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22 **UNITED STATES DISTRICT COURT**  
23 **NORTHERN DISTRICT OF CALIFORNIA**  
24 **SAN JOSE DIVISION**

25 In re EXTREME NETWORKS, INC. ) Master File No. 5:15-cv-04883-BLF-SVK  
26 SECURITIES LITIGATION )  
27 ) **DECLARATION OF CAROL C.**  
28 ) **VILLEGAS IN SUPPORT OF LEAD**  
 ) **PLAINTIFF’S MOTION FOR FINAL**  
 ) **APPROVAL OF CLASS ACTION**  
 ) **SETTLEMENT AND PLAN OF**  
 ) **ALLOCATION AND LEAD COUNSEL’S**  
 ) **MOTION FOR AN AWARD OF**  
 ) **ATTORNEYS’ FEES AND PAYMENT**  
 ) **OF EXPENSES**  
 )  
 ) Date: June 20, 2019 1:30 p.m.  
 ) Dept.: Courtroom 4, 5th Floor  
 ) Judge: Hon. Beth Labson Freeman

1 I, CAROL C. VILLEGAS, declare as follows pursuant to 28 U.S.C. §1746:

2 1. I am a partner of the law firm of Labaton Sucharow LLP (“Labaton Sucharow” or  
3 “Lead Counsel”). Labaton Sucharow serves as court-appointed Lead Counsel for Lead Plaintiff  
4 Arkansas Teacher Retirement System (“ATRS or “Lead Plaintiff”).<sup>1</sup> I have been actively  
5 involved in prosecuting and resolving the Action, am familiar with its proceedings, and have  
6 personal knowledge of the matters set forth herein based upon my supervision and participation  
7 in all material aspects of the Action.

8 2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, I submit this  
9 declaration in support of Lead Plaintiff’s Motion for Final Approval of Class Action Settlement  
10 and Plan of Allocation as well as Lead Counsel’s Motion for an Award of Attorneys’ Fees and  
11 Payment of Litigation Expenses. Both motions have the full support of Lead Plaintiff. *See*  
12 Declaration of Rod Graves, Deputy Director of Arkansas Teacher Retirement System, attached  
13 hereto as Exhibit 1.<sup>2</sup>

14 **I. PRELIMINARY STATEMENT**

15 3. Lead Plaintiff has succeeded in obtaining a recovery for the Settlement Class in  
16 the amount of \$7,000,000, in cash, which has been deposited in an interest-bearing escrow  
17 account for the benefit of the Settlement Class. As set forth in the Stipulation, in exchange for  
18 this payment, the proposed Settlement resolves all claims asserted by Lead Plaintiff and the  
19 Settlement Class in the Action and all related claims that could have been brought against the  
20 Released Defendant Parties (“Released Claims”).

21 4. The case has been vigorously litigated from its commencement in October 2015  
22 through the execution of the Stipulation. The Settlement was achieved only after Lead Counsel,  
23 *inter alia*, as detailed below: (i) conducted a thorough and wide-ranging investigation concerning  
24

25 <sup>1</sup> All capitalized terms not otherwise defined herein have the same meaning as that set  
26 forth in the Stipulation and Agreement of Settlement, dated as of November 30, 2018 (the  
“Stipulation”, ECF No. 156-1).

27 <sup>2</sup> Citations to “Exhibit” or “Ex. \_\_\_” herein refer to exhibits to this Declaration. For  
28 clarity, exhibits that themselves have attached exhibits will be referenced as “Ex. \_\_\_-\_\_\_.” The  
first numerical reference is to the designation of the entire exhibit attached hereto and the second  
numerical reference is to the exhibit designation within the exhibit itself.

1 the allegedly fraudulent misrepresentations/omissions made by Defendants; (ii) prepared and  
2 filed a detailed Consolidated Class Action Complaint for Violations of the Federal Securities  
3 Laws (the “Consolidated Complaint”); (iii) researched and drafted an opposition to Defendants’  
4 motion to dismiss the Consolidated Complaint; (iv) prepared and filed a detailed Amended  
5 Consolidated Class Action Complaint for Violations of the Federal Securities Laws (“Amended  
6 Complaint”) after the Court’s order granting Defendants’ motion to dismiss the Consolidated  
7 Complaint; (v) researched and drafted an opposition to Defendants’ motion to dismiss the  
8 Amended Complaint; (vi) worked closely with experts to analyze loss causation and damages  
9 issues, as well as executive compensation; and (vii) engaged in thorough mediation efforts,  
10 which included the review of approximately 1,270 pages of core documents produced prior to  
11 mediation, the exchange of comprehensive mediation statements, and a full-day mediation  
12 session. At the time the Settlement was reached, Lead Counsel had a thorough understanding of  
13 the strengths and weaknesses of the Parties’ positions.

14 5. Further, as discussed in more detail below, Lead Plaintiff’s consulting damages  
15 expert has estimated that maximum aggregate damages with respect to the claims that survived  
16 the Court’s order granting in part and denying in part Defendants’ motion to dismiss the  
17 Amended Complaint (“MTD Order”) would range from approximately \$74 million to \$140  
18 million, and could be as low as approximately \$13 million to \$36 million if Defendants’  
19 disaggregation arguments were credited and certain disclosures were excluded as a consequence.  
20 Against these benchmarks, for the claims surviving the motion to dismiss, the \$7 million  
21 Settlement, therefore, represents a recovery of approximately 5% to 9.5% of non-disaggregated  
22 damages and 19% to 54% if foreseeable disaggregation arguments are credited—a favorable and  
23 reasonable recovery in light of the countervailing legal and factual arguments and litigation risks.  
24 *See also* Lead Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of  
25 Allocation and Memorandum of Points and Authorities in Support Thereof (“Settlement Brief”),  
26 §I.B.4.

27 6. In deciding to settle, Lead Plaintiff and Lead Counsel took into consideration the  
28 significant risks associated with establishing liability, as well as the duration and complexity of

1 the legal proceedings that remained ahead. As discussed in Section VII, *infra*, the Settlement  
2 was achieved in the face of vigorous opposition by Defendants who would have, had the  
3 Settlement not been reached, continued to raise serious arguments concerning, among other  
4 things, the alleged material falsity of statements and omissions made during the Class Period as  
5 well as scienter. Principally, Lead Plaintiff had not yet moved for class certification and there  
6 was a significant risk that the Court would credit Defendants' unique arguments about price  
7 impact and either refuse to certify the class or decertify the class in connection with summary  
8 judgment or after trial. Further, Lead Plaintiff faced significant challenges relating to loss  
9 causation and damages, which would have come down to an inherently unpredictable and hotly  
10 disputed "battle of the experts," with Defendants' experts undoubtedly rejecting Lead Plaintiff's  
11 expert's model and opinions. Accordingly, in the absence of a settlement, there was a very real  
12 risk that the Settlement Class could have recovered nothing or an amount significantly less than  
13 the negotiated Settlement.

14         7. With respect to the proposed Plan of Allocation, as discussed below and in  
15 Section II of the Settlement Brief, the proposed Plan was developed with the assistance of Lead  
16 Plaintiff's consulting damages expert, and provides for the fair and equitable distribution of the  
17 Net Settlement Fund to Settlement Class Members who submit Claim Forms that are approved  
18 for payment.

19         8. With respect to the Fee and Expense Application, as discussed below and in Lead  
20 Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses and Memorandum  
21 of Points and Authorities in Support Thereof ("Fee Brief"), the requested fee of 25% of the  
22 Settlement Fund would be reasonable and warrants the Court's approval. This fee request is  
23 consistent with the Ninth Circuit's "benchmark" for common fund cases, within the range of fee  
24 percentages frequently awarded in this type of action, and, under the particular facts of this case,  
25 justified in light of the benefits that Lead Counsel conferred on the Settlement Class, the risks it  
26 undertook, the quality of its representation, the nature and extent of the legal services, and the  
27 fact that Lead Counsel pursued the case at their financial risk.

28

1 **II. SUMMARY OF LEAD PLAINTIFF’S CLAIMS**

2 9. Extreme is a network infrastructure company. It develops and sells equipment for  
3 accessing the Internet, as well as software for running the equipment, monitoring its usage, and  
4 analyzing the data that passes through. ¶44.<sup>3</sup> The Company also offers related services contracts  
5 for extended warranty and maintenance of its equipment. *Id.* Together, equipment sales and  
6 service contract payments constitute, in the Company’s words, “substantially all” of the  
7 Company’s revenue. *Id.*

8 10. Enterasys Networks, Inc. (“Enterasys”) was a privately held company  
9 headquartered in Salem, New Hampshire, that also sold network infrastructure equipment and  
10 software, including analytics and security products. Enterasys was a direct competitor of  
11 Extreme. ¶3.

12 11. Extreme announced its acquisition of Enterasys on September 12, 2013 and  
13 completed it on October 31, 2013 for \$180 million, net of cash acquired. The acquisition  
14 roughly doubled the size of the Company, and the Company described it as a “merger of equals.”  
15 ¶4.

16 12. As set forth in more detail below, the Amended Complaint alleges that during the  
17 Class Period Defendants made materially false and misleading statements and omissions  
18 regarding (i) the status of Extreme’s acquisition of and integration with Enterasys; (ii) the  
19 potential impact of Extreme’s partnership with Lenovo; and (iii) that these business  
20 arrangements would lead Extreme to achieve double-digit revenue growth and a 10 percent profit  
21 margin by June 2015. *See, e.g.*, ¶¶15-17, 66-83. In particular, with respect to the status of the  
22 integration, the Amended Complaint alleges that Defendants made false and misleading  
23 statements and omissions that: (i) the integration is “on track”; (ii) the integration is “ahead of  
24 plan,” and similar “plan” statements; (iii) Extreme had a “plan” to achieve synergies from  
25 integration; (iv) synergies from integration are “on track”; (v) sales force integration is  
26  
27

28 <sup>3</sup> All citations to “¶ \_\_\_\_” are to the Amended Complaint, unless otherwise noted.

1 “complete” and integration problems are “behind” Extreme; and (vi) the integration will cause  
2 “no disruption” to customers. *See, e.g.*, ¶¶13, 50-65, 170.

3 13. The Amended Complaint further alleges that the artificial inflation caused by the  
4 alleged fraud came out of the Company’s stock price through four partial corrective disclosures  
5 and/or materializations of the risk before a final one on April 9, 2015. On February 5, 2014,  
6 before the market opened, Extreme reported low revenues and disappointing guidance for the  
7 next quarter, citing issues relating to the integration. On May 6, 2014, Extreme reported  
8 disappointing revenues, saying that it “experienced some integration issues,” and revealed that its  
9 CFO and COO would be leaving (and Berger would be taking over the COO’s role and directly  
10 overseeing the salesforce integration efforts). On October 15, 2014, Extreme preannounced  
11 revenues significantly below its previous guidance. On January 14, 2015, the Company backed  
12 away from its commitment to achieve 10% revenue growth and 10% operating margin by June  
13 2015 (based on the Lenovo partnership). ¶¶20-21.

14 14. Finally, on April 9, 2015, after the markets closed, Extreme preannounced that it  
15 would miss guidance for its third fiscal quarter of 2015, reporting non-GAAP revenue of \$118-  
16 \$120 million and earnings per share (“EPS”) of (\$0.09)-(\$0.07), significantly below its guidance  
17 of \$130-\$140 million and (\$0.03)-\$0.02, respectively. The Company also announced more  
18 executive turnover – Chief Revenue Officer Jeff White, who had been hired only six months  
19 earlier to manage the integration of the Extreme and Enterasys salesforces (taking over from  
20 CEO Berger, who had filled that role from May to October 2014), was “no longer with the  
21 Company.” Trading in Extreme’s common shares was halted. On these alleged disclosures, the  
22 Company’s stock price decreased nearly 23%, from \$3.24 per share to \$2.50 per share, on heavy  
23 trading volume. ¶22.

24 15. The operative complaint in the Action, the Amended Complaint, asserts violations  
25 of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15  
26 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R.  
27 §240.10b-5, by Extreme and former Chief Executive Officer Charles W. Berger, former Chief  
28

1 Financial Officer John T. Kurtzweil, and former Chief Executive Officer Kenneth B. Arola  
2 (collectively, “Individual Defendants”).

### 3 **III. RELEVANT PROCEDURAL HISTORY**

#### 4 **A. Commencement of the Action and Appointment of Lead Plaintiff 5 and Lead Counsel**

6 16. Beginning in October of 2015, two securities class action complaints were filed in  
7 the Court on behalf of investors in Extreme.<sup>4</sup> On December 1, 2015, the Court issued an Order  
8 consolidating the Extreme-related securities actions. ECF No. 18. On June 28, 2016, the Court  
9 issued an Order appointing ATRS as Lead Plaintiff and appointing Labaton Sucharow LLP as  
10 Lead Counsel and Berman DeValerio<sup>5</sup> as Liaison Counsel to represent the putative class. ECF  
11 No. 75.

#### 12 **B. The Consolidated Complaint**

13 17. On September 26, 2016, Lead Plaintiff filed the Consolidated Complaint alleging  
14 violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated  
15 thereunder. ECF No. 87. The Consolidated Complaint was based upon Lead Counsel’s  
16 extensive factual investigation, which included, among other things, the review and analysis of:  
17 (i) documents filed publicly by the Company with the SEC; (ii) publicly available information,  
18 including press releases, news articles, and other public statements issued by or concerning the  
19 Company and the Individual Defendants; (iii) research reports issued by financial analysts  
20 concerning the Company; and (iv) other publicly available information and data concerning the  
21 Company. Lead Counsel’s investigation also included contacting and interviewing a significant  
22 number of former employees of Extreme and other persons with relevant knowledge (seven of  
23 whom were relied on in the Consolidated Complaint). Lead Counsel also consulted with an  
24 economics expert regarding loss causation and damages.

25 18. The Consolidated Complaint alleged that Defendants falsely stated that the  
26 integration of Extreme and Enterasys was “on track,” “ahead of plan” and made other similar

27 <sup>4</sup> *Hong v. Extreme Networks, Inc., et al.*, No. 5:15-cv-04883-BLF and *Kasprzak v.*  
28 *Extreme Networks, Inc., et al.*, No. 5:15-cv-04975-BLF.

<sup>5</sup> Berman DeValerio has since been renamed Berman Tabacco.

1 assurances. The Consolidated Complaint alleged that such statements were false and misleading  
2 because Defendants knew that the Enterasys integration lacked an integration plan, including a  
3 product roadmap for the combined company, and was substantially behind in its integration  
4 efforts and, as a result, the integration efforts were riddled with material problems (*e.g.*,  
5 redundancies in the combined salesforce) that would prevent the Company from achieving the  
6 profit margins touted by Defendants during the Class Period. The Consolidated Complaint  
7 attempted to establish the falsity of Defendants' statements by relying in part on former  
8 employees of the Company, or Confidential Witnesses ("CWs") who recounted, among other  
9 things, that "there was no centralized plan to integrate Extreme and Enterasys." ¶133.

10 **C. Defendants' Motion to Dismiss the Consolidated Complaint**

11 19. Defendants filed a motion to dismiss the Consolidated Complaint on November  
12 10, 2017. ECF No. 89. Extreme and the Individual Defendants moved to dismiss all allegations  
13 of the Consolidated Complaint.

14 20. Defendants argued, *inter alia*, that Lead Plaintiff failed to allege falsity or scienter  
15 regarding Defendants' statements about the success of the integration efforts and that, in any  
16 event, ongoing disclosures of the challenges experienced in the integration undermined falsity  
17 and scienter. Defendants also argued that the Consolidated Complaint failed to state a claim  
18 based on Defendants' Lenovo statements and that the Consolidated Complaint did not allege  
19 falsity or scienter with respect to Defendants' margin and revenue targets, which were protected  
20 by the PSLRA safe harbor.

21 21. Lead Plaintiff filed its opposition to Defendants' motion to dismiss the  
22 Consolidated Complaint on December 23, 2016. ECF No. 90. Lead Plaintiff argued, among  
23 other things, that Defendants' positive statements about the integration, when viewed in context,  
24 were false and misleading when made, and that Defendants' statements that the integration was  
25 "on track" misrepresented present facts that were not protected by the PSLRA safe harbor. Lead  
26 Plaintiff further argued that the Consolidated Complaint alleged a strong inference of scienter  
27 based on certain admissions by the Company's new CEO following the Class Period, Defendant  
28

1 Berger's unique bonus scheme, and the sudden departure of Defendants and certain key  
2 executives.

3 **D. The Court's Order Granting the Motion to Dismiss**  
4 **the Consolidated Complaint**

5 22. On April 27, 2017, after a hearing and thorough argument, the Court issued its  
6 Order Granting Defendants' Motion to Dismiss with Leave to Amend. ECF No. 102. Therein,  
7 the Court held that many of Defendants' class period statements concerning the progress of the  
8 integration were puffery, but that some statements were potentially actionable because they were  
9 "objectively verifiable matters of fact." *See id.* at 17-20. The Court also held that the statements  
10 identified by Defendants with respect to Lenovo were not actionable as "mildly optimistic,  
11 subjective assessment[s]," *id.* at 22, and that Defendants' margin and revenue target statements were  
12 inactionable as "vague, generalized assertion of corporate optimism." *Id.* at 24.

13 23. In turn, the Court found that the potentially actionable statements concerning the  
14 integration were not false and misleading, as "the reasons Plaintiffs offer as to why the statements are  
15 false or misleading bear no connection to the substance of the statements themselves and the  
16 Complaint does not contain any particularized allegations demonstrating that any of the statements  
17 was materially false or misleading when made." *Id.* at 26. Similarly, the Court held that the  
18 potentially actionable Lenovo statements were not false and misleading where "Plaintiffs specify  
19 what information they contend Extreme omitted, but do not indicate why the statements that were  
20 made were misleading, and is it not self-evident that the statements were misleading." *Id.* at 31.  
21 With respect to scienter, the Court, held that "taken together, the facts suggest, at most, corporate  
22 mismanagement and negligence, but they do not evince such fraudulent intent or deliberate  
23 recklessness as to make the inference of scienter cogent." *Id.* at 41-42.

24 24. The Order allowed Lead Plaintiff until May 29, 2017 to amend the complaint and to  
25 attempt to correct the identified deficiencies. *Id.* at 43.

26 **E. The Amended Complaint and the Court's Order Denying**  
27 **in Part the Motion to Dismiss**

28 25. The Amended Complaint was filed on May 29, 2017. ECF No. 105. Like the  
Consolidated Complaint, the Amended Complaint was based on the investigation conducted by

1 Lead Counsel, which was expanded and ultimately included contacting a total of 148 former  
2 employees of Extreme and other persons with relevant knowledge and interviewing 24 of them  
3 (six of whom were relied on in the Amended Complaint). The Amended Complaint was also  
4 based on consultation with an expert in the field of executive compensation. Like the  
5 Consolidated Complaint, the Amended Complaint alleges violations of Sections 10(b) and 20(a)  
6 of the Exchange Act and Rule 10b-5 promulgated thereunder on behalf of a class of all  
7 purchasers of Extreme's common stock and/or exchange-traded options from September 12,  
8 2013 through April 9, 2015, inclusive.

9         26. The Amended Complaint attempted to cure the deficiencies identified in the  
10 Court's order granting Defendants' motion to dismiss the Consolidated Complaint by adding  
11 additional allegations from confidential witnesses supporting the contemporaneous falsity of  
12 Defendants' class period statements and specifying, for each statement alleged to be false and  
13 misleading, the specific basis for falsity and scienter. *See, e.g.*, ECF No. 121-1 (redline showing  
14 additional and specific falsity and scienter allegations as to Defendant Kurtzweil's September 12,  
15 2013 statements). In particular, the Amended Complaint supplemented the factual allegations  
16 from the CWs with direct interactions that CWs 1 and 3 had with Defendant Berger about the  
17 status of Extreme's integration efforts with Enterasys. Amended Complaint at ¶¶102-105, 110,  
18 112-113, 122, 126; ECF No. 130 at 8.

19         27. Lead Plaintiff further supplemented its allegations regarding the Enterasys  
20 integration in the Amended Complaint by adding post-class period admissions to demonstrate  
21 that Extreme lacked an integration plan. Amended Complaint at ¶¶14, 155-57, 160; ECF No.  
22 130 at 9. Lead Plaintiff also added allegations to detail how unusual Berger's stock price-based  
23 bonus was. Amended Complaint at ¶¶371-73; ECF No. 130 at 14. The Amended Complaint  
24 alleged that no preceding CEO of Extreme had a similar "Performance Option" bonus (Amended  
25 Complaint at ¶¶372, 374-78), and included allegations supported by an executive compensation  
26 expert, Steven Hall, stating that Berger's bonus was highly unusual compared to Extreme's peer  
27 companies and other companies of a similar size. Amended Complaint at ¶¶379-92.

1           28.     On July 10, 2017, Defendants filed a motion to dismiss the Amended Complaint,  
2 which Lead Plaintiff opposed on August 31, 2017. ECF Nos. 107, 112. On September 21, 2017,  
3 Defendants filed a reply brief in further support of their motion to dismiss. ECF No. 113. Oral  
4 argument on the motion was held on December 14, 2017. ECF No. 123.

5           29.     On March 21, 2018, the Court issued an Order granting in part and denying in  
6 part Defendants' motion to dismiss. ECF No. 130. In particular, the Court found that falsity and  
7 scienter, based on the Amended Complaint's supplemental allegations, were adequately pled  
8 with respect to certain integration statements. The Court granted the motion to dismiss with  
9 respect to the Lenovo and revenue and margin statements, and generally as to Defendant  
10 Kurtzweil on the Section 10(b) claim, finding that he was not alleged to have made any surviving  
11 statements.

