

EXECUTION VERSION

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

IAS Commercial Part 53

Hon. Andrew Borrok

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Stipulation”) is made and entered into by and between (i) Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund (“Lead Plaintiff” or “Plaintiff”), by and through its counsel of record, on behalf of itself and all other members of the Settlement Class (defined below), on the one hand; and (ii) Benefitfocus, Inc. (“Benefitfocus” or the “Company”); (iii) 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, and Ana M. White (the “Individual Defendants” and together with Benefitfocus, the “Benefitfocus Defendants”); (iv) 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., and GS Capital Partners VI GMBH & Co. KG (the “Goldman Funds Defendants”); (v) Mercer LLC, Marsh & McLennan Companies, Inc., and Mercer Consulting Group, Inc. (the “Mercer Defendants,” and together with the Goldman Funds Defendants, the “Selling Stockholder Defendants”); and (vi) J.P. Morgan Securities LLC, Goldman Sachs & Co. LLC (“GS&Co.”), Merrill Lynch, Pierce, Fenner & Smith Incorporated, Piper Jaffray & Co. (n/k/a Piper Sandler & Co.), Raymond James & Associates, Inc., Wedbush Securities Inc., and First Analysis Securities Corporation (the “Underwriter Defendants,” and together with the Benefitfocus Defendants, Goldman Funds Defendants, and Mercer Defendants, the “Defendants”), on the other, by and through their counsel of record in the above-captioned litigation (the “Action”), which is pending before the Honorable Andrew Borrok of the Supreme Court of the State of New York, New York County (the “Court”). This Stipulation is intended by Lead Plaintiff and Defendants (collectively, the “Parties”) to fully, finally, and forever compromise, settle, release, resolve, relinquish, waive, discharge, and dismiss with prejudice, and without costs, the Plaintiff’s Released Claims (defined below) and Defendants’ Released Claims (defined below), upon and subject to the terms and conditions hereof and subject to the Court’s approval.

WHEREAS:

A. All words or terms used herein that are capitalized shall have the meaning ascribed to those words or terms as set forth herein and in ¶ 1 hereof entitled “Definitions.”

B. On February 26, 2019, Benefitfocus filed with the U.S. Securities and Exchange Commission (the “SEC”) a shelf registration statement on Form S-3ASR (the “Registration Statement”). On March 1, 2019, Benefitfocus filed with the SEC its final prospectus supplement on Form 424(B)(7), which forms part of the Registration Statement (the “Prospectus,” and together with the Registration Statement, the “Offering Documents”). Pursuant to the Offering Documents, Benefitfocus commenced, on or about March 1, 2019, a secondary public offering of up to 6,560,472 shares of common stock, including an underwriters’ overallotment of 855,714 shares, at a price of \$48.25 per share (the “SPO” or the “Offering”).

C. On March 2, 2021, Lead Plaintiff, through its counsel Labaton Sucharow LLP (“Labaton Sucharow” or “Lead Counsel”), commenced the Action through the filing of a putative securities class action complaint, in the Supreme Court of the State of New York, New York County, on behalf of a putative 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, asserting claims under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the “Securities Act”) for alleged misstatements and omissions in the Offering Documents. The Action was initially assigned to Justice Barry Ostrager in Commercial Division Part 61.

D. On April 23, 2021, Lead Plaintiff filed an Amended Class Action Complaint for Violations of the Securities Act of 1933 (the “Amended Complaint”). The Amended Complaint alleges violations of Sections 11, 12(a)(2), and 15 of the Securities Act on behalf of a putative class of all persons or entities who purchased or otherwise acquired Benefitfocus common stock pursuant and/or traceable to the Offering Documents, and who were damaged thereby.

E. On June 1, 2021, Lead Plaintiff served on Defendant Benefitfocus its first notice for discovery and inspection of documents.

F. On June 21, 2021, Defendant Benefitfocus filed a motion for the entry of an order staying discovery pending resolution of any motions to dismiss the Action (the “Motion to Stay”) and a memorandum of law, affirmation, and exhibits in support thereof.

G. On June 22, 2021, the Benefitfocus Defendants, the Goldman Funds Defendants, and the Mercer Defendants each filed a motion to dismiss the Amended Complaint (the “Motions to Dismiss”), and a memorandum of law in support of each of their respective motions. On the same day, the Underwriter Defendants filed a joinder in which the Underwriter Defendants joined the motion to dismiss filed by the Benefitfocus Defendants and Defendant GS&Co. joined portions of the motion to dismiss filed by the Mercer Defendants (the “Motions to Dismiss Joinder”).

H. On July 9, 2021, Lead Plaintiff filed a memorandum of law in opposition to the Motion to Stay.

I. On July 19, 2021, Defendant Benefitfocus filed a memorandum of law in further support of the Motion to Stay.

J. On August 23, 2021, Lead Plaintiff filed an omnibus memorandum of law in opposition to the Motions to Dismiss and the Motions to Dismiss Joinder.

K. On August 25, 2021, the Court held a hearing on the Motion to Stay. At the hearing, the Court orally ruled that discovery would be stayed until the Court ruled on the pending Motions to Dismiss and issued a written order to that effect the same day.

L. On September 23, 2021, the Benefitfocus Defendants, the Goldman Funds Defendants, and the Mercer Defendants each filed a memorandum of law in further support of their respective Motions to Dismiss and the Underwriter Defendants filed a joinder in which the

Underwriter Defendants joined the reply memorandum of law filed by the Benefitfocus Defendants and Defendant GS&Co. joined portions of the reply memorandum of law filed by the Mercer Defendants.

M. On September 27, 2021, the Court held a hearing on the Motions to Dismiss and the Motions to Dismiss Joinder.

N. On September 28, 2021, the Court issued three written opinions denying the Benefitfocus Defendants' Motion to Dismiss, the Mercer Defendants' Motion to Dismiss, and the Underwriter Defendants' Motions to Dismiss Joinder, in whole, and granting in part and denying in part the Goldman Funds Defendants' Motion to Dismiss.

O. On October 5, 2021, the Benefitfocus Defendants filed a notice of appeal from the Court's order denying their Motion to Dismiss. On October 15, 2021, the Mercer Defendants filed notices of appeal from the Court's orders denying their Motion to Dismiss and the Benefitfocus Defendants' Motion to Dismiss. On October 19, 2021, the Goldman Funds Defendants filed notices of appeal from the Court's order denying the Benefitfocus Defendants' Motion to Dismiss, the Mercer Defendants' Motion to Dismiss, and the Goldman Funds Defendants' Motion to Dismiss. On October 25, 2021, the Underwriter Defendants filed a notice of appeal from the Court's order denying the Benefitfocus Defendants' Motion to Dismiss and GS&Co. filed a notice of appeal from the Court's order denying the Mercer Defendants' Motion to Dismiss. Following the filing of the various notices of appeal, briefing commenced and Defendants' appeals were perfected for the January 2022 term in the Appellate Division of the New York Supreme Court for the First Department and oral argument was scheduled for February 15, 2022.

P. On October 12, 2021, the Goldman Funds Defendants filed a motion for leave to reargue their Motion to Dismiss, and a memorandum of law in support thereof, and the Mercer

Defendants also filed a motion for leave to reargue their Motion to Dismiss, and a memorandum of law in support thereof.

Q. On October 18, 2021, Lead Plaintiff filed an omnibus memorandum of law in opposition to the Goldman Funds Defendants' and the Mercer Defendants' motions for leave to reargue.

R. On October 22, 2021, Defendant GS&Co. filed a motion for leave to reargue the motion to dismiss order that found Lead Plaintiff had adequately stated a Section 15 claim against it, and a memorandum of law in support thereof.

S. On October 28, 2021, Lead Plaintiff filed a memorandum of law in opposition to Defendant GS&Co.'s motion to leave to reargue.

T. Also on October 28, 2021, each of the Defendants filed answers to the Amended Complaint and asserted numerous affirmative defenses thereto.

U. On November 3, 2021, the Court issued an order denying each of the motions to reargue filed by the Mercer Defendants, Goldman Funds Defendants, and Defendant GS&Co.

V. On November 8, 2021, the Court entered a stipulation and preliminary conference order. Following entry of the preliminary conference order, discovery, including requests for production of documents and interrogatories, commenced.

W. On January 11, 2022, Lead Plaintiff filed a motion for class certification and a memorandum of law in support thereof requesting that the Court: (i) certify a class consisting of all persons and entities, with certain enumerated exclusions related to Defendants, that purchased or otherwise acquired Benefitfocus publicly traded common stock pursuant and/or traceable to the Offering Documents issued in connection with the SPO, and who were damaged thereby; (ii) appoint Lead Plaintiff as class representative; (iii) appoint Lead Counsel, Labaton Sucharow, as

class counsel; and (iv) grant such other, further, and different relief as the Court deems just and proper.

X. On January 12, 2022, the Action was reassigned to Justice Borrok.

Y. In January 2022, Lead Plaintiff and the Benefitfocus Defendants began discussing the possibility of resolving the claims asserted in the Action through mediation. Lead Plaintiff and the Benefitfocus Defendants engaged Michelle Yoshida, Esq. (the “Mediator”), a well-respected and experienced mediator, to assist them in exploring a potential negotiated resolution of the claims against all Defendants. On February 8, 2022, respective counsel for Lead Plaintiff and the Benefitfocus Defendants met with the Mediator in an attempt to reach a global settlement during an all-day mediation session. The mediation involved an extended effort to settle the claims and was preceded by the exchange of mediation statements and supporting materials, including the Benefitfocus Defendants’ production of documents to Lead Plaintiff. On February 9, 2022, an agreement in principle was reached to settle the claims against all Defendants, subject to the negotiation of a mutually acceptable stipulation of settlement.

Z. Lead Plaintiff states that, through its counsel, it has conducted a thorough investigation relating to the claims, defenses, and underlying events and transactions that are the subject of the Action. According to Lead Plaintiff, this process has included reviewing and analyzing: (i) documents produced by the Benefitfocus Defendants in connection with the mediation; (ii) documents filed publicly by the Company with the SEC; (iii) publicly available information, including press releases, news articles, and other public statements issued by or concerning the Company and the Defendants; (iv) research reports issued by financial analysts concerning the Company; and (v) the applicable law governing the claims and potential defenses. Lead Plaintiff further states that Lead Counsel also: (i) interviewed former Benefitfocus employees

and other persons with relevant knowledge; and (ii) consulted with experts on damages and causation issues.

AA. Lead Plaintiff believes that the claims asserted in the Action have merit and that the information developed to date supports the claims asserted. However, Lead Plaintiff and Lead Counsel each recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action through trial and appeals. They have also taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Action, as well as the difficulties and delays inherent in such litigation. Lead Counsel also is mindful of the inherent problems of proof and the possible defenses to the claims alleged in the Action. Based on their evaluation, Lead Plaintiff and Lead Counsel each believe that the Settlement set forth in this Stipulation confers substantial monetary benefits upon the Settlement Class and is in the best interests of Lead Plaintiff and the Settlement Class.

BB. Defendants have denied and continue to deny any wrongdoing or that they have committed any act or omission giving rise to any liability or violation of law, including the U.S. securities laws. Defendants have denied and continue to deny each and every one of the claims that was alleged or could have been alleged by Lead Plaintiff in the Action, on behalf of the proposed class, including all claims in the Amended Complaint, as well as any allegations that Lead Plaintiff or any member of the proposed class have suffered damages or were otherwise harmed by the conduct alleged in the Action, and have asserted and continue to assert many defenses thereto. Defendants continue to believe that the claims asserted against them in the Action are without merit and reserve their rights to challenge, among other things, class certification if the Settlement does not become effective as set forth herein. Neither this Stipulation, nor the provisions contained or documents referred to herein, nor any action taken to

carry out this Stipulation shall be deemed to be, construed as, or offered or received in evidence as a presumption, a concession, or an admission of any fault, liability, wrongdoing, or damage whatsoever or the lack of merit of any defense that had been or could have been asserted to such claim by any Defendant. Defendants are entering into this Stipulation solely to eliminate the burden and expense of further protracted litigation.

NOW THEREFORE, without any concession by Lead Plaintiff that the Action lacks merit, and without any concession by the Defendants of any liability or wrongdoing or lack of merit in their defenses, it is hereby **STIPULATED AND AGREED**, by and among the Parties to this Stipulation, through their respective attorneys, subject to approval by the Court pursuant to Article 9 of the New York Civil Practice Law & Rules (the “CPLR”), that, in consideration of the benefits flowing to the Parties hereto, all of Plaintiff’s Released Claims (defined below) and all Defendants’ Released Claims (defined below), as against all Released Parties (defined below), shall be fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged, and dismissed with prejudice, and without costs, upon and subject to the following terms and conditions:

DEFINITIONS

1. As used in this Stipulation, the following terms shall have the meanings set forth below. In the event of any inconsistency between any definition set forth below and any definition in any other document related to the Settlement, the definition set forth below shall control.

(a) “Authorized Claimant” means a Settlement Class Member who submits a valid Proof of Claim to the Claims Administrator that is accepted for payment.

(b) “Claimant” means a Person who submits a Proof of Claim to the Claims Administrator seeking to share in the proceeds of the Net Settlement Fund.

(c) “Claims Administrator” means the firm to be retained by Lead Counsel, subject to Court approval, to provide all notices approved by the Court to Settlement Class Members, to process Proofs of Claim, and to administer the Settlement.

(d) “Class Period” means March 1, 2019 through November 5, 2020, inclusive.

(e) “Defendants’ Counsel” means: (i) the law firm of Wilson Sonsini Goodrich & Rosati, P.C., counsel for the Benefitfocus Defendants; (ii) the law firm of Gibson, Dunn & Crutcher LLP, counsel for the Mercer Defendants; (iii) the law firm of Goodwin Procter LLP, counsel for the Goldman Funds Defendants; and (iv) the law firm of Shearman & Sterling LLP, counsel for the Underwriter Defendants.

(f) “Defendant Releasees” means: (i) each Defendant, (ii) each of their respective immediate family members (for individuals) and each of their direct or indirect parent entities, subsidiaries, related entities, and affiliates, and any trust of which any Individual Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of his or her family, and (iii) for any of the entities listed in parts (i) or (ii), their respective past and present general partners, limited partners, principals, shareholders, joint venturers, members, officers, directors, managers, managing directors, employees, contractors, consultants, auditors, accountants, financial advisors, professional advisors, investment bankers, representatives, insurers, trustees, trustors, agents, attorneys, predecessors, successors, assigns, heirs, executors, administrators, and any controlling person thereof, in their capacities as such, and any entity in which a Defendant has a controlling interest.

(g) “Defendant Releasers” means each of the Defendants.

(h) “Defendants’ Released Claims” means any and all claims, demands, rights, liabilities, and causes of action of every nature and description, whether known or Unknown

Claims (defined below), whether arising under federal, state, common, or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the Action, except for claims relating to the enforcement of the Settlement or any claims against any Person who submits a request for exclusion that is accepted by the Court.

(i) “Effective Date” means the date upon which the Settlement shall have become effective, as set forth in ¶ 41 below.

(j) “Escrow Account” means the escrow account at Citibank, N.A. (Private Bank), a national banking institution, established by Lead Counsel to receive the Settlement Amount for the benefit of the Settlement Class pursuant to this Stipulation and subject to the jurisdiction of the Court.

(k) “Escrow Agent” means Labaton Sucharow LLP.

(l) “Fee and Expense Application” means the application, on behalf of Lead Counsel, for an award of attorneys’ fees and payment of expenses incurred in prosecuting the case, including any service award to Lead Plaintiff.

(m) “Final” means an order or judgment as to which there is no pending appeal, stay, motion for reconsideration, motion to vacate, or similar request for relief, and as to which the period of time for a party to seek any such appeal, stay, motion for reconsideration, motion to vacate, or similar request for relief has expired, or if any such appeal, stay, motion for reconsideration, motion to vacate, or similar request has been filed, after such appeal, stay, motion for reconsideration, motion to vacate, or similar request has been denied and the order or judgment has been upheld in all material respects and is no longer subject to review. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to the Plan of Allocation of the Net Settlement Fund, or to the Court’s award of attorneys’ fees or expenses, shall not in any way

delay or affect the time set forth above for the Judgment to become Final or otherwise preclude the Judgment from becoming Final.

(n) “Judgment” means the judgment to be entered by the Court approving the Settlement.

(o) “Lead Counsel” means Labaton Sucharow LLP.

(p) “Lead Plaintiff” means City of Pittsburgh Comprehensive Municipal Pension Trust Fund.

(q) “Net Settlement Fund” means the Settlement Fund less: (i) Court-awarded attorneys’ fees and expenses; (ii) Notice and Administration Expenses; (iii) Taxes; and (iv) any other fees or expenses approved by the Court.

(r) “Notice” means the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses to be sent to Settlement Class Members, which, subject to approval of the Court, shall be substantially in the form attached hereto as Exhibit A-1.

(s) “Notice and Administration Expenses” means all reasonable costs, fees, and expenses incurred in connection with providing notice to the Settlement Class and the administration of the Settlement, including but not limited to: (i) providing notice of the proposed Settlement by mail, publication, and other means to Settlement Class Members; (ii) receiving and reviewing Proofs of Claim; (iii) applying the Plan of Allocation; (iv) communicating with Persons for the purpose of effectuating the proposed Settlement and claims administration process; (v) distributing the proceeds of the Settlement; and (vi) fees related to the Escrow Account and investment of the Settlement Fund.

(t) “Notice Order” means the proposed Order Preliminarily Approving Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, which, subject to the approval of the Court, shall be substantially in the form attached hereto as Exhibit A.

(u) “Offering” or “SPO” means Benefitfocus’s secondary public offering commenced on or about March 1, 2019, pursuant to which Benefitfocus common stock was sold to the public.

(v) “Offering Documents” means Benefitfocus’s shelf registration statement on Form S-3ASR filed with the SEC on February 26, 2019 (the “Registration Statement”) and Benefitfocus’s final prospectus supplement on Form 424(B)(7) filed with the SEC on March 1, 2019, which forms part of the Registration Statement.

(w) “Person(s)” means any individual, corporation (including all divisions and subsidiaries), general or limited partnership, association, joint stock company, joint venture, limited liability company, professional corporation, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity.

(x) “Plaintiff Releasees” means each and every Settlement Class Member, Lead Plaintiff, Lead Counsel, and any and all of their related parties, including without limitation, each of their respective past and present general partners, limited partners, principals, shareholders, joint venturers, members, officers, directors, managers, managing directors, employees, contractors, consultants, auditors, accountants, financial advisors, professional advisors, investment bankers, representatives, insurers, trustees, trustors, agents, attorneys, predecessors, successors, assigns, heirs, executors, administrators, and any controlling person thereof, in their capacities as such, any

entity in which Lead Plaintiff or Settlement Class Member has a controlling interest, any member of Lead Plaintiff's or Settlement Class Member's immediate family, or any trust of which Lead Plaintiff or any Settlement Class Member is a settlor or which is for the benefit of any Settlement Class Member and/or member(s) of his or her family, and each of the heirs, executors, administrators, trustees, predecessors, successors, and assigns of the foregoing. Plaintiff Releasees does not include any Person who timely and validly seeks exclusion from the Settlement Class.

(y) "Plaintiff Releasers" means Lead Plaintiff, any member of the Settlement Class, and each of their respective present, former, and future parent entities, principals, general or limited partners or partnerships, officers, directors, and any entity which is or was affiliated with any Plaintiff Releaser or in which any Plaintiff Releaser has a controlling interest, and each of their successors, assigns, heirs, spouses, executors, trustees, administrators, and legal representatives, each in their capacities as such. Plaintiff Releasers does not include any Person who timely and validly seeks exclusion from the Settlement Class.

(z) "Plaintiff's Released Claims" means any and all claims, demands, rights, liabilities, and causes of action of every nature and description, whether known or Unknown Claims, contingent or absolute, mature or not mature, liquidated or unliquidated, accrued or not accrued, concealed or hidden, whether direct, representative, class, or individual in nature, regardless of legal or equitable theory and whether arising under federal, state, common, or foreign law, that were: (i) asserted in the Action; or (ii) could have been asserted by Plaintiff Releasers in the Action or any other court or forum that arise out of, are based upon, or relate to both: (a) the allegations, transactions, facts, matters or occurrences, or representations or omissions involved, set forth, or referred to in the complaints filed in the Action; and (b) the purchase, acquisition, holding, sale, or disposition of Benefitfocus publicly traded common stock in connection with the

SPO or during the Class Period. Plaintiff's Released Claims shall not include claims relating to the enforcement of the Settlement or any claims against any Person who submits a request for exclusion that is accepted by the Court.

(aa) "Plan of Allocation" means the proposed Plan of Allocation of Net Settlement Fund, which, subject to the approval of the Court, shall be substantially in the form described in the Notice.

