – Implementation, Meghan Hugus sounding like it was a shock when responding to questions in that October 2018 meeting. FE-2 further recalled Hugus stating “senior leadership was shocked,” as in caught by surprise, by the end of the Mercer Health relationship, but FE-2 wondered how they could all be shocked, since he had warned Hugus that this was going to happen. FE-2 recalled that the sentiment about that news in the October 2018 meeting was one of stunned disbelief.

23. FE-2 also recalled that CEO August was present at an all-hands meeting around that same time in October 2018 when the ending of the Mercer Health contract was discussed. FE-2 described this as a meeting to assuage concerns of the Mercer Health team members that they would still have a place at the Company. FE-2 recalled that this meeting was led by Anna Louise Stenton, who FE-2 described as the senior leader for Benefitfocus’s Mercer Marketplace, and was attended by around 40 people. FE-2 further recalled Stenton saying in this meeting that they were “shocked” that the relationship with Mercer was changing and that they “did not expect this.” When attendees of the all-hands meeting asked “How did this happen and how did we not know this was going to happen,” CEO August and other senior leaders told them not to worry because Mercer Health had signed a 2-year contract. According to FE-2, upper leadership were telling employees it is going to be fine, but that was not the case.

24. FE-2 further recalled that while Mercer Health did not renew their 7-year contract, they did sign something like a 2-year extension to make sure that their (Mercer Health’s) clients were not prematurely affected by the severing of business with Benefitfocus. According to FE-2, the 2-year extension was only in place while Mercer Health transitioned their clients off the Benefitfocus platforms and was not intended for new Mercer Health clients to be onboarded.

25. FE-2 believed that by the time of the Offering, Benefitfocus knew that the loss of Mercer Health would have a long-term negative impact on the Company's bottom line because the Company terminated many employees that month (March 2019), including FE-2. FE-2 added that Benefitfocus lost a lot of revenue when they lost Mercer Health as a reseller, and that he knew this because he maintains contact with colleagues still employed by Benefitfocus.

26. According to Former Employee 3 ("FE-3"), around August 2018 it was understood internally at Benefitfocus that Mercer Health was not going to renew its long-term contract with the Company. According to FE-3, he was part of Benefitfocus's Mercer Health team the first few years of his tenure, and then transferred to another team in May 2018. FE-3 recalled that it was a few months after that, around August 2018, when his former Mercer Health team members started to be transitioned to other areas of Benefitfocus because the contract was not going to be renewed.

27. FE-3 also recalled an email, general in nature, that was circulated internally around that same time that members of the Mercer Health team were transitioned (around August 2018), explaining that Mercer Health was not likely to renew their contract with the Company, and that Mercer Health team members would be transitioned to other areas of need as part of an internal restructuring. FE-3 further recalled that while Mercer Health did not renew its long-term contract, they had signed a 2-year extension to not abruptly affect their (Mercer Health's) own clients' needs.

28. According to FE-3, there were indicators and red flags, going back to at least the early part of 2018, that Mercer Health was likely to not renew their contract. FE-3 recalled that in early 2018, and while he was still on the Mercer Health team, Mercer Health began to take on more control of their platforms and requested less work from Benefitfocus. FE-3 also recalled being told by colleagues in June or July 2018, soon after he transferred from the Mercer Health

team, that Mercer Health had taken over the coding, or a good portion of it, for their platforms. According to FE-3, these were indicators to him and some of his colleagues that Mercer Health was likely to be moving on from Benefitfocus when the contract renewal came up.

29. According to Former Employee 4 (“FE-4”), he felt at the time that positive statements given by Benefitfocus to the market throughout 2019—about future opportunities that may present following the loss of Mercer Health—did not reflect reality. FE-4 believed this was a view held by colleagues at that time. FE-4 added that from his perspective in 2019, the loss of Mercer Health was going to have a negative long-term impact on the Company’s bottom line because of both the amount of business and nature of the relationship between Mercer Health and Benefitfocus.

30. FE-4 explained that up until 2017 and early 2018, Benefitfocus had two channels of business: the Mercer Health channel and the SAP, or large enterprise, channel. According to FE-4, Benefitfocus went through a paradigm shift in 2017 when the Company decided to add a third channel, the broker channel, which started in January 2018 with FE-4 as one of its leaders until January 2019.

31. FE-4 recalled perceiving at the time that Benefitfocus was being misleading with their statements to the market in March 2019 that losing Mercer Health would open avenues to new business. FE-4 explained that in making these statements, the Company was presenting it as making up for the loss of the Mercer Health channel through growth in the new broker channel, but that the growth in actual sales was not there and may not be there for a very long time, if ever.

32. According to FE-4, there was a big difference between the Mercer Health and broker channels, in that Mercer Health was a reseller of Benefitfocus platforms and products, while brokers could only refer clients to Benefitfocus. FE-4 explained that Benefitfocus was telling the

market in 2019 that they were adding new clients, but what was actually occurring was that they were adding new broker clients—which did not guarantee more business, unlike a reseller like Mercer Health. FE-4 added that business can be built up through brokers, but that it takes a long time and is far from a guarantee of significant sales growth and market penetration, unlike Mercer Health had traditionally been for Benefitfocus.

33. Regarding Benefitfocus’s March 2019 growth outlook in its communications to shareholders, FE-4 stated that at that time the message did not reflect reality. FE-4 explained that this was his perspective given his exposure to the performance of the new line of business as one of the senior members of the broker channel throughout all of 2018. FE-4 added that the trajectory in expected sales growth on the broker channel side was not going to make up for the loss of the Mercer Health channel any time soon.

34. FE-4 explained that by the time he moved into his new role in January 2019, the sales produced from the broker channel was not meeting what was required, and not meeting what the Company was touting by March 2019. FE-4 advised that by mid-2019, he felt the Company was in long-term trouble given its loss of Mercer Health and its lack of prospects to fill that void.

35. According to FE-4, it was obvious that the loss of Mercer Health would have a long-term negative impact given that, until January 2018, Mercer Health was one of Benefitfocus’s only two channels, as well as a stakeholder in the Company.

36. According to Former Employee 5 (“FE-5”), he occasionally listened to the quarterly guidance calls given by CEO August. FE-5 advised that CEO August pumping up broker business on those calls was believed within the sales side of Benefitfocus to be nonsense because there was no real value behind the broker channel.

37. According to FE-5, it was believed amongst the sales side of Benefitfocus that CEO August was promoting broker growth, which FE-5 described as growth on paper with zero financial backing. FE-5 explained that although Benefitfocus had promoted its growing number of preferred brokers, those brokers had zero financial commitment to the Company and the number of brokers did not equate to sales.

38. FE-5 explained why he and others at Benefitfocus believed that CEO August's positive outlook in 2019 regarding the broker channel was nothing more than just paper and meant nothing. FE-5 explained that Benefitfocus touting the increasing number of broker clients was meaningless because there were no guarantees of sales since brokers could only refer business and did not actually sell Benefitfocus's products or services.

39. FE-5 further explained that it would take a long time for the broker sales to develop because it required Benefitfocus to repair relationships with brokers who the Company had previously burned in the past when competing for customers. FE-5 described brokers as having long memories when it came to Benefitfocus's past behavior towards them. FE-5 reiterated that regardless of how many broker partners the Company may add, that does not automatically mean that will result in sales.

40. Then-existing material facts confirmed by the FEs—and other then-existing material facts that were undisclosed until after the SPO—about the amended Mercer Health Agreement's terms and financial impact were either omitted from the Offering Documents or rendered the Offering Documents' statements materially false and misleading in context.

41. On March 3, 2020, for example, Defendant August admitted that—because of the amended Mercer Health Agreement—“*Mercer is no longer a leading source of revenue in our 2020 outlook.*”

42. Also on March 3, 2020, Defendant Stephen M. Swad (“Swad”) admitted that Benefitfocus had experienced a “*reduction in high-margin Mercer revenue.*” Defendant Swad further admitted that—because of the amended Mercer Health Agreement—“*Mercer headwinds are going to continue, and in fact strengthen.* And that’s why I called out explicitly Mercer’s numbers.... *And so you can see there’s an acceleration in the decline for Mercer.*”

43. On November 5, 2020, CFO Alpana Wegner (“Wegner”) admitted, “Subscription revenue was down 10% compared to the same period last year, *primarily due to the runoff of our legacy agreement with Mercer.*” CFO Wegner further admitted that gross margins of 66% were “up from [the] prior quarter, but down 69.3% in Q3 of last year. This *decline is a result of reduced high-margin Mercer revenue.*”

44. As a result of these undisclosed adverse facts that existed at the time of the Offering, Benefitfocus’s common stock plummeted, falling from its SPO price of \$48.25 per share to close at \$14.90 per share on March 2, 2021, the date this Action was filed.

## II. JURISDICTION AND VENUE

45. This Court has original subject jurisdiction under the New York Constitution, Article VI, Section 7(a), and pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v. Section 22 of the Securities Act expressly prohibits removal of this action to federal court.

46. This Court has personal jurisdiction and venue is proper under the New York Civil Practice Laws and Rules (“CPLR”), and Section 22 of the Securities Act, because Defendants (as defined herein) reside, are headquartered, or transact business in New York and this County. Defendants committed a tortious act within this state and from without this state, causing injury within the state, as alleged herein. Defendants regularly do and solicit business, engage in a persistent course of conduct, and derive substantial revenue in this state. Defendants derive

substantial revenue from interstate commerce and should reasonably expect to have consequences in this state for the acts alleged herein.

47. Benefitfocus is a leading U.S. provider of cloud-based benefit enrollment and administration software to employers and insurance carriers in New York and other states.

48. Defendants offered Benefitfocus common stock shares through the SPO on the Nasdaq Global Market (“NASDAQ”) under the symbol “BNFT” in New York, New York, and the Underwriter Defendants (as defined herein) delivered the shares against payment in New York, New York on or about March 5, 2019.

49. Defendants and their agents affirmatively sold the subject securities and disseminated the Offering Documents to investors in New York and this County, those contacts have a substantial connection to the claims alleged herein, and the securities at issue are listed and traded on the NASDAQ in this County.

50. The Individual Defendants (as defined herein) participated in the Offering in New York and this County.

51. J.P. Morgan Securities LLC (“J.P. Morgan”), Goldman Sachs & Co. LLC (“GS&Co.”), and Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), each an Underwriter Defendant and the underwriter representatives for the SPO, are based in New York and have consented to jurisdiction in this court in their underwriting agreements. New York law governs the underwriting agreements J.P. Morgan, GS&Co., and Merrill Lynch entered into to conduct the Offering. Payment to the Selling Stockholder Defendants for the purchase price of the securities that were initially to be sold to J.P. Morgan, GS&Co., and Merrill Lynch was made at the New York offices of Orrick, Herrington & Sutcliffe LLP.

52. Each of the Selling Stockholder Defendants are headquartered in this County.

53. Orrick, Herrington & Sutcliffe LLP, New York, New York acted as counsel for the Underwriter Defendants in the Offering.

54. Freshfields Bruckhaus Deringer US LLP, New York, New York acted as counsel for the Selling Stockholder Defendants in the Offering.

### **III. PARTIES**

#### **A. Plaintiff**

55. Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund purchased Benefitfocus common stock in the Offering from an Underwriter Defendant pursuant and traceable to the Offering Documents, and has been damaged thereby.

#### **B. Defendants**

##### **1. Corporate Defendant**

56. Defendant Benefitfocus, Inc. is the issuer of the shares sold in the Offering. The Company is a leading U.S. cloud-based benefits management platform and services provider, incorporated under the laws of Delaware, with principal executive offices located at 100 Benefitfocus Way, Charleston, South Carolina 29492. The Company's stock is listed and trades on the NASDAQ national securities exchange in New York under the symbol "BNFT."

##### **2. Selling Stockholder Defendants**

57. Defendants The Goldman Sachs Group, Inc. ("GS Group") and GS&Co. were Selling Stockholders in the SPO. Prior to the SPO, GS Group directly held 48,889 shares of Benefitfocus common stock. GS Group and GS&Co., through the Goldman Funds (as defined herein), beneficially owned a total of 3,791,835 shares of Benefitfocus common stock, or 11.8% of total outstanding shares just prior to the SPO; following the SPO and the full exercise of the Underwriter Defendants' option to purchase and offer additional shares, GS Group beneficially owned only 48,889 shares of Benefitfocus common stock.