12           30.     On May 21, 2018, Defendants filed a Statement of Affirmative Defenses raising  
13 seven affirmative defenses. The defenses focused on issues surrounding reliance, loss causation,  
14 and price impact. *See* ECF No. 144. On May 21, 2018, Defendants filed their Answer to the  
15 Amended Complaint, generally denying the Amended Complaint's substantive allegations. ECF  
16 No. 145.

#### 17 **IV. DISCOVERY**

18           31.     Following the denial, in part, of Defendants' motion to dismiss the Amended  
19 Complaint, the Parties negotiated a case schedule that would see the case through summary  
20 judgment and commenced discovery. As part of this process, the Parties summarized the  
21 outstanding legal issues in dispute, which included, at a minimum:

22                   (a)     Whether Defendants' acts violated the federal securities laws, specifically  
23 Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder by the  
24 Securities and Exchange Commission, 17 C.F.R. §240.10b-5, as alleged in the Amended  
25 Complaint;

26                   (b)     Whether Defendants misrepresented material facts or omitted to state any  
27 material facts that were necessary to make their statements not misleading in light of the  
28 circumstances under which they were made;

1 (c) Whether Defendants had a duty to disclose any alleged material omission;

2 (d) Whether any Defendant acted with scienter in making any alleged  
3 misrepresentations or omissions;

4 (e) Whether the market price of the Company's common stock during the  
5 class period was artificially inflated due to the alleged material omissions and/or  
6 misrepresentations complained of in the Amended Complaint;

7 (f) Whether Lead Plaintiff and putative class members relied on Defendants'  
8 alleged misrepresentations and/or omissions;

9 (g) Whether the Safe Harbor precluded liability for Defendants' alleged  
10 misstatements to the extent they are forward-looking statements;

11 (h) Whether Defendants acted in good faith with respect to all matters alleged  
12 in the Amended Complaint as narrowed by the March 2018 Order, and did not directly or  
13 indirectly induce any act or acts constituting a violation of, or cause of action based on, Section  
14 10(b) of the Exchange Act and Rule 10b-5;

15 (i) Whether the members of the class have sustained damages, and if so, the  
16 proper measure of any such damages;

17 (j) Whether any of the acts or omissions alleged against Defendants caused  
18 damages to plaintiffs;

19 32. As part of the meet and confer process surrounding the submission of the Case  
20 Management Conference Statement, the Parties also discussed and notified the Court that they  
21 anticipated that Lead Plaintiff's class certification motion would be a contested motion and that  
22 each side would file expert witness reports on one or more topics. ECF No. 143. As such,  
23 briefing on Lead Plaintiff's anticipated motion for class certification was not scheduled to  
24 conclude until September 5, 2019 (over a year and four months later).

25 33. As part of its initial discovery requests, Lead Plaintiff served eighty-seven  
26 requests for the production of documents on Defendants on April 30, 2018. Defendants served  
27 responses and objections to Lead Plaintiff's document requests on June 14, 2018. The Parties  
28 also exchanged initial disclosures on May 21, 2018. The Parties met and conferred extensively

1 on the search terms that would be used to search for documents responsive to Lead Plaintiff's  
2 requests for production. The meet and confer process highlighted the Parties' opposing views on  
3 the scope of the allegations that survived the MTD Order, and consequently on the scope of  
4 discovery.

5 34. In connection with these negotiations, the Parties entered into an agreement for  
6 the production of electronically stored information, and agreed to a protective order that would  
7 govern the disclosures in the Action.

#### 8 **V. NEGOTIATION OF THE SETTLEMENT**

9 35. Beginning shortly after the Court's order denying, in part, Defendants' motion to  
10 dismiss the Amended Complaint, the Parties began initial discussions concerning the possibility  
11 of a negotiated resolution of the case. Defendants and Lead Plaintiff engaged Robert A. Meyer,  
12 Esq. ("Mr. Meyer"), a well-respected and highly experienced mediator, to assist them in  
13 exploring a potential negotiated resolution of the claims in the Action.

14 36. On July 18, 2018, Lead Plaintiff and Defendants met with Mr. Meyer in an  
15 attempt to reach a settlement. The mediation involved an extended effort to settle the claims and  
16 was preceded by the exchange of mediation statements and Defendants' production of  
17 approximately 1,270 pages of documents, including Board of Director minutes and presentations.

18 37. Lead Counsel worked diligently to review the documents and to prepare Lead  
19 Plaintiff's mediation statement. The Parties' respective mediation statements thoroughly set  
20 forth Lead Plaintiff's and Defendants' positions and included substantial supporting  
21 documentation.

22 38. Following rigorous, arm's-length, and mediated negotiations under the auspices  
23 of Mr. Meyer, Defendants and Lead Plaintiff accepted a mediator's proposal concerning a  
24 settlement nearly a month later on August 17, 2018, and on September 26, 2018, the Parties  
25 entered into a settlement term sheet.

26 39. Lead Plaintiff and Defendants thereafter memorialized the final terms of  
27 settlement in the Stipulation, which was executed by the Parties on November 30, 2018 and filed  
28

1 with the Court, ECF No. 156-1, along with Lead Plaintiffs' motion and supporting memorandum  
2 of points and authorities seeking preliminary approval of the Settlement, ECF No. 155.

3 **VI. LEAD PLAINTIFF'S COMPLIANCE WITH THE**  
4 **PRELIMINARY APPROVAL ORDER**

5 40. By Order entered March 13, 2019, the Court preliminarily approved the  
6 Settlement and approved the forms of notice to the Settlement Class. Pursuant to the Preliminary  
7 Approval Order, the Court appointed Kurtzman Carson Consultants LLC ("KCC") as Claims  
8 Administrator and instructed KCC to disseminate copies of the Notice of Pendency of Class  
9 Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses and Proof of Claim  
10 (collectively the "Notice Packet") by mail and to disseminate the Summary Notice of Pendency  
11 of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses.

12 41. The Notice, attached as Exhibit A to the Declaration of Lance Cavallo Regarding  
13 (A) Mailing of the Notice and Claim Form; (B) Publication of Summary Notice; (C) Report on  
14 Requests for Exclusion to Date ("Mailing Affidavit" or "Mailing Aff.") (attached as Exhibit 2  
15 hereto), provides potential Settlement Class Members with information about the terms of the  
16 Settlement and, among other things: their right to exclude themselves from the Settlement Class;  
17 their right to object to any aspect of the Settlement, the Plan of Allocation, or the Fee and  
18 Expense Application; and the manner for submitting a Claim Form in order to be eligible for a  
19 payment from the net proceeds of the Settlement. The Notice also informs Settlement Class  
20 Members of Lead Counsel's intention to apply for an award of attorneys' fees of no more than  
21 25% of the Settlement Fund and for payment of expenses in an amount not to exceed \$230,000.

22 42. As detailed in the Mailing Affidavit, on March 27, 2019, KCC began mailing  
23 Notice Packets to potential Settlement Class Members as well as banks, brokerage firms, and  
24 other third party nominees whose clients may be Settlement Class Members. Mailing Aff. at  
25 ¶¶3-7. In total, to date, KCC has mailed 27,710 Notice Packets to potential nominees and  
26 Settlement Class Members by first-class mail, postage prepaid. *Id.* at ¶7. To disseminate the  
27 Notice, KCC obtained the names and addresses of potential Settlement Class Members from  
28

1 listings provided by Extreme's transfer agent and from banks, brokers, and other nominees. *Id.*  
2 at ¶¶3-6.

3 43. On April 8, 2019, KCC caused the Summary Notice to be published in *Investor's*  
4 *Business Daily* and to be transmitted over *PR Newswire*. *Id.* at ¶8 and Exhibit B attached thereto.

5 44. KCC also maintains and posts information regarding the Settlement on a  
6 dedicated website established for the Action, [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com),  
7 to provide Settlement Class Members with information, as well as downloadable copies of the  
8 Notice Packet and the Stipulation. *Id.* at ¶10. In addition, Lead Counsel has made relevant  
9 documents concerning the Settlement available on its firm website.

10 45. Pursuant to the terms of the Preliminary Approval Order, the deadline for  
11 Settlement Class Members to submit objections to the Settlement, the Plan of Allocation, or the  
12 Fee and Expense Application, or to request exclusion from the Settlement Class is May 23, 2019.  
13 To date, no objections have been received and the Claims Administrator has not received any  
14 requests for exclusion from the Settlement Class. *Id.* at ¶11. Should any objections or requests  
15 for exclusion be received, Lead Plaintiff will address them in its reply papers, which are due June  
16 6, 2019.

## 17 **VII. RISKS FACED BY LEAD PLAINTIFF IN THE ACTION**

18 46. Based on publicly available information and documents obtained through  
19 mediation-related discovery, Lead Plaintiff believes that the claims in the Action were strong.  
20 However, Lead Plaintiff also recognizes that there were considerable risks in continuing the  
21 Action against Defendants. Lead Plaintiff and its counsel carefully considered these risks during  
22 the months leading up to the Settlement and throughout the settlement discussions with  
23 Defendants and the Mediator.

24 47. In agreeing to settle, Lead Plaintiff and Lead Counsel weighed, among other  
25 things, the substantial cash benefit to Settlement Class Members against: (i) the uncertainties  
26 associated with trying complex securities cases; (ii) the difficulties and challenges involved in  
27 proving materiality, falsity, scienter, causation, and damages in this particular case; (iii) the  
28 difficulties and challenges involved in certifying a class; (iv) the fact that, even if Lead Plaintiff

1 prevailed at summary judgment and trial, any monetary recovery could have been less than the  
2 Settlement Amount; and (v) the delays that would follow even a favorable final judgment,  
3 including appeals.

4 48. The principal risks are discussed below. However Defendants would have  
5 continued to challenge the material falsity of each alleged misstatement and omission that  
6 survived the Court's MTD Order and Lead Plaintiff's proof of scienter, as discussed above.

7 **A. Narrowed Scope of the Action and Risks Concerning Class Certification**

8 49. The most immediate risk faced by Lead Plaintiff was its upcoming motion for  
9 class certification, and then retaining certification through summary judgment and trial. While at  
10 the time of settlement Lead Plaintiff had not yet moved for class certification, the discussions  
11 between the Parties indicated that the motion would lead to a difficult contested "battle of the  
12 experts." This was, in part, because of the scope of the claims surviving Defendants' motion to  
13 dismiss. The MTD Order excluded: (i) all claims based on challenged statements made in 2013,  
14 the year the Enterasys acquisition was announced (September 12) and closed (as announced  
15 November 4); (ii) all claims based on statements about anticipated costs and operating expense  
16 savings from the acquisition, including projections; (iii) all claims based on business Extreme  
17 hoped to achieve from its relationship with Lenovo; and (iv) all claims based on aspirational  
18 targets for "double digit growth" and 10% operating margin.

19 50. The MTD Order thus significantly trimmed the scope of the Action, finding  
20 actionable only: (i) certain general statements attributed to Berger in press releases and investor  
21 conferences that Enterprise Resource Planning integration and other operational milestones in  
22 the integration of Enterasys were "on track" or "ahead of plan"; (ii) certain statements made by  
23 Berger about integration of the Sales organization; and (iii) certain statements made by former  
24 CFO Ken Arola regarding the integration of the two companies and the projected integration of  
25 the product portfolio and Sales and marketing teams. Based on the surviving claims, Defendants  
26 and their expert(s) would likely have argued a lack of "price impact," a complex attack on the  
27 presumption of reliance that counsel for Defendants have successfully pioneered in this district.  
28 *See In re Finisar Corp. Sec. Litig.*, No. 5:11-CV-01252-EJD, 2017 WL 6026244, at \*1 (N.D.

1 Cal. Dec. 5, 2017), *reconsideration denied*, No. 5:11-CV-01252-EJD, 2018 WL 3472334 (N.D.  
2 Cal. Jan. 18, 2018), and *leave to appeal denied sub nom.*, *Oklahoma Firefighters Pension & Ret.*  
3 *Sys. v. Finisar Corp.*, No. 18-80013, 2018 WL 3472714 (9th Cir. July 13, 2018). As part of this  
4 attack at class certification, Defendants would have argued that when allegedly misrepresenting  
5 these actionable topics, Extreme’s stock price declined, and thus that there was no “price  
6 impact.”

7 51. For example, Extreme’s stock price declined following the press release and  
8 conference call of February 5, 2014. As a result, Defendants would have argued that the  
9 allegedly false and misleading statements on that day had no positive price impact, which, they  
10 would argue, is required to invoke the presumption of reliance. As such, Lead Plaintiff’s bid to  
11 certify a class of investors between February 5, 2014 and May 5, 2014, the date of the next  
12 challenged statement, may have failed, removing thousands of trades from the Class Period and  
13 millions of dollars in damages. Defendants would have attempted this “price impact” attack on  
14 each of the days on which the allegedly false and misleading statements were made.

15 52. In order to rebut Defendants’ anticipated price impact attack, Lead Plaintiff would  
16 have had to argue either that Defendants’ alleged misstatements artificially maintained the prices  
17 of Extreme common stock or that certain of Defendants’ statements had a positive price impact  
18 on Extreme’s securities on July 21, 2014 and October 29, 2014, two days on which there were  
19 statistically significant price increases in Extreme’s stock price and on which Defendants are  
20 alleged to have made false and misleading statements the Court considered actionable. While  
21 this argument would have aided Lead Plaintiff in its class certification arguments, it would also  
22 have reduced damages by moving inflation from the start of the Class Period to later in the Class  
23 Period, arguably reducing the amount of inflation per damaged share at different points  
24 throughout the Class Period.

25 53. In sum, there was no guarantee that the proposed class would be certified and that  
26 certification could have been retained through summary judgment and trial. It was also far from  
27 clear how the Court’s rulings in this regard would affect loss causation and damages or how the  
28 case would be presented to the jury. Moreover, the prospect of appeal from any ruling was

1 extremely high. Ultimately, while Lead Plaintiff and Lead Counsel believe they would have  
2 advanced strong arguments in support of class certification and reliance, without negative price  
3 impact ramifications, they nonetheless acknowledge that Defendants' arguments posed very  
4 credible threats to Lead Plaintiff's ability to recover more than that offered by the Settlement.

5 **B. Risks in Proving Loss Causation and Damages**

6 54. As discussed above, before the MTD Order, the Amended Complaint alleged a  
7 theory of causation and damages premised on three distinct categories of allegedly false and  
8 misleading statements starting on September 12, 2013. Using a rigorous event study and a well-  
9 recognized trading model, Lead Plaintiff's causation and damages expert estimated maximum  
10 aggregate damages under the original theories of liability, and the longer Class Period, to be  
11 approximately \$242 million (and approximately \$145 million, crediting Defendants' likely  
12 argument that pre-class period gains must be netted from a recovery).

13 55. However, taking into account arguments necessary to counter Defendants' likely  
14 price impact arguments at class certification and crediting a netting argument, maximum  
15 aggregate damages under the original theories, and Class Period, would be approximately \$121  
16 million. This aggregate estimate also includes the impact of purportedly non-fraud related  
17 disclosures on the corrective disclosure dates which, Defendants would likely argue, would need  
18 to be isolated and removed at summary judgment and trial, further reducing potential damages.<sup>6</sup>

19 56. In ruling on Defendants' motion to dismiss the Amended Complaint, however, the  
20 Court found only one category of false and misleading statements actionable and further  
21 dismissed certain sub-categories of statements relating to that category. The first false and  
22 misleading statement the Court found actionable thus occurred on February 5, 2014. Assuming  
23 the viability of all remaining categories of false and misleading statements, Lead Plaintiff's  
24 causation and damages expert has estimated maximum aggregate damages following the MTD  
25 Order to be approximately \$140 million. However, if arguments necessary to counter  
26 Defendants' likely price impact arguments at class certification and trial are taken into account,

27 \_\_\_\_\_  
28 <sup>6</sup> Against these benchmarks, and without disaggregation, the Settlement recovers between  
approximately 3% and 6% of aggregate damages.

1 and pre-Class Period gains are netted from the recovery, maximum aggregate damages following  
2 the MTD Order decrease to approximately \$74 million.<sup>7</sup> These “aggregate” estimates still  
3 include the impact of arguably non-fraud related disclosures on the corrective disclosure dates,  
4 which Defendants would argue need to be isolated and removed.

5 57. For example, on May 6, 2014, Defendants announced management changes,  
6 earnings, and forward guidance. While Lead Plaintiff believes that evidence would link the  
7 management changes and the consensus revenue miss to sales force integration issues, the poor  
8 forward guidance was publicly linked to non-integration related issues that were “largely the  
9 result of a falloff in K-12 spending.” Based on these public statements, Defendants would have  
10 strenuously argued that the entire price decline was driven by the Company’s poor forward  
11 guidance (and not merger issues) and, thus, that Lead Plaintiff and the class suffered no  
12 recoverable damages on this day. Taking into account arguments necessary to counter  
13 Defendants’ likely price impact arguments at class certification and netting pre-Class Period  
14 gains, maximum aggregate damages under this possible scenario are approximately \$36 million.

15 58. Further, on April 9, 2015, Extreme pre-announced lowered guidance for the  
16 March quarter and announced the departure of Jeff White, the Company’s Chief Revenue  
17 Officer. As with the May 6, 2014, disclosure, Defendants would have strenuously argued that  
18 the entire price decline was driven by the Company’s poor forward guidance and, thus, that Lead  
19 Plaintiff and the class suffered no recoverable damages on this day. Taking into account this  
20 scenario and the scenario in ¶57, arguments necessary to counter Defendants’ likely price impact  
21 arguments at class certification, and netting pre-Class Period gains, maximum aggregate  
22 damages under this possible scenario are just \$13 million.<sup>8</sup>

23 59. As illustrated above, there was a very real risk that Lead Plaintiff would be unable  
24 to counter at summary judgment, or trial, that a substantial portion of the declines on the  
25

26 <sup>7</sup> Maximum aggregate damages for claims surviving the MTD Order would be  
27 approximately \$94.5 million, if arguments necessary to counter Defendants’ likely price impact  
arguments are taken into account and gains on pre-Class Period purchases are not netted.

28 <sup>8</sup> Against these post-MTD Order benchmarks, the Settlement recovers between  
approximately 5% and 54% of aggregate damages.

1 disclosure dates were attributable to the alleged fraud. There was also substantial uncertainty  
2 surrounding Lead Plaintiff's expert's ability to isolate the proportion of the stock price declines  
3 on the corrective disclosure dates attributable specifically to the alleged fraud. These challenges  
4 were further complicated by the Court's MTD Order, which found actionable only certain  
5 categories of integration statements but not others. For example, the Court found inactionable  
6 statements that the integration would cause "no disruption" to customers but found actionable  
7 statements that the sales force integration was "complete." ECF No. 130 at 20. Lead Plaintiff  
8 was thus faced with the difficult task of separating out the impact of interrelated statements about  
9 the integration on the corrective disclosure dates. Because of this challenge, Lead Plaintiff's  
10 proposed damages methodology would have come under sustained attack by Defendants, and  
11 issues relating to damages would likely have come down, at best, to an inherently unpredictable  
12 and hotly disputed "battle of the experts."

13         60. Furthermore, in order to recover any damages, Lead Plaintiff would have to  
14 prevail at summary judgment and trial and, even if Lead Plaintiff prevailed at those stages,  
15 appeals would likely follow. At each of these stages, there would be significant risks attendant  
16 to the continued prosecution of the Action, and no guarantee that further litigation would have  
17 resulted in a higher recovery, or any recovery at all.

#### 18 **VIII. THE PROPOSED PLAN OF ALLOCATION**

19         61. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all  
20 Settlement Class Members who wish to participate in the distribution of the Settlement proceeds  
21 must submit a valid Claim Form, including all required information, postmarked or submitted  
22 electronically no later than June 6, 2019. As provided in the Notice, after deduction of Court-  
23 awarded attorneys' fees and expenses, notice and administration costs, and applicable taxes, the  
24 balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the  
25 plan of allocation approved by the Court (the "Plan of Allocation").

26         62. The proposed Plan of Allocation, which was set forth in full in the Notice (Ex. 2-  
27 A at 8-12), is designed to achieve an equitable and rational distribution of the Net Settlement  
28 Fund. Lead Counsel developed the Plan of Allocation in close consultation with one of Lead

1 Plaintiff's consulting damages experts and believes that the plan provides a fair and reasonable  
2 method to equitably distribute the Net Settlement Fund among Authorized Claimants.

3         63. The Plan of Allocation provides for distribution of the Net Settlement Fund  
4 among Authorized Claimants on a *pro rata* basis based on "Recognized Loss" formulas tied to  
5 liability and damages. In developing the Plan of Allocation, Lead Plaintiff's damages expert  
6 considered the amount of artificial inflation present in Extreme's common stock and call options  
7 (or deflation in the prices of Extreme put options) throughout the Class Period that was  
8 purportedly caused by the alleged fraud. This analysis entailed studying the price declines  
9 associated with Extreme's allegedly corrective disclosures, adjusted to eliminate the effects  
10 attributable to general market or industry conditions. In this respect, an inflation table was  
11 created as part of the Plan of Allocation and reported in the Notice. Shares purchased before  
12 February 5, 2014 and held through the February 5, 2014 disclosure will be valued using 20% of  
13 the alleged artificial inflation, given the Court's dismissal of these claims.

14         64. Under the Plan of Allocation, a "Recognized Loss Amount" will be calculated by  
15 the Claims Administrator for each purchase of Extreme common stock and call options and each  
16 sale of Extreme put options during the Class Period, as listed in the Claim Form, and for which  
17 adequate documentation is provided. The value of a claimant's Recognized Claim will depend  
18 upon several factors, including when the claimant purchased shares during the Class Period and  
19 whether these shares were sold during the Class Period, and if so, when. Under Lead Counsel's  
20 direction, the Claims Administrator, KCC, will determine each Authorized Claimant's *pro rata*  
21 share of the Net Settlement Fund based upon each Authorized Claimant's total Recognized  
22 Claim compared to the aggregate Recognized Claims of all Authorized Claimants.