(bb) "Proof of Claim" or "Claim Form" means the Proof of Claim and Release form for submitting a claim, which, subject to approval of the Court, shall be substantially in the form attached hereto as Exhibit A-2.

(cc) "Released Parties" means the Plaintiff Releasees and the Defendant Releasees.

(dd) "Settlement" means the resolution of the Action in accordance with the terms and provisions of this Stipulation.

(ee) "Settlement Amount" means the total principal amount of eleven million U.S. dollars (\$11,000,000).

(ff) "Settlement Class" means all persons and entities that purchased or otherwise acquired Benefitfocus publicly traded common stock pursuant and/or traceable to the Offering Documents issued in connection with the March 1, 2019 SPO and/or who subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock during the Class Period, and who were damaged thereby. Excluded from the Settlement Class are: (i) Defendants; (ii) the Individual Defendants' immediate family members; (iii) the officers, directors, and affiliates of Benefitfocus; (iv) the Selling Stockholder Defendants and the Underwriter Defendants at all relevant times; (v) any entity in which a Defendant has or had a majority ownership interest; (vi) the legal representatives, heirs,

successors or assigns of any excluded person or entity; and (vii) any persons or entities who or which exclude themselves by submitting a timely and valid request for exclusion that is accepted by the Court.

(gg) “Settlement Class Member” means each person and entity who or which is a member of the Settlement Class.

(hh) “Settlement Fund” means the Settlement Amount and any interest earned thereon.

(ii) “Settlement Hearing” means the hearing to be held by the Court to determine whether the proposed Settlement is fair, reasonable, and adequate and should be finally approved.

(jj) “Summary Notice” means the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses for publication, which, subject to approval of the Court, shall be substantially in the form attached hereto as Exhibit A-3.

(kk) “Taxes” means all federal, state, or local taxes of any kind on any income earned by the Settlement Fund and the expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, interest, penalties and the reasonable expenses of tax attorneys and accountants).

(ll) “Unknown Claims” means any and all of Plaintiff’s Released Claims that any Plaintiff Releasor does not know or suspect to exist in his, her, or its favor at the time of the release of the Defendant Releasees, and any and all Defendants’ Released Claims that any Defendant Releasor does not know or suspect to exist in his, her, or its favor at the time of the release of the Plaintiff Releasees, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement, including the decision to object to the terms of the Settlement or to exclude himself, herself, or itself from the Settlement Class. With respect to any and all of Plaintiff’s Released Claims and Defendants’ Released Claims, the Parties stipulate and

agree that, upon the Effective Date, Lead Plaintiff and Defendants shall expressly, and each other Plaintiff Releasor and Defendant Releasor shall be deemed to have, and by operation of the Judgment shall have, to the fullest extent permitted by law, expressly waived and relinquished any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or foreign law, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Lead Plaintiff, other Settlement Class Members, or Defendants may hereafter discover facts, legal theories, or authorities in addition to or different from those which any of them now knows or believes to be true with respect to the subject matter of the Plaintiff's Released Claims or the Defendants' Released Claims, but Lead Plaintiff and Defendants shall expressly, fully, finally, and forever settle and release, and each Plaintiff Releasor and Defendant Releasor shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment shall have settled and released, fully, finally, and forever, any and all of Plaintiff's Released Claims and Defendants' Released Claims, as applicable, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. Lead Plaintiff and Defendants acknowledge, and other Plaintiff Releasors and Defendant Releasors by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Plaintiff's Released Claims and Defendants' Released Claims was separately bargained for and was a material element of the Settlement.

SCOPE AND EFFECT OF SETTLEMENT

2. The obligations incurred pursuant to this Stipulation are (a) subject to approval by the Court and the Judgment reflecting such approval becoming Final; and (b) in full and final disposition of the Action and any and all of Plaintiff's Released Claims and Defendants' Released Claims, upon and subject to the terms and conditions set forth herein.

3. For purposes of this Settlement only, Lead Plaintiff and Defendants agree to: (i) certification of the Action as a class action, pursuant to CPLR 901 and 902, on behalf of the Settlement Class as defined herein; (ii) the appointment of Lead Plaintiff as Class Representative for the Settlement Class; and (iii) the appointment of Labaton Sucharow as Class Counsel for the Settlement Class.

4. By operation of the Judgment, as of the Effective Date, Lead Plaintiff and each and every other Settlement Class Member, on behalf of themselves and each of their respective Plaintiff Releasers, in their capacities as such, shall be deemed to have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged, and dismissed with prejudice, and without costs, each and every one of the Plaintiff's Released Claims against each and every one of the Defendant Releasees and shall forever be barred and enjoined from directly or indirectly commencing, instituting, participating in, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or any other forum, asserting any or all of the Plaintiff's Released Claims against the Defendant Releasees. As of the Effective Date of the Settlement, the Action, including any interlocutory appeals, shall be dismissed in full and with prejudice as to all Defendants, subject to the terms stated herein. This release is a material term to this Stipulation. It is an important element to the Defendants' participation in this Settlement that the Defendants and the Defendant Releasees obtain the fullest possible release from any liability to Lead Plaintiff or to any Settlement Class

Member relating to Plaintiff's Released Claims, and it is the intention of the Parties that any liability of the Defendant Releasees relating to Plaintiff's Released Claims be eliminated.

5. By operation of the Judgment, as of the Effective Date, Defendant Releasors, on behalf of themselves and each of their respective legal representatives, heirs, executors, trustees, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged, and dismissed with prejudice, and without costs, each and every one of the Defendants' Released Claims against each and every one of the Plaintiff Releasees and shall forever be barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any or all of the Defendants' Released Claims against any and all of the Plaintiff Releasees.

THE SETTLEMENT CONSIDERATION

6. In full and final settlement of the claims asserted in the Action against Defendants and in consideration of the releases specified in ¶¶ 4-5, above, all of which the Parties agree are good and valuable consideration, Benefitfocus (on behalf of itself and all Defendants) shall cause the Settlement Amount to be paid into the Escrow Account within thirty (30) calendar days of the later of (i) the date of entry of the Notice Order or (ii) Lead Counsel providing, in writing, to Wilson Sonsini Goodrich & Rosati the information necessary to effectuate a transfer of funds to the Escrow Account, including, but not limited to, wire transfer instructions, payment address, and a complete and executed Form W-9 for the Settlement Fund that reflects a valid tax identification number. The Escrow Agent shall maintain the Settlement Amount plus any accrued interest in a segregated Escrow Account maintained by the Escrow Agent. No Defendants other than Benefitfocus shall pay any part of the Settlement Amount or be liable to make any payments under the Settlement.

7. With the sole exception of Benefitfocus's obligation to secure payment of the Settlement Amount into the Escrow Account as provided for in ¶ 6 and Benefitfocus's obligation pursuant to ¶ 36, Defendants, Defendants' Counsel, and Defendant Releasees shall have no responsibility for, interest in, or liability whatsoever with respect to the selection of the Claims Administrator, the administration of the Settlement, or the actions or decisions of the Claims Administrator and shall have no liability whatsoever to the Plaintiff Releasees in connection with such administration, including, but not limited to: (i) any act, omission, or determination by Lead Counsel or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement, Escrow Account, or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any loss suffered by, or fluctuation in value of, the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund, distributions or other payments from the Escrow Account, or the filing of any Tax Returns (as defined in ¶ 11(a)). No Person, including Lead Plaintiff, Settlement Class Members, and Lead Counsel, shall have any claim of any kind against Defendants, Defendants' Counsel, or Defendant Releasees with respect to the matters set forth in this paragraph.

8. Other than the obligation of Benefitfocus to cause the payment of the Settlement Amount pursuant to ¶ 6, Defendants shall have no obligation to make any other payments into the Escrow Account, to any Settlement Class Member, to Lead Counsel, or anyone else pursuant to this Stipulation. Under no circumstances shall Defendants be required to contribute more to the Settlement Fund than the Settlement Amount.

USE AND TAX TREATMENT OF SETTLEMENT FUND

9. The Settlement Fund shall be used: (i) to pay any Taxes; (ii) to pay Notice and Administration Expenses; (iii) to pay any attorneys' fees and expenses awarded by the Court; (iv) to pay any other fees and expenses awarded by the Court; and (v) to pay the claims of Authorized Claimants.

10. The Net Settlement Fund shall be distributed to Authorized Claimants as provided in ¶¶ 22-34 hereof. The Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held in the Escrow Account, and all earnings thereon, shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall have been disbursed or returned, pursuant to the terms of this Stipulation, and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account in instruments backed by the full faith and credit of the United States Government (or a mutual fund invested solely in such instruments) or shall deposit some or all of the funds in non-interest-bearing transaction account(s) that are fully insured by the Federal Deposit Insurance Corporation ("FDIC") in amounts that are up to the limit of FDIC insurance. Defendants, Defendants' Counsel, and Defendant Releasees shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions executed by the Escrow Agent. All risks related to the investment of the Settlement Fund shall be borne solely by the Settlement Fund.

11. After the Settlement Amount has been paid into the Escrow Account, Lead Plaintiff, Defendants, and the Escrow Agent agree to treat the Settlement Fund as a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. The Parties and the Escrow Agent further agree that the Settlement Fund shall be established pursuant to the Court's subject matter jurisdiction within the meaning of Treas. Reg. § 1.468B-1(c)(1). All provisions of this Stipulation shall be interpreted in a manner that is consistent with the Settlement Amount being a "qualified

settlement fund” within the meaning of Treasury Regulation § 1.468B-1. In addition, the Escrow Agent shall timely make, or cause to be made, such elections as necessary or advisable to carry out the provisions of this ¶ 11, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver, or cause to be prepared and delivered, the necessary documentation for signature by all necessary parties, and thereafter to take all such actions as may be necessary or appropriate to cause the appropriate filing(s) to timely occur. Consistent with the foregoing:

(a) For the purposes of Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.468B promulgated thereunder, the “administrator” (as defined in Treas. Reg. § 1.468B-2(k)(3)) shall be the Escrow Agent or its successors, who shall have sole responsibility to timely and properly file, or cause to be filed, all federal, state, or local tax returns and information returns (together, “Tax Returns”) necessary or advisable with respect to the earnings on the funds deposited in the Escrow Account (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)). Such Tax Returns (as well as the election described above) shall be consistent with this subparagraph and in all events shall reflect that all Taxes (including any estimated taxes, earnings, or penalties) on the income earned on the funds deposited in the Escrow Account shall be paid out of such funds as provided in subparagraphs (b) and (c) of this ¶ 11.

(b) All Taxes shall be paid out of the Settlement Fund. In all events, Defendants, Defendants’ Counsel, and Defendant Releasees shall have no liability or responsibility whatsoever for the Taxes or the filing of any Tax Return or other document with the Internal

Revenue Service or any other state or local taxing authority. Defendants, Defendants' Counsel, and Defendant Releasees shall have no liability or responsibility for the Taxes of the Escrow Account with respect to the Settlement Amount nor the filing of any Tax Returns or other documents with the Internal Revenue Service or any other taxing authority, nor any expenses associated therewith. In the event any Taxes are owed by any of the Defendants, Defendants' Counsel, or Defendant Releasees on any earnings on the funds on deposit in the Escrow Account, such amounts shall also be paid out of the Settlement Fund.

(c) Taxes with respect to the Settlement Amount and the Escrow Account shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid, or caused to be paid, by the Escrow Agent out of the Settlement Fund without prior order from the Court or approval by Defendants. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). Lead Plaintiff and Defendants agree to cooperate with each other and their tax attorneys and accountants to the extent reasonably necessary, to carry out the provisions of this ¶ 11.

12. This is not a claims-made settlement. As of the Effective Date, Defendants, and/or any other Person funding the Settlement on a Defendant's behalf, shall not have any right to the return of the Settlement Fund or any portion thereof for any reason.

ATTORNEYS' FEES AND EXPENSES

13. Lead Counsel will apply to the Court for an award from the Settlement Fund of reasonable attorneys' fees and payment of litigation expenses incurred in prosecuting the claims, including a service award to Lead Plaintiff, plus earnings on such amounts at the same rate and for the same periods as earned by the Settlement Fund. The Fee and Expense Application is not the

subject of any agreement between Defendants and Lead Plaintiff other than what is set forth in this Stipulation.

14. The amount of attorneys' fees and expenses awarded by the Court is within the sole discretion of the Court. Any attorneys' fees and expenses awarded by the Court shall be paid from the Settlement Fund to Lead Counsel immediately upon award of such attorneys' fees and expenses and entry of the Judgment, notwithstanding the existence of any timely filed objections thereto or to the Settlement, potential for appeal therefrom, or collateral attack on the Fee and Expense Application, the Settlement, or any part thereof.

15. Any payment of attorneys' fees and expenses pursuant to ¶¶ 13-14 above shall be subject to Lead Counsel's obligation to make refunds or repayments to the Settlement Fund of any paid amounts, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or fails to become effective for any reason, or if, as a result of any appeal or further proceedings on remand or successful collateral attack, the award of attorneys' fees and/or expenses is reduced or reversed by Final non-appealable court order. Lead Counsel shall make the appropriate refund or repayment in full no later than thirty (30) calendar days after receiving notice of the termination of the Settlement pursuant to this Stipulation, notice from a court of appropriate jurisdiction of the disapproval of the Settlement by Final non-appealable court order, or notice of any reduction or reversal of the award of attorneys' fees and/or expenses by Final non-appealable court order. Lead Counsel agrees that it is subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph.

16. Benefitfocus is obligated to cause the payment of the Settlement Amount into the Escrow Account as provided for in ¶ 6. Defendants, Defendants' Counsel, and Defendant

Releasees shall otherwise have no responsibility for, and no liability whatsoever with respect to, any payment whatsoever to Lead Counsel that may occur at any time.

17. Defendants, Defendants' Counsel, and Defendant Releasees shall have no responsibility for, and no liability whatsoever with respect to, any allocation of any attorneys' fees or expenses among Lead Counsel, or to any other Person who may assert some claim thereto, or any fee or expense awards the Court may make.

18. Defendants, Defendants' Counsel, and Defendant Releasees shall have no responsibility for, and no liability whatsoever with respect to, any attorneys' fees, costs, or expenses incurred by or on behalf of Settlement Class Members, whether or not paid from the Escrow Account. The Settlement Fund will be the sole source of payment for any award of attorneys' fees and expenses ordered by the Court.

19. The procedure for and the allowance or disallowance by the Court of any Fee and Expense Application are not part of the Settlement set forth in this Stipulation, and any order or proceeding relating to any Fee and Expense Application, including an award of attorneys' fees or expenses in an amount less than the amount requested by Lead Counsel, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Stipulation or affect or delay the finality of the Judgment approving the Stipulation and the Settlement set forth herein, including, but not limited to, the release, discharge, and relinquishment of Plaintiff's Released Claims against Defendant Releasees or any other orders entered pursuant to the Stipulation. Neither Lead Plaintiff nor Lead Counsel may cancel or terminate the Stipulation or the Settlement, whether in accordance with ¶ 42 or otherwise, based on the Court's or any appellate court's ruling with respect to fees and expenses.

NOTICE AND ADMINISTRATION EXPENSES

20. Except as otherwise provided herein, the Net Settlement Fund shall be held in the Escrow Account until the Effective Date.

21. Without further approval from Defendants or further order of the Court, before the Effective Date, Lead Counsel may pay up to a sum of \$250,000 from the Settlement Fund for Notice and Administration Expenses reasonably and actually incurred. Taxes and fees related to the Escrow Account and investment of the Settlement Fund may be paid as incurred, without further approval of Defendants or further order of the Court. After the Effective Date, any and all Notice and Administration Expenses may be paid from the Settlement Fund, without further approval of Defendants or further order of the Court. All costs of notice to the Settlement Class and administration of the Settlement will be paid solely out of the Settlement Fund, except that Benefitfocus shall pay the costs of providing its transfer records, as set forth in ¶ 36 below, and notice pursuant to the Class Action Fairness Act of 2005 (“CAFA”), if any.

DISTRIBUTION TO AUTHORIZED CLAIMANTS

22. The Claims Administrator, subject to such supervision and direction of Lead Counsel and/or the Court as may be necessary or as circumstances may require, shall administer the Settlement in accordance with the terms of this Stipulation, the Court-approved Plan of Allocation, and subject to the jurisdiction of the Court. Defendants, Defendants’ Counsel, and Defendant Releasees shall have no responsibility for, interest in, or liability whatsoever with respect to the selection of the Claims Administrator, the Plan of Allocation, the administration of the Settlement, the claims process, the disbursement of the Net Settlement Fund or the actions or decisions of the Claims Administrator, and shall have no liability to the Settlement Class in connection with such matters.

23. The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's recognized loss, as defined in the Plan of Allocation included in the Notice, or in such other plan of allocation as the Court may approve.

24. Defendants, Defendants' Counsel, and Defendant Releasees have no role in the development of, and will take no position with respect to, the Plan of Allocation. The Plan of Allocation is a matter separate and apart from the proposed Settlement, and any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. The Plan of Allocation is not a necessary term of this Stipulation and it is not a condition of this Stipulation that any particular plan of allocation be approved by the Court. Lead Plaintiff and Lead Counsel may not cancel or terminate the Stipulation or the Settlement, whether in accordance with ¶ 42 or otherwise, based on the Court's or any appellate court's ruling with respect to the Plan of Allocation or any plan of allocation in the Action. Defendants, Defendants' Counsel, and Defendant Releasees shall have no responsibility or liability for reviewing or challenging claims, the allocation of the Net Settlement Fund, or the distribution of the Net Settlement Fund.

25. Upon the Effective Date and thereafter, and in accordance with the terms of the Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants.

26. If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise) after at least six (6) months from the date of initial distribution of the Net Settlement Fund, the Claims Administrator shall, if feasible and economical

after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, redistribute such balance in an equitable and economic fashion among Authorized Claimants who have received distributions from the Net Settlement Fund. Redistributions, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall continue to Authorized Claimants who have received distributions from the Net Settlement Fund until it is no longer feasible or economical to do so. Once it is no longer feasible or economical to make further distributions, any balance that still remains in the Net Settlement Fund after redistribution(s) and after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall be donated to the Consumer Federation of America, a private, non-profit, non-sectarian 501(c)(3) organization, or shall be distributed as otherwise approved by the Court.

ADMINISTRATION OF THE SETTLEMENT

27. The Claims Administrator shall disseminate the Notice, substantially in the form of Exhibit A-1 attached hereto, the Proof of Claim, substantially in the form of Exhibit A-2 attached hereto, and the Summary Notice, substantially in the form of Exhibit A-3 attached hereto, to the Settlement Class in accordance with this Stipulation and as ordered by the Court. Any Settlement Class Member who fails to timely submit a valid Proof of Claim (substantially in the form of Exhibit A-2) will not be entitled to receive any of the proceeds from the Net Settlement Fund, except as otherwise ordered by the Court or permitted by Lead Counsel, but nevertheless will be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment and all releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Defendant Releasee concerning any of Plaintiff's Released Claims.

28. Lead Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund by the Claims Administrator, subject to Court supervision and direction as circumstances may require. Lead Counsel shall have the right, but not the obligation, to advise the Claims Administrator to waive what Lead Counsel deems to be *de minimis* or formal or technical defects in any Proof of Claim submitted. Defendants, Defendants' Counsel, and Defendant Releasees shall have no liability, obligation, or responsibility for the administration of the Settlement, the allocation of the Net Settlement Fund, or the reviewing or challenging of claims. Lead Counsel shall be solely responsible for designating the Claims Administrator, subject to approval by the Court.

29. For purposes of determining the extent, if any, to which a Claimant shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

(a) Each Claimant shall be required to submit a Proof of Claim, substantially in the form attached hereto as Exhibit A-2, supported by such documents as are designated therein, including proof of the Claimant's loss, or such other documents or proof as the Claims Administrator in its discretion, may deem acceptable;

(b) All Proofs of Claim must be submitted by the date set by the Court in the Notice Order and specified in the Notice, unless such deadline is extended by Lead Counsel in its discretion or by Order of the Court. Any Settlement Class Member who fails to submit a Proof of Claim by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless, by Order of the Court or the discretion of Lead Counsel, late-filed Proofs of Claim are accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment and all releases provided for herein and therein, and will be permanently barred and enjoined from

bringing any action, claim, or other proceeding of any kind against any Defendant Releasee concerning any of Plaintiff's Released Claims. A Proof of Claim shall be deemed to be submitted when mailed if received with a postmark on the envelope, mailed by first-class or overnight U.S. Mail, and addressed in accordance with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator;

(c) Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator, under the supervision of Lead Counsel, and the Claims Administrator shall determine in accordance with this Stipulation the extent, if any, to which each claim shall be allowed;

(d) Proofs of Claim that do not meet the submission requirements may be rejected. Prior to rejecting a Proof of Claim in whole or in part, the Claims Administrator shall communicate with the Claimant in writing to give the Claimant the chance to remedy any curable deficiencies in the Proof of Claim submitted. The Claims Administrator, under supervision of Lead Counsel, shall notify, in writing, all Claimants whose claims the Claims Administrator proposes to reject in whole or in part for curable deficiencies, setting forth the reasons therefor, and shall indicate in such notice that the Claimant whose claim is to be rejected has the right to a review by the Court if the Claimant so requests and complies with the requirements of subparagraph (e) below; and

(e) If any Claimant whose timely claim has been rejected in whole or in part for curable deficiency desires to contest such rejection, the Claimant must, within twenty (20) calendar days after the date of mailing of the notice required in subparagraph (d) above, or a lesser period of time to the extent that the claim was untimely, serve upon the Claims Administrator a

notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation and a request for review thereof by the Court. If a dispute concerning a claim cannot otherwise be resolved, Lead Counsel shall thereafter present the request for review to the Court, on notice to Defendants' Counsel.

30. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's claim, including but not limited to all releases provided for herein and in the Judgment, and the claim shall be subject to investigation and discovery under the Court's rules of civil procedure, provided that such investigation and discovery shall be limited to the Claimant's status as a Settlement Class Member and the validity and amount of the Claimant's claim. In connection with processing the Proofs of Claim, no discovery shall be allowed on the merits of the Action or the Settlement.

31. The determination of claims pursuant to the Stipulation and Court-approved Plan of Allocation shall be deemed final and conclusive against any and all Claimants. All Settlement Class Members whose claims are not approved shall be barred from participating in distributions from the Net Settlement Fund, but nevertheless shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment and the releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Defendant Releasee concerning any of Plaintiff's Released Claims.

32. All proceedings with respect to the administration, processing, and determination of claims described by this Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court, but shall not in any event delay or affect the finality of the

Judgment. All Claimants waive any right to trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to claim determinations.

33. No Person shall have any claim of any kind against the Defendants, Defendant Releasees, or Defendants' Counsel with respect to the matters set forth in this section (*i.e.*, ¶¶ 27-34) or any of its subsections, or otherwise related in any way to the administration of the Settlement, including without limitation the processing, review, determination, calculation, investment, or distribution of the Net Settlement Fund; the Plan of Allocation; the determination, administration, calculation, processing, review, or payment of any Claim; nonperformance of the Claims Administrator; the payment or withholding of Taxes (including interest and penalties) owed by the Net Settlement Fund; or any losses incurred in connection therewith.

34. No Person shall have any claim against the Defendant Releasees, the Plaintiff Releasees, or the Claims Administrator based on determinations or distributions made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or further order(s) of the Court.

TERMS OF THE NOTICE ORDER

35. Concurrently with the application for approval by the Court of the Settlement notice program contemplated by this Stipulation and promptly upon execution of this Stipulation, Lead Counsel shall apply to the Court for entry of the Notice Order, which shall be substantially in the form annexed hereto as Exhibit A. The Notice Order shall, *inter alia*, set the date for the Settlement Hearing, approve the form of notice, and prescribe the method for giving notice of the Settlement to the Settlement Class.

36. Benefitfocus shall provide, or cause to be provided, to Lead Counsel or the Claims Administrator, at no cost to Lead Plaintiff or the Settlement Class, within ten (10) calendar days of entry of the Notice Order, transfer records lists in electronic searchable form containing the

names and addresses of Persons who purchased or otherwise acquired Benefitfocus publicly traded common stock issued pursuant to the SPO or during the Class Period, to the extent such lists are reasonably available from Benefitfocus's transfer agent. The Claims Administrator shall disseminate the Notice and Summary Notice to the Settlement Class in accordance with this Stipulation and as ordered by the Court.

37. The Notice Order shall provide that requests for exclusion shall be received no later than twenty-one (21) calendar days prior to the Settlement Hearing. Lead Counsel shall provide Defendants' Counsel with copies of any request for exclusion from any Settlement Class Member and any written revocations of requests for exclusion on a rolling basis as expeditiously as possible by email. Upon receiving any request for exclusion pursuant to the Notice, Lead Counsel shall promptly, and certainly no later than five (5) calendar days after receiving the request or fifteen (15) calendar days prior to the Settlement Hearing, whichever is earlier, notify Defendants' Counsel and provide a copy of such request and any documentation accompanying it by email. Upon receiving any written revocation of a request for exclusion, Lead Counsel shall immediately provide a copy of such revocation to Defendants' Counsel.

38. Any member of the Settlement Class who fails to comply with any of the provisions of the Notice Order, Notice, and this Stipulation concerning appearing in the Action, submitting an objection, or requesting exclusion shall waive and forfeit any and all rights he, she, or it may otherwise have to appear separately at the Settlement Hearing and/or to object to this Stipulation, and shall be bound by all the terms of this Stipulation, and by all proceedings, orders, and judgments in the Action, including the Judgment to be entered and the releases to be given.

TERMS OF THE JUDGMENT

39. If the Settlement contemplated by this Stipulation is approved by the Court, Lead Counsel and Defendants' Counsel shall jointly request that the Court enter a Judgment substantially in the form annexed hereto as Exhibit B.

40. The Judgment shall contain a bar order substantially in the form set forth in Exhibit B hereto.

EFFECTIVE DATE OF SETTLEMENT

41. The Effective Date of this Settlement shall be the first business day on which all of the following shall have occurred or been waived:

(a) entry of the Notice Order, which shall be in all material respects in the form set forth in Exhibit A annexed hereto;

(b) payment of the Settlement Amount into the Escrow Account;

(c) none of the Parties has exercised his, her, or its respective option(s) to terminate the Settlement pursuant to the provisions of the Stipulation;

(d) approval by the Court of the Settlement and all material terms set forth herein, following notice to the Settlement Class and the Settlement Hearing; and

(e) the Judgment in all material respects in the form attached hereto as Exhibit B has been entered by the Court and has become Final.

TERMINATION

42. Each of the Defendants and Lead Plaintiff shall have the right to terminate the Settlement and the Stipulation by providing written notice of their election to do so ("Termination Notice"), through counsel, to all other Parties hereto within twenty-one (21) calendar days of: (i) the entry of a judgment that differs in any material respect from the proposed Judgment in Exhibit B; (ii) the Court's final non-appealable refusal to enter the Notice Order in any material respect;

(iii) the Court's final non-appealable refusal to approve this Stipulation or any material part of it; (iv) the Court's final non-appealable refusal to enter the proposed Judgment in Exhibit B in any material respect; or (v) the date on which the Judgment is modified or reversed in any material respect by a Final order of the Court, an appellate court, or the Supreme Court of the United States. For the avoidance of doubt, Lead Plaintiff shall not have the right to terminate the Settlement due to any decision, ruling, or order relating to the Fee and Expense Application or any plan of allocation.

43. In addition to the foregoing, Benefitfocus shall also have the sole right to terminate the Settlement in the event the Termination Threshold (defined below) has been reached.

(a) Simultaneously herewith, Defendants' Counsel and Lead Counsel are executing a confidential Supplemental Agreement Regarding Requests for Exclusion ("Supplemental Agreement"). The Supplemental Agreement sets forth certain conditions under which Benefitfocus shall have the sole option to terminate the Settlement and render this Stipulation null and void in the event that requests for exclusion from the Settlement Class exceed certain agreed-upon criteria (the "Termination Threshold").

(b) The Parties agree to maintain the confidentiality of the Supplemental Agreement, which shall not be filed with the Court unless a dispute arises as to its terms or as otherwise ordered by the Court. The Parties further agree that the Supplemental Agreement shall not otherwise be disclosed unless ordered by the Court. If submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the Court, the Parties will undertake to have the Termination Threshold submitted to the Court *in camera* or under seal. In the event of a termination of this Settlement pursuant to the Supplemental Agreement, this

Stipulation shall become null and void and of no further force and effect, with the exception of the provisions of ¶¶ 47-49 which shall continue to apply.

44. In addition to all of the rights and remedies that Lead Plaintiff has under the terms of this Stipulation, Lead Plaintiff also shall have the right to terminate the Settlement in the event that the Settlement Amount has not been paid in full as provided for in ¶ 6 above; provided, however, that before Lead Plaintiff exercises this right, (1) Lead Plaintiff must provide written notice to all other Parties of the failure to pay the Settlement Amount in full, and (2) the failure to pay the Settlement Amount in full must remain uncured fourteen (14) calendar days following such written notice.

45. If, before the Settlement becomes Final, any Defendant files for protection under the Bankruptcy Code or any similar law or a trustee, receiver, conservator, or other fiduciary is appointed under bankruptcy or any similar law and a Final order is entered by a court of competent jurisdiction determining the transfer of money or any portion thereof to the Settlement Fund by or on behalf of such Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Lead Plaintiff, Lead Plaintiff and Defendants shall jointly move the Court to vacate and set aside the release given and the Judgment entered in favor of that Defendant and that Defendant and Lead Plaintiff and the members of the Settlement Class shall be restored *nunc pro tunc* to their litigation positions immediately prior to February 8, 2022. All releases and the Judgment as to other Defendants shall remain unaffected.

(a) Benefitfocus warrants as to the payments it causes pursuant to this Stipulation, that, at the time of such payment, it will not be insolvent, nor will payment render it

insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including Sections 101 and 547 thereof.

46. If an option to withdraw from and terminate this Stipulation arises under any of ¶¶ 42-45 above: (i) neither Defendants nor Lead Plaintiff (as the case may be) will be required for any reason or under any circumstance to exercise that option; and (ii) any exercise of that option shall be made in good faith, but in the sole and unfettered discretion of Defendants or Lead Plaintiff, as applicable.

47. With the exception of the provisions of ¶¶ 47-49 which shall continue to apply, in the event the Settlement is terminated as set forth herein or cannot become effective for any reason or the Judgment does not become Final, then the Settlement shall be without prejudice, and none of its terms shall be effective or enforceable except as specifically provided herein; the Parties shall be deemed to have reverted *nunc pro tunc* to their respective litigation positions immediately prior to February 8, 2022; and, except as specifically provided herein, the Parties shall proceed in all respects as if this Stipulation and any related order or agreement had not been entered or agreed to. In such event, this Stipulation, and any aspect of the discussions, negotiations, or other agreements leading to this Stipulation shall not be admissible in this Action or any other proceeding and shall not be used against or to the prejudice of Defendants or against or to the prejudice of Lead Plaintiff, in any court filing, deposition, at trial, or otherwise. For the avoidance of doubt in such event, Defendants reserve all rights to object to and to oppose class certification or to challenge the standing of Lead Plaintiff or any other intervening plaintiff, and this Stipulation shall not be offered as evidence of any agreement, admission, or concession that any class should be or should remain certified in this Action or that any plaintiff has standing.

48. In the event the Settlement is terminated or fails to become effective for any reason, any portion of the Settlement Amount previously paid, together with any earnings thereon, less any Taxes paid or due, less Notice and Administration Expenses reasonably and actually incurred and paid or payable from the Settlement Fund, shall be returned to the Person(s) that made the deposit(s) within thirty (30) calendar days after written notification of such event in accordance with instructions provided by Defendants' Counsel to Lead Counsel. At the request of Defendants' Counsel, the Escrow Agent or its designees shall apply for any tax refund owed on the amounts in the Escrow Account and shall pay the proceeds, after any deduction of any fees or expenses incurred in connection with such application(s), of such refund to the Person(s) that made the deposits or as otherwise directed by Defendants' Counsel.

NO ADMISSION

49. Except as set forth in ¶ 50 below, this Stipulation, whether or not consummated, and whether or not approved by the Court, and any discussion, negotiation, proceeding, or agreement relating to the Stipulation, the Settlement, and/or any matter arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be offered or received against or to the prejudice of the Parties or their respective counsel, for any purpose other than in an action or any proceeding or motion to enforce the terms of this Stipulation or the Judgment, and in particular:

(a) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee with respect to the truth of any allegation by Lead Plaintiff and the Settlement Class, the validity of any claim that has been or could have been asserted in the Action or in any litigation, including but not limited to the Plaintiff's Released Claims, the deficiency of any defense that has been or could have been

asserted in this Action or in any other litigation, the entitlement of any investors who are not Settlement Class Members to any payment by or damages from the Defendants or Defendant Releasees, or of any liability, damages, negligence, fault, or wrongdoing of Defendants or any Person whatsoever;

(b) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by Defendants or against or to the prejudice of Lead Plaintiff or any other member of the Settlement Class as evidence of any infirmity in the claims of Lead Plaintiff or the other members of the Settlement Class;

(c) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee, Lead Plaintiff, any other member of the Settlement Class, or their respective counsel with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing or in any way referred to for any other reason against or to the prejudice of any of the Defendants or any Defendant Releasee, Lead Plaintiff, other members of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(d) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee, Lead Plaintiff,

or any other member of the Settlement Class, that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial;

(e) do not constitute, and shall not be offered or received against or to the prejudice of Lead Plaintiff as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Lead Plaintiff, or any other member of the Settlement Class that any of their claims are without merit or infirm or that damages recoverable under any of the complaints filed in the Action would not have exceeded the Settlement Amount; and

(f) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee that class certification is appropriate in this Action or any other action, except for the purposes of this Settlement.

50. Notwithstanding ¶ 49 above, this Stipulation, including the releases herein, has full preclusive effect on all Parties, including the Settlement Class, and the Parties and other Released Parties may file or refer to this Stipulation, the Judgment, and/or any Proof of Claim: (i) to effectuate the liability protections granted hereunder, including without limitation to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, injunction, statute of limitations, statute of repose, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim; (ii) to enforce any applicable insurance policies and any agreements relating thereto; or (iii) to enforce the terms of this Stipulation and/or the Judgment. The Parties and other Released Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

MISCELLANEOUS PROVISIONS

51. All of the exhibits to the Stipulation, except any plan of allocation to the extent incorporated in those exhibits, and the Supplemental Agreement are material and integral parts hereof and are fully incorporated herein by this reference. Notwithstanding the foregoing, in the event of a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of this Stipulation shall prevail.

52. The Parties intend the Settlement to be the full, final, and complete resolution of all claims asserted, that could have been asserted, or could in the future be asserted by the Parties with respect to the Plaintiff's Released Claims and Defendants' Released Claims. The Parties agree not to assert in any forum that the Action was brought, prosecuted, or defended in bad faith or without a reasonable basis. The Parties and their respective counsel agree that each has complied fully with the rules of civil procedure, including the requirements of 22 New York Code, Rules and Regulations Part 130, and any other applicable law or rule similar to Federal Rule of Civil Procedure 11, in connection with the maintenance, prosecution, defense, and settlement of the Action and shall not make any application for sanctions, pursuant to any court rule or statute, with respect to any claim or defense in the Action. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length and in good faith with the assistance of the Mediator and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel.

53. This Stipulation along with its exhibits and the Supplemental Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by counsel for the Parties hereto or their successors in interest.

54. The headings herein are used for the purpose of convenience only and are not meant to have legal effect. Such headings shall not limit, modify, or affect in any way the meaning or interpretation of this Stipulation.

55. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and any expenses and implementing and enforcing the terms of this Stipulation.

56. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation or a waiver by any other Party of any breach of this Stipulation.

57. No waiver of any term or provision of this Stipulation, or of any breach or default hereof or hereunder, shall be valid or effective unless in writing and signed by or on behalf of all Parties or their respective successors in interest. This Stipulation, its exhibits, and the Supplemental Agreement constitute the entire agreement among the Parties concerning the Settlement, and no representation, warranty, or inducement has been made by any Party concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

58. Nothing in the Stipulation or the negotiations relating thereto is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the attorney-client privilege, joint defense privilege, or work product protection.

59. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given by the Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation.

Each Settlement Class Member's tax obligations and the determination thereof are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

60. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

61. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated or the Effective Date occurs, the Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings in connection with the Stipulation confidential.

62. All designations and agreements made or orders entered during the course of the Action relating to the confidentiality of documents or information shall survive this Stipulation.

63. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signatures sent by facsimile or via email in pdf format shall be deemed originals.

64. Lead Plaintiff agrees that it will use its best efforts to obtain all necessary approvals of the Court required by this Stipulation, and Defendants agree to provide such support as may be reasonably requested by Lead Plaintiff or Lead Counsel.

65. This Stipulation shall be binding when signed, but the Settlement shall be effective upon the entry of the Judgment and the payment in full of the Settlement Amount, subject only to the condition that the Effective Date shall have occurred.

66. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

67. The construction, interpretation, operation, effect, and validity of this Stipulation and all documents necessary to effectuate it shall be governed by the laws of the State of New York without regard to conflicts of laws.

68. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one Party, it being recognized that this Stipulation is the result of arm's-length negotiations among the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation.

69. This Stipulation shall be construed and interpreted to effectuate the intent of the Parties, which is to resolve completely those claims and disputes, including in the Action as more fully described herein. If any provision of either (i) this Stipulation or (ii) any document necessary to effectuate it, is determined to be invalid, void, or illegal, such provision shall be construed and amended in a manner that would permit the Stipulation's or such document's enforcement, but in no event shall such provision or document affect, impair, or invalidate any other provision hereof.

70. All counsel and any other person executing this Stipulation and any of the exhibits hereto or any related Settlement document warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

71. The Parties and their respective counsel agree to cooperate fully with one another in promptly applying for preliminary approval by the Court of the Settlement and for the scheduling of a hearing for consideration of final approval of the Settlement and Lead Counsel's Fee and Expense Application and to agree promptly upon and execute all such other

documentation as reasonably may be required to obtain final approval by the Court of the Settlement.

72. Pending approval by the Court of this Stipulation and its exhibits, the Parties shall seek to have all proceedings in the Action stayed and all Settlement Class Members barred, enjoined, and estopped from prosecuting any of Plaintiff's Released Claims against any of the Defendant Releasees.

73. Any disputes arising out of finalizing the terms of the Settlement itself shall be resolved by the mediator Michelle Yoshida, Esq., first by way of expedited telephonic mediation and, if unsuccessful, then by way of final, binding, non-appealable resolution, with the fees and expenses of the Mediator to be divided equally between Lead Plaintiff on the one hand and Benefitfocus on the other.

74. Except as otherwise provided herein, each Party shall bear its own costs and legal fees, subject to any rights to indemnification or advancement of costs and legal fees among Defendants, about which Lead Plaintiff takes no position, and except as awarded by the Court to Lead Counsel from the Settlement Amount.

IN WITNESS WHEREOF, the Parties have caused this Stipulation to be executed, by their duly authorized attorneys, as of April 11, 2022.