58. Defendant GS Capital Partners VI Parallel, L.P. (“GS Capital Partners VI Parallel”) was a Selling Stockholder in the SPO. Prior to the SPO, GS Capital Partners VI Parallel directly held 480,442 shares of Benefitfocus common stock.

59. Defendant GS Capital Partners VI Offshore Fund, L.P. (“GS Capital Partners VI Offshore Fund”) was a Selling Stockholder in the SPO. Prior to the SPO, GS Capital Partners VI Offshore Fund directly held 1,453,237 shares of Benefitfocus common stock.

60. Defendant GS Capital Partners VI Fund, L.P. (“GS Capital Partners VI Fund”) was a Selling Stockholder in the SPO. Prior to the SPO, GS Capital Partners VI Fund directly held 1,747,172 shares of Benefitfocus common stock.

61. Defendant GS Capital Partners VI GmbH & Co. KG (“GS Capital Partners VI,” and together with GS Capital Partners VI Parallel, GS Capital Partners VI Offshore Fund, and GS Capital Partners VI Fund, the “Goldman Funds”) was a Selling Stockholder in the SPO. Prior to the SPO, GS Capital Partners VI directly held 62,095 shares of Benefitfocus common stock.

62. Defendant GS&Co. was also an underwriter for the SPO and is separately named herein as an Underwriter Defendant. As a result, the Offering Documents disclosed that GS&Co. had a “conflict of interest.”

63. Defendant Mercer LLC (“Mercer”) was a Selling Stockholder in the SPO. Prior to the SPO, Mercer directly held and beneficially owned 2,817,526 shares of Benefitfocus common stock, or 8.8% of total outstanding shares; following the SPO and the full exercise of the Underwriter Defendants’ option to purchase and offer additional shares, Mercer beneficially owned zero shares of Benefitfocus common stock.

64. Defendant Marsh & McLennan Companies, Inc. (“MMC”) was a Selling Stockholder in the SPO. Prior to the SPO, MMC indirectly held and beneficially owned 2,817,526 shares of Benefitfocus common stock.

65. Mercer Consulting Group, Inc. (“Mercer Consulting”) was a Selling Stockholder in the SPO. Prior to the SPO, Mercer Consulting indirectly held and beneficially owned 2,817,526 shares of Benefitfocus common stock.

66. MMC directly owns all of the outstanding shares of capital stock of Mercer Consulting. Mercer Consulting directly owns all of the outstanding equity interests of Mercer, and Mercer owned the 2,817,526 shares of Benefitfocus common stock directly held prior to the SPO. Each of MMC, Mercer Consulting, and Mercer had shared voting and dispositive power over the 2,817,526 shares of Benefitfocus common stock indirectly and directly held prior to the SPO.

67. Defendants GS Group, GS&Co., the Goldman Funds, Mercer, MMC, and Mercer Consulting are collectively referred to herein as the “Selling Stockholders” or the “Selling Stockholder Defendants.” Prior to the SPO, the Selling Stockholders directly held and beneficially owned 6,609,361 shares of Benefitfocus common stock, or 20.6% of total outstanding shares. According to the Offering Documents, the Selling Stockholders sold 5,704,758 shares of Benefitfocus common stock at a price of \$48.25 per share—prior to the full exercise of the Underwriter Defendants’ option to purchase and offer 855,714 additional shares—with the net proceeds going to them.

68. Not only could the Selling Stockholder Defendants exert substantial influence over Benefitfocus due to their stock ownership, the Selling Stockholder Defendants exerted control over the Company by causing the Offering to occur.

69. According to the Offering Documents, it was the Selling Stockholder Defendants that were “offering” the stock sold in the SPO.

### **3. Individual Defendants**

70. Defendant Mason R. Holland, Jr. (“Holland”) was Chairman of the Company’s Board of Directors at all relevant times, including at the time of the SPO.

71. Defendant Raymond A. August was the Company’s President and CEO and a director on the Company’s Board of Directors at all relevant times, including at the time of the SPO.

72. Defendant Jonathon E. Dussault was the Company’s CFO at all relevant times, including at the time of the SPO.

73. Defendant Douglas A. Dennerline (“Dennerline”) was a director on the Company’s Board of Directors at all relevant times, including at the time of the SPO.

74. Defendant Joseph P. DiSabato (“DiSabato”) was a director on the Company’s Board of Directors at all relevant times, including at the time of the SPO. Defendant DiSabato was also a managing director of Selling Stockholder and Underwriter Defendant GS&Co.

75. Defendant A. Lanham Napier (“Napier”) was a director on the Company’s Board of Directors at all relevant times, including at the time of the SPO.

76. Defendant Francis J. Pelzer V (“Pelzer”) was a director on the Company’s Board of Directors at all relevant times, including at the time of the SPO.

77. Defendant Stephen M. Swad was a director on the Company’s Board of Directors at all relevant times, including at the time of the SPO.

78. Defendant Ana M. White (“White”) was a director on the Company’s Board of Directors at all relevant times, including at the time of the SPO.

79. Defendants Holland, August, Dussault, Dennerline, DiSabato, Napier, Pelzer, Swad, and White are collectively referred to herein as the “Individual Defendants.”

80. Each of the Individual Defendants signed and participated in the preparation of the Registration Statement (as defined herein) and in the making of the materially inaccurate, misleading, and incomplete statements in the Offering Documents alleged herein. Each of the Individual Defendants reviewed, edited, approved, and disseminated to investors the Offering Documents and the SPOs’ roadshow presentations, talking points, and scripts. The Individual Defendants also conducted the roadshows along with the Underwriter Defendants to solicit the purchase of Benefitfocus’s common stock in the SPO. Each of the Individual Defendants signed the Registration Statement, prepared and disseminated the Offering Documents and the SPOs’ roadshow materials, participated in the SPOs, and solicited the purchase of Benefitfocus common stock in the SPO to serve their financial interests, as significant Benefitfocus stockholders, and those of the Company.

#### **4. Underwriter Defendants**

81. Defendant J.P. Morgan Securities LLC was an underwriter for the SPO, serving as a financial advisor for and assisting in the preparation and dissemination of the materially inaccurate, misleading, and incomplete Offering Documents. Defendant J.P. Morgan acted as a lead book-running manager for the SPO and as a representative of all of the underwriters. Defendant J.P. Morgan was allocated approximately 1,996,665 SPO shares to sell to the investing public—prior to the full exercise of the Underwriter Defendants’ option to purchase and offer additional shares.

82. Defendant Goldman Sachs & Co. LLC was an underwriter for the SPO, serving as a financial advisor for and assisting in the preparation and dissemination of the materially inaccurate, misleading, and incomplete Offering Documents. Defendant GS&Co. acted as a lead

book-running manager for the SPO and as a representative of all of the underwriters. Defendant GS&Co. was allocated approximately 1,711,427 SPO shares to sell to the investing public—prior to the full exercise of the Underwriter Defendants’ option to purchase and offer additional shares. Defendant GS&Co. was also a Selling Stockholder in the SPO and is separately named herein as a Selling Stockholder Defendant.

83. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated was an underwriter for the SPO, serving as a financial advisor for and assisting in the preparation and dissemination of the materially inaccurate, misleading, and incomplete Offering Documents. Defendant Merrill Lynch acted as a lead book-running manager for the SPO and as a representative of all of the underwriters. Defendant Merrill Lynch was allocated approximately 1,426,190 SPO shares to sell to the investing public—prior to the full exercise of the Underwriter Defendants’ option to purchase and offer additional shares.

84. Defendant Piper Jaffray & Co. (“Piper Jaffray”) was an underwriter for the SPO, serving as a financial advisor for and assisting in the preparation and dissemination of the materially inaccurate, misleading, and incomplete Offering Documents. Defendant Piper Jaffray acted as a co-manager for the SPO. Defendant Piper Jaffray was allocated approximately 228,190 SPO shares to sell to the investing public—prior to the full exercise of the Underwriter Defendants’ option to purchase and offer additional shares.

85. Defendant Raymond James & Associates, Inc. (“Raymond James”) was an underwriter for the SPO, serving as a financial advisor for and assisting in the preparation and dissemination of the materially inaccurate, misleading, and incomplete Offering Documents. Defendant Raymond James acted as a co-manager for the SPO. Defendant Raymond James was

allocated approximately 228,190 SPO shares to sell to the investing public—prior to the full exercise of the Underwriter Defendants’ option to purchase and offer additional shares.

86. Defendant Wedbush Securities Inc. (“Wedbush”) was an underwriter for the SPO, serving as a financial advisor for and assisting in the preparation and dissemination of the materially inaccurate, misleading, and incomplete Offering Documents. Defendant Wedbush acted as a co-manager for the SPO. Defendant Wedbush was allocated approximately 57,048 SPO shares to sell to the investing public—prior to the full exercise of the Underwriter Defendants’ option to purchase and offer additional shares.

87. Defendant First Analysis Securities Corporation (“First Analysis”) was an underwriter for the SPO, serving as a financial advisor for and assisting in the preparation and dissemination of the materially inaccurate, misleading, and incomplete Offering Documents. Defendant First Analysis acted as a co-manager for the SPO. Defendant First Analysis was allocated approximately 57,048 SPO shares to sell to the investing public—prior to the full exercise of the Underwriter Defendants’ option to purchase and offer additional shares.

88. Defendants J.P. Morgan, GS&Co., Merrill Lynch, Piper Jaffray, Raymond James, Wedbush, and First Analysis are collectively referred to herein as the “Underwriter Defendants.” Defendant Benefitfocus, the Selling Stockholder Defendants, the Individual Defendants, and the Underwriter Defendants are collectively referred to herein as “Defendants.”

89. The Underwriter Defendants are investment banking houses that specialize in, among other things, underwriting public offerings of securities. The Underwriter Defendants’ participation in and their solicitation of purchases of Benefitfocus’s common stock in the SPO was motivated by their financial interests. Collectively, the Underwriter Defendants received over \$8.2 million in fees and commissions in connection with their sale of Benefitfocus common stock in

the SPO, or over \$9.4 million in fees and commissions upon the full exercise of the Underwriter Defendants' option to purchase and offer additional shares.

90. The Underwriter Defendants determined that in return for their share of the SPO's proceeds, they were willing to merchandise Benefitfocus's common stock in the SPO. The Underwriter Defendants arranged for the roadshows prior to the SPO during which they and the Individual Defendants met with investors and presented highly favorable information about the Company, its operations, and its financial condition and prospects.

91. The Underwriter Defendants also demanded and obtained an agreement from Benefitfocus that the Company would indemnify and hold the Underwriter Defendants harmless against certain liabilities, including liabilities under the Securities Act, and contribute to payments that the Underwriter Defendants may be required to make for such liabilities. They also made certain that Benefitfocus had purchased millions of dollars of directors' and officers' liability insurance.

92. The Underwriter Defendants assisted Benefitfocus, the Selling Stockholder Defendants, and the Individual Defendants in planning the SPO, and purportedly conducted an adequate and reasonable investigation into the business and operations of Benefitfocus, an undertaking known as a "due diligence" investigation. The Underwriter Defendants were required to undertake the due diligence investigation in order to engage in the SPO. During the course of their "due diligence," the Underwriter Defendants had continual access to confidential corporate information concerning Benefitfocus's operations and financial prospects.

93. In addition to availing themselves of virtually unbridled access to internal corporate documents, the Underwriter Defendants had access to the Selling Stockholder Defendants' and Benefitfocus's lawyers, management, directors, and top executives (including the Individual

Defendants) to determine: (i) the strategy to best accomplish the SPO; (ii) the terms of the SPO, including the price at which the Company's common stock would be sold; (iii) the language to be used in the Offering Documents; (iv) what disclosures about the Company would be made in the Offering Documents; and (v) what responses would be made to the SEC in connection with its review of the Offering Documents. As a result of these constant contacts and communications between the Underwriter Defendants and the Selling Stockholder Defendants' and Benefitfocus's lawyers, management, directors, and top executives (including the Individual Defendants), at a minimum, the Underwriter Defendants were negligent in not knowing of the materially untrue statements and omissions contained in the Offering Documents as detailed herein.