23         65. Once the Claims Administrator has processed all submitted claims and provided  
24 claimants with an opportunity to cure deficiencies or challenge rejection determinations,  
25 payment distributions will be made to eligible Authorized Claimants using PayPal (for all  
26 payments below \$10.00 and for payments between \$10.00 and \$100.00 for those who elect this  
27 option), and checks. After an initial distribution, if there is any balance remaining in the Net  
28 Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least

1 six (6) months from the date of initial distribution, Lead Counsel will, if feasible and economical,  
2 re-distribute the balance among Authorized Claimants who have cashed their checks. Re-  
3 distributions will be repeated until the balance in the Net Settlement Fund is no longer  
4 economically feasible to distribute. *See* Ex. 2-A at ¶66. At this point, Lead Counsel will file a  
5 report with the Court supporting the determination that an additional distribution would not be  
6 economically feasible and requesting that the unclaimed balance remaining in the Net Settlement  
7 Fund, after payment of any outstanding Notice and Administration Expenses or Taxes, be  
8 donated to Consumer Federation of America. *Id.*

9         66. Consumer Federation of America (CFA) is a non-profit, consumer advocacy  
10 organization established in 1968 to advance consumer interests through policy research,  
11 advocacy, and education before the judiciary, Congress, the White House, federal and state  
12 regulatory agencies, and state legislatures. *See generally* [www.consumerfed.org](http://www.consumerfed.org). With respect  
13 to victims of financial fraud, CFA has an Investor Protection program that works nationwide to  
14 promote consumer-oriented policies that safeguard investors against fraud through: (i) the  
15 development of educational material for investors; (ii) drafting policies and legislation; (iii) and  
16 providing testimony and comments on legislation and regulations. *See*  
17 [www.consumerfed.org/issues/investor-protection](http://www.consumerfed.org/issues/investor-protection). CFA has been approved as a *cy pres*  
18 beneficiary in several securities cases in California, including *In re Intuitive Surgical Sec. Litig.*,  
19 Case No. 5:13-cv-01920-EJD (N.D. Cal.), *In re Vocera Commc'ns, Inc. Sec. Litig.*, No. 13-CV-  
20 03567-EMC (N.D. Cal.) and *In re Broadcom Corp. Sec. Litig.*, No. 01-CV-00275-MLR (C.D.  
21 Cal.).

22         67. In sum, the proposed Plan of Allocation, developed in consultation with Lead  
23 Plaintiff's consulting damages expert, was designed to fairly and rationally allocate the Net  
24 Settlement Fund among Authorized Claimants. Accordingly, Lead Counsel respectfully submits  
25 that the proposed Plan of Allocation is fair, reasonable, and adequate and should be approved.  
26  
27  
28

1 **IX. LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES**  
2 **AND PAYMENT OF EXPENSES**

3 **A. Consideration of Relevant Factors Justifies an Award of a 25% Fee in this**  
4 **Case**

5 68. For its diligent efforts on behalf of the Settlement Class, Lead Counsel is applying  
6 for compensation from the Settlement Fund on a percentage basis. Consistent with the Notice to  
7 the Settlement Class, Lead Counsel seeks a fee award of 25% of the Settlement Fund. Lead  
8 Counsel also requests payment of expenses incurred in connection with the prosecution of the  
9 Action from the Settlement Fund in the amount of \$167,200.00, plus accrued interest at the same  
10 rate as is earned by the Settlement Fund, and reimbursement to Lead Plaintiff pursuant to the  
11 PSLRA in the amount of \$2,180.8. Lead Counsel submits that, for the reasons discussed below  
12 and in the accompanying Fee Brief, such awards would be reasonable and appropriate under the  
13 circumstances before the Court.

14 **1. Lead Plaintiff Supports the Fee and Expense Application**

15 69. ATRS is a public pension fund organized in 1937 to provide retirement, disability,  
16 and survivor benefit programs to active and retired public teachers of the State of Arkansas.  
17 ATRS is responsible for the retirement income of these employees and their beneficiaries. As of  
18 June 30, 2018, ATRS's defined benefit plans served more than 125,000 active and retired  
19 members and their beneficiaries, and ATRS had over \$17 billion in assets under management.  
20 Ex. 1 at ¶1.

21 70. Lead Plaintiff has evaluated and fully supports the Fee and Expense Application.  
22 See Ex. 1 at ¶7. In coming to this conclusion, Lead Plaintiff—which was substantially involved  
23 in the prosecution of the Action and negotiation of the Settlement—considered the recovery  
24 obtained as well as Lead Counsel's substantial effort in obtaining the recovery. Particularly in  
25 light of the considerable risks of litigation, Lead Plaintiff agreed to allow Lead Counsel to apply  
26 for 25% of the Settlement Fund. See *id.* The fee request is also consistent with Lead Counsel's  
27 pre-settlement fee agreement with the Lead Plaintiff.  
28

1                   **2.       The Favorable Settlement Achieved**

2           71.       Courts have consistently recognized that the result achieved is a major factor to be  
3 considered in making a fee award. *See* Fee Brief, §I.C.1. Here, the \$7,000,000 Settlement is a  
4 favorable and reasonable result, particularly when considered in view of the substantial risks and  
5 obstacles to recovery if the Action were to continue through summary judgment, to trial, and  
6 through likely post-trial motions and appeals.

7           72.       As discussed above, Lead Plaintiff's consulting damages expert has estimated that  
8 maximum aggregate damages following the MTD Order are approximately \$74 million to \$140  
9 million, without disaggregation. Against these yardsticks, the Settlement will return  
10 approximately 5% to 9.5% of estimated losses. When disaggregation arguments are factored in,  
11 damages decrease substantially to between approximately \$13 million and \$36 million. Against  
12 this measure, the Settlement will return approximately 19% to 54% of estimated losses.

13           73.       This recovery was the result of very thorough and diligent prosecutorial and  
14 investigative efforts, complicated motion practice, and vigorous settlement negotiations. As a  
15 result of this Settlement, thousands of Settlement Class Members will benefit and receive  
16 compensation for their losses and avoid the very substantial risk of no recovery in the absence of  
17 a settlement.

18                   **3.       The Risks and Unique Complexities of Contingent Class Action**  
19                   **Litigation**

20           74.       This Action presented substantial challenges from the outset of the case, some of  
21 which could not be overcome. The specific risks Lead Plaintiff faced in proving Defendants'  
22 liability and damages are detailed in Section VII, above. These case-specific risks are in addition  
23 to the more typical risks accompanying securities class action litigation, such as the fact that this  
24 Action is governed by stringent PSLRA requirements and case law interpreting the federal  
25 securities laws and was undertaken on a contingent basis.

26           75.       From the outset, Lead Counsel understood that it was embarking on a complex,  
27 expensive, and lengthy litigation with no guarantee of ever being compensated for the substantial  
28 investment of time and money the case would require. In undertaking that responsibility, Lead

1 Counsel was obligated to ensure that sufficient resources were dedicated to the prosecution of the  
2 Action, and that funds were available to compensate staff and to cover the considerable costs that  
3 a case such as this requires. With an average lag time of several years for these cases to  
4 conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid  
5 on an ongoing basis. Indeed, Plaintiffs' Counsel have received no compensation during the two  
6 and a half year course of the Action but have incurred 5,901.8 hours of time for a total lodestar  
7 of \$3,330,856.50 and have incurred \$167,200.00 in expenses in prosecuting the Action for the  
8 benefit of the Settlement Class.

9 76. Counsel also bore the risk that no recovery would be achieved (or that a judgment  
10 could not be collected, in whole or in part). Even with the most vigorous and competent of  
11 efforts, success in contingent-fee litigation, such as this, is never assured. Lead Counsel know  
12 from experience that the commencement of a class action does not guarantee a settlement. To  
13 the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories  
14 that are needed to sustain a complaint or win at trial, or to convince sophisticated defendants to  
15 engage in serious settlement negotiations at meaningful levels.

16 77. Lead Counsel is aware of many hard-fought lawsuits where, because of the  
17 discovery of facts unknown when the case was commenced, or changes in the law during the  
18 pendency of the case, or a decision of a judge or jury following a trial on the merits, excellent  
19 professional efforts of members of the plaintiffs' bar produced no fee for counsel.

20 78. Federal appellate reports are filled with opinions affirming dismissals with  
21 prejudice in securities cases. The many appellate decisions affirming summary judgments and  
22 directed verdicts for defendants show that surviving a motion to dismiss is not a guarantee of  
23 recovery. *See, e.g., Oracle Corp., Sec. Litig.*, 627 F.3d 376 (9th Cir. 2010); *In re Silicon*  
24 *Graphics Sec. Litig.*, 183 F.3d 970 (9th Cir. 1999); *Phillips v. Scientific-Atlanta, Inc.*, 489 F.  
25 App'x. 339 (11th Cir. 2012); *In re Smith & Wesson Holding Corp. Sec. Litig.*, 669 F.3d 68 (1st  
26 Cir. 2012); *McCabe v. Ernst & Young, LLP*, 494 F.3d 418 (3d Cir. 2007); *In re Digi Int'l Inc.*  
27 *Sec. Litig.*, 14 F. App'x. 714 (8th Cir. 2001); *Geffon v. Micrion Corp.*, 249 F.3d 29 (1st Cir.  
28 2001).

1           79.       Successfully opposing a motion for summary judgment is also not a guarantee  
2 that plaintiffs will prevail at trial. Indeed, while only a few securities class actions have been  
3 tried before a jury, several have been lost in their entirety, such as *In re JDS Uniphase Securities*  
4 *Litigation*, Case No. C-02-1486 CW (EDL), slip op. (N.D. Cal. Nov. 27, 2007), litigated by  
5 Labaton Sucharow, or substantially lost as to the main case, such as *In re Clarent Corp.*  
6 *Securities Litigation*, Case No. C-01-3361 CRB, slip op. (N.D. Cal. Feb. 16, 2005).

7           80.       Even plaintiffs who succeed at trial may find their verdict overturned on appeal.  
8 *See, e.g., Glickenhau & Co., et al. v. Household Int'l, Inc., et al.*, 787 F.3d 408 (7th Cir. 2015)  
9 (reversing and remanding jury verdict of \$2.46 billion after 13 years of litigation on loss  
10 causation grounds and error in jury instruction under *Janus Capital Group, Inc. v. First*  
11 *Derivative Traders*, 131 S.Ct. 2296 (2011)); *Ward v. Succession of Freeman*, 854 F.2d 780 (5th  
12 Cir. 1998) (reversing plaintiffs' jury verdict for securities fraud); *Robbins v. Koger Props., Inc.*,  
13 116 F.3d 1441 (11th Cir. 1997) (reversing \$81 million jury verdict and dismissing case with  
14 prejudice); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning  
15 plaintiffs' verdict obtained after two decades of litigation). And, the path to maintaining a  
16 favorable jury verdict can be arduous and time consuming. *See, e.g., In re Apollo Grp., Inc. Sec.*  
17 *Litig.*, Case No. CV-04-2147-PHX-JAT, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008), *rev'd*, No.  
18 08-16971, 2010 WL 5927988 (9th Cir. June 23, 2010) (trial court tossed unanimous verdict for  
19 plaintiffs, which was later reinstated by the Ninth Circuit Court of Appeals (2010 WL 5927988  
20 (9th Cir. June 23, 2010)) and judgment re-entered (*id.*) after denial by the Supreme Court of the  
21 United States of defendants' Petition for Writ of Certiorari (*Apollo Grp. Inc. v. Police Annuity*  
22 *and Benefit Fund*, 131 S. Ct. 1602 (2011)).

23           81.       Losses such as those described above are exceedingly difficult for plaintiff's  
24 counsel to bear. The fees that are awarded in successful cases are used to cover enormous  
25 overhead expenses incurred during the course of litigations and are taxed by federal, state, and  
26 local authorities.

27           82.       Courts have repeatedly held that it is in the public interest to have experienced  
28 and able counsel enforce the securities laws and regulations pertaining to the duties of officers

1 and directors of public companies. Vigorous private enforcement of the federal securities laws  
2 and state corporation laws can only occur if private plaintiffs can obtain some parity in  
3 representation with that available to large corporate defendants. If this important public policy is  
4 to be carried out, courts should award fees that will adequately compensate private plaintiffs'  
5 counsel, taking into account the enormous risks undertaken with a clear view of the economics of  
6 a securities class action.

7 83. As discussed in greater detail above, this case was fraught with significant risk  
8 factors concerning liability and damages. Lead Plaintiff's success was by no means assured.  
9 Defendants disputed, and would continue to dispute, whether Lead Plaintiff could establish  
10 liability and would no doubt contend, as the case proceeded to trial, that even if liability existed,  
11 the amount of damages was substantially lower than Lead Plaintiff alleged. Were this Settlement  
12 not achieved, and even if Lead Plaintiff prevailed at trial, Lead Plaintiff and Lead Counsel faced  
13 potentially years of costly and risky appellate litigation against Defendants, with ultimate success  
14 far from certain and the prospect of no recovery significant. It is also possible that a jury could  
15 have found no liability or no damages. Lead Counsel therefore respectfully submits that based  
16 upon the considerable risk factors present, this case involved a very substantial contingency risk  
17 to counsel.

#### 18 **4. The Work of Plaintiffs' Counsel and the Lodestar Cross-Check**

19 84. The work undertaken by Plaintiffs' Counsel in investigating and prosecuting this  
20 case and arriving at the present Settlement in the face of serious hurdles has been time-  
21 consuming and challenging. As more fully set forth above, the Action settled only after Lead  
22 Counsel overcame multiple legal and factual challenges. Among other efforts, Lead Counsel  
23 conducted a comprehensive investigation into the class's claims; researched and prepared two  
24 detailed amended complaints; briefed thorough oppositions to Defendants' motions to dismiss  
25 the Consolidated and Amended Complaints; obtained and reviewed more than approximately  
26 1,270 pages of core documents from Defendants in connection with the mediation process; and  
27 engaged in a hard-fought settlement process with experienced defense counsel and an  
28 experienced Mediator.

1           85.     At all times throughout the pendency of the Action, Lead Counsel’s efforts were  
2 driven and focused on advancing the litigation to bring about the most successful outcome for  
3 the Settlement Class, whether through settlement or trial, by the most efficient means necessary.

4           86.     Attached hereto are declarations from Plaintiffs’ Counsel, which are submitted in  
5 support of the request for an award of attorneys’ fees and payment of litigation expenses. *See*  
6 Declaration of Carol Villegas on Behalf of Labaton Sucharow LLP in Support of Application for  
7 Award of Attorneys’ Fees and Expenses (attached as Exhibit 3 hereto) and Declaration of Nicole  
8 Lavallee on Behalf of Berman Tabacco in Support of Application for Award of Attorneys’ Fees  
9 and Expenses (attached as Exhibit 4 hereto).

10          87.     Included with these declarations are schedules that summarize the time of each  
11 firm (including by category of work conducted), as well as the expenses incurred by category  
12 (the “Fee and Expense Schedules”).<sup>9</sup> The attached declarations and the Fee and Expense  
13 Schedules report the amount of time spent by each attorney and professional support staff  
14 employed by Plaintiffs’ Counsel and the “lodestar” calculations, *i.e.*, their hours multiplied by  
15 their current rates. *See* Exs. 3 & 4. As explained in each declaration, they were prepared from  
16 daily time records regularly prepared and maintained by the respective firms.

17          88.     The hourly rates of Plaintiffs’ Counsel here range from \$875 to \$995 for partners,  
18 \$615 to \$675 for of counsels, and \$425 to \$625 for associates. *See* Exs. 3-A, 4-A. It is  
19 respectfully submitted that the hourly rates for attorneys and professional support staff included  
20 in these schedules are reasonable and customary. Exhibit 6, attached hereto, is a table of hourly  
21 rates for defense firms compiled by Labaton Sucharow from fee applications submitted by such  
22 firms nationwide in bankruptcy proceedings in 2018. The analysis shows that across all types of  
23 attorneys, Plaintiffs’ Counsel’s rates here are consistent with, or lower than, the firms surveyed.

24          89.     Plaintiffs’ Counsel have expended more than 5,900 hours in the prosecution and  
25 investigation of the Action. *See* Exs. 3-A and 4-A. The resulting lodestar is \$3,330,856.50. *Id.*  
26 Pursuant to a lodestar “cross-check,” applied within the Ninth Circuit, the requested fee of 25%

27 \_\_\_\_\_  
28 <sup>9</sup> Attached hereto as Exhibit 5 is a summary table of the lodestars and expenses of Plaintiffs’ Counsel.

1 of the Settlement Amount (\$1,750,000) results in a significantly *negative* “multiplier” of 0.53 on  
2 the lodestar, which does not include any time that will necessarily be spent from this date  
3 forward administering the Settlement, preparing for and attending the Settlement Hearing, and  
4 assisting class members. Accordingly, Lead Counsel seeks only approximately 53% of  
5 Plaintiffs’ Counsel’s legal fees.

### 6 **5. The Skill Required and Quality of the Work**

7 90. Lead Counsel Labaton Sucharow is among the most experienced and skilled  
8 securities litigation law firms in the field. The expertise and experience of the Firm’s attorneys  
9 is described in Exhibit 3-D, annexed hereto.

10 91. Since the passage of the PSLRA, Labaton Sucharow has been approved by courts  
11 to serve as lead counsel in numerous securities class actions throughout the United States. Here,  
12 Labaton Sucharow attorneys have devoted considerable time and effort to this case, thereby  
13 greatly benefiting the outcome by bringing to bear many years of collective experience. For  
14 example, Labaton has served as lead counsel in a number of high profile matters: *In re Am. Int’l*  
15 *Grp., Inc. Sec. Litig.*, No. 04-8141 (S.D.N.Y.) (representing the Ohio Public Employees  
16 Retirement System, State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension  
17 Fund and reaching settlements of \$1 billion); *In re HealthSouth Corp. Sec. Litig.*, No. 03-1501  
18 (N.D. Ala.) (representing the State of Michigan Retirement System, New Mexico State  
19 Investment Council, and the New Mexico Educational Retirement Board and securing  
20 settlements of more than \$600 million); *In re Countrywide Sec. Litig.*, No. 07-5295 (C.D. Cal.)  
21 (representing the New York State and New York City Pension Funds and reaching settlements of  
22 more than \$600 million); *In re Schering-Plough Corp. / ENHANCE Securities Litigation*, Civil  
23 Action No. 08-397 (DMC) (JAD) (D.N.J.) (representing Massachusetts Pension Reserves  
24 Investment Management Board and reaching a settlement of \$473 million). *See* Ex. 3-D.

### 25 **B. Plaintiffs’ Counsel’s Request for Litigation Expenses**

26 92. Lead Counsel seeks payment from the Settlement Fund of \$167,200.00 in  
27 litigation expenses reasonably and necessarily incurred in connection with commencing and  
28 prosecuting the claims against Defendants. The Notice informs the Settlement Class that Lead

1 Counsel will apply for payment of litigation expenses of no more than \$230,000, plus interest at  
2 the same rate earned by the Settlement Fund. *See* Ex. 2-A at ¶¶5, 33. The amounts requested  
3 herein are well below this cap. To date, no objection to Lead Counsel's request for expenses has  
4 been raised.

5 93. As set forth in the Fee and Expense Schedules, Plaintiffs' Counsel have incurred a  
6 total of \$167,200.00 in litigation expenses in connection with the prosecution of the Action. *See*  
7 Ex. 3-C and Ex. 4-C. As attested to, these expenses are reflected on the books and records  
8 maintained by each firm. These books and records are prepared from expense vouchers, check  
9 records, and other source materials and are an accurate record of the expenses incurred. These  
10 expenses are set forth in detail in Plaintiffs' Counsel's declarations, which identify the specific  
11 category of expense—*e.g.*, online/computer research, experts' fees, travel costs, costs related to  
12 mediation, duplicating, telephone, fax and postage expenses.

13 94. A significant component of Plaintiffs' Counsel's expenses is the cost of a  
14 consulting financial expert and an executive compensation expert, which totals \$62,062.62 or  
15 approximately 37% of total expenses. The services of Lead Plaintiff's consulting damages  
16 expert were necessary for preparing estimates of damages, analyzing loss causation issues, and  
17 assisting with the preparation of the Plan of Allocation. Lead Plaintiff's executive compensation  
18 expert was used to buttress Lead Plaintiff's scienter allegations in the Amended Complaint.

19 95. Plaintiffs' Counsel were also required to travel in connection with this Action and  
20 incurred costs related to working meals, lodging, and transportation, which total \$52,501.36 or  
21 approximately 31% of aggregate expenses. This primarily included travel to court hearings and  
22 for the mediation of the case, as well as working late hours.

23 96. Computerized research totals \$21,974.96 or approximately 13% of total expenses.  
24 These are the charges for computerized factual and legal research services, including LexisNexis,  
25 Westlaw, Thomson and PACER. These services allowed counsel to perform media searches on  
26 Extreme, obtain analysts' reports and financial data for Extreme, and conduct legal research.

27 97. Lead Counsel also paid \$6,021.10 (or approximately 4% of total costs) in  
28 mediation fees assessed by the mediator in this matter.

1           98.     The other expenses for which Lead Counsel seeks payment are the types of  
2 expenses that are necessarily incurred in litigation and routinely charged to clients billed by the  
3 hour. These expenses include, among others, duplicating costs, long distance telephone and  
4 facsimile charges, filing fees, and postage and delivery expenses.

5           99.     All of the litigation expenses incurred, which total \$167,200.00, were necessary to  
6 the successful prosecution and resolution of the claims against Defendants.