LABATON SUCHAROW LLP

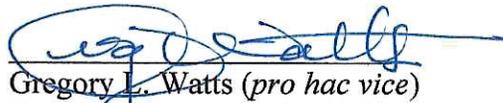


Jonathan Gardner
Alfred L. Fatale III
Charles Wood
140 Broadway
New York, NY 10005

Tel: (212) 907-0700
jgardner@labaton.com
afatale@labaton.com
cwood@labaton.com

*Lead Counsel for Lead Plaintiff
and the Settlement Class*

**WILSON SONSINI GOODRICH &
ROSATI, P.C.**



Gregory L. Watts (*pro hac vice*)
701 Fifth Avenue, Suite 5100
Seattle, Washington 98104
Telephone: (206) 883-2500
Facsimile: (206) 883-2699
GWatts@wsgr.com

Sheryl Shapiro Bassin
Paul C. Gross
1301 Avenue of the Americas, 40th Floor
New York, New York 10019
Telephone: (212) 999-5800
Facsimile: (212) 999-5899
sbassin@wsgr.com
pgross@wsrg.com

Ignacio E. Salceda (*pro hac vice*)
Dylan G. Savage
650 Page Mill Road
Palo Alto, California 94304
Telephone: (650) 493-9300
Facsimile: (650) 493-9301
ISalceda@wsgr.com
dsavage@wsgr.com

Counsel for the Benefitfocus Defendants

GIBSON, DUNN & CRUTCHER LLP



Mark A. Kirsch
Robert F. Serio
Jennifer L. Conn
Mylan Denerstein
Alyssa Kuhn
200 Park Avenue
New York, New York 10166
Telephone: (212) 351-4000
Facsimile: (212) 351-4035
mkirsch@gibsondunn.com
rserio@gibsondunn.com
jconn@gibsondunn.com
mdenerstein@gibsondunn.com
akuhn@gibsondunn.com

Counsel for the Mercer Defendants

SHEARMAN & STERLING LLP

Agnès Dunogué
Elizabeth J. Stewart
Sonia S. Khandekar
599 Lexington Avenue
New York, New York 10022
Telephone: (212) 848 4000
Facsimile: (646) 848-4000
agnes.dunogue@shearman.com
elizabeth.stewart@shearman.com
sonia.khandekar@shearman.com

Counsel for the Underwriter Defendants

GIBSON, DUNN & CRUTCHER LLP

Mark A. Kirsch
Robert F. Serio
Jennifer L. Conn
Mylan Denerstein
Alyssa Kuhn
200 Park Avenue
New York, New York 10166
Telephone: (212) 351-4000
Facsimile: (212) 351-4035
mkirsch@gibsondunn.com
rserio@gibsondunn.com
jconn@gibsondunn.com
mdenerstein@gibsondunn.com
akuhn@gibsondunn.com

Counsel for the Mercer Defendants

SHEARMAN & STERLING LLP



Agnès Dunogué
Elizabeth J. Stewart
Sonia S. Khandekar
599 Lexington Avenue
New York, New York 10022
Telephone: (212) 848 4000
Facsimile: (646) 848-4000
agnes.dunogue@shearman.com
elizabeth.stewart@shearman.com
sonia.khandekar@shearman.com

Counsel for the Underwriter Defendants

GOODWIN PROCTER LLP

Douglas H. Flaum

Douglas H. Flaum

Charles A. Brown

Marco Y. Wong

The New York Times Building

620 Eighth Avenue

New York, New York 10018

Telephone: (212) 813-8800

Facsimile: (212) 355-3333

dflaum@goodwinlaw.com

cbrown@goodwinlaw.com

marcowong@goodwinlaw.com

Counsel for the Goldman Funds Defendants

Exhibit A

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

IAS Commercial Part 53

Hon. Andrew Borrok

**[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT,
APPROVING FORM AND MANNER OF NOTICE, AND SETTING DATE FOR
HEARING ON FINAL APPROVAL OF SETTLEMENT**

WHEREAS, Lead Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund (“Lead Plaintiff”), on behalf of the proposed Settlement Class (as defined below), has applied to the Court pursuant to § 904 of the New York Civil Practice Law and Rules (“CPLR”) for an

Order authorizing the dissemination of notice of the proposed settlement of this Action to the proposed Settlement Class for settlement purposes only; and

WHEREAS, the proposed Settlement is embodied in the Stipulation and Agreement of Settlement, dated as of April 11, 2022 with annexed exhibits (collectively, the “Stipulation”), which has been submitted to the Court with Lead Plaintiff’s motion; and

WHEREAS, the Court has considered the Stipulation and Lead Plaintiff’s submissions; and

WHEREAS, all terms of the proposed Settlement are subject to the Court’s approval after notice has been provided to the Settlement Class and the Court has held a Settlement Hearing; and

WHEREAS, all capitalized terms used in this Order that are not otherwise defined herein shall have the meaning set forth in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Preliminary Approval of Settlement.** The Court preliminarily finds that:
 - (a) the Settlement resulted from informed, extensive arm’s-length negotiations, including mediation under the direction of an experienced mediator, Michelle Yoshida, Esq.; and
 - (b) the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class, such that it warrants providing notice of the Settlement to the Settlement Class.

2. **Provisional Certification of the Settlement Class.** The Court hereby provisionally certifies the Settlement Class solely for purposes of the proposed Settlement, pursuant to CPLR §§ 901 and 902. The Settlement Class is: all persons and entities that purchased or otherwise acquired Benefitfocus publicly traded common stock pursuant and/or traceable to the Offering Documents issued in connection with the March 1, 2019 SPO and/or who subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock during the Class

Period, and who were damaged thereby. Excluded from the Settlement Class are: (i) Defendants; (ii) the Individual Defendants' immediate family members; (iii) the officers, directors, and affiliates of Benefitfocus; (iv) the Selling Stockholder Defendants and the Underwriter Defendants at all relevant times; (v) any entity in which a Defendant has or had a majority ownership interest; (vi) the legal representatives, heirs, successors, or assigns of any excluded person or entity; and (vii) any persons or entities who or which exclude themselves by submitting a timely and valid request for exclusion that is accepted by the Court.

3. This provisional certification of the Settlement Class is made for the sole purpose of the consummation of the proposed settlement of the Action in accordance with the Stipulation. If the Court does not grant final approval of the proposed Settlement or if the Court's grant of final approval does not become Final for any reason, this provisional class certification shall be deemed void *ab initio*, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

4. For purposes of the proposed settlement of the Action, and only for those purposes, and subject to the terms of the Stipulation, the Court provisionally finds that the requirements of CPLR §§ 901 and 902 appear to be satisfied, in that:

(a) The Settlement Class appears to be so numerous that joinder of all members would be impracticable;

(b) Lead Plaintiff has alleged questions of fact and law that would be common to all Settlement Class Members, which predominate over questions affecting only individual class members;

(c) Based on Lead Plaintiff's allegations that Defendants engaged in uniform conduct affecting all Settlement Class Members, Lead Plaintiff's claims would be typical of those of the other members of the Settlement Class;

(d) Lead Plaintiff and Lead Counsel appear to be capable of fairly and adequately protecting the interests of the members of the Settlement Class;

(e) A class action would be superior to other available methods for the fair and efficient adjudication of the Action; and

(f) Consistent with CPLR § 902, (i) there appears to be no overriding interest of individual class members to prosecute separate actions; (ii) class certification would not be impracticable or inefficient; (iii) this Action is the only-filed litigation concerning the events and matters at issue; (iv) this Court is an appropriate forum for these claims; and (v) the Settlement Class would be manageable.

5. Solely for purposes of the proposed Settlement, the Court hereby provisionally certifies City of Pittsburgh Comprehensive Municipal Pension Trust Fund as the Class Representative and provisionally appoints Labaton Sucharow LLP as Class Counsel.

6. **Settlement Hearing.** The Court will hold a settlement hearing (the "Settlement Hearing") on _____, 2022 at _____.m., either in person or remotely, in the Court's discretion, in Part 53 of the Supreme Court of the State of New York, New York County, Courtroom 238, 60 Centre Street, New York, NY 10007 for the following purposes: (i) to determine whether the Court should grant final certification of the Action as a class action for purposes of the Settlement and confirm its appointment of Lead Plaintiff and Lead Counsel as Class Representative and Class Counsel, respectively; (ii) to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class;

(iii) to determine whether a Judgment, substantially in the form attached as Exhibit B to the Stipulation, should be entered dismissing and releasing the Plaintiff's Released Claims and Defendants' Released Claims (as those terms are defined in the Stipulation) with prejudice; (iv) to determine whether the Plan of Allocation for the distribution of the Net Settlement Fund is reasonable and should be approved; (v) to rule upon Lead Counsel's application for an award of attorneys' fees and payment of litigation expenses (which may include a service award for Lead Plaintiff in connection with its representation of the Settlement Class); (vi) to consider any objections or requests for exclusion received by the Court; and (vii) to consider any other matters that may properly be brought before the Court in connection with the Settlement, as the Court may deem appropriate.

7. Papers in support of the Settlement, the Plan of Allocation, and Lead Counsel's application for attorneys' fees and payment of litigation expenses shall be filed and served by Lead Counsel no later than thirty-five (35) calendar days prior to the Settlement Hearing. Reply papers shall be filed and served no later than seven (7) calendar days prior to the Settlement Hearing.

8. Any member of the Settlement Class may appear at the Settlement Hearing and show cause why the proposed Settlement embodied in the Stipulation should or should not be approved as fair, reasonable, adequate and in the best interests of the Settlement Class, and/or to present opposition to the Plan of Allocation or to the application of Lead Counsel for attorneys' fees and litigation expenses. However, no Settlement Class Member shall be heard or entitled to contest the approval of the Settlement, or the terms of the Plan of Allocation, or the application by Lead Counsel for an award of attorneys' fees and litigation expenses, unless, no later than twenty-one (21) calendar days prior to the Settlement Hearing, that Class Member (i) has filed said objections, papers, and briefs with the Clerk of the Supreme Court of the State of New York,

County of New York, Commercial Division; and (ii) has served written objections, by hand or first-class mail, as well as copies of any papers, and/or briefs in support of his, her, or its position, upon each of the following counsel for receipt no later than twenty-one (21) calendar days prior to the Settlement Hearing:

Court Clerk

Clerk of the Court
Supreme Court of the State of New York
County of New York
Commercial Division
60 Centre Street
New York, NY 10007

Lead Counsel for Lead Plaintiff

Alfred L. Fatale III, Esq.
Labaton Sucharow LLP
140 Broadway
New York, NY 10005

Defendants' Counsel Representative

Sheryl Shapiro Bassin, Esq.
Wilson Sonsini Goodrich & Rosati, P.C.
1301 Avenue of the Americas, 40th Floor
New York, New York 10019

9. Any objections must include: (i) the name, address, telephone number, and email address of the objector and must be signed by the objector; (ii) a statement that the objector is objecting to the proposed Settlement, Plan of Allocation, and/or the Fee and Expense Application in *City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.); (iii) the objection(s) and the specific reasons for each objection, including any legal and evidentiary support and copies of any papers, briefs, or other documents upon which the objection is based and/or witnesses the objector wishes to bring to the Court's attention; and (iv) documents sufficient to prove the objector's membership in the

Settlement Class, such as brokerage trade confirmation receipts or other competent documentary evidence, showing the number of shares of Benefitfocus common stock that the objector purchased, acquired, and sold from March 1, 2019, the date of the SPO, through November 5, 2020, as well as the dates, quantities, and prices of each such purchase, acquisition, and sale during the Class Period. Any Settlement Class Member who does not make his, her, or its objection in the manner provided for in this Order and in the Notice shall be deemed to have waived the objection and shall forever be foreclosed from making any objection to any aspect of the Settlement, the Plan of Allocation, and/or the application by Lead Counsel for an award of attorneys' fees and expenses, but nevertheless shall be bound by all the terms of the Stipulation, and by all proceedings, orders, and judgments in the Action, including the Judgment to be entered and the releases to be given. Settlement Class Members submitting written objections are not required to attend the Settlement Hearing, but any Settlement Class Member wishing to be heard orally in opposition to the approval of the Settlement the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses must file a written objection and indicate in the written objection his, her, or its intention to appear at the hearing. Persons who intend to object to the Settlement, the Plan of Allocation, and/or the Fee and Expense Application and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

10. By objecting to the Settlement, the Plan of Allocation, and/or the application by Lead Counsel for an award of attorneys' fees and litigation expenses, or otherwise requesting to be heard at the Settlement Hearing, a Person shall be deemed to have submitted to the jurisdiction

of the Court with respect to the subject matter of the Settlement, including, but not limited to, enforcement of the terms of the Settlement.

11. If approved, all Settlement Class Members will be bound by all of the terms of the Stipulation and the Settlement, including the terms of the Judgment and all releases provided for therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Defendant Releasee concerning any of Plaintiff's Released Claims or any determination of the Court affecting Settlement Class Members, regardless of whether or not a Settlement Class Member objects or submits a Proof of Claim form.

12. Any member of the Settlement Class may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of his, her, or its own choice. If any Settlement Class Member chooses to hire an attorney at his, her, or its own expense, that attorney must file a notice of appearance with the Court and serve it on Lead Counsel so that the notice is received twenty-one (21) days prior to the Settlement Hearing. Absent such notice of appearance, each Settlement Class Member will be represented by Lead Counsel.

13. The Court reserves the right (i) to adjourn or continue the Settlement Hearing, without further individual notice to Settlement Class Members; (ii) to approve the Stipulation with modification(s) approved by the Parties and without further individual notice to Settlement Class Members; (iii) to modify the Plan of Allocation; and (iv) to award such attorneys' fees and expenses from the Net Settlement Fund as the Court finds fair and reasonable. The Court retains jurisdiction over this Action to consider all further applications arising out of or otherwise relating to the proposed Settlement and as otherwise warranted.

14. **Mailing and Publication of Notice.** The Court approves the form of the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses

(“Notice”) (annexed hereto as Exhibit 1); the Proof of Claim and Release form (“Claim Form”) (annexed hereto as Exhibit 2); and the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (“Summary Notice”) (annexed hereto at Exhibit 3), finds that the procedures established for publication, mailing, and distribution of such documents, substantially in the manner and form set forth in this Order, meet the requirements of CPLR §§ 904 & 908, the Due Process Clause of the United States Constitution, Section 27 of the Securities Act of 1933, 15 U.S.C. § 77z-1(a)(7), and the rules of this Court, and constitute the best notice practicable under the circumstances and constitute due and sufficient notice to all persons and entities entitled to notice.

15. The Court approves the appointment of A.B. Data, Ltd. as the Claims Administrator to supervise and administer the notice procedure set forth herein, as well as the processing of claims, as more fully set forth below.

(a) The Claims Administrator shall cause the Notice and the Claim Form, substantially in the forms annexed hereto as Exhibits 1 and 2, respectively, to be mailed, by first-class mail, postage prepaid, no later than ten (10) business days after entry of this Order (“Notice Date”), to all Settlement Class Members who can be identified with reasonable effort. Defendant Benefitfocus, to the extent it has not already done so, no later than ten (10) calendar days following entry of this Order, shall provide, or shall cause to be provided, to Lead Counsel or the Claims Administrator, at no cost to Lead Plaintiff or the Settlement Class, the Company’s transfer records lists in electronic searchable form, containing the names and addresses of Persons who purchased or acquired Benefitfocus common stock during the Class Period, to the extent such lists are reasonably available from Benefitfocus’s transfer agent.

(b) The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers, such as brokerage firms and other persons or entities, that purchased or acquired Benefitfocus common stock during the Class Period as record owners but not as beneficial owners. These nominees shall either: (a) within ten (10) calendar days of receipt of the Notice, request from the Claims Administrator sufficient copies of the Notice to forward to all beneficial owners for which they purchased or otherwise acquired Benefitfocus common stock during the Class Period and within ten (10) calendar days of receipt of those Notices from the Claims Administrator forward them to all those beneficial owners; or (b) within ten (10) calendar days of receipt of the Notice, provide a list of the names and addresses of all those beneficial owners to the Claims Administrator, who shall send the Notice promptly to the identified beneficial owners. Nominees who elect to send the Notice to their beneficial owners shall also send a statement to the Claims Administrator confirming that the mailing was made and shall retain their mailing records for use in connection with any further notices that may be provided in the Action. Upon full and timely compliance with these directions, the nominees may seek reimbursement of their reasonable expenses actually incurred by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought.

(c) The Court directs that Lead Counsel shall cause the Summary Notice to be published in *The Wall Street Journal* and to be transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date.

(d) The Notice, the Summary Notice, and the Claim Form, and any updates after dissemination, shall also be placed on the website created for the Settlement.

16. Lead Counsel shall, at least seven (7) calendar days before the Settlement Hearing, file with the Court proof of mailing of the Notice and Claim Form, and proof of publication of the Summary Notice.

17. **Claims Process.** In order to be eligible to receive a distribution from the Net Settlement Fund, in the event the Settlement is effected in accordance with the Stipulation, each claimant must take the following actions and is subject to the following conditions:

18. The claimant must submit a properly executed Claim Form, substantially in the form annexed hereto as Exhibit 2, to the Claims Administrator, at the address indicated in the Notice, postmarked or received no later than one hundred twenty (120) calendar days after the Notice Date. Each Claim Form shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first-class or overnight mail, postage prepaid) as long as the Claim Form is actually received before a distribution of the Net Settlement Fund. Any Claim Form submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in the Notice. Any Settlement Class Member who does not timely submit a Claim Form within the time provided for shall be barred from sharing in the distribution of the Net Settlement Fund, unless otherwise ordered by the Court or allowed by Lead Counsel, but nonetheless shall be bound by all of the terms of the Stipulation and the Settlement, including the terms of the Judgment and all releases provided for therein, and shall be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Defendant Releasee concerning any of Plaintiffs' Released Claims, and shall be bound by any judgment or determination of the Court affecting the Settlement Class Members. Notwithstanding the foregoing, Lead Counsel may, at its discretion, accept for processing late Claim Forms

provided such acceptance does not delay the distribution of the Net Settlement Fund to Authorized Claimants.

19. The Claim Form submitted by each claimant must satisfy the following conditions, unless otherwise allowed pursuant to the Stipulation: (i) it must be properly completed, signed, and submitted in a timely manner in accordance with the preceding paragraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported in it, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or other documentation that is deemed adequate by the Claims Administrator or Lead Counsel; (iii) if the person executing the Claim Form is acting in a representative capacity, a certification of his or her current authority to act on behalf of the claimant must be included in the Claim Form; and (iv) the Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained in it and must be signed under penalty of perjury.

20. The Claims Administrator, subject to the supervision of Lead Counsel and the Court, will make administrative determinations concerning the acceptance and rejection of the Proof of Claim Forms submitted by claimants pursuant to the procedures set forth in the Stipulation. As part of the Claim Form, each claimant shall submit to the jurisdiction of the Court with respect to the claim submitted.

21. With the sole exception of Benefitfocus's obligation to secure payment of the Settlement Amount into the Escrow Account as provided for in ¶ 6 of the Stipulation and Benefitfocus's obligation pursuant to ¶ 36 of the Stipulation, Defendants, Defendants' Counsel, and Defendant Releasees shall have no responsibility for, interest in, or liability whatsoever with respect to the selection of the Claims Administrator, the administration of the Settlement, or the

actions or decisions of the Claims Administrator and shall have no liability whatsoever to the Plaintiff Releasees in connection with such administration, including, but not limited to: (i) any act, omission, or determination by Lead Counsel or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement, Escrow Account, or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any loss suffered by, or fluctuation in value of, the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund, distributions or other payments from the Escrow Account, or the filing of any Tax Returns (as defined in ¶ 11(a) of the Stipulation).

22. **Exclusion from the Settlement Class.** Any requests for exclusion from the Settlement Class in connection with the Notice must be submitted in accordance with the instructions included in the Notice. A Class Member wishing to make such a request shall mail the request in written form by first class mail to the address designated in the Notice, such that it is received no later than twenty-one (21) calendar days prior to the Settlement Hearing. Such request for exclusion shall clearly state that the Settlement Class Member requests to be “excluded from the Settlement Class in *City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.)” and must (i) state the name, address, telephone number, and email address of the Person requesting exclusion; (ii) state the number of shares of Benefitfocus common stock the Person purchased, acquired, and sold during the Class Period, as well as the dates and prices of each such purchase, acquisition, and sale; and (iii) be signed by the Person requesting exclusion or an authorized representative. The request for

exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

23. All Persons who submit valid and timely requests for exclusion in the manner set forth in this Order and the Notice shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any final judgment.

24. Any member of the Settlement Class who does not request exclusion from the Settlement Class in the manner stated in this Order and the Notice shall be deemed to have waived his, her, or its right to be excluded from the Settlement Class, shall forever be barred from requesting exclusion from the Settlement Class, and shall be bound by all of the terms of the Stipulation and the Settlement, including the terms of the Judgment and all releases provided for therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Defendant Releasee concerning any of Plaintiffs' Released Claims, if the Court approves the Settlement.

25. **Settlement Fund.** All funds held in the Escrow Account, and all earnings thereon, shall be deemed to be *in* the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as such funds shall have been disbursed or returned pursuant to the terms of the Stipulation and/or further order of the Court.

26. **Termination.** In the event that the Settlement fails to become effective in accordance with its terms, or if the Judgment is not entered or is reversed, vacated, or materially modified on appeal (and, in the event of material modification, if any Party elects to terminate the Settlement), this Order (except paragraphs 26, 27, 29) shall be null and void, the Stipulation shall

be deemed terminated, and the Parties shall return to their positions without prejudice in any way, as provided for in the Stipulation.

27. **Stay.** Unless and until otherwise ordered by the Court, all proceedings in the Action shall be stayed, other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination of whether the Settlement should be approved, Lead Plaintiff and all Settlement Class Members shall not institute, commence, maintain, or prosecute any action, and are hereby barred and enjoined from instituting, continuing to prosecute, soliciting, commencing, maintaining, prosecuting, or encouraging or participating in the prosecution of any action in any court of law or equity, arbitration tribunal, administrative forum, or other forum, which, in any case, asserts any of Plaintiff's Released Claims against any of the Defendant Releasees.

28. **Jurisdiction.** The Court retains exclusive jurisdiction over the Action to, *inter alia*, consider all further matters arising out of or connected with the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses.