94. The Underwriter Defendants caused the Offering Documents to be filed with the SEC and to be declared effective in connection with offers and sales of Benefitfocus's common stock pursuant and/or traceable to the SPO and the Offering Documents, including to Plaintiff and the Class.

#### **IV. FORMER BENEFITFOCUS EMPLOYEES WHO SUBSTANTIATE THE ALLEGATIONS**

95. The former Benefitfocus employees or FEs<sup>2</sup> cited throughout include the following:

(a) FE-1 was a financial analyst employed by Benefitfocus from 2018 to 2020. In his final reporting structure, FE-1 was two levels below Cameron White, Vice President Finance, and White reported to the CFO, including Jonathon E. Dussault (until May 2019), Lou Anne Gilmore (as interim-CFO), and then Alpana Wegner.

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<sup>2</sup> Due to concerns expressed by the FEs, Plaintiff has omitted some identifying details about the FEs' employment at Benefitfocus during the relevant time frame. Plaintiff can provide additional specificity, including each FE's exact title and tenure, to the Court through an *in camera* submission.

(b) FE-2 was a project manager employed by Benefitfocus from 2013 to 2019. FE-2 reported to Meghan Hugus, Director, Implementation. Hugus reported to Jason Reese, Senior Director – Professional Services, and Reese reported either directly to CEO August or to one level below the CEO. FE-2 was one of the longest tenured managers on the Mercer Health account.

(c) FE-3 was a manager employed by Benefitfocus from 2015 to 2019. In his final reporting structure, FE-3 reported to Raynor Combs, Senior Manager, Program Management. Combs reported to Tyler Jenkins, Director, Customer Management. Jenkins reported to Ann Louise Stenton, who reported to CEO August.

(d) FE-4 was a manager employed by Benefitfocus from 2012 to 2020. In his final reporting structure, FE-4 reported to Loren Walker, National Director – Partnerships & Channel Strategy. Walker reported to Shaun Scott, Vice President – Channel Sales and then Chris Shee, Enterprise Account Executive. Scott and Shee reported to Peter Allen, Senior Vice President – Sales & Marketing, who reported to CEO August.

(e) FE-5 was an area director employed by Benefitfocus from 2011 to 2020. In his final reporting structure, FE-5 was two levels below Jeff Oldham, Senior Vice President, BenefitsPlace for Consumers, who reported to CEO August.

## **V. SUBSTANTIVE ALLEGATIONS**

### **A. Benefitfocus and Its Business**

96. Benefitfocus provides cloud-based benefit enrollment and administration software mainly to employers and insurance carriers, but also brokers, suppliers, and consumers. The Company has two wholly owned subsidiaries: Benefitfocus.com, Inc. and BenefitStore, Inc.

97. Founded and first incorporated in June 2000 as South Carolina corporation “Benefitfocus.com, Inc.,” the Company reincorporated in September 2013 in Delaware.

Benefitfocus was founded with the intention of selling to employers, but the Company began by selling to insurance carriers due to strong interest and began selling to employers in 2009.

98. Benefitfocus's software helps streamline the process by which employers and insurance carriers offer and administer employee benefits and health care needs. The Company's benefits management platform provides customers with various functions including cost control, administration of health data, sales, simplification of billing, and enrollment processes.

**B. The Mercer Health Agreement**

99. Mercer Health, a wholly owned subsidiary of MMC, is a global consulting firm with specialization in the healthcare and human capital space.

100. Since 2013, Mercer Health was one of Benefitfocus's most important customers. In January 2013, the Company announced it would provide its technology platform and software to power Mercer Health's private health insurance benefits exchange, the Mercer Marketplace. The Mercer Marketplace is a cloud-based private exchange for employers designed to lower employer costs associated with competitive employee benefit packages. Through the Mercer Health Agreement, a long-term commercial agreement, Mercer Health paid Benefitfocus fees for providing the software to power the Mercer Marketplace.

101. In February 2015, Mercer Health announced an expanded commercial relationship with Benefitfocus, including an initial 9.9% equity investment in the Company, with the option to increase the percentage of ownership over time (the "Mercer Stock Purchase Agreement"). In a related press release, Mercer Health explained that the Mercer Marketplace grew the number of participating employers, eligible employees, and eligible lives by five times in 2014. Benefitfocus's then-CEO Shawn Jenkins stated, "This is a milestone for Benefitfocus and a testament to the power of combining our technological expertise with Mercer's proven execution and broad client reach."

102. As a result of the Mercer Stock Purchase Agreement, Mercer Health became a related party to Benefitfocus by virtue of beneficially owning more than 10% of the total outstanding shares of Benefitfocus common stock. Benefitfocus also entered into an amendment of the Mercer Health agreement, expanding its commercial relationship with Mercer Health.

103. In 2016, Mercer Health represented approximately 14% and 11% of the Company's total accounts receivable and total revenue, respectively.

104. Throughout 2017 and 2018, Mercer Health revenues continued to contribute a substantial portion of Benefitfocus's total accounts receivable and total revenue.

105. On February 26, 2019, just days before the SPO, Benefitfocus announced its financial results for the fourth quarter ended December 31, 2018 ("Q4 2018") and full-year 2018.

106. During the related earnings call, Defendant August explained that Benefitfocus's investments included "expanding our Premier Broker program through a national broker agreement with *Mercer, who was a material customer in 2018*. Mercer has been a valued partner since they launched their private exchange and became an investor in Benefitfocus 4 years ago."

107. Nevertheless, Defendant August disclosed that during the first quarter of 2019, Benefitfocus had agreed to amend the Mercer Health Agreement. Defendant August stated, "In Q1, we extended our commercial agreement with Mercer to be more in line with both company's [sic] goals. *The result for Benefitfocus is a measured pivot away from supporting Mercer's private exchange business to an emphasis on selling our platform and a renewed partnership.*"

108. Defendant August elaborated, "While the *strategic pivot will result in a modest headwind to our 2019 software services revenue*, it will also broaden our broker opportunity, remove all prior exclusivity constraints, and *Mercer will be a reseller of our platform.*" In addition, Defendant August claimed, "[W]e are confident that over the longer term, that this

change will be accretive to our growth and profitability of our company. By pivoting in this direction, Benefitfocus provides a level playing field for all brokers across the U.S. This strategy will allow us to work with all brokers without restriction.”

109. During the questions and answers segment of the earnings call, Defendant August noted, “[I]t’s important to state that *Mercer continues to be a very important strategic partner for us at Benefitfocus*. As we said on the call that [sic] *we just signed an extension with them that will go for several years*, so we’re excited about that.” Defendant August added, “We released [the] exclusivity provision from Mercer, so it’s really a great opportunity for us to work with this entire broker ecosystem, and which once was a headwind to us, now we consider a tailwind, and we actually think this will be a very important factor as we look at our revenue growth.”

110. In response to an analyst asking “what’s the net impact of the Mercer change[,]” Defendant Dussault stated, “As we think about the outlook for the full year, it really starts with the business having very strong momentum as we head into 2019.... The Mercer arrangement does provide some modest headwinds in 2019, which we’re estimating to be in the low to mid-single-digits impact on our total growth rate.”

### **C. Benefitfocus Conducts the SPO**

111. On February 26, 2019, Benefitfocus filed with the SEC its shelf registration statement on Form S-3ASR (the “Registration Statement,” attached hereto as **Exhibit A**).

112. On March 1, 2019, the Company announced the public offering of 5,704,758 shares of Benefitfocus common stock at a price of \$48.25 per share, together with the Underwriter Defendants’ option to purchase and offer an additional 855,714 shares of common stock at the same price within 30 days of the prospectus supplement, *i.e.*, the SPO. Upon the full exercise of the Underwriter Defendants’ option to purchase and offer additional shares, the Selling Stockholder Defendants would receive \$307,046,491 in net proceeds in connection with the SPO,

which would reduce the GS Group's and Mercer's stake in Benefitfocus from 11.8% to 0.2% and from 8.8% to 0%, respectively. Defendants J.P. Morgan, GS&Co., and Merrill Lynch acted as lead book-running managers for the SPO and as representatives of the Underwriter Defendants in the Offering. Defendants Piper Jaffray, Raymond James, Wedbush, and First Analysis acted as co-managers for the SPO.

113. Also on March 1, 2019, Benefitfocus filed with the SEC its final prospectus supplement on Form 424B7 (the "Prospectus," attached hereto as **Exhibit B**), which forms part of the Registration Statement (the Registration Statement and the Prospectus are referred to collectively herein as the "Offering Documents"), and sold 5,704,758 shares of Benefitfocus common stock to the investing public. The proceeds from the SPO went to the Selling Stockholders. The Offering Documents incorporated by reference certain information and other documents, including the Company's Annual Report on Form 10-K for the year ended December 31, 2018, filed with the SEC on February 26, 2019 (the "2018 10-K," attached hereto as **Exhibit C**).

114. On April 1, 2019, the Company announced that the Underwriter Defendants exercised in full their option to purchase and offer an additional 855,714 shares of Benefitfocus common stock at the SPO price of \$48.25 per share. After giving effect to the full exercise of the Underwriter Defendants' option, the Selling Stockholder Defendants sold a total of 6,560,472 shares of Benefitfocus common stock in the Offering.

#### **D. Defendants' False and Misleading Offering Documents**

115. The Offering Documents were negligently prepared, and as a result, contained untrue statements of material fact, omitted material facts necessary to make the statements contained therein not misleading, and failed to make adequate disclosures required under the rules and regulations governing its preparation.

116. Section 11 creates liability against Benefitfocus, each of the Individual Defendants, and each of the Underwriter Defendants and Section 12(a)(2) creates liability against each of the Defendants for each (1) misstatement, (2) omission in contravention of an affirmative legal disclosure obligation, and (3) omission of information that is necessary to prevent existing disclosures from being misleading, in the Offering Documents.

117. Additionally, pursuant to SEC Regulation C, the Offering Documents were required to disclose material information necessary to ensure that representations in the Offering Documents were not misleading. Specifically, Rule 408, 17 C.F.R. § 230.408(a), states that “[i]n addition to the information expressly required to be included in a registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.”

118. Further, Defendants were required to comply with Item 303 of Regulation S-K, 17 C.F.R. § 229.303. Specifically, Item 303 and the SEC’s related interpretive releases thereto, requires issuers to disclose events and uncertainties, including any known trends that have had or are reasonably likely to cause the issuer’s financial information not to be indicative of future operating results.

119. Moreover, Defendants were also required to comply with Item 105 (formerly Item 503) of Regulation S-K, 17 C.F.R. § 229.105. Specifically, Item 105 requires that the Offering Documents furnish, among other things, a discussion of the most significant factors that make the Offerings speculative or risky.

**1. The Offering Documents Contained Materially False and Misleading Statements and Material Omissions About the Terms and Financial Impact of the Amended Mercer Health Agreement**

120. In violation of these statutes and rules, the Offering Documents contained materially misleading statements and omissions concerning Benefitfocus’s commercial

relationship with Mercer and Mercer Health and the adverse impact of the amended Mercer Health Agreement. As a result, the Offering Documents contained untrue statements of material fact, omitted to state other material facts necessary to make the statements contained in the Offering Documents not misleading, and were not prepared in accordance with the rules and regulations governing their preparation.