7 **X.     LEAD PLAINTIFF'S REIMBURSEMENT PURSUANT TO THE PSLRA**

8           100.    Additionally, in accordance with 15 U.S.C. §78u-4(a)(4), Lead Plaintiff ATRS  
9 seeks reimbursement of its reasonable costs and expenses (including lost wages) incurred in  
10 connection with its work representing the class in the amount of \$2,180.8. The amount of time  
11 and effort devoted to this Action by ATRS is detailed in the accompanying Declaration of Rod  
12 Graves, attached hereto as Exhibit 1. Lead Counsel respectfully submits that the amount  
13 requested is consistent with Congress's intent, as expressed in the PSLRA, of encouraging  
14 institutional investors to take an active role in commencing and supervising private securities  
15 litigation.

16           101.    As discussed in the Fee Brief and in the Lead Plaintiff's declaration, ATRS has  
17 been committed to pursuing the class's claims since it became involved in the litigation back in  
18 2015. As a large institutional investor, ATRS has actively and effectively fulfilled its obligation  
19 as a representative of the class, complying with all of the many demands placed upon it during  
20 the litigation and settlement of the Action, and providing valuable assistance to Lead Counsel.  
21 Among other things, ATRS met with Lead Counsel and spoke with them on a regular basis to  
22 discuss the status of the case and counsel's strategy for the prosecution, and eventual settlement,  
23 of the case. ATRS also reviewed pleadings and other material documents during the litigation.  
24 Mr. Graves also attended the May 2016 hearing on ATRS's motion for appointment as lead  
25 plaintiff. Ex. 1 at ¶5. These efforts required employees of ATRS to dedicate time and resources  
26 to the Action that they would have otherwise devoted to their regular duties.

1           102. The efforts expended by ATRS during the course of the Action are precisely the  
2 types of activities courts have found support reimbursement to class representatives, and support  
3 the Lead Plaintiff's request for reimbursement.

4 **XI. THE REACTION OF THE SETTLEMENT CLASS TO THE**  
5 **FEE AND EXPENSE APPLICATION**

6           103. As mentioned above, consistent with the Preliminary Approval Order, a total of  
7 27,710 Notices have been mailed to potential Settlement Class Members advising them that Lead  
8 Counsel would seek an award of attorneys' fees not to exceed 25% of the Settlement Fund, and  
9 payment of expenses in an amount not greater than \$230,000. *See* Ex. 2 at ¶7. Additionally, the  
10 Summary Notice was published in *Investor's Business Daily* and disseminated over *PR*  
11 *Newswire*. *Id.* at ¶8. The Notice and the Stipulation have also been available on the settlement  
12 website maintained by the Claims Administrator. *Id.* at ¶10.<sup>10</sup> While the deadline set by the  
13 Court for Settlement Class Members to object to the requested fees and expenses has not yet  
14 passed, to date Lead Plaintiff has received no objections. Lead Counsel will respond to any  
15 objections received in its reply papers, which are due June 6, 2019.

16 **XII. MISCELLANEOUS EXHIBITS**

17           104. Attached hereto as Exhibit 7 is a true and correct copy of Stefan Boettrich &  
18 Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review*  
19 (NERA Jan. 29, 2019).

20           105. Attached hereto as Exhibit 8 is a compendium of unreported cases, in alphabetical  
21 order, cited in the accompanying Fee Brief.

22 **XIII. CONCLUSION**

23           106. In view of the significant recovery to the Settlement Class and the substantial  
24 risks of this litigation, as described above and in the accompanying memorandum of law, Lead  
25 Plaintiff and Lead Counsel respectfully submit that the Settlement should be approved as fair,  
26 reasonable, and adequate and that the proposed Plan of Allocation should likewise be approved

27  
28 <sup>10</sup> Lead Plaintiff's motion for approval of the Settlement and Lead Counsel's motion for  
an award of attorneys' fees and expenses will also be posted on the Settlement website.

1 as fair, reasonable, and adequate. In view of the significant recovery in the face of substantial  
2 risks, the quality of work performed, the contingent nature of the fee, and the standing and  
3 experience of Lead Counsel, as described above and in the accompanying memorandum of law,  
4 Lead Counsel respectfully submits that a fee in the amount of 25% of the Settlement Fund be  
5 awarded, that litigation expenses in the amount of \$167,200.00 be paid, and that Lead Plaintiff  
6 be awarded \$2,180.80, pursuant to the PSLRA.

7  
8 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
9 May 9, 2019.

10   
11 CAROL C. VILLEGAS

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 9, 2019, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 9, 2019

/s/ Carol C. Villegas  
Carol C. Villegas

1 **Electronic Mail Notice List**

2 **Mailing Information for a Case 5:15-cv-04883-BLF**

3 ***Hong v. Extreme Networks, Inc. et al.***

4 **Electronic Mail Notice List**

5 The following are those who are currently on the list to receive e-mail notices for this case.

- 6 • **Eric J. Belfi**  
7 ebelfi@labaton.com,kgutierrez@labaton.com,ElectronicCaseFiling@labaton.com,  
8 4076904420@filings.docketbird.com
- 9 • **Kenneth Joseph Black**  
10 KennyB@rgrdlaw.com
- 11 • **Alec T Coquin**  
12 acoquin@labaton.com,kgutierrez@labaton.com,7391740420@filings.docketbird.com,  
13 electroniccasefiling@labaton.com
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16 mpenrhyn@labaton.com,echan-lee@labaton.com,electroniccasefiling@labaton.com
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26 electroniccasefiling@labaton.com
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28 elliot.katz@dlapiper.com
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drogers@labaton.com,electroniccasefiling@labaton.com
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jalieberman@pomlaw.com
- **Francis P McConville**  
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abarbosa@pomlaw.com,jpalazzolo@pomlaw.com

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13 shawnw@rgrdlaw.com,kmccarty@rgrdlaw.com,e\_file\_sd@rgrdlaw.com,  
kirstenb@rgrdlaw.com
- 14 • **Nicole Zeiss**  
zeiss@labaton.com,cboria@labaton.com

15 **Manual Notice List**

16 The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case  
(who therefore require manual noticing).

- 17 • (No manual recipients)
- 18  
19  
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# **Exhibit 1**

**LABATON SUCHAROW LLP**

Carol C. Villegas (*pro hac vice*)

Alec T. Coquin (*pro hac vice*)

140 Broadway

New York, NY 10005

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Facsimile: (212) 818-0477

Email: cvillegas@labaton.com

acoquin@labaton.com

*Attorneys for Lead Plaintiff and Lead Counsel  
for the Class*

**BERMAN TABACCO**

Nicole Lavalley (SBN 165755)

A. Chowning Poppler (SBN 272870)

44 Montgomery Street, Ste. 650

San Francisco, CA 94111

Telephone: (415) 433-3200

Facsimile: (415) 433-6382

Email: nlavalley@bermantabacco.com

cpoppler@bermantabacco.com

*Liaison Counsel for the Class*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

In re EXTREME NETWORKS, INC.  
SECURITIES LITIGATION

This Document Relates to:

All Actions.

Master File No. 5:15-cv-04883-BLF-SVK

**DECLARATION OF ROD GRAVES,  
DEPUTY DIRECTOR OF ARKANSAS  
TEACHER RETIREMENT SYSTEM, IN  
SUPPORT MOTION FOR APPROVAL  
OF CLASS ACTION SETTLEMENT  
AND MOTION FOR ATTORNEYS'  
FEES AND EXPENSES**

Date: June 20, 2019 1:30 p.m.

Dept.: Courtroom 4, 5th Floor

Judge: Hon. Beth Labson Freeman

1 I, ROD GRAVES, declare as follows pursuant to 28 U.S.C. § 1746:

2 1. I am the Deputy Director of Arkansas Teacher Retirement System (“ATRS”), the  
3 Court-appointed Lead Plaintiff in the above-captioned securities class action (the “Action”).<sup>1</sup>  
4 ATRS is a public pension fund organized in 1937 to provide retirement, disability, and survivor  
5 benefit programs to active and retired public teachers of the State of Arkansas. ATRS is  
6 responsible for the retirement income of these employees and their beneficiaries. As of June 30,  
7 2018, ATRS’s defined benefit plans served more than 125,000 active and retired members and  
8 their beneficiaries, and ATRS had over \$17 billion in assets under management.

9  
10 2. I respectfully submit this declaration in support of (a) approval of the proposed  
11 class action settlement and plan of allocation for the proceeds of the Settlement and (b) Lead  
12 Counsel’s motion for an award of attorneys’ fees and litigation expenses, which includes  
13 ATRS’s application for reimbursement of costs and expenses pursuant to the Private Securities  
14 Litigation Reform Act of 1995 (“PSLRA”).

15  
16 3. I have personal knowledge of the matters set forth in this declaration, as I, or  
17 others working with me, have been directly involved in monitoring and overseeing the  
18 prosecution of the Action, and I could and would testify competently thereto.

19 **ATRS’s Oversight of the Litigation on Behalf of the Settlement Class**

20 4. ATRS understands that the PSLRA was intended to encourage institutional  
21 investors with large losses to seek to manage and direct securities fraud class actions. ATRS is a  
22 large, sophisticated institutional investor that committed itself to vigorously prosecuting this  
23 litigation, through trial if necessary. In seeking appointment as a lead plaintiff in the case, ATRS  
24

25  
26  
27 <sup>1</sup> All capitalized terms used herein, unless otherwise defined, have the same meanings as set  
28 forth in the Stipulation and Agreement of Settlement (the “Stipulation”), dated November 30,  
2018. ECF No. 156-1.

1 understood its fiduciary duties to serve the interests of the class by participating in the  
2 management and prosecution of the case.

3 5. Since ATRS's appointment as Lead Plaintiff on June 28, 2016, I and the former  
4 Executive Director of ATRS, George Hopkins, who retired on November 16, 2018, have  
5 monitored and been engaged in all material aspects of the prosecution and resolution of this  
6 litigation. Among other things, we met with our attorneys and spoke with them on a regular  
7 basis to discuss the status of the case and counsel's strategy for the prosecution, and eventual  
8 settlement, of the case. ATRS also reviewed pleadings and other material documents during the  
9 litigation. I also attended the May 2016 hearing on our motion for appointment as lead plaintiff.

10  
11 **ATRS Endorses Approval of the Settlement**

12 6. Based on its involvement throughout the prosecution and resolution of the Action,  
13 ATRS believes that the proposed Settlement is fair, reasonable, and adequate and in the best  
14 interest of the Settlement Class. ATRS believes that the proposed Settlement represents a  
15 favorable recovery for the Settlement Class, particularly in light of the substantial risks of  
16 continuing to litigate the Action, and it endorses approval of the Settlement by the Court.

17  
18 **ATRS Supports Lead Counsel's Motion for an Award of Attorneys'  
19 Fees and Payment of Litigation Expenses**

20 7. ATRS also believes that Lead Counsel's request for an award of attorneys' fees in  
21 the amount of 25% of the Settlement Fund is fair and reasonable. ATRS has evaluated Lead  
22 Counsel's fee request in light of the efficient work performed, the risks and challenges in the  
23 litigation, as well as the recovery obtained for the Settlement Class. ATRS understands that  
24 Lead Counsel will also devote additional time in the future to administering the Settlement.  
25 ATRS further believes that the litigation expenses requested are reasonable, and represent the  
26 costs and expenses that were necessary for the successful prosecution and resolution of this case.  
27 Based on the foregoing, and consistent with its obligation to obtain the best result at the most  
28

1 efficient cost on behalf of the Settlement Class, ATRS fully supports Lead Counsel's motion for  
2 attorneys' fees and payment of litigation expenses.

3 **Work Performed by ATRS on Behalf of the Settlement Class**

4 8. Since ATRS's appointment, I and the former Executive Director, George  
5 Hopkins, monitored and were engaged in all material aspects of the prosecution and resolution of  
6 this litigation.

7  
8 9. ATRS understands that reimbursement of a lead plaintiff's reasonable costs and  
9 expenses, including lost wages, is authorized under §21D(a)(4) of the PSLRA, 15 U.S.C. §78u-  
10 4(a)(4). Consequently, in connection with Lead Counsel's request for payment of litigation  
11 expenses, ATRS seeks reimbursement in the amount of \$2,180.80, which represents the cost of  
12 the 25 hours that ATRS devoted to supervising and participating in the litigation.

13  
14 10. In total, I dedicated at least 15 hours to this Action on behalf of ATRS. This was  
15 time that I did not spend conducting ATRS's usual business. My effective hourly rate is \$72.78  
16 per hour. The total cost of my time is \$1,091.70.

17  
18 11. In total, Mr. Hopkins dedicated at least 10 hours to this Action on behalf of  
19 ATRS. This was time that he did not spend conducting ATRS's usual business. His effective  
20 hourly rate is \$108.91 per hour. The total cost of his time is \$1,089.10.

21 **Conclusion**

22  
23 12. In conclusion, ATRS endorses the Settlement as fair, reasonable, and adequate,  
24 and believes it represents a favorable recovery for the Settlement Class in light of the significant  
25 risks of continued litigation. ATRS further supports Lead Counsel's attorneys' fee and litigation  
26 expense request and believes that it represents fair and reasonable compensation for counsel in  
27

1 light of the work performed, the recovery obtained for the Settlement Class, and the attendant  
2 litigation risks.

3  
4 I declare under penalty of perjury under the laws of the United States of America that the  
5 foregoing is true and correct.

6 Executed this 7 day of May, 2019 at Little Rock, Arkansas.

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8 

9 \_\_\_\_\_  
10 Rod Graves  
11 Deputy Director  
12 Arkansas Teacher Retirement System  
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# **Exhibit 2**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

In re EXTREME NETWORKS, INC.  
SECURITIES LITIGATION

This Document Relates to:  
All Actions.

Master File No. 3:15-cv-04883-BLF  
CLASS ACTION

**DECLARATION OF LANCE CAVALLO REGARDING  
(A) MAILING OF THE NOTICE AND CLAIM FORM;  
(B) PUBLICATION OF SUMMARY NOTICE; AND  
(C) REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE**

I, Lance Cavallo, declare and state as follows:

1. I am a Senior Project Manager of Class Actions at Kurtzman Carson Consultants LLC (“KCC”). Pursuant to the Court’s March 13, 2019 Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement (the “Preliminary Approval Order”), KCC was appointed as the Claims Administrator in connection with the proposed Settlement of the above-captioned Action.<sup>1</sup> I have personal knowledge of the matters stated herein and, if called upon, could and would testify thereto.

**MAILING OF THE NOTICE AND CLAIM FORM**

2. Pursuant to the Preliminary Approval Order, KCC is responsible for disseminating the Notice of Pendency of Class Action, Proposed Settlement, and Motion For Attorneys’ Fees and Expenses (the “Notice”) and the Proof of Claim and Release (the “Claim Form” and, collectively with the Notice, the “Notice Packet”) to potential Settlement Class Members. A copy of the Notice Packet is attached hereto as Exhibit A.

<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated November 30, 2018 (the “Stipulation”).

1           3.       In accordance with the Stipulation and Preliminary Approval Order, KCC  
2 received from Computershare, the transfer agent for Extreme Networks, Inc. (“Extreme”), a list  
3 containing the names and addresses of 245 persons or entities who purchased Extreme common  
4 stock during the period from September 12, 2013 through and including April 9, 2015 (the “Class  
5 Period”). On March 27, 2019, KCC disseminated Notice Packets by first-class mail to the 245  
6 potential Settlement Class Members contained on this list.

7           4.       As in most class actions of this nature, a large majority of potential Settlement  
8 Class Members are beneficial purchasers whose securities were held in “street name” – *i.e.*, the  
9 securities were purchased by brokerage firms, banks, institutions and other third-party nominees  
10 in the name of the nominee, on behalf of the beneficial purchasers. KCC maintains a proprietary  
11 database with the names and addresses of the largest and most common U.S. banks, brokerage  
12 firms, and nominees, including national and regional offices of certain nominees (the “Nominee  
13 Database”). KCC’s Nominee Database is updated from time to time as new nominees are  
14 identified, and others merge or cease to exist. At the time of the initial mailing, the Nominee  
15 Database contained 964 mailing records. On March 27, 2019, KCC caused Notice Packets to be  
16 mailed to the 964 mailing records contained in KCC’s Nominee Database.

17           5.       The Notice directed those who purchased or otherwise acquired publicly  
18 traded common stock and exchange-traded call options, and/or sold put options of Extreme during  
19 the Class Period, for the beneficial interest of persons or organizations other than themselves, to  
20 provide KCC with the name and last known address of each person or entity for whom the  
21 Nominee executed such transactions. KCC then caused the Notice Packet to be mailed promptly  
22 to said beneficial owners. Alternatively, Nominees may request additional copies of the Notice  
23 Packet from KCC, in which case the Nominees are required to promptly mail the Notice Packet  
24 directly to the persons for whom the transactions were made.

25           6.       Following the initial mailing, through May 7, 2019, KCC has received an  
26 additional 13,209 unique names and addresses of potential Settlement Class Members from  
27 individuals or nominees requesting that a Notice Packet be mailed to such persons or entities.  
28 Additionally, KCC has received requests from nominees for an additional 13,292 unaddressed

1 Notice Packets to be forwarded by the nominees to their customers. All such requests have been  
2 honored in a timely manner, and KCC will continue to disseminate Notice Packets upon receipt of  
3 any additional requests and/or upon receipt of updated addresses.

4 7. As a result of the efforts described above, as of May 7, 2019, KCC has mailed  
5 a total of 27,710 Notice Packets to potential Settlement Class Members and nominees.

6 **PUBLICATION OF THE SUMMARY NOTICE**

7 8. Pursuant to the Preliminary Approval Order, on April 8, 2019, KCC caused  
8 the Summary Notice to be published in *Investor's Business Daily* and to be transmitted over *PR*  
9 *Newswire*. Attached hereto as Exhibit B are confirmations of publication and transmittal.

10 **TELEPHONE HOTLINE**

11 9. KCC established and continues to maintain a toll-free telephone number (1-  
12 866-526-6266) for potential Settlement Class Members to call and obtain information about the  
13 Settlement, request a Notice Packet, and/or seek assistance from a live operator during regular  
14 business hours. The telephone hotline became operational on March 27, 2019.

15 **SETTLEMENT WEBSITE**

16 10. To further assist potential Settlement Class Members, KCC, in coordination  
17 with Lead Counsel, designed, implemented and currently maintains a website,  
18 [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com), dedicated to the Settlement (the "Settlement  
19 Website"). The address for the Settlement Website is set forth in the Notice, Claim Form and  
20 Summary Notice. The Settlement Website became operational on March 27, 2019, and is  
21 accessible 24 hours a day, 7 days a week. The Settlement Website lists the exclusion, objection,  
22 and claim submission deadlines, as well as the date and time of the Court's Settlement Hearing. In  
23 addition, the Settlement Website contains links to copies of the Stipulation, the Preliminary  
24 Approval Order, and the Notice Packet, all of which can be downloaded by potential Settlement  
25 Class Members. The Settlement Website also contains detailed instructions for entities who wish  
26 to submit claims electronically. KCC will continue operating, maintaining and, as appropriate,  
27 updating the Settlement Website until the conclusion of the administration.

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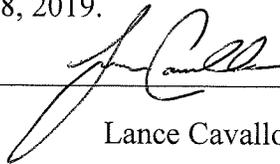
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**REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE**

11. The Notice informs potential Settlement Class Members that requests for exclusion from the Settlement Class must be addressed to Extreme Networks, Inc. Securities Litigation, EXCLUSIONS, c/o KCC Class Action Services, P.O Box 505026, Louisville, KY 40233, such that they are received no later than May 23, 2019. The Notice also sets forth the information that must be included in each request for exclusion. As of May 7, 2019, KCC can confirm that it has not received any exclusion requests. KCC will submit a supplemental declaration after the May 23, 2019 deadline for requesting exclusion, that will report on any exclusion requests received.

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

Executed in New York, New York on May 8, 2019.

  
\_\_\_\_\_  
Lance Cavallo

# Exhibit A

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

In re EXTREME NETWORKS, INC.  
SECURITIES LITIGATION

Master File No. 3:15-cv-04883-BLF

CLASS ACTION

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

This Document Relates to:

All Actions.

**If you purchased or otherwise acquired publicly traded common stock and exchange-traded call options, and/or sold put options, of Extreme Networks, Inc. during the period from September 12, 2013 through April 9, 2015, inclusive (the "Class Period"), you may be entitled to a payment from a class action settlement.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

- If approved by the Court, the proposed Settlement will create a \$7,000,000 settlement fund, plus earned interest, for the benefit of eligible Settlement Class Members, less any attorneys' fees and expenses awarded by the Court, Notice and Administration Expenses, and Taxes.<sup>1</sup>
- The Settlement resolves claims by Arkansas Teacher Retirement System ("ATRS" or "Lead Plaintiff") that have been asserted on behalf of the proposed Settlement Class against Extreme Networks, Inc. ("Extreme" or the "Company") and Charles W. Berger, Kenneth B. Arola, and John T. Kurtzweil (collectively, the "Individual Defendants," and with the Company, "Defendants").

**Your legal rights are affected whether you act or do not act. Read this Notice carefully.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM BY JUNE 6, 2019</b>	The <i>only</i> way to get a payment.
<b>EXCLUDE YOURSELF BY MAY 23, 2019</b>	Get no payment. This is the <i>only</i> option that allows you to ever bring or be part of any <i>other</i> lawsuit against Defendants and the other Released Defendant Parties about the Released Claims.
<b>OBJECT BY MAY 23, 2019</b>	Write to the Court about why you do not like the Settlement, the proposed Plan of Allocation, and/or the Fee and Expense Application. This will not exclude you from the Settlement Class.
<b>GO TO A HEARING ON JUNE 20, 2019</b>	Ask to speak in Court about the Settlement at the Settlement Hearing.
<b>DO NOTHING</b>	Get no payment. Give up rights.