29. **Use of this Order.** This Order, the Stipulation, whether or not consummated, and whether or not approved by the Court, and any discussion, negotiation, proceeding, or agreement relating to the Stipulation, the Settlement, and/or any matter arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be offered or received against or to the prejudice of the Parties or their respective counsel, for any purpose other than in an action or any proceeding or motion to enforce the terms of the Stipulation or the Judgment, and in particular:

(a) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption,

concession, or admission by Defendants or any Defendant Releasee with respect to the truth of any allegation by Lead Plaintiff and the Settlement Class, the validity of any claim that has been or could have been asserted in the Action or in any litigation, including but not limited to the Plaintiff's Released Claims, the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, the entitlement of any investors who are not Settlement Class Members to any payment by or damages from the Defendants or Defendant Releasees, or of any liability, damages, negligence, fault, or wrongdoing of Defendants or any Person whatsoever;

(b) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by Defendants or against or to the prejudice of Lead Plaintiff or any other member of the Settlement Class as evidence of any infirmity in the claims of Lead Plaintiff or the other members of the Settlement Class;

(c) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee, Lead Plaintiff, any other member of the Settlement Class, or their respective counsel with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing or in any way referred to for any other reason against or to the prejudice of any of the Defendants or any Defendant Releasee, Lead Plaintiff, other members of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(d) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee, Lead Plaintiff, or any other member of the Settlement Class, that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial;

(e) do not constitute, and shall not be offered or received against or to the prejudice of Lead Plaintiff as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Lead Plaintiff, or any other member of the Settlement Class that any of their claims are without merit or infirm or that damages recoverable under any of the complaints filed in the Action would not have exceeded the Settlement Amount; and

(f) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee that class certification is appropriate in this Action or any other action, except for the purposes of this Settlement.

IT IS SO ORDERED.

Dated: New York, New York

_____, 2022

The Honorable Andrew Borrok

Exhibit A-1

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., et al.,

Defendants.

Index No. 651425/2021

IAS Commercial Part 53

Hon. Andrew Borrok

**NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT,
AND MOTION FOR ATTORNEYS' FEES AND EXPENSES**

If you purchased or otherwise acquired publicly traded common stock pursuant and/or traceable to the Offering Documents issued in connection with Benefitfocus, Inc.'s ("Benefitfocus" or the "Company") March 1, 2019 secondary public offering ("SPO") and/or who subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock from March 1, 2019 through November 5, 2020, inclusive (the "Class Period"), and were damaged thereby, you may be entitled to a payment from a class action settlement.

A Court authorized this Notice. This is not a solicitation from a lawyer.

- The purpose of this Notice is to inform you of the pendency of this securities class action (the "Action"), the proposed settlement of the Action (the "Settlement"),¹ and a hearing to be held by the Court to consider: (i) whether the Settlement should be approved; (ii) whether the proposed plan for allocating the proceeds of the Settlement (the "Plan of Allocation") should be approved; and (iii) Lead Counsel's application for attorneys' fees and expenses (*see* pages ___ and ___ below). This Notice describes important rights you may have and what steps you must take if you wish to participate in the Settlement, wish to object, or wish to be excluded from the Settlement Class.
- If approved by the Court, the Settlement will create a \$11,000,000 cash fund, plus any earned interest, for the benefit of eligible Settlement Class Members, before the deduction of attorneys' fees and expenses awarded by the Court, Notice and Administration Expenses, and Taxes. This is an average recovery of approximately \$0.14 per allegedly damaged share, before these deductions.

¹ The terms of the Settlement are in the Stipulation and Agreement of Settlement, dated April ____, 2022 (the "Stipulation"), which can be viewed at www._____.com. All capitalized terms not defined in this Notice have the same meanings as defined in the Stipulation.

- The Settlement resolves claims by (i) Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund (“Lead Plaintiff” or “Plaintiff”), on behalf of itself and all other members of the Settlement Class (defined below), on the one hand; and, on the other, (ii) Benefitfocus; (iii) 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, and Ana M. White (the “Individual Defendants” and together with Benefitfocus, the “Benefitfocus Defendants”); (iv) 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., and GS Capital Partners VI GMBH & Co. KG (the “Goldman Funds Defendants”); (v) Mercer LLC, Marsh & McLennan Companies, Inc., and Mercer Consulting Group, Inc. (the “Mercer Defendants,” and together with the Goldman Funds Defendants, the “Selling Stockholder Defendants”); and (vi) J.P. Morgan Securities LLC, Goldman Sachs & Co. LLC (“GS&Co.”), Merrill Lynch, Pierce, Fenner & Smith Incorporated, Piper Jaffray & Co. (n/k/a Piper Sandler & Co.), Raymond James & Associates, Inc., Wedbush Securities Inc., and First Analysis Securities Corporation (the “Underwriter Defendants,” and together with the Benefitfocus Defendants, Goldman Funds Defendants, and Mercer Defendants, the “Defendants”). It avoids the costs and risks of continuing the litigation; pays money to eligible investors; and releases the Defendant Releasees (defined below) from liability.

If you are a Settlement Class Member, your legal rights will be affected by this Settlement whether you act or do not act. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY _____, 2022	The <u>only</u> way to be eligible to receive a payment. <i>See</i> Question 8 below for details.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY _____, 2022	If you exclude yourself from the Settlement Class, you will receive no payment from the Settlement. This is the only option that will, assuming your claim is timely brought, allow you to seek recovery from the Defendants or the other Defendant Releasees through other litigation, at your own expense. <i>See</i> Question 11 below for details.
OBJECT BY _____, 2022	Write to the Court and explain why you do not agree with the Settlement, the Plan of Allocation, and/or Lead Counsel’s Fee and Expense Application. If you object, you will still be a member of the Settlement Class. <i>See</i> Question 16 below for details.
PARTICIPATE IN A HEARING ON _____, 2022 AND SUBMIT A NOTICE OF INTENTION TO APPEAR BY _____, 2022	You may participate at the hearing and speak to the Court about the fairness of the Settlement, the proposed Plan of Allocation, and/or Lead Counsel’s Fee and Expense Application. You cannot object to the Settlement unless you are a member of the Settlement Class and do not validly exclude yourself. <i>See</i> Question 20 below for details.

DO NOTHING	Receive no payment, remain a Settlement Class Member, give up your rights to seek recovery from the Defendants and the other Defendant Releasees through other litigation, and be bound by the Judgment entered by the Court if it approves the Settlement, including the release of Plaintiff's Released Claims.
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- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made to all Settlement Class Members who timely submit valid Proof of Claim and Release forms (“Claim Forms”) if the Court approves the Settlement and after any appeals are resolved. Please be patient.

SUMMARY OF THE NOTICE

Statement of the Settlement Class’s Recovery

1. Subject to Court approval, Lead Plaintiff, on behalf of the Settlement Class, has agreed to settle the Action in exchange for a payment of \$11,000,000 in cash (the “Settlement Amount”), which will be deposited into an Escrow Account, which may earn interest (the “Settlement Fund”). Based on Lead Plaintiff’s consulting damages expert’s estimate of the number of shares of Benefitfocus common stock eligible to participate in the Settlement, and assuming that all investors eligible to participate in the Settlement do so, it is estimated that the average recovery, before deduction of any Court-approved fees and expenses, such as attorneys’ fees, litigation expenses, Taxes, and Notice and Administration Expenses, would be approximately \$0.14 per allegedly damaged share. If the Court approves Lead Counsel’s Fee and Expense Application (discussed below), the average recovery would be approximately \$0.09 per allegedly damaged share. **These average recovery amounts are only estimates and Settlement Class Members may recover more or less than these estimated amounts.** A Settlement Class Member’s actual recovery will depend on, for example: (i) the total number of claims submitted;

(ii) the amount of the Net Settlement Fund (after deduction of Court-approved fees and expenses); and (iii) whether and when the Settlement Class Member sold Benefitfocus common stock. *See* the Plan of Allocation beginning on page [] for information on the calculation of your Recognized Claim, as defined in Question 23, below.

Statement of Potential Outcome of Case if the Action Continued to Be Litigated

2. The Parties disagree about both liability and damages and do not agree about the amount of damages that would be recoverable if Lead Plaintiff were to prevail on each claim alleged. The issues on which the Parties disagree include, for example: (i) whether the Offering Documents contained untrue statements of material fact or omitted material facts necessary to make the statements in the documents not misleading; (ii) Lead Plaintiff's ability to trace their purchases to the Company's SPO; (iii) whether Lead Plaintiff's claims were time-barred under the applicable statute of limitations; (iv) whether the Selling Stockholder Defendants were statutory sellers under Section 12(a)(2) of the Securities Act of 1933 (the "Securities Act") and/or controlled the contents of the Offering Documents; (v) the extent to which external factors, such as general market, economic and industry conditions, influenced the trading prices of Benefitfocus common stock at various times; (vi) the appropriate economic models for measuring damages and causation; and (vii) whether class members suffered any damages.

3. Defendants have denied and continue to deny any wrongdoing or that they have committed any act or omission giving rise to any liability or violation of law, including the U.S. securities laws. Defendants have denied and continue to deny each and every one of the claims that was alleged or could have been alleged by Lead Plaintiff in the Action on behalf of the proposed class, including all claims in the Amended Complaint, as well as any allegations that Lead Plaintiff or any member of the proposed class has suffered damages or were otherwise

harmful by the conduct alleged in the Action, and have asserted and continue to assert many defenses thereto. Defendants continue to believe that the claims asserted against them in the Action are without merit and reserve their rights to challenge, among other things, class certification if the Settlement does not become effective as set forth in the Stipulation.

Statement of Attorneys' Fees and Expenses Sought

4. Lead Counsel Labaton Sucharow LLP will apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 33% of the Settlement Fund, which includes any accrued interest. Lead Counsel will also apply for payment of litigation expenses incurred in prosecuting the Action in an amount not to exceed \$100,000, which will include reimbursement for the hourly legal fees paid to Frank, Gale, Bails & Pocrass, P.C., Lead Plaintiff's outside pension fund counsel in connection with their representation of Lead Plaintiff in fulfilling its fiduciary obligations to the Settlement Class. Lead Counsel may also seek a service award for Lead Plaintiff of no more than \$5,000 related to its representation of the Settlement Class. If the Court approves Lead Counsel's Fee and Expense Application in full, the average amount of such fees and expenses, assuming claims are filed for all shares eligible to participate in the Settlement, will be approximately \$0.05 per allegedly damaged share of Benefitfocus common stock based on Lead Plaintiff's consulting damages expert's estimate of the number of shares of Benefitfocus common stock eligible to participate in the Settlement. A copy of the Fee and Expense Application will be posted on [www. _____](http://www._____) after it has been filed with the Court.

Reasons for the Settlement

5. For Lead Plaintiff, the principal reason for the Settlement is the guaranteed cash benefit to the Settlement Class. This benefit must be compared to the uncertainty of being able to prove the allegations in the Amended Complaint; the risk of Defendants' appeals of the Court's rulings on their motions to dismiss; the risk that the Court may grant some or all of the anticipated

summary judgment motions to be filed by Defendants; the uncertainty of having a class certified; the uncertainty inherent in the Parties' various and competing theories of liability, causation and damages; the uncertainty of a greater recovery after a trial and pending or future appeals; the risks of litigation, especially in complex actions like this; as well as the difficulties and delays inherent in such litigation (including any trial and appeals).

6. Defendants are entering into the Settlement solely to eliminate the uncertainty, burden, and expense of further protracted litigation.

Identification of Attorneys' Representatives

7. Lead Plaintiff and the Settlement Class are represented by Lead Counsel, Alfred L. Fatale III, Labaton Sucharow LLP, 140 Broadway, New York, NY 10005, (888) 219-6877, www.labaton.com, settlementquestions@labaton.com.

8. Further information regarding the Action, the Settlement, and this Notice may be obtained by contacting the Claims Administrator: _____, (____) ____-____, www._____com; or Lead Counsel.

Please Do Not Call the Court with Questions About the Settlement.

BASIC INFORMATION

1. Why did I get this Notice?

9. You or someone in your family may have purchased or acquired Benefitfocus publicly traded common stock pursuant and/or traceable to the Company's Offering Documents for its March 1, 2019 SPO of common stock and/or purchased or acquired shares thereafter during the Class Period (March 1, 2019 through November 5, 2020, inclusive).² **Receipt of this Notice**

² Given the difficulty of tracing newly issued shares to a secondary offering, solely for purposes of the Settlement, it will be presumed that shares of Benefitfocus common stock purchased or otherwise acquired at the Offering price of \$48.25 per share, or from an Underwriter Defendant,

does not mean that you are a Member of the Settlement Class or that you will be entitled to receive a payment. If you wish to be eligible for a payment, you are required to submit the Claim Form that is being distributed with this Notice. See Question 8 below.

10. The Court directed that this Notice be sent to potential Settlement Class Members because they have a right to know about the proposed Settlement of this class action lawsuit and about all of their options before the Court decides whether to approve the Settlement.

11. The Court in charge of the Action is the Supreme Court of the State of New York, New York County, and the case is known as *City of Pittsburgh Comprehensive Municipal Pension Trust Fund, et al. v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.) (the “Action”). The Action is assigned to the Honorable Andrew Borrok.

2. What is this case about and what has happened so far?

12. The Action arises from the secondary public offering of the common stock of cloud-based benefits management platform and services provider Benefitfocus, commenced on or about March 1, 2019, and alleged misstatements and omissions of material fact made to investors in the Offering Documents issued in connection with the SPO. More specifically, the Action concerns Defendants’ alleged failure to disclose that prior to the SPO, non-party Mercer Health & Benefits, LLC (“Mercer Health”), allegedly one of Benefitfocus’s most important customers, was purportedly terminating its contract with the Company and would be transitioning off the Benefitfocus platform. (Defendants deny that Lead Plaintiff has asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever.)

during the period from March 1, 2019 through and including April 1, 2019, were purchased or otherwise acquired in the SPO.

13. As a result, Lead Plaintiff alleged that the Offering Documents were false and misleading for several reasons, including: (i) the alleged termination of the agreement with Mercer Health was falsely portrayed as an amendment in the Offering Documents; (ii) purported opportunities arising from the change in relationship with Mercer Health were allegedly non-existent; and (iii) the Company's financial condition was allegedly worse than the Offering Documents portrayed.

14. Following the SPO and throughout 2019, Benefitfocus reported disappointing financial results, yet allegedly reaffirmed that "the renegotiation of the Mercer agreement will have a short-term impact on [its] 2019 revenue," and allegedly attributed any financial strain due to the "amended" Mercer Health Agreement as anticipated "headwinds." On March 3, 2020, Benefitfocus stated that Mercer Health was no longer a leading source of revenue in Benefitfocus's 2020 outlook. In November 2020, investors were told that the Mercer Health Agreement had not been "amended" as allegedly portrayed in the Offering Documents, but had instead been terminated in such a way that would negatively impact Benefitfocus's financial condition throughout 2020 and beyond.

15. Lead Plaintiff alleges that these undisclosed issues and the impact they had on the Company's business caused the Company's stock price to fall below the SPO price of \$48.25 per share. As provided above, Defendants have denied, and continue to deny, Lead Plaintiff's allegations and that the Offering Documents were materially false or misleading.

16. On March 2, 2021, Lead Plaintiff commenced the Action through the filing of a putative securities class action complaint, in the Supreme Court of the State of New York, New York County, on behalf of a putative 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, asserting claims under Sections 11, 12(a)(2), and 15 of the Securities Act for alleged misstatements and omissions in the Offering Documents.

17. On April 23, 2021, Lead Plaintiff filed an Amended Class Action Complaint for Violations of the Securities Act (the “Amended Complaint”). The Amended Complaint alleges violations of Sections 11, 12(a)(2), and 15 of the Securities Act on behalf of a putative class of all persons or entities who purchased or otherwise acquired Benefitfocus common stock pursuant and/or traceable to the Offering Documents, and who were damaged thereby.

18. On June 1, 2021, Lead Plaintiff served on Defendant Benefitfocus its first notice for discovery and inspection of documents. On June 21, 2021, Defendant Benefitfocus filed a motion for the entry of an order staying discovery pending resolution of any motions to dismiss the Action (the “Motion to Stay”) and a memorandum of law, affirmation, and exhibits in support thereof, which Lead Plaintiff opposed.

19. On June 22, 2021, the Benefitfocus Defendants, the Goldman Funds Defendants, and the Mercer Defendants each filed a motion to dismiss the Amended Complaint (the “Motions to Dismiss”), and a memorandum of law in support of each of their respective motions. On the same day, the Underwriter Defendants filed a joinder in which the Underwriter Defendants joined the motion to dismiss filed by the Benefitfocus Defendants and Defendant GS&Co. joined portions of the motion to dismiss filed by the Mercer Defendants (the “Motions to Dismiss Joinder”).

20. On August 23, 2021, Lead Plaintiff filed an omnibus memorandum of law in opposition to the Motions to Dismiss and the Motions to Dismiss Joinder.

21. On August 25, 2021, the Court held a hearing on the Motion to Stay. At the hearing, the Court orally ruled that discovery would be stayed until the Court ruled on the pending Motions to Dismiss and issued a written order to that effect the same day.

22. On September 23, 2021, the Benefitfocus Defendants, the Goldman Funds Defendants, and the Mercer Defendants each filed a memorandum of law in further support of their respective Motions to Dismiss and the Underwriter Defendants filed a joinder in which the Underwriter Defendants joined the reply memorandum of law filed by the Benefitfocus Defendants and Defendant GS&Co. joined portions of the reply memorandum of law filed by the Mercer Defendants. On September 27, 2021, the Court held a hearing on the Motions to Dismiss and the Motions to Dismiss Joinder.

23. On September 28, 2021, the Court issued three written opinions denying the Benefitfocus Defendants' Motion to Dismiss, the Mercer Defendants' Motion to Dismiss, and the Underwriter Defendants' Motions to Dismiss Joinder, in whole, and granting in part and denying in part the Goldman Funds Defendants' Motion to Dismiss.

24. On October 5, 2021, the Benefitfocus Defendants filed a notice of appeal from the Court's order denying their Motion to Dismiss. On October 15, 2021, the Mercer Defendants filed notices of appeal from the Court's orders denying their Motion to Dismiss and the Benefitfocus Defendants' Motion to Dismiss. On October 19, 2021, the Goldman Funds Defendants filed notices of appeal from the Court's order denying the Benefitfocus Defendants' Motion to Dismiss, the Mercer Defendants' Motion to Dismiss, and the Goldman Funds Defendants' Motion to Dismiss. On October 25, 2021, the Underwriter Defendants filed a notice of appeal from the Court's order denying the Benefitfocus Defendants' Motion to Dismiss and GS&Co. filed a notice of appeal from the Court's order denying the Mercer Defendants' Motion

to Dismiss. Following the filing of the various notices of appeal, briefing commenced and Defendants' appeals were perfected for the January 2022 term in the Appellate Division of the New York Supreme Court for the First Department and oral argument was scheduled for February 15, 2022.

25. On October 12, 2021, the Goldman Funds Defendants filed a motion for leave to reargue their Motion to Dismiss, and a memorandum of law in support thereof, and the Mercer Defendants also filed a motion for leave to reargue their Motion to Dismiss, and a memorandum of law in support thereof. On October 18, 2021, Lead Plaintiff filed an omnibus memorandum of law in opposition to the Goldman Funds Defendants' and the Mercer Defendants' motions for leave to reargue.

26. On October 22, 2021, Defendant GS&Co. filed a motion for leave to reargue the motion to dismiss order which found that Lead Plaintiff had adequately stated a Section 15 claim against it, and a memorandum of law in support thereof. On October 28, 2021, Lead Plaintiff filed a memorandum of law in opposition to Defendant GS&Co.'s motion to leave to reargue.

27. Also on October 28, 2021, each of the Defendants filed answers to the Amended Complaint and asserted numerous affirmative defenses thereto.

28. On November 3, 2021, the Court issued an order denying each of the motions to reargue filed by the Mercer Defendants, Goldman Funds Defendants, and Defendant GS&Co.

29. On November 8, 2021, the Court entered a stipulation and preliminary conference order. Following entry of the preliminary conference order, discovery, including requests for production of documents and interrogatories, commenced.

30. On January 11, 2022, Lead Plaintiff filed a motion for class certification and a memorandum of law in support thereof requesting that the Court: (i) certify a class; (ii) appoint

Lead Plaintiff as class representative; (iii) appoint Lead Counsel, Labaton Sucharow, as class counsel; and (iv) grant such other, further, and different relief as the Court deems just and proper.

31. In January 2022, Lead Plaintiff and the Benefitfocus Defendants began discussing the possibility of resolving the claims asserted in the Action through mediation. Lead Plaintiff and the Benefitfocus Defendants engaged Michelle Yoshida, Esq. (the “Mediator”), a well-respected and experienced mediator, to assist them in exploring a potential negotiated resolution of the claims against all Defendants. On February 8, 2022, respective counsel for Lead Plaintiff and the Benefitfocus Defendants met with the Mediator in an attempt to reach a global settlement during an all-day mediation session. The mediation involved an extended effort to settle the claims and was preceded by the exchange of mediation statements and supporting materials, including the Benefitfocus Defendants’ production of documents to Lead Plaintiff. On February 9, 2022, an agreement in principle was reached to settle the claims against all Defendants, subject to the negotiation of a mutually acceptable stipulation of settlement.