121. The Offering Documents misleadingly claimed that Benefitfocus amended its commercial relationship with Mercer Health to “better align with [the Company’s] strategic priorities and current trends[,]” that a reduction in 2019 revenue was counterbalanced by “long-term opportunities for us to sell more broadly across the broker channel[,]” and that “any such reduction in revenue [would not] be material to our results.” The Offering Documents stated, in pertinent part, as follows:

***In the first quarter of 2019, we amended our commercial relationship with Mercer Health & Benefits LLC to better align with our strategic priorities and current trends in the marketplace. We believe our revised commercial agreement with them will lead to a reduction in our revenue from the relationship this year, but will ultimately provide long-term opportunities for us to sell more broadly across the broker channel. We do not believe any such reduction in revenue will be material to our results, and have incorporated it into our 2019 financial plan already.***

(a) The statement “In the first quarter of 2019, we amended our commercial relationship with Mercer Health & Benefits LLC to better align with our strategic priorities and current trends in the marketplace” was false and misleading because of the following material adverse facts, material adverse trends, material uncertainties, or significant risks that existed at the time of the Offering:

(1) Mercer Health did not renew their 7-year contract, but rather signed a 2-year extension to make sure that their clients were not prematurely affected by the severing of business with Benefitfocus;

(2) The amended Mercer Health Agreement was a 2-year extension that was only in place while Mercer Health transitioned their clients off the Benefitfocus platforms and was not intended for new Mercer Health clients to be onboarded;

(3) Mercer Health did not renew its long-term contract with Benefitfocus, but rather signed a 2-year extension to not abruptly affect their own clients' needs;

(4) As early as Spring 2018, senior executives at Benefitfocus were warned that Mercer Health would not renew their 7-year agreement;

(5) As early as August 2018, it was understood internally at Benefitfocus that Mercer Health was not going to renew its long-term contract with the Company;

(6) As early as August 2018, an email circulated internally at Benefitfocus around the same time that members of the Mercer Health team were transitioned explaining that Mercer Health was not likely to renew their contract with the Company;

(7) As early as October 2018, Benefitfocus revealed at an internal meeting that Mercer Health were not going to renew their contract with the Company;

(8) As early as October 2018, Benefitfocus revealed at an all-hands internal meeting that the Mercer Health contract was ending;

(9) There was normally a sizeable gap on Benefitfocus's financial projections for each approaching quarter between FP&A's reality-based numbers and the higher ones that Defendant August was telling FP&A that he wanted to present to the market, and internally this difference was referred to as the "gap target[;]"

(10) Benefitfocus knew that the loss of Mercer Health would have a long-term negative impact on the Company's bottom line;

(11) Benefitfocus lost a lot of revenue when they lost Mercer Health as a reseller;

(12) The loss of Mercer Health was going to have a negative long-term impact on the Company's bottom line because of both the amount of business and nature of the relationship between Mercer Health and Benefitfocus;

(13) By January 2019, the sales produced from the broker channel was not meeting what was required, and not meeting what the Company was touting by March 2019;

(14) By mid-2019, the Company was in long-term trouble given its loss of Mercer Health and its lack of prospects to fill that void; and

(15) The loss of Mercer Health would have a long-term negative impact given that, until January 2018, Mercer Health was one of Benefitfocus's only two channels, as well as a stakeholder in the Company.

(b) The statement "We believe our revised commercial agreement with them will lead to a reduction in our revenue from the relationship this year, but will ultimately provide long-term opportunities for us to sell more broadly across the broker channel" was false and misleading because of the following material adverse facts, material adverse trends, material uncertainties, or significant risks that existed at the time of the Offering:

(1) Benefitfocus was misleading with their statements to the market in March 2019 that losing Mercer Health would open avenues to new business;

(2) While Benefitfocus claimed that growth in the new broker channel would make up for the loss of the Mercer Health channel, growth in actual sales was not there and may not be there for a very long time, if ever;

(3) The trajectory in expected sales growth on the broker channel side was not going to make up for the loss of the Mercer Health channel any time soon;

(4) There was no real value behind the broker channel;

(5) Broker channel growth amounted to growth on paper with zero financial backing;

(6) Brokers had zero financial commitment to the Company and the number of brokers did not equate to sales;

(7) Benefitfocus touting the increasing number of broker clients was meaningless because there were no guarantees of sales since brokers could only refer business and did not actually sell Benefitfocus's products or services;

(8) It would take a long time for the broker sales to develop because it required Benefitfocus to repair relationships with brokers who the Company had previously burned in the past when competing for customers, and because brokers have long memories when it came to Benefitfocus's past behavior towards them;

(9) Regardless of how many broker partners Benefitfocus may add, that does not automatically mean that will result in sales;

(10) There was normally a sizeable gap on Benefitfocus's financial projections for each approaching quarter between FP&A's reality-based numbers and the higher ones that Defendant August was telling FP&A that he wanted to present to the market, and internally this difference was referred to as the "gap target[;]"

(11) Benefitfocus knew that the loss of Mercer Health would have a long-term negative impact on the Company's bottom line;

(12) The loss of Mercer Health was going to have a negative long-term impact on the Company's bottom line because of both the amount of business and nature of the relationship between Mercer Health and Benefitfocus;

(13) While Benefitfocus claimed that growth in the new broker channel would make up for the loss of the Mercer Health channel, growth in actual sales was not there and may not be there for a very long time, if ever;

(14) The trajectory in expected sales growth on the broker channel side was not going to make up for the loss of the Mercer Health channel any time soon;

(15) By January 2019, the sales produced from the broker channel was not meeting what was required, and not meeting what the Company was touting by March 2019;

(16) By mid-2019, the Company was in long-term trouble given its loss of Mercer Health and its lack of prospects to fill that void;

(17) The loss of Mercer Health would have a long-term negative impact given that, until January 2018, Mercer Health was one of Benefitfocus's only two channels, as well as a stakeholder in the Company;

(18) Based on the amended Mercer Health Agreement, in the same quarter as the SPO, Benefitfocus would report an earnings miss, low operating cash flow, an updated and weak full-year 2019 forecast due to lower Mercer Health revenues, and the abrupt resignation of Defendant Dussault;

(19) Based on the amended Mercer Health Agreement, Mercer Health would no longer be a leading source of revenue for Benefitfocus in and after 2019;

(20) The amended Mercer Health Agreement represented a reduction in high-margin Mercer Health revenue;

(21) The adverse financial impact or “headwinds” from the amended Mercer Health Agreement would continue—and in fact would strengthen and accelerate—after 2019;

(22) The amended Mercer Health Agreement represented a runoff of Benefitfocus’s legacy agreement with Mercer Health; and

(23) Based on the amended Mercer Health Agreement, Benefitfocus would experience a decline in gross margins after 2019, a result of the reduction of high-margin Mercer Health revenue.

(c) The statement “We do not believe any such reduction in revenue will be material to our results, and have incorporated it into our 2019 financial plan already” was false and misleading because of the following material adverse facts, material adverse trends, material uncertainties, or significant risks that existed at the time of the Offering:

(1) There was normally a sizeable gap on Benefitfocus’s financial projections for each approaching quarter between FP&A’s reality-based numbers and the higher ones that Defendant August was telling FP&A that he wanted to present to the market, and internally this difference was referred to as the “gap target[;]”

(2) Benefitfocus knew that the loss of Mercer Health would have a long-term negative impact on the Company’s bottom line;

(3) The loss of Mercer Health was going to have a negative long-term impact on the Company’s bottom line because of both the amount of business and nature of the relationship between Mercer Health and Benefitfocus;

(4) While Benefitfocus claimed that growth in the new broker channel would make up for the loss of the Mercer Health channel, growth in actual sales was not there and may not be there for a very long time, if ever;

(5) The trajectory in expected sales growth on the broker channel side was not going to make up for the loss of the Mercer Health channel any time soon;

(6) By January 2019, the sales produced from the broker channel was not meeting what was required, and not meeting what the Company was touting by March 2019;

(7) By mid-2019, the Company was in long-term trouble given its loss of Mercer Health and its lack of prospects to fill that void;

(8) The loss of Mercer Health would have a long-term negative impact given that, until January 2018, Mercer Health was one of Benefitfocus's only two channels, as well as a stakeholder in the Company;

(9) Based on the amended Mercer Health Agreement, in the same quarter as the SPO, Benefitfocus would report an earnings miss, low operating cash flow, an updated and weak full-year 2019 forecast due to lower Mercer Health revenues, and the abrupt resignation of Defendant Dussault;

(10) Based on the amended Mercer Health Agreement, Mercer Health would no longer be a leading source of revenue for Benefitfocus in and after 2019;

(11) The amended Mercer Health Agreement represented a reduction in high-margin Mercer Health revenue;

(12) The adverse financial impact or "headwinds" from the amended Mercer Health Agreement would continue—and in fact would strengthen and accelerate—after 2019;

(13) The amended Mercer Health Agreement represented a runoff of Benefitfocus's legacy agreement with Mercer Health; and

(14) Based on the amended Mercer Health Agreement, Benefitfocus would experience a decline in gross margins after 2019, a result of the reduction of high-margin Mercer Health revenue.

122. The Offering Documents misleadingly claimed that Benefitfocus had "established strong relationships with key participants in the benefits market," including Mercer Health, and "eliminated previous friction and improved our outreach to key constituents within the benefits industry, like brokers." The Offering Documents stated in the incorporated-by-reference 2018 10-K, in pertinent part, as follows:

We believe we have a large opportunity to efficiently grow our customer base through our partners. To increase the number of consumers on our platform, *we have established strong relationships with key participants in the benefits market, including Mercer Health & Benefits, LLC ("Mercer"), SAP and SuccessFactors. We have also eliminated previous friction and improved our outreach to key constituents within the benefits industry, like brokers.* One such example is the introduction of our Premier Broker program in 2018.

(a) The statement "[W]e have established strong relationships with key participants in the benefits market, including Mercer Health & Benefits, LLC" was false and misleading because of the following material adverse facts, material adverse trends, material uncertainties, or significant risks that existed at the time of the Offering:

(1) Mercer Health did not renew their 7-year contract, but rather signed a 2-year extension to make sure that their clients were not prematurely affected by the severing of business with Benefitfocus;

(2) The amended Mercer Health Agreement was a 2-year extension that was only in place while Mercer Health transitioned their clients off the Benefitfocus platforms and was not intended for new Mercer Health clients to be onboarded;

(3) Mercer Health did not renew its long-term contract with Benefitfocus, but rather signed a 2-year extension to not abruptly affect their own clients' needs;

(4) As early as Spring 2018, senior executives at Benefitfocus were warned that Mercer Health would not renew their 7-year agreement;

(5) As early as August 2018, it was understood internally at Benefitfocus that Mercer Health was not going to renew its long-term contract with the Company;

(6) As early as August 2018, an email circulated internally at Benefitfocus around the same time that members of the Mercer Health team were transitioned explaining that Mercer Health was not likely to renew their contract with the Company;

(7) As early as October 2018, Benefitfocus revealed at an internal meeting that Mercer Health were not going to renew their contract with the Company;

(8) As early as October 2018, Benefitfocus revealed at an all-hands internal meeting that the Mercer Health contract was ending;

(9) There was normally a sizeable gap on Benefitfocus's financial projections for each approaching quarter between FP&A's reality-based numbers and the higher ones that Defendant August was telling FP&A that he wanted to present to the market, and internally this difference was referred to as the "gap target[;]"

(10) Benefitfocus knew that the loss of Mercer Health would have a long-term negative impact on the Company's bottom line;

(11) Benefitfocus lost a lot of revenue when they lost Mercer Health as a reseller;

(12) The loss of Mercer Health was going to have a negative long-term impact on the Company's bottom line because of both the amount of business and nature of the relationship between Mercer Health and Benefitfocus;

(13) By January 2019, the sales produced from the broker channel was not meeting what was required, and not meeting what the Company was touting by March 2019;

(14) By mid-2019, the Company was in long-term trouble given its loss of Mercer Health and its lack of prospects to fill that void; and

(15) The loss of Mercer Health would have a long-term negative impact given that, until January 2018, Mercer Health was one of Benefitfocus's only two channels, as well as a stakeholder in the Company.