**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 \$7,000,000 (the "Settlement Amount"), which will be deposited into an interest-bearing Escrow Account (the "Settlement Fund"). The Net Settlement Fund (as defined below) will be distributed to Settlement Class Members according to the Court-approved plan of allocation (the "Plan of Allocation" or "Plan"). The proposed Plan of Allocation is set forth on pages 8-12 below.

**Estimate of Average Amount of Recovery Per Share**

2. Based on Lead Plaintiff's consulting damages expert's estimate of the number of shares of Extreme common stock eligible to participate in the Settlement, and assuming that all investors eligible to participate do so, Lead Plaintiff estimates that the average recovery would be approximately \$0.05 per damaged share (before deduction of any Court-approved fees and expenses, such as attorneys' fees and expenses, Taxes, and Notice and Administration Expenses), and approximately \$0.04 per damaged share after the deduction of the attorneys' fees and expenses discussed below.<sup>2</sup> **Please note, however, that these average recovery amounts are only estimates and Settlement Class**

<sup>1</sup> All capitalized terms not otherwise defined in this Notice shall have the meaning provided in the Stipulation and Agreement of Settlement, dated as of November 30, 2018 (the "Stipulation"), which can be viewed at [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com).

<sup>2</sup> An allegedly damaged share might have been traded, and potentially damaged, more than once during the Class Period, and the average recovery indicated above represents the estimated average recovery for each share that allegedly incurred damages.

**Members may recover more or less than these estimated amounts.** An individual Settlement Class Member's actual recovery will depend on numerous factors. These factors are fully explained in the Plan of Allocation beginning on page 8. Please refer to the Plan for information on the calculation of your Recognized Claim (defined below).

**Statement of Potential Outcome of Case**

3. The Parties disagree about both liability and damages and do not agree on the damages that would be recoverable if Lead Plaintiff were to prevail on each claim asserted against Defendants. The issues on which the Parties disagree include, for example: (i) whether Defendants made any statements or omitted any facts that were materially false or misleading, or otherwise actionable under the federal securities laws; (ii) whether any such allegedly materially false or misleading statements or omissions were made with the required level of intent or recklessness; (iii) the amounts by which the prices of Extreme common stock and call options were allegedly artificially inflated (or deflated in the case of put options), if at all, during the Class Period; and (iv) the extent to which factors such as general market, economic, and industry conditions, influenced the trading prices of Extreme common stock or exchange-traded options ("Extreme Securities") during the Class Period.

4. Defendants have denied and continue to deny any wrongdoing, deny that they have committed any act or omission giving rise to any liability or violation of law, and deny that Lead Plaintiff and the Settlement Class have suffered any loss attributable to Defendants' actions. While Lead Plaintiff believes it has meritorious claims, it recognizes that there are significant obstacles in the way to recovery.

**Statement of Attorneys' Fees and Expenses Sought**

5. Lead Counsel, on behalf of itself and Liaison Counsel Berman Tabacco ("Plaintiffs' Counsel"), will apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 25% of the Settlement Fund, which includes any accrued interest. Lead Counsel will also apply for payment of litigation expenses incurred by Plaintiffs' Counsel in prosecuting the Action in an amount not to exceed \$230,000, plus accrued interest, which may include an application pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA") for the reasonable costs and expenses (including lost wages) of Lead Plaintiff directly related to its representation of the Settlement Class. If the Court approves Lead Counsel's Fee and Expense Application, the average amount of fees and expenses, assuming claims are filed for all shares eligible to participate in the Settlement, will be approximately \$0.01 per allegedly damaged share of Extreme common stock.

**Reasons for the Settlement**

6. 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 that the Court may grant some or all of the anticipated motions to be filed by Defendants; the risks of litigation, especially in complex securities actions like this; as well as the difficulties and delays inherent in such litigation (including any trial and appeals). For Defendants, who deny all allegations of wrongdoing or liability whatsoever and deny that Settlement Class Members were damaged, the principal reasons for entering into the Settlement are to end the burden, expense, uncertainty, and risk of further litigation.

**Identification of Attorneys' Representatives**

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

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

[END OF PSLRA COVER PAGE]

**BASIC INFORMATION****1. Why did I get this Notice?**

8. You or someone in your family, or an investment account for which you serve as a custodian, may have purchased or otherwise acquired publicly traded Extreme common stock, exchange-traded call options, and/or sold publicly traded Extreme put options during the Class Period, and may be a Settlement Class Member. This Notice explains the Action, the Settlement, Settlement Class Members' legal rights, what benefits are available, who is eligible for them, and how to get them.

9. The Court directed that this Notice be sent to Settlement Class Members to inform them of the terms of the proposed Settlement and about all of their options, before the Court decides whether to approve the Settlement at the upcoming hearing to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and Lead Counsel's Fee and Expense Application (the "Settlement Hearing").

10. The Court in charge of the Action is the United States District Court for the Northern District of California, and the case is known as *In re Extreme Networks, Inc. Securities Litigation*, Case No. 3:15-cv-04883-BLF. The Action is assigned to the Honorable Beth Labson Freeman.

**2. What is this case about?**

11. Extreme develops and sells network infrastructure equipment. Its main products include wired and wireless devices for accessing the Internet, as well as relevant software. The Action arises out of Defendants' allegedly false and misleading representations regarding the success of Extreme's post-acquisition integration with its former competitor, Enterasys Networks, Inc., as well as developments in Extreme's key partnership with Lenovo Group, Ltd. As a result of these alleged misrepresentations and omissions, Extreme's stock allegedly traded at artificially inflated prices during the Class Period.

12. Beginning in October 2015, two securities class action complaints were filed in the United States District Court for the Northern District of California on behalf of investors in Extreme. The actions were consolidated by an Order dated December 1, 2015. On June 28, 2016, the Court issued an Order appointing ATRS as Lead Plaintiff pursuant to the PSLRA. By the same Order, the Court approved Lead Plaintiff's selection of Labaton Sucharow LLP as Lead Counsel for the class and Berman Tabacco (f/k/a Berman DeValerio) as Liaison Counsel to represent the class.

13. On September 26, 2016, Lead Plaintiff filed a Consolidated Class Action Complaint for Violations of the Federal Securities Laws asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), and Rule 10b-5 (17 C.F.R. §240.10b-5) promulgated thereunder. On November 10, 2016, Defendants filed a motion to dismiss the consolidated complaint, which Lead Plaintiff opposed on December 23, 2016. On April 27, 2017, the Court issued an Order granting Defendants' motion to dismiss with leave to amend.

14. On June 2, 2017, Lead Plaintiff filed the Amended Consolidated Class Action Complaint (the "Amended Complaint"). The Amended Complaint alleges violations under Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. On July 10, 2017, Defendants filed a motion to dismiss the Amended Complaint, which Lead Plaintiff opposed on August 31, 2017. On March 21, 2018, the Court issued an Order granting in part and denying in part Defendants' motion to dismiss. In particular, the Court found that falsity and scienter were adequately pled with respect to only certain allegations. The Court granted the motion to dismiss with respect to Defendant Kurtzweil on the Section 10(b) claim, finding that he was not alleged to have made any surviving statements. On June 21, 2018, Defendants answered the Amended Complaint, denying Lead Plaintiff's claims and asserting various affirmative defenses.

15. On July 18, 2018, counsel for the Parties met with Robert Meyer, Esq. ("Mr. Meyer"), a well-respected and highly experienced mediator, in an attempt to reach a settlement. The mediation involved an extended effort to settle the claims and was preceded by the exchange of mediation statements. The Parties were unable to reach an agreement at the July 18, 2018 mediation. Following the mediation, the Parties continued to engage in arm's-length efforts, under the auspices of Mr. Meyer, and accepted a mediator's proposal to settle the Action in August 2018 followed by execution of a Settlement Term Sheet on September 26, 2018. On November 30, 2018, the Parties executed the Stipulation, which sets forth the final terms and conditions of the Settlement.

16. Lead Plaintiff, through Lead Counsel, has conducted a thorough investigation relating to the claims, defenses, and underlying events and transactions that are the subject of the Action. This process has included reviewing and analyzing: (i) documents filed publicly by the Company with the SEC; (ii) publicly available information, including press releases, news articles, and other public statements issued by or concerning the Company and the Individual Defendants; (iii) research reports issued by financial analysts concerning the Company; (iv) other publicly available information and data concerning the Company; (v) approximately 1,270 pages of documents produced in advance of mediation, including Board of Director minutes and presentations; and (vi) the applicable law governing the claims and potential defenses. Lead Counsel also contacted 148 former employees of Extreme and other persons with relevant knowledge, interviewed 24 of them (seven of whom were relied on in the Amended Complaint), and consulted with experts on damages issues.

**3. Why is this a class action?**

17. In a class action, one or more persons or entities (in this case, Lead Plaintiff), sue on behalf of people and entities that have similar claims. Together, these people and entities are a “class,” and each is a “class member.” Bringing a case, such as this one, as a class action allows the adjudication of many individuals’ similar claims that might be too small to bring economically as separate 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.

**4. What are the reasons for the Settlement?**

18. The Court did not finally decide in favor of Lead Plaintiff or Defendants. Instead, both sides agreed to a settlement that will end the Action. Lead Plaintiff and Lead Counsel believe that the claims asserted in the Action have merit, however, Lead Plaintiff and Lead Counsel recognize the expense and length of continued proceedings necessary to pursue their claims through trial and appeals, as well as the difficulties in establishing liability and damages. In light of the Settlement and the guaranteed cash recovery to the Settlement Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

19. Defendants have denied and continue to deny any allegations of wrongdoing contained in the Amended Complaint. The Settlement should not be seen as an admission or concession on the part of Defendants. Defendants have taken into account the burden, expense, uncertainty, distraction, and risks inherent in any litigation and have concluded that it is desirable to settle upon the terms and conditions set forth in the Stipulation.

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

20. 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 the publicly traded common stock and exchange-traded call options, and/or sold put options, of Extreme during the period from September 12, 2013 through April 9, 2015, inclusive, and who were damaged thereby.***

21. Receipt of this Notice does not mean that you are a Settlement Class Member. The Parties do not have access to your transactions in Extreme Securities. Please check your records or contact your broker to see if you are a member of the Settlement Class. If one of your mutual funds purchased Extreme Securities during the Class Period, that alone does not make you a Settlement Class Member. You are a Settlement Class Member only if you individually purchased or otherwise acquired Extreme Securities during the Class Period.

**6. Are there exceptions to being included?**

22. Yes. There are some individuals and entities that are excluded from the Settlement Class by definition. Excluded from the Settlement Class are: (i) the Defendants; (ii) the officers and directors of the Company during the Class Period; (iii) the Company’s subsidiaries and affiliates; (iv) the Company’s employee retirement and benefit plan(s) and their participants or beneficiaries, to the extent they made purchases through such plan(s); (v) members of the immediate families of the Individual Defendants and the officers and directors of the Company during the Class Period; (vi) any entity in which any Defendant has or had a controlling interest; and (vii) the legal representatives, heirs, successors, and assigns of any such excluded party. Also excluded from the Settlement Class will be any Person that timely and validly seeks exclusion from the Settlement Class in accordance with the procedures described in Question 11 below or whose request is otherwise allowed by the Court.

**THE SETTLEMENT BENEFITS****7. What does the Settlement provide?**

23. In exchange for the Settlement and the release of the Released Claims against the Released Defendant Parties, Defendants have agreed to fund a \$7 million cash fund, which will accrue interest, to be distributed, 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”), among all Settlement Class Members who submit valid Claim Forms and are found to be eligible to receive a distribution from the Net Settlement Fund (“Authorized Claimants”).

**8. How can I receive a payment?**

24. To qualify for a payment, you must submit a timely and valid Claim Form. A Claim Form is included with this Notice. You can also submit a Claim Form online or obtain a copy using the website dedicated to the Settlement: [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com), or obtain a copy from Lead Counsel’s website, [www.labaton.com](http://www.labaton.com). You can request that a Claim Form be mailed to you by calling the Claims Administrator toll-free at (866) 526-6266. 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 mail or submit it to the Claims Administrator so that it is **postmarked or received no later than June 6, 2019**. A Claim Form will be deemed to be submitted when mailed, if received with a postmark on the envelope and if mailed by first-class or overnight U.S. Mail and addressed in accordance with the instructions. In all other cases, the Claim Form will be deemed to have been submitted when actually received by the Claims Administrator.

25. Please note that if you have an eligible claim that calculates to a payment of less than \$10.00, your payment will be sent to you through PayPal, using an account that you have established, rather than a paper check, given the costs associated with mailing checks. **If you do not provide the information required to process a payment through PayPal and/or you do not have an active PayPal account at the time of payment you will not receive a payment.** For instance, as noted above, if the average settlement recovery is \$0.04 per damaged share and you purchased 200 damaged shares, your payment may be \$8.00. If your payment is \$8.00, you will be paid only through your PayPal account. If you purchased 500 shares your payment may be \$20.00. If your payment is between \$10.00 and \$100.00, you may choose to receive payment through your PayPal account or check (please see the Claim Form for more information). If your payment is more than \$100.00, you will receive a check. **However, please remember that the average recovery amount of \$0.04 per damaged share is only an estimate and Settlement Class Members may recover more or less.** An individual Settlement Class Member's actual recovery will depend on numerous factors. These factors are fully explained in the Plan of Allocation beginning on page 8. Please refer to the Plan for information on the calculation of your Recognized Claim.

#### 9. When will I receive my payment?

26. The Court will hold a Settlement Hearing on **June 20, 2019, at 1:30 p.m.**, 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 or stay in the Settlement Class?

27. If you are a member of the Settlement Class, unless you exclude yourself, you will remain in the class, and that means that, upon the "Effective Date" of the Settlement, you will release all "Released Claims" against the "Released Defendant Parties."

(a) **"Released Claims"** means any and all claims and causes of action of every nature and description, including both known claims and Unknown Claims (defined below), whether arising under federal, state, common or foreign law, or any other law, whether class or individual in nature, that Lead Plaintiff or any other Settlement Class Member (i) asserted in the Action; or (ii) could have asserted in any forum that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in any complaint in the Action and that relate to the purchase or acquisition of the Company's publicly traded common stock, and/or exchange-traded options on such common stock, during the Class Period. Notwithstanding the foregoing, Released Claims do not include (i) claims relating to the enforcement of the Settlement; or (ii) or any claims in the shareholder derivative action *Shaffer v. Kispert*, No. 16-cv-291726 (Super. Ct. of Cal., Santa Clara Cty., Feb. 2, 2016).

(b) **"Released Defendant Parties"** means Defendants, Defendants' Counsel, and each of their respective past, present, or future subsidiaries, parents, affiliates, principals, successors and predecessors, assigns, officers, directors, shareholders, trustees, partners, agents, fiduciaries, contractors, employees, attorneys, auditors, insurers; the spouses, members of the immediate families, representatives, and heirs of the Individual Defendants, as well as any trust of which any Individual Defendant is the settlor or which is for the benefit of any of their immediate family members; any firm, trust, corporation, or entity in which any Defendant has a controlling interest; and any of the legal representatives, heirs, successors in interest or assigns of Defendants.

(c) **"Unknown Claims"** means any and all Released Claims that Lead Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Parties, and any and all Released Defendants' Claims that any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiff Parties, 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 Released Claims and Released Defendants' Claims, the Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff and Defendants shall expressly, and each other Settlement Class Member shall be deemed to have, and by operation of the Judgment or Alternative 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 which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

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 Released Claims and the Released Defendants' Claims, but Lead Plaintiff and Defendants shall expressly, fully, finally, and forever settle and release, and each Settlement Class Member shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment or Alternative Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims and Released Defendants' 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 Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims and Released Defendants' Claims was separately bargained for and was a material element of the Settlement.

28. The "Effective Date" will occur when an Order entered by the Court approving the Settlement becomes Final and is not subject to appeal. 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. Upon the Effective Date, Defendants will also 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.

### EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS

29. If you do not want to be eligible to receive a payment from the Settlement but you want to keep any right you may have to sue or continue to sue the Released Defendant Parties on your own about the 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 bring your own claims, Defendants will have the right to seek their dismissal.**

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

30. 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 *In re Extreme Networks, Inc. Sec. Litig.*, No. 15-04883 (N.D. Cal.)." You cannot exclude yourself by telephone or e-mail. Each request for exclusion must also: (i) state the name, address, and telephone number of the person or entity requesting exclusion; (ii) state the date(s), price(s), and number(s) of shares of all purchases, acquisitions, and sales of Extreme Securities during the Class Period; and (iii) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion must be mailed, so that it is **received no later than May 23, 2019**, to:

*Extreme Networks, Inc. Securities Litigation*  
c/o KCC Class Action Services  
P.O. Box 505026  
Louisville, KY 40233-5026

**Your exclusion request must comply with these requirements in order to be valid.**

31. If you ask to be excluded, do not submit a Claim Form because you cannot receive any payment from the Net Settlement Fund. Also, 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 Released Defendant Parties in the future, assuming your claims are timely. If you have a pending lawsuit against any of the Released Defendant Parties, **please speak to your lawyer in the case immediately.**

### THE LAWYERS REPRESENTING YOU

#### 12. Do I have a lawyer in this case?

32. The Court appointed the law firm of Labaton Sucharow LLP to represent all Settlement Class Members. These lawyers are called "Lead Counsel." You will not be separately charged for these lawyers. The Court will determine the amount of Plaintiffs' Counsel's 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.

#### 13. How will the lawyers be paid?

33. Plaintiffs' Counsel have not received any payment for their services in pursuing the claims against Defendants on behalf of the Settlement Class, nor have they been reimbursed for their litigation expenses. Lead Counsel will ask the Court to award it, together with Liaison Counsel Berman Tabacco, attorneys' fees of no more than 25% of the Settlement Fund, which will include any accrued interest. No other attorneys will share in the fee awarded by the Court. Lead Counsel will also seek payment of litigation expenses incurred by Plaintiffs' Counsel in the prosecution of the Action of no more than \$230,000, plus accrued interest, which may include an application in accordance with the PSLRA for the reasonable costs and expenses (including lost wages) of Lead Plaintiff directly related to its representation of the Settlement Class.

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

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

34. If you are a Settlement Class Member, you can object to the Settlement or any of its terms, the proposed Plan of Allocation, and/or the Fee and Expense Application. You can ask the Court not to approve the Settlement, however you cannot ask the Court to order a different settlement; the Court can only approve or deny this Settlement. If the Court denies approval of the Settlement, no payments will be made to Settlement Class Members and the Action will continue.

35. To object, you must send a signed letter stating that you object to the proposed Settlement, the proposed Plan of Allocation, and/or the Fee and Expense Application in "*In re Extreme Networks, Inc. Sec. Litig.*, No. 15-04883 (N.D. Cal.)." Your objection must state why you are objecting and whether your objection applies only to you, a subset of the Settlement Class, or the entire Settlement Class. The objection must also: (i) include the name, address, and telephone number of the person or entity objecting; (ii) contain a statement of the objection and the specific reasons for it, including any legal and evidentiary support (including witnesses) the Settlement Class Member wishes to bring to the Court's attention; and

(iii) identify the number of shares of Extreme Securities purchased, acquired, and/or sold during the Class Period, as well as the date, number of shares, and price per share of each such purchase, acquisition, and/or 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 the proposed Settlement, the Plan of Allocation, and/or Lead Counsel's Fee and Expense Application. Your objection must be submitted to the Court either by mailing it to the Clerk of the Court or filing it with the Court so that it is **postmarked or filed no later than May 23, 2019**, using this address: Clerk of the Court, United States District Court, Northern District of California, Robert F. Peckham Federal Building, United States Courthouse, 280 South 1st Street, San Jose, CA 95113.

**15. What is the difference between objecting and seeking exclusion?**

36. 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. 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**

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

37. The Court will hold the Settlement Hearing on **June 20, 2019 at 1:30 p.m.**, in Courtroom 3, 5th Floor of the Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, San Jose, CA 95113. At this hearing, the Court will consider whether: (i) the Settlement is fair, reasonable, adequate, and should be finally approved; (ii) the Plan of Allocation is fair and reasonable, and should be approved; and (iii) Lead Counsel's Fee and Expense Application is reasonable and should be approved. The Court will take into consideration any written objections filed in accordance with the instructions in Question 14 above. We do not know how long it will take the Court to make these decisions.

38. You should be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent to Settlement Class Members. If you want to attend the hearing, you should check with Lead Counsel beforehand to be sure that the date and/or time has not changed, periodically check the Court's website at <https://www.cand.uscourts.gov/cm-ecf>, or periodically check the settlement website at [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com) to see if the Settlement Hearing stays as calendared or is changed. Subscribers to PACER, a fee-based service, can also view the Court's docket for the Action for updates about the Settlement Hearing through the Court's online Case Management/Electronic Case Files System at <https://www.pacer.gov>.

**17. Do I have to come to the Settlement Hearing?**

39. 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 come to Court 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 file and serve a Notice of Appearance in the manner described in the answer to Question 18 below **no later than May 23, 2019**.

**18. May I speak at the Settlement Hearing?**

40. You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must include with your objection (see Question 14), **no later than May 23, 2019**, a statement that you, or your attorney, intend to appear in "*In re Extreme Networks, Inc. Sec. Litig.*, No. 15-04883 (N.D. Cal.)." Persons who intend to present evidence at the Settlement Hearing must also include in their objections the identities of any witnesses they may wish to call to testify and any exhibits they intend to introduce into evidence at the hearing. You may not speak at the Settlement Hearing if you exclude yourself or if you have not provided written notice in accordance with the procedures described in this Question 18 and Question 14 above.

**IF YOU DO NOTHING**

**19. What happens if I do nothing at all?**

41. 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 the other Released Defendant Parties concerning the Released Claims. To share in the Net Settlement Fund, you must submit a Claim Form (see Question 8 above).