3. Why is this a class action?

32. In a class action, one or more persons or entities (in this case, Lead Plaintiff), sue on behalf of people and entities who have similar claims. Together, these people and entities are a “class,” and each is a “class member.” Class actions allow the adjudication of many individuals’ similar claims that might be too small economically to bring efficiently as individual actions. One court resolves the issues for all class members at the same time, except for those who exclude themselves, or “opt-out,” from the class. In this Action, the Court has appointed Lead Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund to serve as Class Representative for purposes of the Settlement, and has appointed Labaton Sucharow LLP to serve as Class Counsel for purposes of the Settlement.

4. What are the reasons for the Settlement?

33. The Court did not finally decide in favor of Lead Plaintiff or Defendants. Instead, both sides agreed to a settlement. Lead Plaintiff and Lead Counsel believe that the claims asserted in the Action are strong. They recognize, however, the expense and length of continued proceedings needed to pursue the claims through trial and appeals, as well as the difficulties in establishing liability. For example, Defendants have raised a number of arguments and defenses (which they would raise at summary judgment and trial) countering Lead Plaintiff's allegations that the Offering Documents failed to disclose material adverse facts in existence at the time of the SPO. For example, Defendants have argued that the Mercer Health Agreement was never terminated and is still in existence and the Company disclosed prior to the SPO that it was pivoting away from its historical relationship with Mercer Health. Defendants would also continue to argue that many of their purported misstatements were inactionable statements of sincerely held opinions or corporate optimism. Defendants also would continue to seek to have the Court's rulings on Defendants' Motions to Dismiss reversed on appeal, in particular on the grounds that Lead Plaintiff's claims were brought outside of the applicable statute of limitations, and Lead Plaintiff would face substantial risk of further delay and motion and appellate practice.

34. Even assuming Lead Plaintiff could establish liability, the amount of damages that could be attributed to the allegedly false and misleading statements would also be hotly contested. Defendants likely would argue that any drop in Benefitfocus's stock price resulted from factors other than the alleged misstatements or omissions in the Offering Documents. In the absence of a settlement, the Parties would present factual and expert testimony on each of these issues, and there is a risk that the Court or jury would resolve these issues unfavorably against Lead Plaintiff

and the Settlement Class. Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

35. As provided above, Defendants have denied and continue to deny any wrongdoing or that they committed any act giving rise to any liability or violation of any law including the U.S. securities laws. Defendants deny each and every one of the claims alleged by Lead Plaintiff in the Action, including all claims in the Amended Complaint.

WHO IS IN THE SETTLEMENT CLASS

5. How do I know if I am part of the Settlement Class?

36. The Court directed, for the purposes of the proposed Settlement, that everyone who fits the following description is a Settlement Class Member and subject to the Settlement, unless they are an excluded person (*see* Question 6 below) or take steps to exclude themselves from the Settlement Class (*see* Question 11 below):

all persons and entities that purchased or otherwise acquired Benefitfocus publicly traded common stock pursuant and/or traceable to the Offering Documents issued in connection with the March 1, 2019 SPO and/or who subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock during the Class Period, and who were damaged thereby.

37. You are a Settlement Class Member if you (i) purchased or otherwise acquired Benefitfocus common stock pursuant and/or traceable to the Company's SPO, which occurred on or about March 1, 2019 and/or (ii) subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock from March 1, 2019 through November 5, 2020, inclusive. Given the difficulty of tracing newly issued shares to a secondary offering, for purposes of the Settlement, it will be presumed that shares of Benefitfocus common stock purchased or otherwise acquired at

the Offering price of \$48.25 per share, or from an Underwriter Defendant, during the period from March 1, 2019 through and including April 1, 2019 were purchased or otherwise acquired in the SPO. Check your investment records or contact your broker to see if you have any eligible purchases or acquisitions.

6. Are there exceptions to being included?

38. Yes. There are some individuals and entities who are excluded from the Settlement Class by definition. Excluded from the Settlement Class are: (i) Defendants; (ii) the Individual Defendants' immediate family members; (iii) the officers, directors, and affiliates of Benefitfocus; (iv) the Selling Stockholder Defendants and the Underwriter Defendants at all relevant times; (v) any entity in which a Defendant has or had a majority ownership interest; (vi) the legal representatives, heirs, successors or assigns of any excluded person or entity; and (vii) any persons or entities who or which exclude themselves by submitting a timely and valid request for exclusion that is accepted by the Court. *See* Question 11 below.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

39. In exchange for the Settlement and the release of Plaintiff's Released Claims against the Defendant Releasees (*see* Question 10 below), Benefitfocus (on behalf of itself and all Defendants) has agreed to cause an \$11,000,000 cash payment to be made, which, along with any interest earned, will be distributed to Settlement Class Members who send in valid and timely Claim Forms, after deduction of Court-awarded attorneys' fees and litigation expenses, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court (the "Net Settlement Fund").

8. How can I receive a payment?

40. To qualify for a payment from the Net Settlement Fund, you must submit a timely and valid Claim Form. A Claim Form is included with this Notice. You also may obtain one from the website dedicated to the Settlement: www._____.com. You also can request that a Claim Form be mailed to you by calling the Claims Administrator toll-free at (____) ____-____.

41. Please read the instructions contained in the Claim Form carefully. Fill out the Claim Form, include all the documents the form requests, sign it, and either mail it to the Claims Administrator using the address listed in the Claim Form or submit it online at www._____.com. Claim Forms must be **postmarked (if mailed) or received no later than _____, 2022.**

9. When will I receive my payment?

42. The Court will hold a Settlement Hearing on _____, **2022** to decide, among other things, whether to finally approve the Settlement. Even if the Court approves the Settlement, there may be appeals which can take time to resolve, perhaps more than a year. It also takes a long time for all of the Claim Forms to be accurately reviewed and processed. Please be patient.

10. What am I giving up to receive a payment and by staying in the Settlement Class?

43. If you are a Settlement Class Member and do not timely and validly exclude yourself from the Settlement Class, you will remain in the Settlement Class and that means that, upon the “Effective Date” of the Settlement, you will release all “Plaintiff’s Released Claims” against the “Defendant Releasees.”

(a) **“Plaintiff’s Released Claims”** means any and all claims, demands, rights, liabilities, and causes of action of every nature and description, whether known or Unknown

Claims, contingent or absolute, mature or not mature, liquidated or unliquidated, accrued or not accrued, concealed or hidden, whether direct, representative, class, or individual in nature, regardless of legal or equitable theory and whether arising under federal, state, common, or foreign law, that were: (i) asserted in the Action; or (ii) could have been asserted by Plaintiff Releasers in the Action or any other court or forum that arise out of, are based upon, or relate to both: (a) the allegations, transactions, facts, matters or occurrences, or representations or omissions involved, set forth, or referred to in the complaints filed in the Action; and (b) the purchase, acquisition, holding, sale, or disposition of Benefitfocus publicly traded common stock in connection with the SPO or during the Class Period. Plaintiff's Released Claims shall not include claims relating to the enforcement of the Settlement or any claims against any Person who submits a request for exclusion that is accepted by the Court.

(b) **“Defendant Releasees”** means: (i) each Defendant, (ii) each of their respective immediate family members (for individuals) and each of their direct or indirect parent entities, subsidiaries, related entities, and affiliates, and any trust of which any Individual Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of his or her family, and (iii) for any of the entities listed in parts (i) or (ii), their respective past and present general partners, limited partners, principals, shareholders, joint venturers, members, officers, directors, managers, managing directors, employees, contractors, consultants, auditors, accountants, financial advisors, professional advisors, investment bankers, representatives, insurers, trustees, trustors, agents, attorneys, predecessors, successors, assigns, heirs, executors, administrators, and any controlling person thereof, in their capacities as such, and any entity in which a Defendant has a controlling interest.

(c) **“Unknown Claims”** means any and all of Plaintiff’s Released Claims that any Plaintiff Releasor does not know or suspect to exist in his, her, or its favor at the time of the release of the Defendant Releasees, and any and all Defendants’ Released Claims that any Defendant Releasor does not know or suspect to exist in his, her, or its favor at the time of the release of the Plaintiff Releasees, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement, including the decision to object to the terms of the Settlement or to exclude himself, herself, or itself from the Settlement Class. With respect to any and all of Plaintiff’s Released Claims and Defendants’ Released Claims, the Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff and Defendants shall expressly, and each other Plaintiff Releasor and Defendant Releasor shall be deemed to have, and by operation of the Judgment shall have, to the fullest extent permitted by law, expressly waived and relinquished any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or foreign law, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Lead Plaintiff, other Settlement Class Members, or Defendants may hereafter discover facts, legal theories, or authorities in addition to or different from those which any of them now knows or believes to be true with respect to the subject matter of the Plaintiff’s Released Claims or the Defendants’ Released Claims, but Lead Plaintiff and Defendants shall expressly, fully, finally, and forever settle and release, and each Plaintiff Releasor and Defendant Releasor shall be deemed to have settled and released, and upon the Effective Date and by operation of the

Judgment shall have settled and released, fully, finally, and forever, any and all of Plaintiff's Released Claims and Defendants' Released Claims, as applicable, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. Lead Plaintiff and Defendants acknowledge, and other Plaintiff Releasers and Defendant Releasers by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Plaintiff's Released Claims and Defendants' Released Claims was separately bargained for and was a material element of the Settlement.

44. The "Effective Date" means the date on which the Settlement has become effective, as set forth in paragraph 41 of the Stipulation. If you remain a member of the Settlement Class, all of the Court's orders, whether favorable or unfavorable, will apply to you and legally bind you.

45. Upon the "Effective Date," the Defendant Releasers also will provide a release of any claims against Lead Plaintiff and the Settlement Class arising out of or related to the institution, prosecution, or settlement of the claims in the Action, as described in the Stipulation.

EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS

46. If you want to keep any right you may have to sue or continue to sue Defendants and/or the other Defendant Releasees on your own concerning the Plaintiff's Released Claims, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself or "opting out." **Please note:** If you decide to exclude yourself, there is a risk that any lawsuit you may file to pursue claims alleged in the Action may be dismissed, including because the suit was not filed within the applicable time periods required for filing suit. Also, Benefitfocus may terminate the Settlement if more than a certain number of exclusion requests are received.

11. How do I exclude myself from the Settlement Class?

47. To exclude yourself from the Settlement Class, you must mail a signed letter stating that you request to be “excluded from the Settlement Class in *City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.)” You cannot exclude yourself by telephone or email. Each request for exclusion must also: (i) state the name, address, telephone number, and email address of the person or entity requesting exclusion; (ii) state the number of shares of Benefitfocus common stock the person or entity purchased, acquired, and sold from March 1, 2019 through November 5, 2020, as well as the dates and prices of each such purchase, acquisition and sale; and (iii) be signed by the person or entity requesting exclusion or an authorized representative. Only members of the Settlement Class may request exclusion. A request for exclusion must be mailed so that it is **received no later than _____, 2022** at:

Benefitfocus Securities Settlement

c/o _____

P.O. Box _____

48. The information above is needed to determine whether you are a member of the Settlement Class. Your exclusion request must comply with these requirements in order to be valid. If you ask to be excluded, do not submit a Claim Form because you cannot receive any payment from the Net Settlement Fund. Also, if you ask to be excluded, you cannot object to the Settlement because you will not be a Settlement Class Member. However, if you submit a valid exclusion request, you will not be legally bound by anything that happens in the Action, and you may be able to sue (or continue to sue) Defendants and the other Defendant Releasees in the future.

12. If I do not exclude myself, can I sue Defendants and the other Defendant Releasees for the same thing later?

49. No. If you are a member of the Settlement Class, unless you properly exclude yourself, you will give up any rights to sue Defendants and the other Defendant Releasees for any and all Plaintiff's Released Claims. If you have a pending lawsuit against any of the Defendant Releasees, **speak to your lawyer in that case immediately**. You must exclude yourself from this Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is _____, **2022**.

13. If I exclude myself, can I get money from the proposed Settlement?

50. No, only Settlement Class Members are eligible to recover money from the Settlement.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

51. Labaton Sucharow LLP is Lead Counsel in the Action. You will not be separately charged for these lawyers. The Court will determine the amount of attorneys' fees and expenses, which will be paid from the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How will the lawyers be paid?

52. Lead Counsel has been prosecuting the Action on a contingent basis and has not been paid for any of its work. Lead Counsel will seek an attorneys' fee award of no more than 33% of the Settlement Fund, which will include any accrued interest. Lead Counsel also will seek payment of expenses incurred in the prosecution of this Action of no more than \$100,000, plus any accrued interest, which will include reimbursement for the hourly legal fees paid to Lead

Plaintiff's outside pension fund counsel in connection with their representation of Lead Plaintiff in fulfilling its fiduciary obligations to the Settlement Class. Lead Counsel also may seek a service award for Lead Plaintiff of no more than \$5,000 related to its representation of the Settlement Class. Any attorneys' fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

**OBJECTING TO THE SETTLEMENT, THE PLAN OF ALLOCATION, OR THE
FEE AND EXPENSE APPLICATION**

16. How do I tell the Court that I do not like something about the proposed Settlement?

53. If you are a Settlement Class Member, you can object to the Settlement or any of its terms, the proposed Plan of Allocation of the Net Settlement Fund, and/or Lead Counsel's Fee and Expense Application. You may write about why you think the Court should not approve any or all of the Settlement terms or related relief. If you would like the Court to consider your views, you must submit a proper objection within the deadline and according to the following procedures.

54. To object, you must send a signed letter stating that you object to the proposed Settlement, the Plan of Allocation, and/or the Fee and Expense Application in "*City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.)." The objection must also include: (i) your name, address, telephone number, email address and signature; (ii) your objection(s) and the specific reasons for each objection, including any legal and evidentiary support, and copies of any papers, briefs or other documents upon which the objection is based and/or witnesses you wish to bring to the Court's attention; and (iii) documents sufficient to prove your membership in the Settlement Class, such as brokerage trade confirmation receipts or other competent documentary evidence, showing the

number of shares of Benefitfocus common stock that you purchased, acquired, and sold during the Class Period, as well as the dates, quantities and prices of each such purchase, acquisition, and sale. Unless otherwise ordered by the Court, any Settlement Class Member who does not object in the manner described in this Notice will be deemed to have waived any objection and will be forever foreclosed from making any objection to any aspect of the Settlement, the Plan of Allocation, and/or the application by Lead Counsel for an award of attorneys' fees and expenses, but nevertheless shall be bound by all the terms of the Stipulation, and by all proceedings, orders and judgments in the Action, including the Judgment to be entered and the releases to be given. Your objection must be mailed or delivered to each of the following addresses so that it is received no later than _____, 2022:

<u>The Court</u>	<u>Lead Counsel for Lead Plaintiff</u>	<u>Defendants' Counsel Representative</u>
<p>Clerk of the Court Supreme Court of the State of New York County of New York Commercial Division, 60 Centre Street New York, NY 10007</p>	<p>Labaton Sucharow LLP Alfred L. Fatale III, Esq. 140 Broadway New York, NY 10005</p>	<p>Wilson Sonsini Goodrich & Rosati, P.C. Sheryl Shapiro Bassin, Esq. 1301 Ave. of the Americas, 40th Floor New York, New York 10019</p>

55. You do not need to participate in the Settlement Hearing to have your written objection considered by the Court. However, any Settlement Class Member who has complied with the procedures described in this Question 16 and below in Question 20 may participate at the Settlement Hearing and be heard, to the extent allowed by the Court. An objector may appear themselves or arrange, at his, her, or its own expense, for a lawyer to represent him, her, or it at the Settlement Hearing.

17. What is the difference between objecting and seeking exclusion?

56. Objecting is telling the Court that you do not like something about the proposed Settlement, Plan of Allocation, or Lead Counsel's Fee and Expense Application. You can still recover money from the Settlement. You can object only if you stay in the Settlement Class. In contrast, excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself from the Settlement Class, you have no basis to object because the Settlement and the Action no longer affect you.

THE SETTLEMENT HEARING

18. When and where will the Court decide whether to approve the proposed Settlement?

57. The Settlement Hearing will be held on _____, 2022 at ____:____.m. EDT, before the Court, either in person at the Supreme Court, New York County, Courtroom 238, 60 Centre Street, New York, NY 10007, or remotely using directions that will be posted in advance on the Settlement website, in the Court's discretion.

58. At this hearing, the Honorable Andrew Borrok will (i) consider whether the Court should grant final certification of the Action as a class action for purposes of the Settlement and confirm its appointment of Lead Plaintiff and Lead Counsel as Class Representative and Class Counsel, respectively; (ii) consider whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; (iii) consider whether a Judgment, substantially in the form attached as Exhibit B to the Stipulation, should be entered dismissing and releasing the Plaintiff's Released Claims and Defendants' Released Claims (as those terms are defined in the Stipulation) with prejudice; (iv) consider whether the Plan of Allocation for the distribution of the Net Settlement Fund is reasonable and should be approved; (v) consider Lead Counsel's application for an award of attorneys' fees and payment of litigation expenses (which

may include a service award for Lead Plaintiff in connection with its representation of the Settlement Class); (vi) consider any objections or requests for exclusion received by the Court; and (vii) consider any other matters that may properly be brought before the Court in connection with the Settlement, as the Court may deem appropriate.

59. You should be aware that the Court may change the date and time of the Settlement Hearing, or hold the hearing remotely, without another notice being sent to Settlement Class Members. If you want to attend the hearing, you should check with Lead Counsel or visit the Settlement website, www._____.com, beforehand to be sure that the hearing date and/or time has not changed.

19. Do I have to come to the Settlement Hearing?

60. No. Lead Counsel will answer any questions the Court may have. But you are welcome to attend at your own expense. If you submit a valid and timely objection, the Court will consider it and you do not have to participate in the Settlement Hearing to discuss it. You may have your own lawyer attend (at your own expense), but it is not required. If you do hire your own lawyer, he or she must submit and serve a Notice of Appearance in the manner described in the answer to Question 20 below **no later than _____, 2022.**

20. May I speak at the Settlement Hearing?

61. If you are a member of the Settlement Class, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must, **no later than _____, 2022,** submit a statement to Lead Counsel and Defendants' Counsel that you, or your attorney, intend to appear in "*City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.)." Persons who intend to present evidence at the Settlement Hearing must also include in their objections (prepared and submitted in accordance

with the answer to Question 16 above), the identities of any witnesses they may wish to call to testify and any exhibits they intend to introduce into evidence at the Settlement Hearing. You may not speak at the Settlement Hearing if you exclude yourself from the Settlement Class or if you have not provided written notice of your intention to speak at the Settlement Hearing in accordance with the procedures described in this Question 20 and Question 16 above.

IF YOU DO NOTHING

21. What happens if I do nothing at all?

62. If you do nothing and you are a member of the Settlement Class, you will receive no money from this Settlement and you will be precluded from starting a lawsuit, continuing with a lawsuit, or being part of any other lawsuit against Defendants and/or the other Defendant Releasees concerning the Plaintiff's Released Claims. To share in the Net Settlement Fund, you must submit a Claim Form (*see* Question 8 above). To start, continue, or be a part of any other lawsuit against Defendants and/or the other Defendant Releasees concerning the Plaintiff's Released Claims, you must exclude yourself from the Settlement Class (*see* Question 11 above).

GETTING MORE INFORMATION

22. Are there more details about the Settlement?

63. This Notice summarizes the proposed Settlement. More details are contained in the Stipulation. You may review the Stipulation filed with the Court or other documents in the case by visiting www._____.com or the Court's website at <https://iapps.courts.state.ny.us/nyscef/Login>.

64. You can also get a copy of documents related to the Settlement, as well as additional information by visiting the website dedicated to the Settlement, www._____.com. You may also call the Claims Administrator toll free at (____) ____ - ____ or write to the Claims

Administrator at *Benefitfocus Securities Settlement*, c/o _____ . **Please do not call or write the Court with questions about the Settlement.**

PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

23. How will my claim be calculated?

65. The Plan of Allocation (the “Plan of Allocation” or “Plan”) set forth below is the plan that is being proposed by Lead Plaintiff and Lead Counsel to the Court for approval. The Court may approve this Plan of Allocation or modify it without additional notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the Settlement website at: _____.

66. The Settlement Amount and the interest it earns is the “Settlement Fund.” The Settlement Fund, after deduction of (i) Court-approved attorneys’ fees and expenses; (ii) Notice and Administration Expenses; (iii) Taxes; and (iv) any other fees or expenses approved by the Court is the “Net Settlement Fund.” The Net Settlement Fund will be distributed to members of the Settlement Class who timely submit valid Claim Forms that show a Recognized Claim according to the Plan of Allocation approved by the Court.