(b) The statement "We have also eliminated previous friction and improved our outreach to key constituents within the benefits industry, like brokers" was false and misleading because of the following material adverse facts, material adverse trends, material uncertainties, or significant risks that existed at the time of the Offering:

(1) Benefitfocus was misleading with their statements to the market in March 2019 that losing Mercer Health would open avenues to new business;

(2) While Benefitfocus claimed that growth in the new broker channel would make up for the loss of the Mercer Health channel, growth in actual sales was not there and may not be there for a very long time, if ever;

(3) The trajectory in expected sales growth on the broker channel side was not going to make up for the loss of the Mercer Health channel any time soon;

- (4) There was no real value behind the broker channel;
- (5) Broker channel growth amounted to growth on paper with zero financial backing;
- (6) Brokers had zero financial commitment to the Company and the number of brokers did not equate to sales;
- (7) Benefitfocus touting the increasing number of broker clients was meaningless because there were no guarantees of sales since brokers could only refer business and did not actually sell Benefitfocus's products or services;
- (8) It would take a long time for the broker sales to develop because it required Benefitfocus to repair relationships with brokers who the Company had previously burned in the past when competing for customers, and because brokers have long memories when it came to Benefitfocus's past behavior towards them;
- (9) Regardless of how many broker partners Benefitfocus may add, that does not automatically mean that will result in sales;
- (10) There was normally a sizeable gap on Benefitfocus's financial projections for each approaching quarter between FP&A's reality-based numbers and the higher ones that Defendant August was telling FP&A that he wanted to present to the market, and internally this difference was referred to as the "gap target[;]"
- (11) Benefitfocus knew that the loss of Mercer Health would have a long-term negative impact on the Company's bottom line;
- (12) Benefitfocus lost a lot of revenue when they lost Mercer Health as a reseller;

(13) The loss of Mercer Health was going to have a negative long-term impact on the Company's bottom line because of both the amount of business and nature of the relationship between Mercer Health and Benefitfocus;

(14) By January 2019, the sales produced from the broker channel was not meeting what was required, and not meeting what the Company was touting by March 2019;

(15) By mid-2019, the Company was in long-term trouble given its loss of Mercer Health and its lack of prospects to fill that void; and

(16) The loss of Mercer Health would have a long-term negative impact given that, until January 2018, Mercer Health was one of Benefitfocus's only two channels, as well as a stakeholder in the Company.

123. Independent of the foregoing reasons, the Offering Documents were false and misleading in context because they omitted the following material adverse facts, material adverse trends, material uncertainties, or significant risks that existed at the time of the Offering:

(a) Mercer Health did not renew their 7-year contract, but rather signed a 2-year extension to make sure that their clients were not prematurely affected by the severing of business with Benefitfocus;

(b) The amended Mercer Health Agreement was a 2-year extension that was only in place while Mercer Health transitioned their clients off the Benefitfocus platforms and was not intended for new Mercer Health clients to be onboarded;

(c) Mercer Health did not renew its long-term contract with Benefitfocus, but rather signed a 2-year extension to not abruptly affect their own clients' needs;

(d) As early as Spring 2018, senior executives at Benefitfocus were warned that Mercer Health would not renew their 7-year agreement;

(e) As early as August 2018, it was understood internally at Benefitfocus that Mercer Health was not going to renew its long-term contract with the Company;

(f) As early as August 2018, an email circulated internally at Benefitfocus around the same time that members of the Mercer Health team were transitioned explaining that Mercer Health was not likely to renew their contract with the Company;

(g) As early as October 2018, Benefitfocus revealed at an internal meeting that Mercer Health were not going to renew their contract with the Company;

(h) As early as October 2018, Benefitfocus revealed at an all-hands internal meeting that the Mercer Health contract was ending;

(i) Benefitfocus was misleading with their statements to the market in March 2019 that losing Mercer Health would open avenues to new business;

(j) While Benefitfocus claimed that growth in the new broker channel would make up for the loss of the Mercer Health channel, growth in actual sales was not there and may not be there for a very long time, if ever;

(k) The trajectory in expected sales growth on the broker channel side was not going to make up for the loss of the Mercer Health channel any time soon;

(l) There was no real value behind the broker channel;

(m) Broker channel growth amounted to growth on paper with zero financial backing;

(n) Brokers had zero financial commitment to the Company and the number of brokers did not equate to sales;

(o) Benefitfocus touting the increasing number of broker clients was meaningless because there were no guarantees of sales since brokers could only refer business and did not actually sell Benefitfocus's products or services;

(p) It would take a long time for the broker sales to develop because it required Benefitfocus to repair relationships with brokers who the Company had previously burned in the past when competing for customers, and because brokers have long memories when it came to Benefitfocus's past behavior towards them;

(q) Regardless of how many broker partners Benefitfocus may add, that does not automatically mean that will result in sales;

(r) There was normally a sizeable gap on Benefitfocus's financial projections for each approaching quarter between FP&A's reality-based numbers and the higher ones that Defendant August was telling FP&A that he wanted to present to the market, and internally this difference was referred to as the "gap target[;]"

(s) Benefitfocus knew that the loss of Mercer Health would have a long-term negative impact on the Company's bottom line;

(t) Benefitfocus lost a lot of revenue when they lost Mercer Health as a reseller;

(u) The loss of Mercer Health was going to have a negative long-term impact on the Company's bottom line because of both the amount of business and nature of the relationship between Mercer Health and Benefitfocus;

(v) By January 2019, the sales produced from the broker channel was not meeting what was required, and not meeting what the Company was touting by March 2019;

(w) By mid-2019, the Company was in long-term trouble given its loss of Mercer Health and its lack of prospects to fill that void;

(x) The loss of Mercer Health would have a long-term negative impact given that, until January 2018, Mercer Health was one of Benefitfocus's only two channels, as well as a stakeholder in the Company;

(y) Based on the amended Mercer Health Agreement, in the same quarter as the SPO, Benefitfocus would report an earnings miss, low operating cash flow, an updated and weak full-year 2019 forecast due to lower Mercer Health revenues, and the abrupt resignation of Defendant Dussault;

(z) Based on the amended Mercer Health Agreement, Mercer Health would no longer be a leading source of revenue for Benefitfocus in and after 2019;

(aa) The amended Mercer Health Agreement yielded a reduction in high-margin Mercer Health revenue;

(bb) The adverse financial impact or "headwinds" from the amended Mercer Health Agreement would continue—and in fact would strengthen and accelerate—after 2019;

(cc) The amended Mercer Health Agreement was a runoff of Benefitfocus's legacy agreement with Mercer Health; and

(dd) Based on the amended Mercer Health Agreement, Benefitfocus would experience a decline in gross margins after 2019, a result of the reduction of high-margin Mercer Health revenue.

## **2. The Offering Documents Failed to Disclose Significant Risks That Made the SPO More Speculative and Risky**

124. The Offering Documents contained materially false, misleading, and incomplete risk factors that failed to advise investors about significant, then-existing (as opposed to potential) factors that made the Offering more speculative and risky than the Offering Documents disclosed. Specifically, the Offering Documents purported to warn of potential risks that "may" or "could"

adversely affect Benefitfocus while failing to disclose that these very “risks” had already materialized prior to and at the time of the Offering. The Offering Documents also omitted warnings of specific, material risks that had already materialized prior to and at the time of the Offering.

125. The Offering Documents inaccurately described as potential certain risks associated with Benefitfocus’s commercial relationship with Mercer and Mercer Health, the adverse impact of the amended Mercer Health Agreement, and Benefitfocus’s ability to maintain or grow its revenue as a result of its commercial relationship with third parties, including Mercer and Mercer Health. The Offering Documents stated in the incorporated-by-reference 2018 10-K, in pertinent part, as follows:

***Our growth depends in part on the success of our strategic relationships with third parties, including brokers. In order to grow our business, we anticipate that we will continue to depend on our relationships with third parties including resellers such as Mercer Health and Benefits LLC, or Mercer, and SAP SE, and other referral sources such as brokers, consultants, specialty benefits providers, insurance carriers, technology and content providers, and third-party system integrators. Identifying partners, negotiating and documenting relationships with them, and developing referral sources requires significant time and resources. Our expanded relationship with and February 2015 sale of stock to Mercer increases our reliance on it and related risks, including Mercer’s competitors being less likely to do business with us. Our competitors might be effective in providing incentives to third parties to favor their products or services or to prevent or reduce subscriptions to our products and services. In addition, acquisitions of our partners by our competitors could result in a decrease in the number of our current and potential customers, as our partners may no longer facilitate the adoption of our applications by potential customers. If we are unsuccessful in establishing or maintaining our relationships with third parties, our ability to compete in the marketplace or to grow our revenue could be impaired and our operating results may suffer.*** Even if we are successful, we cannot assure you that these relationships will result in increased customer use of our applications or increased revenue.

(a) The statement “Our growth depends in part on the success of our strategic relationships with third parties, including brokers” was false and misleading in the context of this disclosure, because while noting only the *potential* negative impacts on Benefitfocus’s business, financial condition, and results of operations, the Offering Documents failed to disclose the following significant, *then-existing* material events, trends, and uncertainties that Benefitfocus *had already been* facing at the time of the Offerings:

(1) Benefitfocus was misleading with their statements to the market in March 2019 that losing Mercer Health would open avenues to new business;

(2) While Benefitfocus claimed that growth in the new broker channel would make up for the loss of the Mercer Health channel, growth in actual sales was not there and may not be there for a very long time, if ever;

(3) The trajectory in expected sales growth on the broker channel side was not going to make up for the loss of the Mercer Health channel any time soon;

(4) There was no real value behind the broker channel;

(5) Broker channel growth amounted to growth on paper with zero financial backing;

(6) Brokers had zero financial commitment to the Company and the number of brokers did not equate to sales;

(7) Benefitfocus touting the increasing number of broker clients was meaningless because there were no guarantees of sales since brokers could only refer business and did not actually sell Benefitfocus’s products or services;

(8) It would take a long time for the broker sales to develop because it required Benefitfocus to repair relationships with brokers who the Company had previously

burned in the past when competing for customers, and because brokers have long memories when it came to Benefitfocus's past behavior towards them;

(9) Regardless of how many broker partners Benefitfocus may add, that does not automatically mean that will result in sales;

(10) There was normally a sizeable gap on Benefitfocus's financial projections for each approaching quarter between FP&A's reality-based numbers and the higher ones that Defendant August was telling FP&A that he wanted to present to the market, and internally this difference was referred to as the "gap target[;]"

(11) Benefitfocus knew that the loss of Mercer Health would have a long-term negative impact on the Company's bottom line;

(12) Benefitfocus lost a lot of revenue when they lost Mercer Health as a reseller;

(13) The loss of Mercer Health was going to have a negative long-term impact on the Company's bottom line because of both the amount of business and nature of the relationship between Mercer Health and Benefitfocus;

(14) By January 2019, the sales produced from the broker channel was not meeting what was required, and not meeting what the Company was touting by March 2019;

(15) By mid-2019, the Company was in long-term trouble given its loss of Mercer Health and its lack of prospects to fill that void; and

(16) The loss of Mercer Health would have a long-term negative impact given that, until January 2018, Mercer Health was one of Benefitfocus's only two channels, as well as a stakeholder in the Company.

(b) The statement “In order to grow our business, we anticipate that we will continue to depend on our relationships with third parties including resellers such as Mercer Health and Benefits LLC” was false and misleading in the context of this disclosure, because while noting only the *potential* negative impacts on Benefitfocus’s business, financial condition, and results of operations, the Offering Documents failed to disclose the following significant, *then-existing* material events, trends, and uncertainties that Benefitfocus *had already been* facing at the time of the Offerings:

(1) Mercer Health did not renew their 7-year contract, but rather signed a 2-year extension to make sure that their clients were not prematurely affected by the severing of business with Benefitfocus;

(2) The amended Mercer Health Agreement was a 2-year extension that was only in place while Mercer Health transitioned their clients off the Benefitfocus platforms and was not intended for new Mercer Health clients to be onboarded;

(3) Mercer Health did not renew its long-term contract with Benefitfocus, but rather signed a 2-year extension to not abruptly affect their own clients’ needs;

(4) As early as Spring 2018, senior executives at Benefitfocus were warned that Mercer Health would not renew their 7-year agreement;

(5) As early as August 2018, it was understood internally at Benefitfocus that Mercer Health was not going to renew its long-term contract with the Company;

(6) As early as August 2018, an email circulated internally at Benefitfocus around the same time that members of the Mercer Health team were transitioned explaining that Mercer Health was not likely to renew their contract with the Company;

(7) As early as October 2018, Benefitfocus revealed at an internal meeting that Mercer Health were not going to renew their contract with the Company;

(8) As early as October 2018, Benefitfocus revealed at an all-hands internal meeting that the Mercer Health contract was ending;

(9) There was normally a sizeable gap on Benefitfocus's financial projections for each approaching quarter between FP&A's reality-based numbers and the higher ones that Defendant August was telling FP&A that he wanted to present to the market, and internally this difference was referred to as the "gap target[;]"

(10) Benefitfocus knew that the loss of Mercer Health would have a long-term negative impact on the Company's bottom line;

(11) Benefitfocus lost a lot of revenue when they lost Mercer Health as a reseller;

(12) The loss of Mercer Health was going to have a negative long-term impact on the Company's bottom line because of both the amount of business and nature of the relationship between Mercer Health and Benefitfocus;

(13) By January 2019, the sales produced from the broker channel was not meeting what was required, and not meeting what the Company was touting by March 2019;

(14) By mid-2019, the Company was in long-term trouble given its loss of Mercer Health and its lack of prospects to fill that void;

(15) The loss of Mercer Health would have a long-term negative impact given that, until January 2018, Mercer Health was one of Benefitfocus's only two channels, as well as a stakeholder in the Company;

(16) Based on the amended Mercer Health Agreement, in the same quarter as the SPO, Benefitfocus would report an earnings miss, low operating cash flow, an updated and weak full-year 2019 forecast due to lower Mercer Health revenues, and the abrupt resignation of Defendant Dussault;

(17) Based on the amended Mercer Health Agreement, Mercer Health would no longer be a leading source of revenue for Benefitfocus in and after 2019;

(18) The amended Mercer Health Agreement yielded a reduction in high-margin Mercer Health revenue;

(19) The adverse financial impact or “headwinds” from the amended Mercer Health Agreement would continue—and in fact would strengthen and accelerate—after 2019;

(20) The amended Mercer Health Agreement was a runoff of Benefitfocus’s legacy agreement with Mercer Health; and

(21) Based on the amended Mercer Health Agreement, Benefitfocus would experience a decline in gross margins after 2019, a result of the reduction of high-margin Mercer Health revenue.