**GETTING MORE INFORMATION****20. Are there more details about the Settlement?**

42. This Notice summarizes the proposed Settlement. More details are in the Stipulation. Lead Counsel's motions in support of final approval of the Settlement, the request for attorneys' fees and litigation expenses, and approval of the proposed Plan of Allocation will be filed with the Court no later than May 9, 2019 and available from Lead Counsel, the Claims Administrator, or the Court, pursuant to the instructions below.

43. You may review the Stipulation or documents filed in the case at the Office of the Clerk of the United States District Court for the Northern District of California, Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, Room 2112, San Jose, CA 95113 on weekdays (other than court holidays) between 9:00 a.m. and 4:00 p.m. Subscribers to PACER can also view the papers filed publicly in the Action through the Court's online Case Management/Electronic Case Files System at <https://www.pacer.gov>.

44. You can also get a copy of the Stipulation and other case documents by calling the Claims Administrator toll free at (866) 526-6266; writing to the Claims Administrator at *Extreme Networks, Inc. Securities Litigation*, c/o KCC Class Action Services, P.O. Box 505026, Louisville, KY 40233-5026; or visiting the website dedicated to the Settlement, [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com) or the website of Lead Counsel, [www.labat.com](http://www.labat.com). **Please do not call the Court with questions about the Settlement.**

**PLAN OF ALLOCATION OF NET SETTLEMENT FUND****21. How will my claim be calculated?**

45. As discussed above, the Settlement Amount and any interest it earns constitute the Settlement Fund. The Settlement Fund, after the deduction of Court-approved attorneys' fees and litigation expenses, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court, is the Net Settlement Fund. If the Settlement is approved by the Court, the Net Settlement Fund will be distributed to eligible Authorized Claimants – *i.e.*, members of the Settlement Class who timely submit valid Claim Forms that are accepted for payment – in accordance with this proposed Plan of Allocation or such other plan of allocation as the Court may approve. Settlement Class Members who do not timely submit valid Claim Forms will not share in the Net Settlement Fund, but will otherwise be bound by the Settlement. The Court may approve this proposed 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, [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com).

46. To design the Plan, Lead Counsel has conferred with Lead Plaintiff's damages expert. The objective of the Plan of Allocation is to distribute the Net Settlement Fund equitably among those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The Plan of Allocation is not intended to estimate, or be indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations intended to estimate the amounts that will be paid to Authorized Claimants. The Plan of Allocation measures the amount of loss that a Settlement Class Member can claim for purposes of making *pro rata* allocations of the Net Settlement Fund to Authorized Claimants.

47. For losses to be compensable damages under the federal securities laws, the disclosure of the allegedly misrepresented information must be the cause of the change in the price of the securities at issue. In this case, Lead Plaintiff alleged that Defendants issued false statements and omitted material facts during the Class Period that artificially inflated the price of Extreme common stock and call options (and artificially deflated the price of Extreme put options). It is alleged that corrective information released to the market on February 5, 2014 (prior to market open), May 6, 2014 (after market close), October 15, 2014 (prior to market open), and April 9, 2015 (after market close) impacted the market prices of Extreme Securities in a statistically significant manner and removed the alleged artificial inflation (deflation for put options) from the prices on February 5, 2014, May 7-8, 2014, October 16, 2014, and April 10, 2015. Accordingly, in order to have a compensable loss in this Settlement, the Extreme common stock and call options must have been purchased or otherwise acquired during the Class Period and held through at least one of the alleged corrective disclosures listed above and, with respect to put options, those options must have been sold (written) during the Class Period and not closed through at least one of the alleged corrective disclosures.

**CALCULATION OF RECOGNIZED LOSS AMOUNTS**

48. A "Recognized Loss Amount" will be calculated as set forth herein for each purchase of Extreme common stock and call options and each sale of Extreme put options during the Class Period that is listed in the Claim Form and for which adequate documentation is provided. The sum of a claimant's Recognized Loss Amounts will be the claimant's "Recognized Claim." 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.

**COMMON STOCK CALCULATIONS**

49. For each share of common stock purchased or otherwise acquired during the Class Period and sold before the close of trading on April 9, 2015, an “Out of Pocket Loss” will be calculated. Out of Pocket Loss is defined as the purchase price (excluding all fees, taxes, and commissions) minus the sale price (excluding all fees, taxes, and commissions). To the extent that the calculation of the Out of Pocket Loss results in a negative number, that number shall be set to zero.

50. **For each share of Extreme common stock purchased or acquired from September 12, 2013 through and including April 9, 2015 and:**

- A. Sold before the opening of trading on February 5, 2014, the Recognized Loss Amount for each such share shall be zero.
- B. Sold after the opening of trading on February 5, 2014, and before the close of trading on April 9, 2015, the Recognized Loss Amount for each such share shall be **the lesser of:**
  1. the dollar artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 1** below minus the dollar artificial inflation applicable to each such share on the date of sale as set forth in **Table 1** below; or
  2. the Out of Pocket Loss.
- C. Sold after the close of trading on April 9, 2015, and before the close of trading on July 8, 2015, the Recognized Loss Amount for each such share shall be **the least of:**
  1. the dollar artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 1** below; or
  2. the actual purchase/acquisition price of each such share minus the average closing price from April 10, 2015, up to the date of sale as set forth in **Table 2**<sup>3</sup> (available at [www. ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com)); or
  3. the Out of Pocket Loss.
- D. Held as of the close of trading on July 8, 2015, the Recognized Loss Amount for each such share shall be **the lesser of:**
  1. the dollar artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 1** below; or
  2. the actual purchase/acquisition price of each such share minus the average closing price of \$2.63.

**TABLE 1**

**Extreme Networks Common Stock Artificial Inflation  
For Purposes of Calculating Purchase and Sale Inflation**

Transaction Date	Artificial Inflation Per Share
September 12, 2013 – February 4, 2014	\$3.50
February 5, 2014 – May 6, 2014	\$3.28
May 7, 2014	\$1.87
May 8, 2014 – October 15, 2014	\$1.49
October 16, 2014 – April 9, 2015	\$0.77

**CALL AND PUT OPTIONS CALCULATIONS**

51. Exchange-traded options are traded in units called “contracts,” which entitle the holder to buy (in the case of a call option) or sell (in the case of a put option) 100 shares of the underlying security, which in this case is Extreme common stock. Throughout this Plan of Allocation, all price quotations are per share of the underlying security (*i.e.*, 1/100 of a contract).

52. Each option contract specifies a strike price and an expiration date. Contracts with the same strike price and expiration date are referred to as a “series” and each series represents a different security that trades in the market and has its own market price (and thus artificial inflation or deflation). Under the Plan of Allocation, the dollar artificial inflation per share (*i.e.*, 1/100 of a contract) for each series of Extreme call options and the dollar artificial deflation per share (*i.e.*, 1/100 of a contract) for each series of Extreme put options has been calculated by Lead Plaintiff’s damages expert.

<sup>3</sup> Pursuant to Section 21D(e)(1) of the Exchange Act, “in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.” Consistent with this requirement, Recognized Loss Amounts are reduced by taking into account the closing prices of Extreme common stock during the “90-day look-back period,” April 10, 2015 through July 8, 2015. The mean (average) closing price for Extreme common stock during this 90-day look-back period was \$2.63.

53. Transactions in Extreme options that expired before February 5, 2014 have a Recognized Loss Amount of zero under the Plan of Allocation.

54. For each Extreme call option purchased or otherwise acquired during the Class Period and sold before the close of trading on April 9, 2015, and for each Extreme put option sold (written) during the Class Period and purchased before the close of trading on April 9, 2015, an "Out of Pocket Loss" will be calculated. For Extreme call options closed through sale, the Out of Pocket Loss is the purchase/acquisition price (excluding all fees, taxes, and commissions) minus the sale price (excluding all fees, taxes, and commissions). For Extreme call options closed through exercise or expiration, the Out of Pocket Loss is the purchase/acquisition price (excluding all fees, taxes, and commissions) *minus* the value per option on the date of exercise or expiration.<sup>4</sup> For Extreme put options closed through purchase, the Out of Pocket Loss is the purchase/acquisition price (excluding all fees, taxes, and commissions) minus the sale price (excluding all fees, taxes, and commissions). For Extreme put options closed through exercise or expiration, the Out of Pocket Loss is the value per option on the date of exercise or expiration<sup>5</sup> *minus* the sale price (excluding all fees, taxes, and commissions). To the extent that the calculation of the Out of Pocket Loss results in a negative number, that number shall be set to zero.

55. **For each Extreme call option purchased or otherwise acquired from September 12, 2013 through and including April 9, 2015, and:**

- A. Closed (through sale, exercise, or expiration) before the opening of trading on February 5, 2014, the Recognized Loss Amount for each such share shall be zero.
- B. Closed (through sale, exercise, or expiration) after the opening of trading on February 5, 2014, and before the close of trading on April 9, 2015, the Recognized Loss Amount for each such share shall be ***the lesser of:***
  1. the dollar artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 3** *minus* the dollar artificial inflation applicable to each such share on the date of sale as set forth in **Table 3** (available at [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com)); or
  2. the Out of Pocket Loss.
- C. Open as of the close of trading on April 9, 2015, the Recognized Loss Amount for each such share shall be ***the lesser of:***
  1. the dollar artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 3** (available at [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com)); or
  2. the actual purchase/acquisition price of each such share *minus* the closing price on April 10, 2015 (*i.e.*, the "Holding Price") as set forth in **Table 3** (available at [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com)).

56. **For each Extreme put option sold (written) from September 12, 2013 through and including April 9, 2015, and:**

- A. Closed (through purchase, exercise, or expiration) before the opening of trading on February 5, 2014, the Recognized Loss Amount for each such share shall be zero.
- B. Closed (through purchase, exercise, or expiration) after the opening of trading on February 5, 2014, and before the close of trading on April 9, 2015, the Recognized Loss Amount for each such share shall be ***the lesser of:***
  1. the dollar artificial deflation applicable to each such share on the date of sale (writing) as set forth in **Table 4** (available at [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com)) *minus* the dollar artificial deflation applicable to each such share on the date of close as set forth in **Table 4** (available at [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com)); or
  2. the Out of Pocket Loss.
- C. Open as of the close of trading on April 9, 2015, the Recognized Loss Amount for each such share shall be ***the lesser of:***
  1. the dollar artificial deflation applicable to each such share on the date of sale (writing) as set forth in **Table 4** (available at [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com)); or
  2. the closing price on April 10, 2015 (*i.e.*, the "Holding Price") as set forth in **Table 4** (available at [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com)) *minus* the sale (writing) price.

57. **Maximum Recovery for Options:** The Settlement proceeds available for Extreme call options purchased during the Class Period and Extreme put options sold (written) during the Class Period shall be limited to a total amount equal to 1% of the Net Settlement Fund.

<sup>4</sup> The "value" of the call option on the date of exercise or expiration shall be the closing price of Extreme common stock on the date of exercise or expiration minus the strike price of the option. If this number is less than zero, the value of the call option is zero.

<sup>5</sup> The "value" of the put option on the date of exercise or expiration shall be the strike price of the option minus the closing price of Extreme common stock on the date of exercise or expiration. If this number is less than zero, the value of the put option is zero.

**ADDITIONAL PROVISIONS OF THE PLAN OF ALLOCATION**

58. If a Settlement Class Member has more than one purchase/acquisition or sale of any eligible Extreme Security during the Class Period, all purchases/acquisitions and sales of the like security shall be matched on a FIFO basis. With respect to Extreme common stock and call options, 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. For Extreme put options, Class Period purchases will be matched first to close out positions open at the beginning of the Class Period, and then against put options sold (written) during the Class Period in chronological order.

59. Purchases/acquisitions and sales of Extreme Securities shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, inheritance, or operation of law of Extreme Securities during the Class Period shall not be deemed a purchase, acquisition or sale of such securities for the calculation of an Authorized Claimant’s Recognized Claim, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such security unless: (i) the donor or decedent purchased or otherwise acquired the security 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 security; and (iii) it is specifically so provided in the instrument of gift or assignment.

60. The Recognized Loss Amount on any portion of a purchase or acquisition that matches against (or “covers”) a “short sale” is zero. The Recognized Loss Amount on a “short sale” that is not covered by a purchase or acquisition is also zero. In the event that a claimant has an opening short position in Extreme common stock at the start of the Class Period, the earliest Class Period purchases or acquisitions 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.

61. If a Settlement Class Member has “written” call options, thereby having a short position in the call options, the date of covering such a written position is deemed to be the date of purchase or acquisition of the call option. The date on which the call option was written is deemed to be the date of sale of the call option. In accordance with the Plan of Allocation, the earliest Class Period purchases or acquisitions shall be matched against such short positions in accordance with the FIFO matching described above and any portion of such purchases or acquisitions that cover such short positions will not be entitled to recovery.

62. If a Settlement Class Member has purchased or acquired put options, thereby having a long position in the put options, the date of purchase/acquisition is deemed to be the date of purchase/acquisition of the put option. The date on which the put option was sold, exercised, or expired is deemed to be the date of sale of the put option. In accordance with the Plan of Allocation, the earliest sales or dispositions of like put options during the Class Period shall be matched against such long positions in accordance with the FIFO matching described above and any portion of the sales that cover such long positions shall not be entitled to a recovery.

63. Publicly traded Extreme common stock, Extreme call options, and Extreme put options are the only securities eligible for recovery under the Plan of Allocation. With respect to Extreme common stock purchased or sold through the exercise of an option, the purchase/sale date of the Extreme common stock is the exercise date of the option and the purchase/sale price is the exercise price of the option.

64. An Authorized Claimant’s Recognized Claim shall be the amount used to calculate the Authorized Claimant’s share of the Net Settlement Fund. To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to his, her, or its Recognized Claim. If, however, the sum total of Recognized Claims of all Authorized Claimants is greater than the Net Settlement Fund, each Authorized Claimant shall receive the percentage of the Net Settlement Fund that his, her, or its Recognized Claim bears to the total Recognized Claims of all Authorized Claimants, *i.e.*, the Authorized Claimant’s *pro rata* share.

65. The Net Settlement Fund will be allocated *pro rata* among all Authorized Claimants. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, the payment will be sent through the Authorized Claimant’s PayPal account, rather than a paper check, given the costs associated with mailing checks. **If the claimant does not provide the information required to process a payment through PayPal and/or have an active PayPal account at the time of payment, the claimant will not receive a payment.** If the prorated payment to an Authorized Claimant calculates to between \$10.00 and \$100.00, the claimant may choose to receive a payment through a PayPal account or check. Payments for more than \$100.00 will be by check.

66. Distributions to eligible Authorized Claimants will be made after claims have been processed. After an initial distribution of the Net Settlement Fund, 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, Lead Counsel shall, if feasible and economical after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses if any, redistribute such balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion. These redistributions shall be repeated until the balance in the Net Settlement Fund is no longer feasible to distribute to Authorized Claimants. 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 Expense, Taxes, and attorneys' fees and expenses, if any, shall be contributed to Consumer Federation of America.

67. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all claimants. No person shall have any claim against Lead Plaintiff, Plaintiffs' Counsel, Lead Plaintiff's damages expert, Defendants, Defendants' Counsel, any of the other Released Plaintiffs Parties or Released Defendant Parties, or the Claims Administrator or other agent designated by Lead Counsel, arising from distributions made substantially in accordance with the Stipulation, the Plan of Allocation approved by the Court, or further orders of the Court. Lead Plaintiff, Defendants and their respective counsel, and all other Released Defendant Parties, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund; the Plan of Allocation; the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator; the payment or withholding of Taxes; or any losses incurred in connection therewith.

68. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the claim of any claimant. Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim Form.

**SPECIAL NOTICE TO SECURITIES BROKERS AND NOMINEES**

69. If you purchased or otherwise acquired Extreme Securities during the Class Period for the beneficial interest of a person or entity other than yourself, the Court has directed that **WITHIN SEVEN (7) DAYS OF YOUR RECEIPT OF THIS NOTICE, YOU MUST EITHER:** (a) provide to the Claims Administrator the name and last known address of each such person or entity; or (b) request additional copies of this Notice and the Claim Form from the Claims Administrator, which will be provided to you free of charge, and **WITHIN SEVEN (7) DAYS** of receipt, mail the Notice and Claim Form directly to all such persons or entities. If you choose to follow procedure (b), the Court has also directed that, upon making that mailing, **YOU MUST SEND A STATEMENT** to the Claims Administrator confirming that the mailing was made as directed and keep a record of the names and mailing addresses used. Upon full and timely compliance with these directions, you may seek reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, upon request and submission of appropriate documentation. All communications concerning the foregoing should be addressed to the Claims Administrator: *Extreme Networks, Inc. Securities Litigation*, Claims Administrator, c/o KCC Class Action Services, P.O. Box 505026, Louisville, KY 40233-5026, (866) 526-6266, [nominees@ExtremeNetworksSecuritiesLitigation.com](mailto:nominees@ExtremeNetworksSecuritiesLitigation.com), [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com).

Dated: March 27, 2019

BY ORDER OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re EXTREME NETWORKS, INC.  
SECURITIES LITIGATION

This Document Relates to:

All Actions.

Master File No. 3:15-cv-04883-BLF

CLASS ACTION

**PROOF OF CLAIM AND RELEASE**

### I. GENERAL INSTRUCTIONS

1. Capitalized terms not defined in this Proof of Claim and Release ("Claim Form") have the same meaning as set forth in the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses ("Notice") that accompanies this Claim Form and the Stipulation and Agreement of Settlement, dated as of November 30, 2018 (the "Stipulation").

2. To be eligible to recover from the Net Settlement Fund in the action entitled *In re Extreme Networks, Inc. Sec. Litig.*, No. 15-04883-BLF (N.D. Cal.) (the "Action"), you must complete and, on page 8, sign this Claim Form. If you fail to submit a properly completed and addressed Claim Form, your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with the Settlement of the Action.

Submission of this Claim Form, however, does not assure that you will share in the Net Settlement Fund.

**3. YOU MUST MAIL OR SUBMIT YOUR COMPLETED AND SIGNED CLAIM FORM ONLINE SO THAT IT IS POSTMARKED OR RECEIVED NO LATER THAN JUNE 6, 2019, ADDRESSED AS FOLLOWS:**

Extreme Networks, Inc. Securities Litigation  
c/o KCC Class Action Services  
P.O. Box 505026  
Louisville, KY 40233-5026  
[www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com)

To be considered timely, your Claim Form must be postmarked or received by the deadline above. A Claim Form will be deemed to be submitted when mailed, if received with a postmark on the envelope and if mailed by first-class or overnight U.S. Mail and addressed in accordance with the instructions above. In all other cases, the Claim Form will be deemed to have been submitted when actually received by the Claims Administrator.

4. Please note that if you have an eligible claim that calculates to a payment of less than \$10.00, your payment will be sent to you through PayPal, using an account that you have established, rather than a paper check, given the costs associated with mailing checks. **If you do not provide the information required to process a payment through PayPal and/or you do not have an active PayPal account at the time of payment you will not receive a payment.** For instance, as noted in the Notice, if the average settlement recovery is \$0.04 per damaged share and you purchased 200 damaged shares, your payment may be \$8.00. If your payment is \$8.00, you will be paid only through your PayPal account. If you purchased 500 shares your payment may be \$20.00. **However, please remember that the average recovery amount of \$0.04 per damaged share is only an estimate and Settlement Class Members may recover more or less.** An individual Settlement Class Member's actual recovery will depend on numerous factors. These factors are fully explained in the Plan of Allocation beginning on page 8 of the Notice. Please refer to the Plan for information on the calculation of your Recognized Claim.

5. If your payment is between \$10.00 and \$100.00, you may choose to receive a payment through a PayPal account that you have established or by check. See page 2, below. Payments for more than \$100.00 will be by check.

6. If you are NOT a Settlement Class Member (as defined in the Notice), **DO NOT** submit a Claim Form. If you are a Settlement Class Member and have not requested exclusion, you will be bound by the terms of the Settlement and any judgment entered in this Action, **WHETHER OR NOT YOU SUBMIT A CLAIM FORM.**

7. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the mandatory electronic filing requirements and file layout, you may visit the settlement website at [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com) or you may email the Claims Administrator's electronic filing department at [Nominees@ExtremeNetworksSecuritiesLitigation.com](mailto:Nominees@ExtremeNetworksSecuritiesLitigation.com). Any file not in accordance with the required electronic filing format will be subject to rejection. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email after processing your file with your claim numbers and respective account information. Do not assume that your file has been received or processed until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at [Nominees@ExtremeNetworksSecuritiesLitigation.com](mailto:Nominees@ExtremeNetworksSecuritiesLitigation.com) to inquire about your file and confirm it was received and acceptable.



NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Official  
Office  
Use  
Only

*In re Extreme Networks, Inc. Sec. Litig.*

Master File No. 3:15-cv-04883-BLF

**PROOF OF CLAIM AND RELEASE**

Please Type or Print in the Boxes Below  
Do NOT use Red Ink, Pencil, or Staples

Must Be Postmarked or Received  
No Later than JUNE 6, 2019

**EXS**

**PART I. CLAIMANT IDENTIFICATION**

Last Name (Beneficial Owner)

[Grid for Last Name (Beneficial Owner)]

M.I.

[Grid for M.I.]

First Name (Beneficial Owner)

[Grid for First Name (Beneficial Owner)]

Last Name (Co-Beneficial Owner)

[Grid for Last Name (Co-Beneficial Owner)]

M.I.

[Grid for M.I.]