67. The objective of this Plan of Allocation is to equitably distribute the Net Settlement Fund among Authorized Claimants who allegedly suffered economic losses as a result of the misstatements and omissions allegedly made by Defendants in violation of the federal securities laws with respect to shares of Benefitfocus common stock purchased or otherwise acquired during the Class Period, March 1, 2019 (the date of the Company’s SPO) through November 5, 2020, inclusive. The Plan of Allocation, however, is not a formal damages analysis and the calculations made pursuant to the Plan are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. An

individual Settlement Class Member's recovery will depend on, for example: (i) the total number and value of claims submitted; and (ii) whether and when the Claimant sold his, her, or its shares of Benefitfocus common stock. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

68. An Authorized Claimant's "Recognized Claim" shall be the amount used to calculate the Authorized Claimant's *pro rata* share of the Net Settlement Fund. The *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of the Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

69. The Action's claims asserted under Section 11 of the Securities Act serve as the basis for the calculation of each "Recognized Loss Amount" under the Plan of Allocation. Section 11 of the Securities Act provides a statutory formula for the calculation of damages under that provision. The formulas stated below, which were developed by Lead Plaintiff's damages expert, generally track the statutory formula.

CALCULATION OF RECOGNIZED LOSS AMOUNTS

70. For purposes of determining whether a Claimant has a "Recognized Claim," purchases, acquisitions, and sales of Benefitfocus common stock will first be matched on a First In/First Out ("FIFO") basis. Class Period sales will be matched first against any holdings at the beginning of the Class Period and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

71. A "Recognized Loss Amount" will be calculated as set forth below for each share of Benefitfocus common stock purchased or otherwise acquired from March 1, 2019 through November 5, 2020, inclusive, that is listed in the Claim Form and for which adequate

documentation is provided. To the extent that the calculation of a Claimant's Recognized Loss Amount results in a negative number, that number shall be set to zero. The sum of a Claimant's Recognized Loss Amounts will be his, her, or its "Recognized Claim."

72. Generally, the Action asserted claims on behalf of investors who purchased or otherwise acquired Benefitfocus common stock pursuant and/or traceable to the SPO, *e.g.*, those who purchased newly issued shares "in" the SPO and not historical Benefitfocus shares on the open market. Given the difficulty of tracing newly issued shares to a secondary offering, the Plan of Allocation presumes that shares of Benefitfocus common stock purchased or otherwise acquired at the Offering price of \$48.25 per share, or from an Underwriter Defendant, during the period from March 1, 2019 through and including April 1, 2019, were purchased or otherwise acquired in the SPO. Claimants who meet these conditions are being allocated a greater proportion of the Net Settlement Fund than purchases or acquisitions during the Class Period that do not meet either of these conditions and would have faced great difficulty in "tracing" their shares to the SPO. Claimants must provide adequate documentation of these conditions.

73. **For each share of Benefitfocus common stock purchased or otherwise acquired in the SPO,³ and:**

- A. Sold before March 2, 2021,⁴ the Recognized Loss Amount for each such share shall be the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* the sale price per share.

³ As stated above, the Plan of Allocation presumes that shares of Benefitfocus common stock purchased or otherwise acquired at the Offering price of \$48.25 per share or from an Underwriter Defendant from March 1, 2019 through and including April 1, 2019, were purchased or otherwise acquired in the SPO. Claimants must provide adequate documentation of these conditions.

⁴ For purposes of the statutory calculations, March 2, 2021, the date the initial complaint in the Action was filed, is the date of suit.

- B. Sold from March 2, 2021 through the close of trading on June 2, 2021,⁵ the Recognized Loss Amount for each such share shall be the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* the sale price per share (not to be less than \$14.90 per share, the closing price on March 2, 2021).
- C. Retained after the close of trading on June 2, 2021, the Recognized Loss Amount for each such share shall be the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* \$14.90 per share, the closing price on March 2, 2021.

74. For each share of Benefitfocus common stock purchased or otherwise acquired from March 1, 2019 through and including November 5, 2020, both dates inclusive, but not purchased or otherwise acquired in the SPO,⁶ and:

- A. Sold before March 2, 2021,⁷ the Recognized Loss Amount for each such share shall be (i) the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* the sale price per share, (ii) multiplied by 0.25.⁸
- B. Sold from March 2, 2021 through the close of trading on June 2, 2021,⁹ the Recognized Loss Amount for each such share shall be (i) the purchase/acquisition price per share (not

⁵ For purposes of the statutory calculations, June 2, 2021 is being treated as the date of judgment because, as of the date of this Notice, there has been no recorded trading price for Benefitfocus common stock after June 2, 2021 that is greater than the \$14.90 per share closing price on the date of suit.

⁶ As discussed above, shares are presumed to have been purchased or otherwise acquired in the SPO if they were purchased at the Offering price of \$48.25 per share or from an Underwriter Defendant from March 1, 2019 through and including April 1, 2019.

⁷ For purposes of the statutory calculations, March 2, 2021, the date the initial complaint in the Action was filed, is the date of suit.

⁸ The Plan of Allocation applies a seventy-five percent (75%) discount to the claims of Settlement Class Members that purchased or otherwise acquired Benefitfocus common stock on the open market from March 1, 2019 through November 5, 2020, inclusive, rather than in the SPO. The discount reflects the difficulty that Settlement Class Members would have in “tracing” their shares to the SPO, but nevertheless allocates a portion of the Net Settlement Fund for these claims given the release of Securities Exchange Act of 1934 claims that were not asserted in the Action.

⁹ For purposes of the statutory calculations, June 2, 2021 is being treated as the date of judgment because, as of the date of this Notice, there has been no recorded trading price for Benefitfocus common stock after June 2, 2021 that is greater than the \$14.90 per share closing price on the date of suit.

to exceed the issue price at the Offering of \$48.25 per share) *minus* the sale price per share (not to be less than \$14.90 per share, the closing price on March 2, 2021), (ii) multiplied by 0.25.

- C. Retained after the close of trading on June 2, 2021, the Recognized Loss Amount for each such share shall be (i) the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* \$14.90 per share, the closing price on March 2, 2021, (ii) multiplied by 0.25.

ADDITIONAL PROVISIONS

75. Purchases or acquisitions and sales of Benefitfocus publicly traded common stock shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement,” “payment,” or “sale” date. The receipt or grant by gift, inheritance or operation of law of Benefitfocus common stock purchased or acquired during the Class Period shall not be deemed a purchase, acquisition, or sale of such shares for the calculation of a Claimant’s Recognized Claim, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such shares unless: (i) the donor or decedent purchased or otherwise acquired such shares during the Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such shares; and (iii) it is specifically so provided in the instrument of gift or assignment.

76. The Recognized Loss Amount on a “short sale” that is not covered by a purchase or acquisition is zero.

77. In the event that a Claimant has an opening short position in Benefitfocus common stock at the start of the Class Period, the earliest Class Period purchase or acquisition shall be matched against such opening short position in accordance with the FIFO matching described above, and any portion of such purchase or acquisition that covers such short sales will not be entitled to recovery. In the event that a Claimant newly establishes a short position during the Class

Period, the earliest subsequent Class Period purchase or acquisition shall be matched against such short position on a FIFO basis and will not be entitled to a recovery.

78. Benefitfocus common stock is the only security eligible for recovery under the Plan of Allocation. With respect to Benefitfocus common stock purchased or sold through the exercise of an option, the purchase/sale date of the Benefitfocus common stock is the exercise date of the option and the purchase/sale price is the exercise price of the option.

79. The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is \$10.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation and a distribution will not be made to that Authorized Claimant.

80. Payment according to this Plan of Allocation will be deemed conclusive against all Authorized Claimants. Recognized Claims will be calculated as defined herein by the Claims Administrator and cannot be less than zero.

81. Distributions will be made to eligible Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of initial distribution of the Net Settlement Fund, the Claims Administrator shall, if feasible and economical, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, redistribute such balance in an equitable and economic fashion among Authorized Claimants who have received distributions from the Net Settlement Fund. Redistributions, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall continue to Authorized Claimants who have received distributions from the Net Settlement Fund until it is no

longer feasible or economical to do so. Once it is no longer feasible or economical to make further distributions, any balance that still remains in the Net Settlement Fund after re-distribution(s) and after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall be donated to the Consumer Federation of America, a private, non-profit, non-sectarian 501(c)(3) organization, or shall be distributed as otherwise approved by the Court.

82. Payment pursuant to the Plan of Allocation or such other plan as may be approved by the Court shall be conclusive against all Claimants. No Person shall have any claim against the Defendant Releasees, the Plaintiff Releasees, or the Claims Administrator based on determinations or distributions made substantially in accordance with the Stipulation, the Settlement, the Plan of Allocation approved by the Court, or further order(s) of the Court.

83. Defendants, Defendants' Counsel, and Defendant Releasees shall have no responsibility for, interest in, or liability whatsoever with respect to the selection of the Claims Administrator, the administration of the Settlement, or the actions or decisions of the Claims Administrator and shall have no liability whatsoever to the Plaintiff Releasees in connection with such administration, including, but not limited to: (i) any act, omission, or determination by Lead Counsel or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement, Escrow Account, or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any loss suffered by, or fluctuation in value of, the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund, distributions or other payments from the Escrow Account, or the filing of any Tax Returns (as defined in paragraph 11(a) of the Stipulation). No Person, including

Lead Plaintiff, Settlement Class Members, and Lead Counsel, shall have any claim of any kind against Defendants, Defendants' Counsel, or Defendant Releasees with respect to the matters set forth in this paragraph.

84. Each Claimant is deemed to have submitted to the jurisdiction of the Court with respect to his, her, or its claim.

SPECIAL NOTICE TO SECURITIES BROKERS AND NOMINEES

85. If you purchased or acquired Benefitfocus common stock during the period from March 1, 2019 through November 5, 2020, inclusive, (the Class Period) for the beneficial interest of a person or entity other than yourself, the Court has directed that WITHIN TEN (10) CALENDAR DAYS of your receipt of this Notice, you must either: (a) request from the Claims Administrator sufficient copies of the Notice to forward to all beneficial owners for whom or which you purchased or otherwise acquired Benefitfocus common stock during the Class Period and WITHIN TEN (10) CALENDAR DAYS of receipt of those Notices from the Claims Administrator forward them to all those beneficial owners; or (b) provide a list of the names and addresses of all those beneficial owners to the Claims Administrator, who shall send the Notice promptly to the identified beneficial owners. If you choose to follow procedure (a), the Court has also directed that you shall also send a statement to the Claims Administrator confirming that the mailing was made and shall retain your mailing records for use in connection with any further notices that may be provided in the Action. Upon full and timely compliance with these directions, you may seek reimbursement from the Settlement Fund of your reasonable expenses actually incurred by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Those expenses will be paid upon request and submission of appropriate supporting documentation and timely compliance with the above

directives. All communications concerning the foregoing should be addressed to the Claims Administrator:

Benefitfocus Securities Settlement

c/o _____

Dated: _____, 2022

BY ORDER OF THE SUPREME COURT OF
THE STATE OF NEW YORK, NEW YORK
COUNTY

Exhibit A-2

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., et al.,

Defendants.

Index No. 651425/2021

IAS Commercial Part 53

Hon. Andrew Borrok

PROOF OF CLAIM AND RELEASE FORM

I. GENERAL INSTRUCTIONS

1. To recover as a member of the Settlement Class based on your claims in the class action entitled *City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.) (the “Action”), you must complete and, on page ____ below, sign this Proof of Claim and Release form (“Claim Form”). If you fail to submit a timely and properly addressed (as explained in paragraph 2 below) Claim Form, your claim may be rejected and you may not receive any recovery from the Net Settlement Fund created in connection with the proposed Settlement. Submission of this Claim Form, however, does not assure that you will share in the proceeds of the Settlement of the Action.

2. **THIS CLAIM FORM MUST BE SUBMITTED ONLINE AT WWW. _____ NO LATER THAN _____, 2022 OR, IF MAILED, BE POSTMARKED NO LATER THAN _____, 2022, ADDRESSED AS FOLLOWS:**

Benefitfocus Securities Settlement

c/o _____

P.O. Box _____

City, State Zip Code

www. _____

_____ - _____

3. If you are NOT a member of the Settlement Class (as defined in the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses ("Notice")), which accompanies this Claim Form) DO NOT submit a Claim Form.

4. If you are a member of the Settlement Class and you do not timely request exclusion in response to the Notice dated _____, 2022, you are bound by and subject to the terms of any judgment entered in the Action, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A CLAIM FORM OR RECEIVE A PAYMENT.

II. CLAIMANT IDENTIFICATION

5. If you purchased or otherwise acquired publicly traded common stock pursuant and/or traceable to the Offering Documents issued in connection with Benefitfocus, Inc.'s ("Benefitfocus") March 1, 2019 secondary public offering ("SPO") and/or you subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock from March 1, 2019 through November 5, 2020, inclusive (the "Class Period"), and held the stock in your name, you are the beneficial owner as well as the record owner. If, however, you purchased or otherwise acquired Benefitfocus's publicly traded common stock through a third party, such as a brokerage firm, you are the beneficial owner and the third party is the record owner.

6. Use **Part I** of this form entitled "Claimant Identification" to identify each beneficial owner of Benefitfocus publicly traded common stock that forms the basis of this claim, as well as the owner of record if different. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL OWNERS OR THE LEGAL REPRESENTATIVE OF SUCH OWNERS.

7. All joint owners must sign this claim. Executors, administrators, guardians, conservators, legal representatives, and trustees must complete and sign this claim on behalf of persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

III. IDENTIFICATION OF TRANSACTIONS

8. Use **Part II** of this form entitled “Schedule of Transactions in Benefitfocus Publicly Traded Common Stock” to supply all required details of your transaction(s) in Benefitfocus publicly traded common stock. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

9. Given the difficulty of tracing newly issued shares to a secondary offering, for purposes of the Settlement, it will be presumed that shares of Benefitfocus common stock purchased or otherwise acquired at the Offering price of \$48.25 per share, or from an Underwriter Defendant, during the period from March 1, 2019 through and including April 1, 2019 were purchased or otherwise acquired in the SPO.

10. On the schedules, provide all of the requested information with respect to your holdings, purchases/acquisitions, and sales of Benefitfocus publicly traded common stock, whether the transactions resulted in a profit or a loss. Failure to report all such transactions may result in the rejection of your claim.

11. The date of covering a “short sale” is deemed to be the date of purchase of Benefitfocus publicly traded common stock. The date of a “short sale” is deemed to be the date of sale of Benefitfocus publicly traded common stock.

12. Copies of broker confirmations or other documentation of your transactions must be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim. **THE PARTIES DO NOT HAVE INFORMATION ABOUT YOUR TRANSACTIONS IN BENEFITFOCUS PUBLICLY TRADED COMMON STOCK.**

13. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may, or may be requested to, submit information regarding their transactions in electronic files. (This is different from the online claim portal on the Settlement website.) All such claimants **MUST** submit a manually signed paper Claim Form whether or not

**PART II: SCHEDULE OF TRANSACTIONS IN BENEFITFOCUS
PUBLICLY TRADED COMMON STOCK**

1. BEGINNING HOLDINGS - State the total number of shares of Benefitfocus common stock held at the opening of trading on March 1, 2019. If none, write "0" or "Zero." (Must submit documentation.) _____				
2. PURCHASES/ACQUISITIONS OF BENEFITFOCUS COMMON STOCK – Separately list each and every purchase/acquisition of Benefitfocus common stock from the opening of trading on March 1, 2019 through and including the close of trading on November 5, 2020. (Must submit documentation.)				
Date of Purchase/Acquisition (List Chronologically) (MM/DD/YY)	Number of Shares Purchased/Acquired	Purchase/Acquisition Price Per Share	Total Purchase/Acquisition Price (excluding taxes, commissions, and fees)	Purchased/Acquired from an Underwriter Defendant ¹ Y/N
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
3. PURCHASES/ACQUISITIONS AFTER CLASS PERIOD – State the total number of shares of Benefitfocus common stock purchased/acquired from the opening of trading on November 6, 2020 through and including the close of trading on June 2, 2021. ² (Must submit documentation.) _____				
4. SALES OF BENEFITFOCUS COMMON STOCK – Separately list each and every sale of Benefitfocus common stock from the opening of trading on March 1, 2019 through the close of trading on June 2, 2021. (Must submit documentation.)				
Date of Sale (List Chronologically) (MM/DD/YY)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (excluding taxes, commissions and fees)	
		\$	\$	
		\$	\$	

¹ The Underwriter Defendants are J.P. Morgan Securities LLC, Goldman Sachs & Co. LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Piper Jaffray & Co. (n/k/a Piper Sandler & Co.), Raymond James & Associates, Inc., Wedbush Securities Inc., and First Analysis Securities Corporation.

² Information requested in this Claim Form with respect to your purchases/acquisitions of Benefitfocus common stock from the opening of trading on November 6, 2020 through and including the close of trading on June 2, 2021 is needed only in order for the Claims Administrator to confirm that you have reported all relevant transactions. Purchases/acquisitions during this period, however, are not eligible for a recovery because these purchases/acquisitions are outside the Class Period. They will not be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation.

		\$	\$
		\$	\$
5. ENDING HOLDINGS – State the total number of shares of Benefitfocus common stock held after the close of trading on June 2, 2021. If none, write “0” or “Zero.” (Must submit documentation.) _____			

IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS YOU MUST PHOTOCOPY THIS PAGE AND CHECK THIS BOX

IV. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS

14. By signing and submitting this Claim Form, the claimant(s) or the person(s) acting on behalf of the claimant(s) certify(ies) that: I (We) submit this Claim Form under the terms of the Plan of Allocation described in the accompanying Notice. I (We) also submit to the jurisdiction of the Supreme Court of the State of New York, New York County (the “Court”) with respect to my (our) claim as a Settlement Class Member(s) and for purposes of enforcing the releases set forth herein. I (We) further acknowledge that I (we) will be bound by and subject to the terms of any judgment entered in connection with the Settlement in the Action, including the releases set forth therein. I (We) agree to furnish additional information to the Claims Administrator to support this claim, such as additional documentation for transactions in Benefitfocus publicly traded common stock, if required to do so. I (We) have not submitted any other claim covering the same transactions in Benefitfocus publicly traded common stock during the Class Period and know of no other person having done so on my (our) behalf.

V. RELEASES, WARRANTIES, AND CERTIFICATION

15. I (We) hereby warrant and represent that I am (we are) a Settlement Class Member as defined in the Notice, that I am (we are) not excluded from the Settlement Class, that I am (we are) not one of the “Defendant Releasees” as defined in the accompanying Notice.

16. As a Settlement Class Member, I (we), on behalf of myself (ourselves) and each of my (our) respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and

forever compromise, settle, release, resolve, relinquish, waive, discharge, and dismiss with prejudice, and without costs, each and every one of the Plaintiff's Released Claims against each and every one of the Defendant Releasees (as these terms are defined in the accompanying Notice). I (we) further acknowledge that I (we) shall forever be barred and enjoined from directly or indirectly commencing, instituting, participating in, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or any other forum, asserting any or all of the Plaintiff's Released Claims against the Defendant Releasees. This release shall be of no force or effect unless and until the Court approves the Settlement and it becomes effective on the Effective Date.

17. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter or claim released pursuant to this release or any other part or portion thereof.

18. I (We) hereby warrant and represent that I (we) have included information about all of my (our) purchases/acquisitions and sales of Benefitfocus publicly traded common stock that occurred during the time periods above and the number of shares held by me (us), to the extent requested.

19. I (We) certify that I am (we are) NOT subject to backup tax withholding. (If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the prior sentence.)

I (We) declare under penalty of perjury under the laws of the United States of America that all of the foregoing information supplied on this Claim Form by the undersigned is true and correct.

Executed this _____ day of _____, 2022

Signature of Claimant

Type or print name of Claimant

Signature of Joint Claimant, if any

Type or print name of Joint Claimant

Signature of person signing on behalf
of Claimant

Type or print name of person signing
on behalf of Claimant

Capacity of person signing on behalf of Claimant, if other than an individual (e.g.,
Administrator, Executor, Trustee, President, Custodian, Power of Attorney, etc.)

REMINDER CHECKLIST:

1. Please sign this Claim Form. If this claim is being made on behalf of Joint Claimants, then both must sign.
2. DO NOT USE RED PEN OR HIGHLIGHT THE CLAIM FORM OR YOUR SUPPORTING DOCUMENTATION.
3. Attach only copies of supporting documentation as these documents will not be returned to you.
4. Keep a copy of your Claim Form and all supporting documentation for your records.
5. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. **Your claim is not deemed submitted until you receive an acknowledgment postcard.** If you do not receive an acknowledgment postcard within 60 days, please call the Claims Administrator toll free at XXX-XXX-XXXX.
6. If you move after submitting this Claim Form please notify the Claims Administrator of the change in your address, otherwise you may not receive additional notices or payment.