(c) The statement “If we are unsuccessful in establishing or maintaining our relationships with third parties, our ability to compete in the marketplace or to grow our revenue could be impaired and our operating results may suffer” was false and misleading in the context of this disclosure, because while noting only the *potential* negative impacts on Benefitfocus’s business, financial condition, and results of operations, the Offering Documents failed to disclose the following significant, *then-existing* material events, trends, and uncertainties that Benefitfocus *had already been* facing at the time of the Offerings:

- (1) Mercer Health did not renew their 7-year contract, but rather signed a 2-year extension to make sure that their clients were not prematurely affected by the severing of business with Benefitfocus;
- (2) The amended Mercer Health Agreement was a 2-year extension that was only in place while Mercer Health transitioned their clients off the Benefitfocus platforms and was not intended for new Mercer Health clients to be onboarded;
- (3) Mercer Health did not renew its long-term contract with Benefitfocus, but rather signed a 2-year extension to not abruptly affect their own clients' needs;
- (4) As early as Spring 2018, senior executives at Benefitfocus were warned that Mercer Health would not renew their 7-year agreement;
- (5) As early as August 2018, it was understood internally at Benefitfocus that Mercer Health was not going to renew its long-term contract with the Company;
- (6) As early as August 2018, an email circulated internally at Benefitfocus around the same time that members of the Mercer Health team were transitioned explaining that Mercer Health was not likely to renew their contract with the Company;
- (7) As early as October 2018, Benefitfocus revealed at an internal meeting that Mercer Health were not going to renew their contract with the Company;
- (8) As early as October 2018, Benefitfocus revealed at an all-hands internal meeting that the Mercer Health contract was ending;
- (9) Benefitfocus was misleading with their statements to the market in March 2019 that losing Mercer Health would open avenues to new business;

(10) While Benefitfocus claimed that growth in the new broker channel would make up for the loss of the Mercer Health channel, growth in actual sales was not there and may not be there for a very long time, if ever;

(11) The trajectory in expected sales growth on the broker channel side was not going to make up for the loss of the Mercer Health channel any time soon;

(12) There was no real value behind the broker channel;

(13) Broker channel growth amounted to growth on paper with zero financial backing;

(14) Brokers had zero financial commitment to the Company and the number of brokers did not equate to sales;

(15) Benefitfocus touting the increasing number of broker clients was meaningless because there were no guarantees of sales since brokers could only refer business and did not actually sell Benefitfocus's products or services;

(16) It would take a long time for the broker sales to develop because it required Benefitfocus to repair relationships with brokers who the Company had previously burned in the past when competing for customers, and because brokers have long memories when it came to Benefitfocus's past behavior towards them;

(17) Regardless of how many broker partners Benefitfocus may add, that does not automatically mean that will result in sales;

(18) There was normally a sizeable gap on Benefitfocus's financial projections for each approaching quarter between FP&A's reality-based numbers and the higher ones that Defendant August was telling FP&A that he wanted to present to the market, and internally this difference was referred to as the "gap target[;]"

(19) Benefitfocus knew that the loss of Mercer Health would have a long-term negative impact on the Company's bottom line;

(20) Benefitfocus lost a lot of revenue when they lost Mercer Health as a reseller;

(21) The loss of Mercer Health was going to have a negative long-term impact on the Company's bottom line because of both the amount of business and nature of the relationship between Mercer Health and Benefitfocus;

(22) By January 2019, the sales produced from the broker channel was not meeting what was required, and not meeting what the Company was touting by March 2019;

(23) By mid-2019, the Company was in long-term trouble given its loss of Mercer Health and its lack of prospects to fill that void;

(24) The loss of Mercer Health would have a long-term negative impact given that, until January 2018, Mercer Health was one of Benefitfocus's only two channels, as well as a stakeholder in the Company;

(25) Based on the amended Mercer Health Agreement, in the same quarter as the SPO, Benefitfocus would report an earnings miss, low operating cash flow, an updated and weak full-year 2019 forecast due to lower Mercer Health revenues, and the abrupt resignation of Defendant Dussault;

(26) Based on the amended Mercer Health Agreement, Mercer Health would no longer be a leading source of revenue for Benefitfocus in and after 2019;

(27) The amended Mercer Health Agreement yielded a reduction in high-margin Mercer Health revenue;

(28) The adverse financial impact or “headwinds” from the amended Mercer Health Agreement would continue—and in fact would strengthen and accelerate—after 2019;

(29) The amended Mercer Health Agreement was a runoff of Benefitfocus’s legacy agreement with Mercer Health; and

(30) Based on the amended Mercer Health Agreement, Benefitfocus would experience a decline in gross margins after 2019, a result of the reduction of high-margin Mercer Health revenue.

126. The Offering Documents inaccurately described as potential certain risks associated with Benefitfocus’s commercial relationship with Mercer and Mercer Health, the adverse impact of the amended Mercer Health Agreement, and Benefitfocus’s ability to derive revenue from its largest customers, including Mercer and Mercer Health. The Offering Documents stated in the incorporated-by-reference 2018 10-K, in pertinent part, as follows:

A significant amount of our revenue is derived from our largest customers, and any reduction in revenue from any of these customers would reduce our revenue and net income. Our ten largest customers by revenue accounted for approximately 42%, 42% and 43% of our consolidated revenue in each of 2018, 2017 and 2016, respectively. Our largest customer by revenue accounted for approximately 13%, 11% and 12% of our revenue in 2018, 2017 and 2016, respectively. In addition, one customer represented 12% of our accounts receivable at December 31, 2017. ***If any of our large customers or strategic partners decides not to renew its contracts with us, or to renew on less favorable terms, our business, revenues, reputation, and our ability to obtain new customers could be materially and adversely affected.***

(a) The statement “If any of our large customers or strategic partners decides not to renew its contracts with us, or to renew on less favorable terms, our business, revenues, reputation, and our ability to obtain new customers could be materially and adversely affected” was false and misleading in the context of this disclosure, because while noting only the ***potential***

negative impacts on Benefitfocus's business, financial condition, and results of operations, the Offering Documents failed to disclose the following significant, *then-existing* material events, trends, and uncertainties that Benefitfocus *had already been* facing at the time of the Offerings:

- (1) Mercer Health did not renew their 7-year contract, but rather signed a 2-year extension to make sure that their clients were not prematurely affected by the severing of business with Benefitfocus;
- (2) The amended Mercer Health Agreement was a 2-year extension that was only in place while Mercer Health transitioned their clients off the Benefitfocus platforms and was not intended for new Mercer Health clients to be onboarded;
- (3) Mercer Health did not renew its long-term contract with Benefitfocus, but rather signed a 2-year extension to not abruptly affect their own clients' needs;
- (4) As early as Spring 2018, senior executives at Benefitfocus were warned that Mercer Health would not renew their 7-year agreement;
- (5) As early as August 2018, it was understood internally at Benefitfocus that Mercer Health was not going to renew its long-term contract with the Company;
- (6) As early as August 2018, an email circulated internally at Benefitfocus around the same time that members of the Mercer Health team were transitioned explaining that Mercer Health was not likely to renew their contract with the Company;
- (7) As early as October 2018, Benefitfocus revealed at an internal meeting that Mercer Health were not going to renew their contract with the Company;
- (8) As early as October 2018, Benefitfocus revealed at an all-hands internal meeting that the Mercer Health contract was ending;

(9) Benefitfocus was misleading with their statements to the market in March 2019 that losing Mercer Health would open avenues to new business;

(10) While Benefitfocus claimed that growth in the new broker channel would make up for the loss of the Mercer Health channel, growth in actual sales was not there and may not be there for a very long time, if ever;

(11) The trajectory in expected sales growth on the broker channel side was not going to make up for the loss of the Mercer Health channel any time soon;

(12) There was no real value behind the broker channel;

(13) Broker channel growth amounted to growth on paper with zero financial backing;

(14) Brokers had zero financial commitment to the Company and the number of brokers did not equate to sales;

(15) Benefitfocus touting the increasing number of broker clients was meaningless because there were no guarantees of sales since brokers could only refer business and did not actually sell Benefitfocus's products or services;

(16) It would take a long time for the broker sales to develop because it required Benefitfocus to repair relationships with brokers who the Company had previously burned in the past when competing for customers, and because brokers have long memories when it came to Benefitfocus's past behavior towards them;

(17) Regardless of how many broker partners Benefitfocus may add, that does not automatically mean that will result in sales;

(18) There was normally a sizeable gap on Benefitfocus's financial projections for each approaching quarter between FP&A's reality-based numbers and the higher

ones that Defendant August was telling FP&A that he wanted to present to the market, and internally this difference was referred to as the “gap target[;]”

(19) Benefitfocus knew that the loss of Mercer Health would have a long-term negative impact on the Company’s bottom line;

(20) Benefitfocus lost a lot of revenue when they lost Mercer Health as a reseller;

(21) The loss of Mercer Health was going to have a negative long-term impact on the Company’s bottom line because of both the amount of business and nature of the relationship between Mercer Health and Benefitfocus;

(22) By January 2019, the sales produced from the broker channel was not meeting what was required, and not meeting what the Company was touting by March 2019;

(23) By mid-2019, the Company was in long-term trouble given its loss of Mercer Health and its lack of prospects to fill that void; and

(24) The loss of Mercer Health would have a long-term negative impact given that, until January 2018, Mercer Health was one of Benefitfocus’s only two channels, as well as a stakeholder in the Company.