First Name (Co-Beneficial Owner)

[Grid for First Name (Co-Beneficial Owner)]

Company Name (Beneficial Owner - if Claimant is not an Individual or Custodian Name if an IRA)

[Grid for Company Name]

Trustee/Asset Manager/Nominee/Record Owner's Name (If Different from Beneficial Owner Listed Above)

[Grid for Trustee/Asset Manager/Nominee/Record Owner's Name]

Account#/Fund# (Not Necessary for Individual Filers)

[Grid for Account#/Fund#]

Last Four Digits of Social Security Number

[Grid for Last Four Digits of Social Security Number]

or

Taxpayer Identification Number

[Grid for Taxpayer Identification Number]

Telephone Number (Primary Daytime)

[Grid for Telephone Number (Primary Daytime)]

Telephone Number (Alternate)

[Grid for Telephone Number (Alternate)]

Email address for communications (Email address is generally not required, but if you provide it, you authorize the Claims Administrator to use it in providing you with information relevant to this claim.)

[Grid for Email address for communications]

Email address for payment to PayPal account (Required in order to receive a settlement payment of less than \$10.00 or, if your settlement payment is between \$10.00 and \$100.00, you elect an electronic payment below.)

[Grid for Email address for payment to PayPal account]

If my (our) settlement payment is between \$10.00 and \$100.00, I (we) wish to receive payment from the Settlement  by check or  by credit to the PayPal account associated with the above email address. (Please note, you must have an active PayPal account associated with this email address at the time of payment. If you do not, you will receive a check.)

**MAILING INFORMATION**

Address

[Grid for Address]

Address

[Grid for Address]

City

[Grid for City]

State

[Grid for State]

Zip Code

[Grid for Zip Code]

Foreign Province

[Grid for Foreign Province]

Foreign Postal Code

[Grid for Foreign Postal Code]

Foreign Country Name/Abbreviation

[Grid for Foreign Country Name/Abbreviation]

FOR CLAIMS  
PROCESSING  
ONLY

OB

[Grid for OB]

CB

[Grid for CB]

ATP  
 KE  
 ICI

BE  
 DR  
 EM

FL  
 ME  
 ND

OP  
 RE  
 SH

[MM] / [DD] / [YYYY]

FOR CLAIMS  
PROCESSING  
ONLY



- BEGINNING HOLDINGS** – State the total number of shares of common stock held as of the opening of trading on September 12, 2013. If none, write “0” or “Zero.” (Must be documented.)
- PURCHASES/ACQUISITIONS DURING THE CLASS PERIOD** – Separately list each and every purchase/acquisition of common stock from after the opening of trading on September 12, 2013 through and including the close of trading on April 9, 2015. (Must be documented.)

PURCHASES							Total Purchase Price (excluding taxes, commissions and fees). Please round off to the nearest whole dollar
Date of Purchase (List Chronologically)			Number of Shares Purchased	Purchase Price Per Share			
M	M	D D	Y Y				
1.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>	\$ <input type="text"/>
2.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>	\$ <input type="text"/>
3.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>	\$ <input type="text"/>
4.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>	\$ <input type="text"/>
5.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>	\$ <input type="text"/>

- PURCHASES/ACQUISITIONS DURING 90-DAY LOOKBACK PERIOD** – State the total number of shares of common stock purchased/acquired from after the opening of trading on April 10, 2015 through and including the close of trading on July 8, 2015<sup>1</sup>. (Must be documented.)
- SALES DURING THE CLASS PERIOD AND DURING THE 90-DAY LOOKBACK PERIOD** – Separately list each and every sale/disposition of common stock from after the opening of trading on September 12, 2013 through and including the close of trading on July 8, 2015. (Must be documented.)

SALES							Total Sale Price (excluding taxes, commissions and fees). Please round off to the nearest whole dollar
Date of Sale (List Chronologically)			Number of Shares Sold	Sale Price Per Share			
M	M	D D	Y Y				
1.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>	\$ <input type="text"/>
2.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>	\$ <input type="text"/>
3.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>	\$ <input type="text"/>
4.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>	\$ <input type="text"/>
5.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>	\$ <input type="text"/>

- ENDING HOLDINGS** – State the total number of shares of common stock held as of the close of trading on July 8, 2015. If none, write “0” or “Zero.” (Must be documented.)

IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS, PLEASE PHOTOCOPY THIS PAGE,

WRITE YOUR NAME ON THE COPY AND FILL THIS CIRCLE:

IF YOU DO NOT FILL IN THIS CIRCLE THESE ADDITIONAL PAGES MAY NOT BE REVIEWED.

YOU MUST READ AND SIGN THE RELEASE ON PAGE 8. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.

<sup>1</sup> Information requested in this Claim Form with respect to your transactions from the opening of trading on April 10, 2015 through and including the close of trading on July 8, 2015, is needed only in order to balance your claim. Purchases/acquisitions (sales of put options) during this period are not eligible to participate in the Settlement because they are outside the Class Period.



**PART III. TRANSACTIONS IN EXTREME EXCHANGE-TRADED CALL OPTIONS**

1. **BEGINNING HOLDINGS** – State the total number of call option contracts held as of the opening of trading on September 12, 2013. If none, write “0” or “Zero.” (Must be documented.)

Strike Price of Call Option Contract	Number of Call Option Contracts Held	Expiration Date of Call Option Contract (MM/YY)
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

2. **PURCHASES/ACQUISITIONS DURING THE CLASS PERIOD** – Separately list each and every purchase/acquisition of call option contracts from after the opening of trading on September 12, 2013 through and including the close of trading on April 9, 2015. (Must be documented.)

Date of Purchase (List Chronologically) (MM/DD/YY)	Strike Price of Call Option Contract	Number of Call Option Contracts Purchased	Purchase Price Per Call Option Contract	Insert an “E” if Exercised or “X” if Expired	Exercise Date (MM/DD/YY)	Expiration Date of Call Option Contract (MM/YY)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS, YOU MUST PHOTOCOPY THIS PAGE AND FILL THIS CIRCLE: ○



3. **SALES DURING THE CLASS PERIOD AND DURING THE 90-DAY LOOKBACK PERIOD** – Separately list each and every sale/disposition of the call option contracts listed in #2 above from after the opening of trading on September 12, 2013 through and including the close of trading on July 8, 2015. (Must be documented.)

Date of Sale (List Chronologically) (MM/DD/YY)	Strike Price of Call Option Contract	Number of Call Option Contracts Sold	Sale Price Per Call Option Contract	Insert "A" if Assigned. Insert "X" if Expired	Expiration Date of Call Option Contract (MM/YY)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

4. **ENDING HOLDINGS** – State the total number of call option contracts open after the close of trading on July 8, 2015. If none, write "0" or "Zero." (Must be documented.)

Strike Price of Call Option Contract	Number of Call Option Contracts Held	Expiration Date of Call Option Contract (MM/YY)
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
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IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS, YOU MUST PHOTOCOPY THIS PAGE AND FILL THIS CIRCLE: ○



**PART IV. TRANSACTIONS IN EXTREME EXCHANGE-TRADED PUT OPTIONS**

1. **BEGINNING HOLDINGS** – State the total number of put option contracts held as of the opening of trading on September 12, 2013. If none, write “0” or “Zero.” (Must be documented.)

Strike Price of Put Option Contract	Number of Put Option Contracts Held	Expiration Date of Put Option Contract (MM/YY)
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

2. **SALES (WRITING OF PUT OPTIONS) DURING THE CLASS PERIOD** – Separately list each and every sale (writing) of put option contracts from after the opening of trading on September 12, 2013 through and including the close of trading on April 9, 2015. (Must be documented.)

Date of Sale (Writing) (List Chronologically) (MM/DD/YY)	Strike Price of Put Option Contract	Number of Put Option Contracts Sold (Written)	Sale Price Per Put Option Contract	Insert “E” if Exercised. Insert “X” if Expired	Expiration Date of Put Option Contract (MM/YY)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS, YOU MUST PHOTOCOPY THIS PAGE AND FILL THIS CIRCLE: ○



3. **RE-PURCHASES DURING THE CLASS PERIOD AND DURING THE 90-DAY LOOKBACK PERIOD** – Separately list each and every re-purchase of put option contracts listed in #2 above from after the opening of trading on September 12, 2013 through and including the close of trading on July 8, 2015. (Must be documented.)

Date of Re-Purchase (List Chronologically) (MM/DD/YY)	Strike Price of Put Option Contract	Number of Put Option Contracts Purchased	Purchase Price Per Put Option Contract	Expiration Date of Put Option Contract (MM/YY)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

4. **ENDING HOLDINGS** – State the total number of put option contracts held as of the close of trading on July 8, 2015. If none, write “0” or “Zero.” (Must be documented.)

Strike Price of Put Option Contract	Number of Put Option Contracts Held	Expiration Date of Put Option Contract (MM/YY)
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS, YOU MUST PHOTOCOPY THIS PAGE AND FILL THIS CIRCLE: ○



**V. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

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 of Net Settlement Fund described in the accompanying Notice. I (We) also submit to the jurisdiction of the United States District Court for the Northern District of California (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 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 eligible Extreme Securities, if required to do so. I (We) have not submitted any other claim covering the same transactions in publicly traded Extreme Securities during the alleged Class Period and know of no other person having done so on my (our) behalf.

**VI. RELEASES, WARRANTIES, AND CERTIFICATION**

1. 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 "Released Defendant Parties" as defined in the accompanying Notice.

2. As a Settlement Class Member, I (we) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and forever settle, release, and discharge with prejudice the Released Claims as to each and all of the Released Defendant Parties (as these terms are defined in the accompanying Notice). 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.

3. 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 released pursuant to this release or any other part or portion thereof.

4. I (We) hereby warrant and represent that I (we) have included information about all of my (our) purchases, acquisitions and sales and other transactions in publicly traded Extreme Securities that occurred during the Class Period and the number of securities held by me (us), to the extent requested.

5. 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 that all of the foregoing information supplied by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ in \_\_\_\_\_  
(Month/Year) (City/State/Country)

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
(Type or print name of Claimant)

\_\_\_\_\_  
Signature of Joint Claimant, if any

\_\_\_\_\_  
(Type or print name of Joint Claimant, if any)

\_\_\_\_\_  
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.
2. DO NOT 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 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 (866) 526-6266.
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 B

Table with 12 columns: Fund Name, 2019 Performance, 12 Mo, 5 Yr, Net, NAV, and 12 columns for various other funds. Includes sections for S-T-U, P-Q-R, and V-W-X.

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION

IN RE EXTREME NETWORKS, INC. SECURITIES LITIGATION

This Document Relates to: All Actions. TO: ALL PERSONS AND ENTITIES THAT PURCHASED OR OTHERWISE ACQUIRED THE PUBLICLY TRADED COMMON STOCK AND EXCHANGE-TRADED CALL OPTIONS, AND/OR SOLD PUT OPTIONS, OF EXTREME NETWORKS, INC., DURING THE PERIOD FROM SEPTEMBER 12, 2013 THROUGH APRIL 9, 2015.

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Northern District of California, that Lead Plaintiff Arkansas Teacher Retirement System, on behalf of itself and the proposed Settlement Class, and Extreme Networks, Inc. ("Extreme" or "the Company"), Charles W. Berger, Kenneth B. Arola, and John T. Kurtzweil (collectively, the "Individual Defendants," and with the Company, "Defendants"), have reached a settlement in the above-captioned action (the "Action") in the amount of \$7,000,000 in cash (the "Settlement Amount") that, if approved by the Court, will resolve all claims in the Action.

A hearing will be held before the Honorable Beth Labson Freeman of the United States District Court for the Northern District of California in Courtroom 3, 5th Floor, Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, San Jose, CA 95113 at 1:30 p.m. on June 20, 2019, to, among other things, determine whether (1) the Settlement should be approved by the Court as fair, reasonable, and adequate; (2) the Plan of Allocation for distribution of the Settlement Amount, and any interest thereon, less Court-awarded attorneys' fees, Notice and Administration Expenses, Taxes, and any other costs, fees, or expenses approved by the Court (the "Net Settlement Fund") should be approved as fair, reasonable, and adequate; and (3) to approve the application of Lead Counsel for an award of attorneys' fees of no more than 25% of the Settlement Fund (or up to \$1,750,000) and payment of expenses of no more than \$230,000 from the Settlement Fund, which may include the expenses of Lead Plaintiff pursuant to the Private Securities Litigation Reform Act of 1995. The Court may change the date of the Settlement Hearing without providing another notice. You do NOT need to attend the Settlement Hearing in order 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 SETTLEMENT AND YOU MAY BE ENTITLED TO SHARE IN THE NET SETTLEMENT FUND. If you have not yet received the full 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"), you may obtain copies of these documents by contacting the Claims Administrator or visiting its website: Extreme Networks, Inc. Securities Litigation, c/o KCC Class Action Services, P.O. Box 50526, Louisville, KY 40233-5026. (866) 526-6266, www.ExtremeNetworksSecuritiesLitigation.com. Inquiries may also be made to Lead Counsel: Labston Sucharow LLP, Carol C. Villegas, Esq., 140 Broadway, New York, NY 10005, (888) 219-6877, www.labston.com, settlementquestions@labston.com.

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 received no later than June 6, 2019. If you are a Settlement Class Member and 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 any judgments or orders entered by the Court in the Action.

If you 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 May 23, 2019. If you are a Settlement Class Member and do not exclude yourself from the Settlement Class, you will be bound by any judgments or orders entered by the Court in the Action.

Any objections to the Settlement, Plan of Allocation, and/or Lead Counsel's Fee and Expense Application must be filed with the Court in accordance with the instructions set forth in the Notice such that they are postmarked or filed no later than May 23, 2019.

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

Dated: April 8, 2019 BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA



Three days of investing insights. Five tracks. #MICUS

The full agenda for the Morningstar Investment Conference is now available. This year you'll hear from keynote speakers including AQR founder Cliff Asness, PIMCO CEO Emmanuel Roman, Franklin Templeton CIO Sonal Desai, venture capitalist Morgan Housel, presidential historian Doris Kearns Goodwin, T. Rowe Price portfolio manager David Giroux, Hartford Healthcare Fund's Jean M. Hynes, Morningstar CEO Kunal Kapoor, Morningstar CIO Daniel Needham, and several master life coach Boyd Varty. Please join us May 8-10 in Chicago.

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**From:** [sfhubs@prnewswire.com](mailto:sfhubs@prnewswire.com)  
**Subject:** PR Newswire: Press Release Distribution Confirmation for Labaton Sucharow LLP. ID#2417815-1-1  
**Date:** Monday, April 8, 2019 8:00:11 AM

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Hello

Your press release was successfully distributed at: 08-Apr-2019 08:00:00 AM ET

Release headline: Labaton Sucharow LLP Announces Proposed Settlement in the Extreme Networks Securities Litigation  
Word Count: 804  
Product Selections:  
US1  
Visibility Reports Email  
Complimentary Press Release Optimization  
PR Newswire ID: 2417815-1-1

View your release:\* [http://www.prnewswire.com/news-releases/labaton-sucharow-llp-announces-proposed-settlement-in-the-extreme-networks-securities-litigation-300820830.html?tc=eml\\_cleartime](http://www.prnewswire.com/news-releases/labaton-sucharow-llp-announces-proposed-settlement-in-the-extreme-networks-securities-litigation-300820830.html?tc=eml_cleartime)

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\* If the page link does not load immediately, please refresh and try again after a few minutes.



# Labaton Sucharow LLP Announces Proposed Settlement in the Extreme Networks Securities Litigation

NEWS PROVIDED BY  
**Labaton Sucharow LLP**  
Apr 08, 2019, 08:00 ET



SAN FRANCISCO, April 8, 2019 /PRNewswire/ -- The following statement is being issued by Labaton Sucharow LLP regarding the Extreme Networks Securities Litigation:

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE EXTREME NETWORKS, INC. SECURITIES LITIGATION	Master File No. 3:15-cv-04883-BLF
This Document Relates to:	CLASS ACTION
All Actions.	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 THE PUBLICLY TRADED COMMON STOCK AND EXCHANGE-TRADED CALL OPTIONS, AND/OR SOLD PUT OPTIONS, OF EXTREME NETWORKS, INC., DURING THE PERIOD FROM SEPTEMBER 12, 2013 THROUGH APRIL 9, 2015.**

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Northern District of California, that Lead Plaintiff Arkansas Teacher Retirement System, on behalf of itself and the proposed Settlement Class, and Extreme Networks, Inc. ("Extreme" or "the Company"), Charles W. Berger, Kenneth B. Arola, and John T. Kurtzweil (collectively, the "Individual Defendants," and with the Company, "Defendants"), have reached a settlement in the above-captioned action (the "Action") in the amount of \$7,000,000 in cash (the "Settlement Amount") that, if approved by the Court, will resolve all claims in the Action.<sup>1</sup>

A hearing will be held before the Honorable Beth Labson Freeman of the United States District Court for the Northern District of California in Courtroom 3, 5th Floor, Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, San Jose, CA 95113 at 1:30 p.m. on **June 20, 2019** to, among other things, determine whether (1) the Settlement should be approved by the Court as fair, reasonable, and adequate; (2) the Plan of Allocation for distribution of the Settlement Amount, and any interest thereon, less Court-awarded attorneys' fees, Notice and Administration Expenses, Taxes, and any other costs, fees, or expenses approved by the Court (the "Net Settlement Fund") should be approved as fair, reasonable, and adequate; and (3) to approve the application of Lead Counsel for an award of attorneys' fees of no more than 25% of the Settlement Fund (or up to \$1,750,000) and payment of expenses of no more than \$230,000 from the Settlement Fund, which may include the expenses of Lead Plaintiff pursuant to the Private Securities Litigation Reform Act of 1995. The Court may change the date of the Settlement Hearing without providing another notice. You do NOT need to attend the Settlement Hearing in order 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 SETTLEMENT** AND YOU MAY BE ENTITLED TO SHARE IN THE NET SETTLEMENT FUND. If you have not yet received the full 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"), you may obtain copies of these documents by contacting the Claims Administrator or visiting its website: *Extreme Networks, Inc. Securities Litigation*, c/o KCC Class Action Services, P.O. Box 505026, Louisville, KY 40233-5026, (866) 526-6266, [www.ExtremeNetworksSecuritiesLitigation.com](http://www.ExtremeNetworksSecuritiesLitigation.com). Inquiries may also be made to Lead Counsel: Labaton Sucharow LLP, Carol C. Villegas, Esq., 140 Broadway, New York, NY 10005, (888) 219-6877, [www.labaton.com](http://www.labaton.com), [settlementquestions@labaton.com](mailto:settlementquestions@labaton.com).

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 received no later than June 6, 2019**. If you are a Settlement Class Member and 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 any judgments or orders entered by the Court in the Action.

If you 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 May 23, 2019**. If you are a Settlement Class Member and do not exclude yourself from the Settlement Class, **you will be bound** by any judgments or orders entered by the Court in the Action.

Any objections to the Settlement, Plan of Allocation, and/or Lead Counsel's Fee and Expense Application must be filed with the Court in accordance with the instructions set forth in the Notice such that they are **postmarked or filed no later than May 23, 2019**.

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

Dated: April 8, 2019 BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

<sup>1</sup> The complete terms of the Settlement are in the Stipulation and Agreement of Settlement, dated November 30, 2018.

chrome-extension://nlipoenfbbikpbjkfpfillcgkoblqgmj/edit.html  
which can be viewed at www.ExtremeNetworksSecuritiesLitigation.com.

SOURCE Labaton Sucharow LLP

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# **Exhibit 3**



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I, CAROL C. VILLEGAS, declare as follows under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I am a partner of the law firm of Labaton Sucharow LLP (“Labaton Sucharow”). I submit this declaration in support of Lead Counsel’s motion for an award of attorneys’ fees and payment of expenses, on behalf of all Plaintiffs’ Counsel who contributed to the prosecution of the claims in the above-captioned action (the “Action”), from inception through April 15, 2019 (the “Time Period”). I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. My firm, which served as Court-appointed Lead Counsel in the Action, participated in all aspects of the prosecution of the Action and settlement of the claims, as described in detail in the Declaration of Carol C. Villegas in Support of Lead Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of Allocation and Lead Counsel’s Motion for an Award of Attorneys’ Fees and Payment of Expenses, submitted herewith.

3. The information in this declaration regarding my firm’s time and expenses is taken from time and expense reports and supporting documentation prepared and/or maintained by the firm in the ordinary course of business. These reports (and backup documentation where necessary) were reviewed by others at my firm, under my direction, in connection with the preparation of this declaration. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. As a result of this review and the adjustments made, I believe that the time reflected in the firm’s lodestar calculation and the expenses for which payment is sought as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition,

1 I believe that the expenses are all of a type that would normally be charged to a fee-paying client  
2 in the private legal marketplace.

3 4. After the reductions referred to above, the schedule attached hereto as Exhibit A  
4 is a summary indicating the amount of time spent by the attorneys and professional support staff  
5 members of my firm who were involved in the prosecution of the Action and the lodestar  
6 calculation based on my firm's current rates. For personnel who are no longer employed by my  
7 firm, the lodestar calculation is based upon the rates for such personnel in his or her final year of  
8 employment by my firm. The schedule was prepared from daily time records regularly prepared  
9 and maintained by my firm, which are available at the request of the Court. Time expended in  
10 preparing this application for fees and payment of expenses has not been included in this request.  
11

12 5. The hourly rates for the attorneys and professional support staff of my firm  
13 included in Exhibit A are their usual and customary rates, unless otherwise noted.  
14

15 6. The total number of hours expended on this litigation by my firm during the Time  
16 Period is 5,778.7 hours. The total lodestar for my firm for those hours is \$3,260,714.50.

17 7. Attached as Exhibit B is a task-based summary of the work performed by the  
18 attorneys and professional staff members of my firm who performed services in this Action.

19 8. My firm's lodestar figures are based upon the firm's hourly rates, which rates do  
20 not include charges for expense items. Expense items are recorded separately and are not  
21 duplicated in my firm's hourly rates.  
22

23 9. As detailed in Exhibit C, my firm has incurred a total of \$164,647.87 in expenses  
24 and charges in connection with the prosecution of the litigation. These expenses and charges are  
25 summarized by category in Exhibit C.