Exhibit A-3

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., et al.,

Defendants.

Index No. 651425/2021

IAS Commercial Part 53

Hon. Andrew Borrok

**SUMMARY NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED
SETTLEMENT, AND MOTION FOR ATTORNEYS' FEES AND EXPENSES**

To: All persons and entities that purchased or otherwise acquired publicly traded common stock pursuant and/or traceable to the Offering Documents issued in connection with Benefitfocus, Inc.'s ("Benefitfocus" or the "Company") March 1, 2019 secondary public offering and/or who subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock from March 1, 2019 through November 5, 2020, inclusive (the "Class Period"), and who were damaged thereby.

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the Supreme Court of the State of New York, New York County, that Lead Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund, on behalf of itself and the proposed Settlement Class,¹ and Benefitfocus and the other Defendants in the Action, have reached a proposed settlement of the above-captioned securities class action (the "Action") in the amount of \$11,000,000 that, if approved, will resolve the Action in its entirety (the "Settlement").

A hearing will be held before the Honorable Andrew Borrok, on _____, 2022 at _____: _____m. EDT, before the Court, either in person at the Supreme Court, New York County,

¹ All terms not defined herein shall have the definition assigned to them in the Stipulation and Agreement of Settlement, dated _____, 2022.

Courtroom 238, 60 Centre Street, New York, NY 10007, or remotely using directions that will be posted in advance on the Settlement website, in the Court’s discretion (the “Settlement Hearing”) to, among other things, determine whether the Court should: (i) approve the proposed Settlement as fair, reasonable, and adequate; (ii) dismiss the Action with prejudice as provided in the Stipulation and Agreement of Settlement, dated _____, 2022; (iii) approve the proposed Plan of Allocation for distribution of the Net Settlement Fund; and (iv) approve Lead Counsel’s Fee and Expense Application. The Court may change the date of the Settlement Hearing without providing another notice. You do NOT need to attend the Settlement Hearing to receive a distribution from the Net Settlement Fund.

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED SETTLEMENT AND YOU MAY BE ENTITLED TO A MONETARY PAYMENT. If you have not yet received a Notice and Proof of Claim and Release form (“Claim Form”), you may obtain copies of these documents by visiting the website dedicated to the Settlement, www._____.com, or by contacting the Claims Administrator at:

Benefitfocus Securities Settlement
c/o _____

Inquiries, other than requests for the Notice/Claim Form or for information about the status of a claim, may also be made to Lead Counsel:

Alfred L. Fatale III Esq.
LABATON SUCHAROW LLP
140 Broadway
New York, NY 10005
www.labaton.com
settlementquestions@labaton.com
(888) 219-6877

If you are a Settlement Class Member, to be eligible to share in the distribution of the Net Settlement Fund, you must submit a Claim Form *postmarked or submitted online no later than* _____, **2022**. If you are a Settlement Class Member and you do not timely submit a valid Claim Form, you will not be eligible to share in the distribution of the Net Settlement Fund, but you will nevertheless be bound by the Settlement and all judgments or orders entered by the Court in the Action, whether favorable or unfavorable.

If you are a Settlement Class Member and wish to exclude yourself from the Settlement Class, you must submit a written request for exclusion in accordance with the instructions set forth in the Notice such that it is *received no later than* _____, **2022**. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action, whether favorable or unfavorable, and you will not be eligible to share in the distribution of the Net Settlement Fund. If you are a Settlement Class Member and do not timely and validly exclude yourself from the Settlement Class, you will remain in the Settlement Class and that means that, upon the Effective Date of the Settlement, you will release all Plaintiff's Released Claims against the Defendant Releasees.

Any objections to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's Fee and Expense Application must be mailed to the Court and counsel for the Parties in accordance with the instructions in the Notice, such that they are *received no later than* _____, **2022**.

**PLEASE DO NOT CONTACT THE COURT, DEFENDANTS, OR
DEFENDANTS' COUNSEL REGARDING THIS NOTICE.**

DATED: _____, 2022

BY ORDER OF THE SUPREME COURT OF
THE STATE OF NEW YORK, NEW YORK
COUNTY

Exhibit B

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

IAS Commercial Part 53

Hon. Andrew Borrok

[PROPOSED] FINAL ORDER AND JUDGMENT

WHEREAS:

A. As of _____, 2022, Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund (“Lead Plaintiff”), by and through its counsel of record, on behalf of itself and all other members of the Settlement Class, on the one hand; and (i) Benefitfocus, Inc. (“Benefitfocus” or the “Company”); (ii) 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, and Ana M. White (the “Individual Defendants” and together with Benefitfocus, the “Benefitfocus Defendants”); (iii) 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., and GS Capital Partners VI GMBH & Co. KG (the “Goldman Funds Defendants”); (iv) Mercer LLC, Marsh & McLennan Companies, Inc., and Mercer Consulting Group, Inc. (the “Mercer Defendants,” and together with the Goldman Funds Defendants, the “Selling Stockholder Defendants”); and (v) J.P. Morgan Securities LLC, Goldman Sachs & Co. LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Piper Jaffray & Co. (n/k/a Piper Sandler & Co.), Raymond James & Associates, Inc., Wedbush Securities Inc., and First Analysis Securities Corporation (the “Underwriter Defendants,” and together with the Benefitfocus Defendants, Goldman Funds Defendants, and Mercer Defendants, the “Defendants”), on the other, by and through their counsel of record, entered into a Stipulation and Agreement of Settlement (the “Stipulation”) in the above-titled litigation (the “Action”);

B. Pursuant to the Order Preliminarily Approving Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, entered _____, 2022 (the “Notice Order”), the Court scheduled a hearing for _____, 2022 (the “Settlement Hearing”) for the following purposes: (i) to determine whether the Court should grant final certification of the Action as a class action for purposes of the Settlement and confirm its appointment of Lead Plaintiff and Labaton Sucharow LLP (“Lead Counsel”) as Class Representatives and Class Counsel, respectively; (ii) to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; (iii) to determine whether a Judgment, substantially in the form attached

as Exhibit B to the Stipulation, should be entered dismissing and releasing the Plaintiff's Released Claims and Defendants' Released Claims (as those terms are defined in the Stipulation) with prejudice; (iv) to determine whether the Plan of Allocation for distribution of the Net Settlement Fund is reasonable and should be approved; (v) to rule upon Lead Counsel's application for an award of attorneys' fees and payment of expenses (which may include a service award to Lead Plaintiff in connection with its representation of the Settlement Class); (vi) to consider any objections or exclusion requests; and (vii) to consider any other matters that may properly be brought before the Court in connection with the Settlement, as the Court may deem appropriate;

C. The Court ordered that the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses (the "Notice") and a Proof of Claim and Release form ("Claim Form"), substantially in the forms annexed to the Notice Order as Exhibits 1 and 2, respectively, be mailed, by first-class mail, postage prepaid, no later than ten (10) business days after the date of entry of the Notice Order ("Notice Date") to all potential Settlement Class Members who could be identified through reasonable effort, and that a Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses (the "Summary Notice"), substantially in the form attached to the Notice Order as Exhibit 3, be published in *The Wall Street Journal* and transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date;

D. The Court ordered that the Notice, the Summary Notice, and the Claim Form, and any updates after dissemination, shall also be placed on the website created for the Settlement;

E. The Notice and the Summary Notice advised potential Settlement Class Members of the date, time, place, and purpose of the Settlement Hearing. The Notice further advised that

any objections to the Settlement were required to be filed with the Court and served on counsel for the Parties such that they were received by _____, 2022;

F. The provisions of the Notice Order as to notice were complied with;

G. The Settlement Hearing was duly held before this Court on _____, 2022, at which time all interested Persons were afforded the opportunity to be heard; and

H. The Court has reviewed and considered the Stipulation, all papers filed and proceedings held in connection with the Settlement, the record in the Action, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. **Jurisdiction.** The Court has jurisdiction over the subject matter of the Action and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents.** This Judgment incorporates by reference and makes a part hereof: (i) the Stipulation filed with the Court on _____, 2022; and (ii) the Notice, which was filed with the Court on _____, 2022, as though fully set forth herein. Capitalized terms not defined in this Judgment shall have the meaning set forth in the Stipulation.

3. **Notice.** The Court finds that the mailing and publication of the Notice, Summary Notice, and Claim Form: (i) complied with the Notice Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated to apprise Settlement Class Members of the effect of the Settlement, the Judgment, the proposed Plan of Allocation, Lead Counsel's request for an award of attorneys' fees and payment of litigation expenses incurred in connection with the prosecution of the Action, Settlement Class Members'

right to object or seek exclusion from the Settlement Class, and their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (v) satisfied the notice requirements of § 904 of the New York Civil Practice Law and Rules (“CPLR”), the Due Process Clause of the United States Constitution, and Section 27 of the Securities Act of 1933, 15 U.S.C. §77z-1(a)(7), and the rules of this Court.

4. **Class Certification for Purposes of the Settlement.** The Court hereby affirms its determinations in the Notice Order and finally certifies, for purposes of the Settlement only, pursuant to CPLR §§ 901 and 902, the Settlement Class of: all persons and entities that purchased or otherwise acquired Benefitfocus publicly traded common stock pursuant and/or traceable to the Offering Documents issued in connection with the March 1, 2019 SPO and/or who subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock during the Class Period, and who were damaged thereby. Excluded from the Settlement Class are: (i) Defendants; (ii) the Individual Defendants’ immediate family members; (iii) the officers, directors, and affiliates of Benefitfocus; (iv) the Selling Stockholder Defendants and the Underwriter Defendants at all relevant times; (v) any entity in which a Defendant has or had a majority ownership interest; and (vi) the legal representatives, heirs, successors or assigns of any excluded person or entity. [Also excluded from the Settlement Class are those Persons who or which have timely and validly sought exclusion from the Settlement Class and are listed on the annexed Exhibit A as having submitted an exclusion request allowed by the Court.]

5. Pursuant to CPLR §§ 901 and 902, and for purposes of the Settlement only, the Court hereby re-affirms its determinations in the Notice Order and finally certifies City of Pittsburgh Comprehensive Municipal Pension Trust Fund as Class Representative for the

Settlement Class; and finally appoints the law firm of Labaton Sucharow LLP as Class Counsel for the Settlement Class.

6. **Objections.** [There have been no objections to the Settlement.]

7. **Final Settlement Approval and Dismissal of Claims.** Pursuant to, and in accordance with, CPLR § 908, the Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects, and finds that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. This Court further finds that the Settlement set forth in the Stipulation is the result of good faith, arm's-length negotiations between experienced counsel representing the interests of Lead Plaintiff, the Settlement Class, and Defendants. The extent of support by the Settlement Class, the judgment of Lead Counsel, and the complex nature of the legal and factual issues in the Action further support approval of the Settlement. The Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions of the Stipulation.

8. The Amended Class Action Complaint for Violations of the Securities Act of 1933 (the "Amended Complaint"), filed on April 23, 2021, is dismissed in its entirety, with prejudice, and without costs to any Party, except as otherwise provided in the Stipulation.

9. **Releases.** The Releases set forth in Paragraphs 4 and 5 of the Stipulation, together with the definitions contained in Paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. Accordingly, this Court orders that:

(a) Upon the Effective Date of the Settlement, Lead Plaintiff and each and every other Settlement Class Member, on behalf of themselves and each of their respective Plaintiff Releasers, in their capacities as such, shall be deemed to have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged, and dismissed with

prejudice, and without costs, each and every one of the Plaintiff's Released Claims against each and every one of the Defendant Releasees and shall forever be barred and enjoined from directly or indirectly commencing, instituting, participating in, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or any other forum, asserting any or all of the Plaintiff's Released Claims against the Defendant Releasees.

(b) Upon the Effective Date of the Settlement, Defendant Releasors, on behalf of themselves and each of their respective legal representatives, heirs, executors, trustees, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged, and dismissed with prejudice, and without costs, each and every one of the Defendants' Released Claims against each and every one of the Plaintiff Releasees and shall forever be barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any or all of the Defendants' Released Claims against any and all of the Plaintiff Releasees.

10. Notwithstanding Paragraph 9 above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

11. Each Settlement Class Member, whether or not such Settlement Class Member executes and delivers a Claim Form, is bound by this Judgment, including, without limitation, the release of claims as set forth herein and in the Stipulation.

12. **Complete Bar Order.**

(a) Any and all Persons are permanently barred, enjoined, and restrained, to the fullest extent permitted by applicable law, from commencing, prosecuting, or asserting any and all claims for indemnity or contribution against any Defendant Releasee (or any other claim against

any Defendant Releasee where the alleged injury to such Person is that Person's actual or threatened liability to the Settlement Class or a Settlement Class Member in the Action), based upon, arising out of, or related to the Plaintiff's Released Claims, whether arising under state, federal, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, whether asserted in the Action, in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere. However, with respect to any judgment that the Settlement Class or a Settlement Class Member may obtain against such Person based upon, arising out of, or relating to any Plaintiff's Released Claims belonging to the Settlement Class or a Settlement Class Member, that Person shall be entitled to a credit of the greater of (i) an amount that corresponds to the percentage of responsibility of the Defendant Releasees for the loss to the Settlement Class or the Settlement Class Member for common damages, or (ii) the amount paid by or on behalf of the Defendant Releasees to the Settlement Class or the Settlement Class Member for common damages;

(b) Each and every Defendant Releasee is hereby permanently barred, enjoined, and restrained, to the fullest extent permitted by applicable law, from commencing, prosecuting, or asserting any and all claims for indemnity or contribution against any Person other than a Person whose liability to the Settlement Class has been extinguished by the Settlement (or any other claim against any such Person where the alleged injury to such Defendant Releasee is that Defendant Releasee's actual or threatened liability to the Settlement Class or a Settlement Class Member in the Action), based upon, arising out of, or related to the Plaintiff's Released Claims, whether arising under state, federal, or foreign law, as claims, cross claims, counterclaims, or third-party claims, whether asserted in the Action, in this Court, in any other federal or state court, or in any

other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere;

(c) Nothing in this Complete Bar Order shall prevent a putative Settlement Class Member who validly requested exclusion from the Settlement Class from pursuing any Plaintiff's Released Claim against any Defendant Releasee. If any putative Settlement Class Member who validly requested exclusion from the Settlement Class pursues any such Plaintiff's Released Claim against any Defendant Releasee, nothing in this Complete Bar Order or in the Stipulation shall operate to preclude such Defendant Releasee from asserting any claim of any kind against such putative Settlement Class Member (or seeking contribution or indemnity from any Person, including any co-defendant in the Action, in respect of the claim of such putative Settlement Class Member who validly requests exclusion from the Settlement Class);

(d) Nothing in this Complete Bar Order shall release or alter the contractual rights, if any, under the terms of any written agreements between or among the Defendant Releasers; and

(e) Notwithstanding anything in this Paragraph, nothing in the Stipulation or in this Complete Bar Order shall operate to preclude the Defendant Releasers from asserting any claims against their own insurers.

13. **Binding Effect.** The terms of the Stipulation and of this Judgment shall be forever binding on and inure to the benefit of Defendants, Lead Plaintiff, all other members of the Settlement Class (regardless of whether or not any individual Settlement Class Member submits a Claim Form or seeks or obtains a distribution from the Net Settlement Fund), and the Released Parties, as well as their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, in their capacities as such.

14. **Rule 11 Findings.** The Court finds and concludes that during the course of the litigation, the Parties and their respective counsel have complied fully with the requirements of 22 New York Code, Rules and Regulations Part 130 and any other applicable law or rule similar to Federal Rule of Civil Procedure 11 in connection with the commencement, maintenance, prosecution, defense, and settlement of the Action.

15. **Qualified Settlement Fund.** Pursuant to the Stipulation, the Settlement Fund will be treated as a Qualified Settlement Fund within the meaning of § 468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulation § 1.468B-1.

16. **No Admissions.** Except as set forth in Paragraph 17 below, this Judgment, the Stipulation, and any discussion, negotiation, proceeding, or agreement relating to the Stipulation, the Settlement, and/or any matter arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be offered or received against or to the prejudice of the Parties or their respective counsel, for any purpose other than in an action or any proceeding or motion to enforce the terms of the Stipulation or the Judgment, and in particular:

(a) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee with respect to the truth of any allegation by Lead Plaintiff and the Settlement Class, the validity of any claim that has been or could have been asserted in the Action or in any litigation, including but not limited to the Plaintiff's Released Claims, the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, the entitlement of any investors who are not Settlement Class Members to any payment by or damages from the Defendants or Defendant

Releasees, or of any liability, damages, negligence, fault or wrongdoing of Defendants or any Person whatsoever;

(b) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by Defendants or against or to the prejudice of Lead Plaintiff or any other member of the Settlement Class as evidence of any infirmity in the claims of Lead Plaintiff or the other members of the Settlement Class;

(c) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee, Lead Plaintiff, any other member of the Settlement Class, or their respective counsel with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing or in any way referred to for any other reason against or to the prejudice of any of the Defendants or any Defendant Releasee, Lead Plaintiff, other members of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(d) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee, Lead Plaintiff, or any other member of the Settlement Class, that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial;

(e) do not constitute, and shall not be offered or received against or to the prejudice of Lead Plaintiff as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Lead Plaintiff, or any other member of the Settlement Class that any of their claims are without merit or infirm or that damages recoverable under any of the complaints filed in the Action would not have exceeded the Settlement Amount; and

(f) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee that class certification is appropriate in this Action or any other action, except for the purposes of this Settlement.

17. Notwithstanding the foregoing, the Parties and other Released Parties may file or refer to this Judgment, the Stipulation, and/or any Proof of Claim: (i) to effectuate the liability protections granted hereunder, including without limitation to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, injunction, statute of limitations, statute of repose, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim; (ii) to enforce any applicable insurance policies and any agreements relating thereto; or (iii) to enforce the terms of the Stipulation and/or the Judgment. The Parties and other Released Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

18. As set forth in the Stipulation, Defendants, Defendants' Counsel, and Defendant Releasees shall have no responsibility for, interest in, or liability whatsoever with respect to the selection of the Claims Administrator, the administration of the Settlement, or the actions or decisions of the Claims Administrator and shall have no liability whatsoever to the Plaintiff

Releasees in connection with such administration, including, but not limited to: (i) any act, omission, or determination by Lead Counsel or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement, Escrow Account, or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any loss suffered by, or fluctuation in value of, the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund, distributions or other payments from the Escrow Account, or the filing of any Tax Returns (as defined in Paragraph 11(a) of the Stipulation). No Person, including Lead Plaintiff, Settlement Class Members, and Lead Counsel, shall have any claim of any kind against Defendants, Defendants' Counsel, or Defendant Releasees with respect to the matters set forth in this Paragraph.

19. No Person shall have any claim against the Defendant Releasees, the Plaintiff Releasees, or the Claims Administrator based on determinations or distributions made substantially in accordance with the Stipulation and the Settlement, the Plan of Allocation, and this Judgment or order(s) of this Court.

20. **Extensions of Time.** Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

21. **Separate Orders for Attorneys' Fees and Expenses and Plan of Allocation.** A separate order shall be entered regarding Lead Counsel's application for attorneys' fees and payment of expenses as allowed by the Court. A separate order shall be entered regarding the proposed Plan of Allocation for the Net Settlement Fund. Such orders, including any changes to

the Plan of Allocation reflected therein, shall in no way disturb or affect this Judgment or the Settlement and shall be considered separate therefrom.

22. **Retention of Jurisdiction.** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (i) the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement; (ii) the implementation and administration of the Settlement; (iii) the allowance, disallowance, or adjustment of any Settlement Class Member's claim on equitable grounds; (iv) any motion for an award of attorneys' fees and/or litigation expenses by Lead Counsel in the Action that will be paid from the Settlement Fund; (v) any motion to approve the Plan of Allocation; and (vi) the Settlement Class Members for all matters relating to the Action.

23. **Termination.** If the Effective Date of the Settlement does not occur, or the Settlement is terminated as provided in the Stipulation, then this Judgment (other than Paragraph 16) and any orders of the Court relating to the Settlement, shall be vacated, rendered null and void, and be of no further force or effect, and without prejudice to any party, and each party shall be restored to his, her or its respective litigation positions as they existed prior to February 8, 2022, as provided for in the Stipulation.

24. **Entry of Final Judgment.** There is no just reason to delay the entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment in this Action.

IT IS SO ORDERED.

Dated: New York, New York

_____, 2022

The Honorable Andrew Borrok