127. The Offering Documents inaccurately described as potential certain risks associated with Benefitfocus’s commercial relationship with Mercer and Mercer Health, the adverse impact of the amended Mercer Health Agreement, and the extent to which acceptance of Benefitfocus’s products and services by customers, including Mercer and Mercer Health, may impact the Company’s quarterly operating results. The Offering Documents stated in the incorporated-by-reference 2018 10-K, in pertinent part, as follows:

In addition to other risk factors listed in this section, *some of the important factors that may cause fluctuations in our quarterly*

***operating results include ... the extent to which our products and services achieve or maintain market acceptance, including through brokers.***

(a) The statement “[S]ome of the important factors that may cause fluctuations in our quarterly operating results include ... the extent to which our products and services achieve or maintain market acceptance, including through brokers” was false and misleading in the context of this disclosure, because while noting only the ***potential*** negative impacts on Benefitfocus’s business, financial condition, and results of operations, the Offering Documents failed to disclose the following significant, ***then-existing*** material events, trends, and uncertainties that Benefitfocus ***had already been*** facing at the time of the Offerings:

(1) Mercer Health did not renew their 7-year contract, but rather signed a 2-year extension to make sure that their clients were not prematurely affected by the severing of business with Benefitfocus;

(2) The amended Mercer Health Agreement was a 2-year extension that was only in place while Mercer Health transitioned their clients off the Benefitfocus platforms and was not intended for new Mercer Health clients to be onboarded;

(3) Mercer Health did not renew its long-term contract with Benefitfocus, but rather signed a 2-year extension to not abruptly affect their own clients’ needs;

(4) As early as Spring 2018, senior executives at Benefitfocus were warned that Mercer Health would not renew their 7-year agreement;

(5) As early as August 2018, it was understood internally at Benefitfocus that Mercer Health was not going to renew its long-term contract with the Company;

(6) As early as August 2018, an email circulated internally at Benefitfocus around the same time that members of the Mercer Health team were transitioned explaining that Mercer Health was not likely to renew their contract with the Company;

(7) As early as October 2018, Benefitfocus revealed at an internal meeting that Mercer Health were not going to renew their contract with the Company;

(8) As early as October 2018, Benefitfocus revealed at an all-hands internal meeting that the Mercer Health contract was ending;

(9) Benefitfocus was misleading with their statements to the market in March 2019 that losing Mercer Health would open avenues to new business;

(10) While Benefitfocus claimed that growth in the new broker channel would make up for the loss of the Mercer Health channel, growth in actual sales was not there and may not be there for a very long time, if ever;

(11) The trajectory in expected sales growth on the broker channel side was not going to make up for the loss of the Mercer Health channel any time soon;

(12) There was no real value behind the broker channel;

(13) Broker channel growth amounted to growth on paper with zero financial backing;

(14) Brokers had zero financial commitment to the Company and the number of brokers did not equate to sales;

(15) Benefitfocus touting the increasing number of broker clients was meaningless because there were no guarantees of sales since brokers could only refer business and did not actually sell Benefitfocus's products or services;

(16) It would take a long time for the broker sales to develop because it required Benefitfocus to repair relationships with brokers who the Company had previously burned in the past when competing for customers, and because brokers have long memories when it came to Benefitfocus's past behavior towards them;

(17) Regardless of how many broker partners Benefitfocus may add, that does not automatically mean that will result in sales;

(18) There was normally a sizeable gap on Benefitfocus's financial projections for each approaching quarter between FP&A's reality-based numbers and the higher ones that Defendant August was telling FP&A that he wanted to present to the market, and internally this difference was referred to as the "gap target[;]"

(19) Benefitfocus knew that the loss of Mercer Health would have a long-term negative impact on the Company's bottom line;

(20) Benefitfocus lost a lot of revenue when they lost Mercer Health as a reseller;

(21) The loss of Mercer Health was going to have a negative long-term impact on the Company's bottom line because of both the amount of business and nature of the relationship between Mercer Health and Benefitfocus;

(22) By January 2019, the sales produced from the broker channel was not meeting what was required, and not meeting what the Company was touting by March 2019;

(23) By mid-2019, the Company was in long-term trouble given its loss of Mercer Health and its lack of prospects to fill that void;

(24) The loss of Mercer Health would have a long-term negative impact given that, until January 2018, Mercer Health was one of Benefitfocus's only two channels, as well as a stakeholder in the Company;

(25) Based on the amended Mercer Health Agreement, in the same quarter as the SPO, Benefitfocus would report an earnings miss, low operating cash flow, an updated and weak full-year 2019 forecast due to lower Mercer Health revenues, and the abrupt resignation of Defendant Dussault;

(26) Based on the amended Mercer Health Agreement, Mercer Health would no longer be a leading source of revenue for Benefitfocus in and after 2019;

(27) The amended Mercer Health Agreement yielded a reduction in high-margin Mercer Health revenue;

(28) The adverse financial impact or "headwinds" from the amended Mercer Health Agreement would continue—and in fact would strengthen and accelerate—after 2019;

(29) The amended Mercer Health Agreement was a runoff of Benefitfocus's legacy agreement with Mercer Health; and

(30) Based on the amended Mercer Health Agreement, Benefitfocus would experience a decline in gross margins after 2019, a result of the reduction of high-margin Mercer Health revenue.

#### **E. Events Following the SPO**

128. On May 1, 2019, just two months after the SPO, Benefitfocus announced its financial results for the first quarter ended March 31, 2019 ("Q1 2019")—the same quarter in which Defendants conducted the SPO—and shocked investors by reporting an earnings miss and low operating cash flow for Q1 2019, a weak forecast for the second quarter ended June 30, 2019

(“Q2 2019”), an updated and weak full-year 2019 forecast due to lower Mercer Health revenues, and the abrupt resignation of Defendant Dussault as CFO.

129. For Q1 2019, Benefitfocus reported a generally accepted accounting principles (“GAAP”) net loss of \$(14.2) million and a GAAP net loss or negative earnings per share (“EPS”) of \$(0.44). The Company also reported a non-GAAP net loss or negative EPS of \$(0.21) per share, below analysts’ consensus of \$(0.20) per share. The Company further reported negative operating cash flow of \$(20.5) million, below analysts’ estimates of \$(11.2) million.

130. In the same Q1 2019 earnings release, Benefitfocus also provided a surprising outlook for Q2 2019, including a total revenue outlook of \$66.5 million to \$68.5 million, below analysts’ consensus of \$71.0 million at the midpoint. The Company further surprised investors by providing a loss or negative adjusted earnings before interest, taxes, depreciation, and amortization (“EBITDA”) outlook of \$(5) million to \$(3) million for Q2 2019, below analysts’ consensus of \$1.7 million. The Company also provided a loss or negative EPS estimate for Q2 2019 of \$(0.46) to \$(0.40) per share, well below analysts’ consensus of \$(0.17) per share at the midpoint.

131. In the same earnings release, Benefitfocus provided shocking revisions to its full-year 2019 outlook, including a loss or negative EPS outlook of \$(0.83) to \$(0.68) per share, with both the high- and low-end well below analysts’ consensus of \$(0.32) per share.

132. Benefitfocus also announced that Defendant Dussault was “resigning as Chief Financial Officer effective no later than August 31, 2019[,]” giving only the boilerplate explanation that the resignation was “due to personal reasons.”

133. During the related Q1 2019 earnings call held on May 1, 2019, Defendant August affirmatively stated that “the renegotiation of the Mercer agreement will have a short-term impact on our 2019 revenue.” Defendant August hedged that statement by claiming that despite the

purported short-term impact to revenue, Benefitfocus was “confident in the longer-term value of expanding our influence with [brokers,]” adding that the Company had “meaningful broker-driven pipeline that we would not have had without making this pivot” away from the Mercer Health agreement. Defendant August added that the Company’s “expanding group of Premier Broker partners is helping us quickly scale, better penetrate the larger employer market, and we believe, drive BenefitsPlace product adoption over time.”

134. During the same Q1 2019 earnings call, in response to an analyst question about whether “Q2 [is] the quarter on a year-over-year basis that you have the biggest headwind from the Mercer changes,” Defendant Dussault responded, “Yes, yes.”

135. Market analysts quickly noted both the unexpected losses and revised outlook for both Q2 2019 and full-year 2019. On May 1, 2019, for example, Cantor Fitzgerald analysts noted that the Company’s “adjusted loss per share was slightly larger than our estimate” and stated that full-year 2019 results would be “affected by the restructured Mercer agreement (the biggest headwind in 2Q).” Nevertheless, Cantor Fitzgerald analysts further “note[d] that the company has significantly increased its broker network (to 300 from 100 earlier in the year) given the restructured Mercer agreement, which removed a channel conflict for the company.”

136. RBC Capital Markets analysts commented on May 1, 2019 that the Company’s “2Q19 was guided below RBC/Street on revenue/EBITDA” and that “the planned departure of the CFO is disappointing and comes after the departure of the head of sales in 1Q19.”

137. Also on May 1, 2019, William Blair analysts noted that “[a]lthough Mercer is a midsingle-digit headwind to 2019 revenue growth, Benefitfocus is rapidly expanding its indirect broker channel, with over 300 brokers at the end of the first quarter (up from 100 in late February and 50-plus at the end of 2018).”

138. On May 2, 2019, Wedbush analysts remarked that “the headline EPS guide is significantly lower than expected” and that, “[a]dding to the agita, in a surprise move CFO Jonathon Dussault announced he will be departing the company as the revolving door CFO situation continues at BNFT which will be a focus of investors this morning.” Wedbush analysts also remarked that Benefitfocus had provided “[t]ough June guidance to swallow.”

139. On July 3, 2019, J.P. Morgan analysts explained that “the company’s strategic pivots over the last one to two years[,]” including “exiting its exclusive broker arrangement with Mercer, which has allowed the company to work with other brokers (>300 as of 1Q19), which drive employers and ultimately NBELs [(net benefit eligible lives)] to the Benefitfocus platform.”

140. On March 3, 2020, Benefitfocus announced weak financial results for the fourth quarter ended December 31, 2019 (“Q4 2019”) and full-year 2019 and shocked investors with a disappointing 2020 outlook driven by continued issues from the loss of Mercer Health business.

141. In its Q4 2019 earnings release, Benefitfocus provided a surprising full-year 2020 outlook, including a total revenue outlook of \$310 million to \$320 million, below analysts’ consensus of \$332 million at the midpoint, or full-year 2020 revenue growth of just 7%, below analysts’ consensus of 12%. The Company also provided an adjusted EBITDA outlook of \$22 million to \$27 million, with the \$24.5 million midpoint below analysts’ consensus of \$25.9 million.

142. During the related Q4 2019 earnings call held on March 3, 2020, Defendant August claimed, “To enable greater broker activity, in 2019, we changed our relationship with Mercer.” Despite this qualification, Defendant August admitted, “*Mercer is no longer a leading source of revenue in our 2020 outlook.*” Defendant August hedged this admission and further claimed, “We remain confident that the strategic decision to fully open our channel to be broker-agnostic will offset the short-term revenue headwind over time.”

143. During the same Q4 2019 earnings call, Defendant Swad claimed, “[A]t the start of 2019, we strategically renegotiated our Mercer contract. The revised contract contributed to stronger relationships with the influential broker community, but from a 2019 revenue standpoint, created a near-term headwind of approximately \$3 million in Q4 and \$9 million for the full year.”

144. Also during the same earnings call, Defendant Swad admitted, “The year-over-year decline in gross margin as a percentage of revenue reflects the combination of increased investment in open enrollment staffing, investment in third-party data and a *reduction in high-margin Mercer revenue.*”

145. On the same earnings call, an analyst inquired about the “Mercer business that’s left[,]” asking, “How should we think about that on a go-forward basis?” Defendant August replied, “The Mercer revenue is -- really could come from a point of -- we have this single source relationship to now where they’re part of our robust broker community.” Defendant August claimed that, “like all parts of our robust broker community, we’re working closely with them, have a good relationship with them, and frankly, hope to grow that revenue that we have working with them just like we would with any other broker.”

146. The same analyst followed up on the Company’s 2020 outlook, and Defendant Swad responded:

And then I did mention that *the Mercer headwinds are going to continue, and in fact strengthen.* And that’s why I called out explicitly Mercer’s numbers. And so you’ll see, when you look at the data that Mercer is going from like \$26 million to \$10 million, and if you look back, it was, I think, \$35 million to \$26 million. *And so you can see there’s an acceleration in the decline for Mercer.* And that’s why I called it out the way I did it.

147. After the earnings call on March 4, 2020, J.P. Morgan analysts commented that the weak outlook for the first quarter ended March 31, 2020 (“Q1 2020”) and full-year 2020 “stems primarily from the lower expectation for Mercer partnership-driven revenue, which the company

expects will be \$10M in 2020, down from \$26M in 2019.” J.P. Morgan analysts expressed surprise about the news of continued issues from the loss of Mercer business: “*We find it surprising that Benefitfocus’s 800 brokers are unable to make up the difference for the absence of Mercer.*”

148. Other market analysts noted the significant adverse impact of the loss of the Company’s self-described high-margin Mercer business. On March 3, 2020, for example, Wells Fargo analysts noted that Benefitfocus “lost [about] \$9 million of business from Mercer in 2019 and is losing another \$16 million in 2020, which caused the company to guide light of consensus.”

149. On March 4, 2020, William Blair analysts commented that Benefitfocus’s “revenue guidance of \$310 million to \$320 million ..., which includes a \$16 million Mercer headwind, fell short of the Street.” The analysts noted they “expect gross margin will be pressured by the Mercer headwind in 2020[,]” especially since “[m]anagement guided to roughly 50% non-GAAP gross margin for the first quarter, down 340 basis points year-over-year.”

150. Also on March 4, 2020, Raymond James analysts remarked that the “headline revenue/margin guidance was well below the street, [which] mostly reflects the \$16 million headwind from Mercer.”

151. On November 5, 2020, Benefitfocus announced weak financial results for the third quarter ended September 30, 2020 (“Q3 2020”) and shocked investors with further continued issues from the loss of Mercer Health business.

152. During the related Q3 2020 earnings call held on November 5, 2020, CFO Wegner admitted, “Subscription revenue was down 10% compared to the same period last year, *primarily due to the runoff of our legacy agreement with Mercer.*” CFO Wegner further admitted that gross margins of 66% were “up from [the] prior quarter, but down from 69.3% in Q3 of last year. This *decline is a result of reduced high-margin Mercer revenue.*”

153. Since the SPO, the value of Benefitfocus's common stock shares has collapsed from the SPO price of \$48.25 per share to \$14.90 per share on March 2, 2021, the date this Action was filed.

## **VI. CLASS ACTION ALLEGATIONS**

154. Plaintiff brings this action as a class action pursuant to Article 9 of the New York Civil Practice Laws and Rules on behalf of a class consisting of all persons or entities who purchased or otherwise acquired Benefitfocus common stock pursuant and/or traceable to the Offering Documents issued in connection with the SPO, and who were damaged thereby (the "Class"). Excluded from the Class: the Defendants and the Individual Defendants' immediate family members; the officers, directors, and affiliates of Benefitfocus, the Selling Stockholder Defendants and the Underwriter Defendants at all relevant times, including Benefitfocus's employee retirement and/or benefit plan(s) and their participants and/or beneficiaries to the extent that they purchased or acquired Benefitfocus common stock shares through any such plan(s); any entity in which a Defendant has or had a controlling interest; and the legal representatives, heirs, successors or assigns of any excluded person or entity.

155. The members of the Class are so numerous that joinder of all members is impracticable. The exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery. Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Benefitfocus or its transfer agent, and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

156. Plaintiff's claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

157. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

158. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether Defendants violated the Securities Act;
- (b) Whether the Offering Documents were negligently prepared and contained inaccurate statements of material fact or omitted material information required to be stated therein; and
- (c) To what extent the members of the Class have sustained damages and the proper measure of damages.

159. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

## **VII. CAUSES OF ACTION**

### **COUNT I For Violation of Section 11 of the Securities Act Against Benefitfocus, the Individual Defendants, and the Underwriter Defendants**

160. Plaintiff repeats and realleges each and every allegation above as if fully set forth herein.

161. This cause of action is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. § 77k, on behalf of Plaintiff and the Class, against Defendant Benefitfocus, each of the Individual Defendants, and each of the Underwriter Defendants.

162. This cause of action does not sound in fraud. Plaintiff does not claim that any of the Defendants committed intentional or reckless misconduct or that any of the Defendants acted with scienter or fraudulent intent. This cause of action is based solely on strict liability as to Benefitfocus and negligence as to the remaining Defendants. Plaintiff expressly disclaims any allegations of scienter or fraudulent intent in these non-fraud claims.

163. The Registration Statement issued in connection with the Offering was inaccurate and misleading, contained untrue statements of material facts, omitted material facts necessary to make the statements made not misleading, and omitted material facts required to be stated therein in accordance with the rules and regulations governing the Registration Statement's preparation.

164. Benefitfocus is the registrant and issuer of the common shares offered pursuant to the Registration Statement. As such, Benefitfocus is strictly liable for the materially inaccurate statements contained in the Registration Statement and the failure of the Registration Statement to be complete and accurate. By virtue of the Registration Statement containing material misstatements of fact, omitting material facts necessary to make the statements made not misleading, and omitting material facts required to be stated therein in accordance with the rules and regulations governing the Registration Statement's preparation, Benefitfocus is liable under Section 11 of the Securities Act to Plaintiff and the Class.

165. The Individual Defendants each signed the Registration Statement and caused its issuance. The Individual Defendants each had a duty to make a reasonable and diligent investigation of the truthfulness and accuracy of the statements contained in the Registration

Statement. They each had a duty to ensure that such statements were true and accurate and that there were no omissions of material facts that would make the statements misleading or that were required by the rules and regulations governing the Registration Statement's preparation. By virtue of each of the Individual Defendants' failure to exercise reasonable care, the Registration Statement contained material misstatements of fact, omitted material facts necessary to make the statements made not misleading, and omitted material facts required to be stated therein in accordance with the rules and regulations governing the Registration Statement's preparation. As such, each of the Individual Defendants is liable under Section 11 of the Securities Act to Plaintiff and the Class.

166. Each of the Underwriter Defendants served as an underwriter for the SPO and qualifies as such according to the definition contained in Section 2(a)(11) of the Securities Act, 15 U.S.C. § 77b(a)(11). As such, they participated in the solicitation, offering, and sale of Benefitfocus's common stock to the investing public pursuant to the Offering Documents. Each of the Underwriter Defendants, as an underwriter of the common stock offering in the SPO pursuant to the Registration Statement, had a duty to make a reasonable and diligent investigation of the truthfulness, accuracy, and completeness of the statements contained in the Registration Statement. They each had a duty to ensure that such statements were true and accurate and that there were no omissions of material facts that would make the statements misleading or that were required by the rules and regulations governing the Registration Statement's preparation. By virtue of each of the Underwriter Defendants' failure to exercise reasonable care, the Registration Statement contained material misstatements of fact, omitted material facts necessary to make the statements made not misleading, and omitted material facts required to be stated therein in accordance with

the rules and regulations governing the Registration Statement's preparation. As such, each of the Underwriter Defendants is liable under Section 11 of the Securities Act to Plaintiff and the Class.

167. None of the untrue statements or omissions of material fact in the Registration Statement alleged herein was a forward-looking statement. Rather, each such statement concerned existing facts. Moreover, the Registration Statement did not properly identify any of the untrue statements as forward-looking statements and did not disclose information that undermined the putative validity of those statements.

168. Each of the Defendants named in this Count issued, caused to be issued, and participated in the issuance of materially untrue and misleading written statements to the investing public that were contained in the Registration Statement, which misstated and failed to disclose, among other things, the facts set forth above. By reason of the conduct herein alleged, each Defendant violated Section 11 of the Securities Act.

169. Plaintiff and the Class have sustained damages. The value of Benefitfocus common stock has declined substantially subsequent to and due to violations by Defendants named in this cause of action.

170. At the time Plaintiff and other members of the Class purchased Benefitfocus common stock, they were without knowledge of the facts concerning the wrongful conduct alleged herein and could not have reasonably discovered those facts prior to the disclosures alleged herein. Less than one year has elapsed between the time that Plaintiff discovered or reasonably could have discovered the facts upon which this Complaint is based and the time that Plaintiff commenced this Action. Less than three years has elapsed between the time that the common stock upon which this cause of action is brought were offered to the public and the time that Plaintiff commenced this Action.

**COUNT II**  
**For Violation of Section 12(a)(2) of the Securities Act**  
**Against All Defendants**

171. Plaintiff repeats and realleges each and every allegation above as if fully set forth herein.

172. This cause of action is brought pursuant to Section 12(a)(2) of the Securities Act, 15 U.S.C. § 77l(a)(2), on behalf of Plaintiff and the Class, against Defendant Benefitfocus and each of the Selling Stockholder Defendants, Individual Defendants, and Underwriter Defendants.

173. This cause of action does not sound in fraud. Plaintiff does not allege that any of the Defendants committed intentional or reckless misconduct or that any of the Defendants acted with scienter or fraudulent intent, which are not elements of a Section 12(a)(2) claim. This cause of action is based solely on negligence and/or strict liability. Plaintiff expressly disclaims any allegations of scienter or fraudulent intent in these non-fraud claims.

174. Each of the Defendants named in this Count were sellers, offerors, and/or solicitors of purchasers of the Company's common stock pursuant to the defective Prospectus. The actions of solicitation by the Defendants named in this Count included participating in the preparation of the false and misleading Prospectus, roadshow, and marketing of Benefitfocus's common stock to investors, such as Plaintiff and other members of the Class.

175. The Prospectus contained untrue statements of material fact, omitted to state other material facts necessary to make the statements made therein not misleading, and omitted to state material facts required to be stated therein.

176. Each of Defendants named in this cause of action owed to the purchasers of Benefitfocus's common stock, including Plaintiff and other members of the Class, the duty to make a reasonable and diligent investigation of the statements contained in the Prospectus to ensure that such statements were true and that there was no omission of material fact required to be stated in

order to make the statements made therein not misleading and no omission of material fact required by the rules and regulations governing the Prospectus's preparation. By virtue of each of these Defendants' failure to exercise reasonable care, the Prospectus contained material misstatements of fact, omitted material facts necessary to make the statements therein not misleading, and omitted material facts required to be stated therein. As such, each of these Defendants is liable under Section 12(a)(2) of the Securities Act to Plaintiff and the Class.

177. Plaintiff did not know, nor in the exercise of reasonable diligence could Plaintiff have known, of the untruths and omissions contained in the Prospectus at the time Plaintiff acquired Benefitfocus common stock shares.

178. By reason of the conduct alleged herein, the Defendants named in this cause of action violated Section 12(a)(2) of the Securities Act. As a direct and proximate result of such violations, Plaintiff and the other members of the Class who acquired Benefitfocus common stock shares pursuant to the Prospectus sustained substantial damages. Accordingly, Plaintiff and the other members of the Class who hold the shares issued pursuant to the Prospectus have the right to rescind and recover the consideration paid for their shares with interest thereon or damages as allowed by law or in equity. Class members who have sold their Benefitfocus shares seek damages to the extent permitted by law.

**COUNT III**  
**For Violation of Section 15 of the Securities Act**  
**Against the Selling Stockholder Defendants and the Individual Defendants**

179. Plaintiff repeats and realleges each and every allegation above as if fully set forth herein.

180. This cause of action is brought pursuant to Section 15 of the Securities Act, 15 U.S.C. § 77o, on behalf of Plaintiff and the Class, against each of the Selling Stockholder Defendants and each of the Individual Defendants.

181. This cause of action does not sound in fraud. Plaintiff does not allege that any of the Defendants committed intentional or reckless misconduct or that any of the Defendants acted with scienter or fraudulent intent, which are not elements of a Section 15 claim. This claim is based solely on negligence and/or strict liability. Plaintiff expressly disclaims any allegations of scienter or fraudulent intent in these non-fraud claims.

182. The Selling Stockholder Defendants and the Individual Defendants each were control persons of Benefitfocus by virtue of their positions as directors and/or senior officers and/or major shareholders of the Company. The Selling Stockholder Defendants and the Individual Defendants each had a series of direct or indirect business or personal relationships with other directors and/or officers and/or major shareholders of Benefitfocus.

183. Each of the Selling Stockholder Defendants and the Individual Defendants participated in the preparation and dissemination of the Offering Documents, and otherwise participated in the process necessary to conduct the SPO. Because of their positions of control and authority as senior officers and/or directors and/or major shareholders of the Company, each of the Selling Stockholder Defendants and the Individual Defendants were able to, and did, control the contents of the Offering Documents, which contained materially untrue information or omitted material information required to be disclosed by rule or regulation to prevent the statements made therein from being misleading.

184. As control persons of Benefitfocus, each of the Selling Stockholder Defendants and the Individual Defendants are liable jointly and severally with and to the same extent as Benefitfocus for its violation of Sections 11 and 12(a)(2) of the Securities Act.

#### **VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- A. Determining that this action is a proper class action, certifying Plaintiff as a Class Representative, and appointing Labaton Sucharow LLP as Class Counsel;
- B. Awarding compensatory damages of at least \$200 million in favor of Plaintiff and other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding rescission or a rescissory measure of damages;
- D. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including attorneys' fees, accountants' fees, and expert fees, and other costs and disbursements; and
- E. Awarding Plaintiff and the Class such other relief including equitable and/or injunctive relief as the Court may deem just and proper.

#### **IX. JURY DEMAND**

Plaintiff hereby demands a trial by jury.

DATED: April 23, 2021

**LABATON SUCHAROW LLP**

*/s/ Alfred L. Fatale III*

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