26 10. The following is additional information regarding certain of my firm's expenses:  
27  
28

1 (a) Filing, Witness and Other Fees: \$3,400.00. These expenses have been  
2 paid to courts in connection with certificates of good standing and *pro hac vice* motions.

3 (b) Work-Related Transportation, Hotels & Meals: \$52,406.06. In connection  
4 with the prosecution of this case, the firm has paid for work-related transportation expenses,  
5 meals, and travel expenses related to, among other things, attending court conferences and  
6 hearings and working late hours. (Any first-class airfare has been reduced to be comparable to  
7 economy rates.)

8 (c) Experts/Consultants: \$62,062.62. Lead Plaintiff retained experts in the  
9 fields of damages, loss causation, and executive compensation. These are the fees that have been  
10 paid to these experts.

11 (d) Mediation Fees: \$6,021.10. This is Lead Plaintiff's portion of the fees and  
12 expenses charged by mediator Robert A. Meyer, Esq. in connection with assisting the Parties in  
13 exploring a potential negotiated resolution of the Action.

14 (e) Online Legal and Factual Research: \$21,927.55. The firm conducted  
15 research using databases maintained by vendors such as PACER, Bloomberg BNA, Thomson  
16 Reuters Markets, Thompson West, Westlaw, LexisNexis and LexisNexis Risk Solution. These  
17 databases were used to obtain access to financial information, factual information, and to  
18 conduct legal research. The charges for these vendors vary depending upon the type of services  
19 requested.

20 11. The expenses pertaining to the Action are reflected on the books and records of  
21 my firm. These books and records are prepared from expense vouchers, check records and other  
22 source materials and are an accurate record of the expenses.

23 12. With respect to the standing of my firm, attached hereto as Exhibit D is a brief  
24 biography of my firm, as well as biographies of the firm's partners and of counsels.

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 9<sup>th</sup> day of May, 2019, in New York, NY.



---

CAROL C. VILLEGAS

## **Exhibit A**

## EXHIBIT A

*IN RE EXTREME NETWORKS, INC. SEC. LITIG.*

## Labaton Sucharow LLP

Inception through April 15, 2019

PROFESSIONAL	STATUS	HOURLY RATE	TOTAL HOURS TO DATE	TOTAL LODESTAR TO DATE AT CURRENT RATES
Dubbs, T.	P	\$995	153.3	\$152,533.50
Gottlieb, L.	P	\$975	369.9	\$360,652.50
Keller, C.	P	\$975	67.5	\$65,812.50
Gardner, J.	P	\$975	34.8	\$33,930.00
Zeiss, N.	P	\$900	101.4	\$91,260.00
Stocker, M.	P	\$900	41.9	\$37,710.00
Belfi, E.	P	\$900	34.3	\$30,870.00
Villegas, C.	P	\$875	289.7	\$253,487.50
Vasilchenko, I.	P	\$575 <sup>1</sup>	1,362.3	\$783,322.50
Wierzbowski, E.	OC	\$675	38.0	\$25,650.00
McConville, F.	OC	\$575 <sup>2</sup>	34.0	\$19,550.00
Mackiel, N.	A	\$625	48.9	\$30,562.50
Cividini, D.	A	\$625	30.4	\$19,000.00
Jessee, S.	A	\$575	52.9	\$30,417.50
Dubbin, J.	A	\$475	1,145.4	\$544,065.00
Coquin, A.	A	\$450	364.0	\$163,800.00
Tsang, W.	A	\$425	238.7	\$101,447.50
Pontrelli, J.	I	\$495	11.6	\$5,742.00
Greenbaum, A.	I	\$455	102.3	\$46,546.50
Crowley, M.	I	\$435	400.4	\$174,174.00
Wroblewski, R.	I	\$425	62.5	\$26,562.50
Clark, J.	I	\$400	62.4	\$24,960.00
Malonzo, F.	PL	\$340	48.4	\$16,456.00
Penrhyn, M.	PL	\$325	304.2	\$98,865.00
Schneider, P.	PL	\$325	177.4	\$57,655.00
Chan-Lee, E.	PL	\$325	63.0	\$20,475.00
Carpio, A.	PL	\$325	58.3	\$18,947.50
Boria, C.	PL	\$325	24.3	\$7,897.50
Gutierrez, K.	PL	\$325	21.7	\$7,052.50

<sup>1</sup> Ms. Vasilchenko was promoted to partner during the pendency of the Action and this is her hourly rate before her promotion.

<sup>2</sup> Mr. McConville was promoted to of counsel during the pendency of the Action and this is his hourly rate before his promotion.

1	Rogers, D.	PL	\$325	21.1	\$6,857.50
2	Mehring, L.	PL	\$325	13.7	\$4,452.50
	<b>TOTAL</b>			<b>5,778.7</b>	<b>\$3,260,714.50</b>

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Partner (P)  
Of Counsel (OC)  
Associate (A)  
Investigator (I)  
Paralegal (PL)

## **Exhibit B**

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**EXHIBIT B**  
**IN RE EXTREME NETWORKS, INC. SEC. LITIG.**  
**Labaton Sucharow LLP**  
**Inception through April 15, 2019**

- Categories:  
(1) Factual Investigation  
(2) Pleadings  
(3) Discovery  
(4) Case Management  
(5) Motions and Legal Research

- (6) Court Appearances  
(7) Experts/Consultants  
(8) Settlement  
(9) Litigation Strategy/Analysis

Name	1	2	3	4	5	6	7	8	9	Total Hours	Rate	Total Lodestar
Dubbs, T.	P			6.3		46.0			101.0	153.3	\$995	\$152,533.50
Gottlieb, L.	P	183.6	3.1	9.6	169.1		3.5			369.9	\$975	\$360,652.50
Keller, C.	P	14.0			16.0				37.5	67.5	\$975	\$65,812.50
Gardner, J.	P							33.0	1.8	34.8	\$975	\$33,930.00
Zeiss, N.	P							101.4		101.4	\$900	\$91,260.00
Stocker, M.	P	4.6		1.3	11.6	24.4				41.9	\$900	\$37,710.00
Belfi, E.	P	5.0						11.6	17.7	34.3	\$900	\$30,870.00
Villegas, C.	P	0.5	0.4	16.3	13.9	134.5	2.0	104.6	5.5	289.7	\$875	\$253,487.50
Vasilchenko, I.	P	181.8	218.8		62.5	852.8	24.8	20.5	1.1	1,362.3	\$575	\$783,322.50
Wierzbowski, E.	OC							38.0		38.0	\$675	\$25,650.00
McConville, F.	OC	10.5			13.5				10.0	34.0	\$575	\$19,550.00
Mackiel, N.	A	14.1			34.8					48.9	\$625	\$30,562.50
Cividini, D.	A			30.3					0.1	30.4	\$625	\$19,000.00
Jesse, S.	A		17.3	2.0	30.0				0.1	52.9	\$575	\$30,417.50
Dubbin, J.	A	199.0	365.2		11.6	483.8	11.0		74.8	1,145.4	\$475	\$544,065.00
Coquin, A.	A	3.4		141.9	10.5	33.4	19.0	141.5	6.5	364.0	\$450	\$163,800.00
Tsang, W.	A	34.9	83.7		2.2	117.9				238.7	\$425	\$101,447.50
Pomrelli, J.	I	4.5			7.1					11.6	\$495	\$5,742.00
Greenbaum, A.	I	92.0		10.2					0.1	102.3	\$455	\$46,546.50
Crowley, M.	I	400.4								400.4	\$435	\$174,174.00
Wroblewski, R.	I	62.5								62.5	\$425	\$26,562.50
Clark, J.	I	62.4								62.4	\$400	\$24,960.00
Malonzo, F.	PL	11.9	13.1		3.3			9.0		48.4	\$340	\$16,456.00
Pemhyn, M.	PL	87.9		26.9	188.9	0.5				304.2	\$325	\$98,865.00
Schneider, P.	PL	46.6			130.8					177.4	\$325	\$57,655.00
Chan-Lee, E.	PL	19.0			44.0					63.0	\$325	\$20,475.00
Carpio, A.	PL		2.3	17.5	27.2			11.3		58.3	\$325	\$18,947.50
Boria, C.	PL							24.3		24.3	\$325	\$7,897.50
Gutierrez, K.	PL			21.7						21.7	\$325	\$7,052.50
Rogers, D.	PL	21.1								21.1	\$325	\$6,857.50
Mehringer, L.	PL				13.7					13.7	\$325	\$4,452.50
<b>TOTAL:</b>		1,111.7	1,034.4	219.2	217.5	2,171.0	249.2	44.8	256.2	5,778.7		\$3,260,714.50

(P) Partner  
(OC) Of Counsel  
(A) Associate  
(I) Investigator  
(PL) Paralegal

## **Exhibit C**

**EXHIBIT C*****IN RE EXTREME NETWORKS, INC. SEC. LITIG.*****Labaton Sucharow LLP****Inception through April 15, 2019**

<b>DISBURSEMENT</b>	<b>AMOUNT</b>	<b>AMOUNT</b>
Filing, Witness and Other Fees		\$3,400.00
Work-Related Transportation, Hotels & Meals *		\$52,406.06
Long-Distance Telephone, Facsimile & Conference Calling		\$448.60
Messenger, Overnight Delivery		\$1,759.00
Court Hearing and Deposition Reporting		\$238.00
Experts/Consultants		\$62,062.62
Loss Causation/Damages	\$53,562.62	
Executive Compensation	\$8,500.00	
Duplicating		\$15,149.33
Online Legal and Factual Research		\$21,927.55
Litigation Support		\$1,120.00
Mediation Fees		\$6,021.10
Research Materials		\$115.61
<b>TOTAL</b>		<b>\$164,647.87</b>

\*\$4,726.00 in estimated travel costs has been included for representatives of Labaton Sucharow to attend the final approval hearing. If less than \$4,726.00 is incurred, the actual amount incurred will be deducted from the Settlement Fund. If more than \$4,726.00 is incurred, \$4,726.00 will be the cap and only that amount will be deducted from the Settlement Fund.

## **Exhibit D**

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**EXHIBIT D**

***IN RE EXTREME NETWORKS, INC. SEC. LITIG.***

**Labaton Sucharow LLP**

FIRM RESUME



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# Firm Resume

## Securities Class Action Litigation

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New York, NY | Wilmington, DE | Washington, D.C.

[www.labaton.com](http://www.labaton.com)



## Table of Contents

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About the Firm .....	1
Notable Successes .....	2
Lead Counsel Appointments in Ongoing Litigation .....	6
Innovative Legal Strategy .....	7
Appellate Advocacy and Trial Experience .....	8
Our Clients .....	9
Awards and Accolades.....	10
Community Involvement .....	11
Firm Commitments .....	11
Individual Attorney Commitments .....	12
Commitment to Diversity.....	13
Securities Litigation Attorneys .....	14

## About the Firm

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Founded in 1963, Labaton Sucharow LLP has earned a reputation as one of the leading plaintiffs firms in the United States. We have recovered more than \$12 billion and secured corporate governance reforms on behalf of the nation's largest institutional investors, including public pension and Taft-Hartley funds, hedge funds, investment banks, and other financial institutions. These recoveries include more than \$1 billion in *In re American International Group, Inc. Securities Litigation*, \$671 million in *In re HealthSouth Securities Litigation*, \$624 million in *In re Countrywide Financial Corporation Securities Litigation*, and \$473 million in *In re Schering-Plough/ENHANCE Securities Litigation*.

As a leader in the field of complex litigation, the Firm has successfully conducted class, mass, and derivative actions in the following areas: securities; antitrust; financial products and services; corporate governance and shareholder rights; mergers and acquisitions; derivative; REITs and limited partnerships; consumer protection; and whistleblower representation.

Along with securing newsworthy recoveries, the Firm has a track record for successfully prosecuting complex cases from discovery to trial to verdict. In court, as *Law360* has noted, our attorneys are known for "fighting defendants tooth and nail." Our appellate experience includes winning appeals that increased settlement value for clients, and securing a landmark 2013 U.S. Supreme Court victory benefitting all investors by reducing barriers to the certification of securities class action cases.

Our Firm is equipped to deliver results with a robust infrastructure of more than 60 full-time attorneys, a dynamic professional staff, and innovative technological resources. Labaton Sucharow attorneys are skilled in every stage of business litigation and have challenged corporations from every sector of the financial markets. Our professional staff includes paralegals, financial analysts, e-discovery specialists, a certified public accountant, a certified fraud examiner, and a forensic accountant. With seven investigators, including former members of federal and state law enforcement, we have one of the largest in-house investigative teams in the securities bar. Managed by a law enforcement veteran who spent 12 years with the FBI, our internal investigative group provides us with information that is often key to the success of our cases.

Outside of the courtroom, the Firm is known for its leadership and participation in investor protection organizations, such as the Council for Institutional Investors, World Federation of Investors, National Association of Shareholder and Consumer Attorneys, as well as serving as a patron of the John L. Weinberg Center for Corporate Governance of the University of Delaware. The Firm shares these groups' commitment to a market that operates with greater transparency, fairness, and accountability.

Labaton Sucharow has been consistently ranked as a top-tier firm in leading industry publications such as *Chambers & Partners USA*, *The Legal 500*, and *Benchmark Litigation*. For the past decade, the Firm was listed on *The National Law Journal's* Plaintiffs' Hot List and was inducted to the Hall of Fame for successive honors. The Firm has also been featured as one of *Law360's* Most Feared Plaintiffs Firms and Class Action and Securities Law Practice Groups of the Year.

Visit [www.labaton.com](http://www.labaton.com) for more information about our Firm.

## Securities Class Action Litigation

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Labaton Sucharow is a leader in securities litigation and a trusted advisor to more than 300 institutional investors. Since the passage of the Private Securities Litigation Reform Act of 1995 (PSLRA), the Firm has recovered more than \$9 billion in the aggregate for injured investors through securities class actions prosecuted throughout the United States and against numerous public corporations and other corporate wrongdoers.

These notable recoveries would not be possible without our exhaustive case evaluation process. The Firm has developed a proprietary system for portfolio monitoring and reporting on domestic and international securities litigation, and currently provides these services to more than 160 institutional investors, which manage collective assets of more than \$2 trillion. The Firm's in-house licensed investigators also gather crucial details to support our cases, whereas other firms rely on outside vendors, or conduct no confidential investigation at all.

As a result of our thorough case evaluation process, our securities litigators can focus solely on cases with strong merits. The benefits of our selective approach are reflected in the low dismissal rate of the securities cases we pursue, which is well below the industry average. Over the past decade, we have successfully prosecuted headline-making class actions against AIG, Countrywide, Fannie Mae, and Bear Stearns, among others.

### Notable Successes

Labaton Sucharow has achieved notable successes in financial and securities class actions on behalf of investors, including the following:

- ***In re American International Group, Inc. Securities Litigation, No. 04-cv-8141 (S.D.N.Y.)***

In one of the most complex and challenging securities cases in history, Labaton Sucharow secured more than \$1 billion in recoveries on behalf of lead plaintiff Ohio Public Employees' Retirement System in a case arising from allegations of bid rigging and accounting fraud. To achieve this remarkable recovery, the Firm took over 100 depositions and briefed 22 motions to dismiss. The settlement entailed a \$725 million settlement with American International Group (AIG), \$97.5 million settlement with AIG's auditors, \$115 million settlement with former AIG officers and related defendants, and an additional \$72 million settlement with General Reinsurance Corporation, which was approved by the Second Circuit on September 11, 2013.

- ***In re Countrywide Financial Corp. Securities Litigation, No. 07-cv-05295 (C.D. Cal.)***

Labaton Sucharow, as lead counsel for the New York State Common Retirement Fund and the five New York City public pension funds, sued one of the nation's largest issuers of mortgage loans for credit risk misrepresentations. The Firm's focused investigation and discovery efforts uncovered incriminating evidence that led to a \$624 million settlement for investors. On February 25, 2011, the court granted final approval to the settlement, which is one of the top 20 securities class action settlements in the history of the PSLRA.

- ***In re HealthSouth Corp. Securities Litigation, No. 03-cv-01500 (N.D. Ala.)***

Labaton Sucharow served as co-lead counsel to New Mexico State Investment Council in a case stemming from one of the largest frauds ever perpetrated in the healthcare industry. Recovering \$671 million for the class, the settlement is one of the top 15 securities class action settlements of all

time. In early 2006, lead plaintiffs negotiated a settlement of \$445 million with defendant HealthSouth. On June 12, 2009, the court also granted final approval to a \$109 million settlement with defendant Ernst & Young LLP. In addition, on July 26, 2010, the court granted final approval to a \$117 million partial settlement with the remaining principal defendants in the case, UBS AG, UBS Warburg LLC, Howard Capek, Benjamin Lorello, and William McGahan.

- ***In re Schering-Plough/ENHANCE Securities Litigation, No. 08-cv-00397 (D. N.J.)***

As co-lead counsel, Labaton Sucharow obtained a \$473 million settlement on behalf of co-lead plaintiff Massachusetts Pension Reserves Investment Management Board. After five years of litigation, and three weeks before trial, the settlement was approved on October 1, 2013. This recovery is one of the largest securities fraud class action settlements against a pharmaceutical company. The Special Masters' Report noted, "**the outstanding result achieved for the class is the direct product of outstanding skill and perseverance by Co-Lead Counsel...no one else...could have produced the result here—no government agency or corporate litigant to lead the charge and the Settlement Fund is the product solely of the efforts of Plaintiffs' Counsel.**"

- ***In re Waste Management, Inc. Securities Litigation, No. H-99-2183 (S.D. Tex.)***

In 2002, the court approved an extraordinary settlement that provided for recovery of \$457 million in cash, plus an array of far-reaching corporate governance measures. Labaton Sucharow represented lead plaintiff Connecticut Retirement Plans and Trust Funds. At that time, this settlement was the largest common fund settlement of a securities action achieved in any court within the Fifth Circuit and the third largest achieved in any federal court in the nation. Judge Harmon noted, among other things, that Labaton Sucharow "**obtained an outstanding result by virtue of the quality of the work and vigorous representation of the class.**"

- ***In re General Motors Corp. Securities Litigation, No. 06-cv-1749 (E.D. Mich.)***

As co-lead counsel in a case against automotive giant, General Motors (GM), and Deloitte & Touche LLP (Deloitte), its auditor, Labaton Sucharow obtained a settlement of \$303 million—one of the largest settlements ever secured in the early stages of a securities fraud case. Lead plaintiff Deka Investment GmbH alleged that GM, its officers, and its outside auditor overstated GM's income by billions of dollars, and GM's operating cash flows by tens of billions of dollars, through a series of accounting manipulations. The final settlement, approved on July 21, 2008, consisted of a cash payment of \$277 million by GM and \$26 million in cash from Deloitte.

- ***Arkansas Teacher Retirement System v. State Street Corp., No. 11-cv-10230 (D. Mass)***

Labaton Sucharow served as lead counsel for the plaintiff Arkansas Teacher Retirement System (ATRS) in this securities class action against Boston-based financial services company, State Street Corporation (State Street). On November 2, 2016, the court granted final approval of the \$300 million settlement with State Street. The plaintiffs claimed that State Street, as custodian bank to a number of public pension funds, including ATRS, was responsible for foreign exchange (FX) trading in connection with its clients global trading. Over a period of many years, State Street systematically overcharged those pension fund clients, including Arkansas, for those FX trades.

- ***Wyatt v. El Paso Corp., No. H-02-2717 (S.D. Tex.)***

Labaton Sucharow secured a \$285 million class action settlement against the El Paso Corporation on behalf of co-lead plaintiff, an individual. The case involved a securities fraud stemming from the company's inflated earnings statements, which cost shareholders hundreds of millions of dollars during a four-year span. On March 6, 2007, the court approved the settlement and also commended the

efficiency with which the case had been prosecuted, particularly in light of the complexity of the allegations and the legal issues.

- ***In re Bear Stearns Cos., Inc. Securities, Derivative & ERISA Litigation, No. 08-cv-2793 (S.D.N.Y.)***

Labaton Sucharow served as co-lead counsel, representing lead plaintiff, the State of Michigan Retirement Systems, and the class. The action alleged that Bear Stearns and certain officers and directors made misstatements and omissions in connection with Bear Stearns' financial condition, including losses in the value of its mortgage-backed assets and Bear Stearns' risk profile and liquidity. The action further claimed that Bear Stearns' outside auditor, Deloitte & Touche LLP, made misstatements and omissions in connection with its audits of Bear Stearns' financial statements for fiscal years 2006 and 2007. Our prosecution of this action required us to develop a detailed understanding of the arcane world of packaging and selling subprime mortgages. Our complaint has been called a "tutorial" for plaintiffs and defendants alike in this fast-evolving area. After surviving motions to dismiss, on November 9, 2012, the court granted final approval to settlements with the Bear Stearns defendants for \$275 million and with Deloitte for \$19.9 million.

- ***In re Massey Energy Co. Securities Litigation, No. 10-CV-00689 (S.D. W.Va.)***

As co-lead counsel representing the Commonwealth of Massachusetts Pension Reserves Investment Trust, Labaton Sucharow achieved a \$265 million all-cash settlement in a case arising from one of the most notorious mining disasters in U.S. history. On June 4, 2014, the settlement was reached with Alpha Natural Resources, Massey's parent company. Investors alleged that Massey falsely told investors it had embarked on safety improvement initiatives and presented a new corporate image following a deadly fire at one of its coal mines in 2006. After another devastating explosion which killed 29 miners in 2010, Massey's market capitalization dropped by more than \$3 billion. Judge Irene C. Berger noted that "**Class counsel has done an expert job of representing all of the class members to reach an excellent resolution and maximize recovery for the class.**"

- ***Eastwood Enterprises, LLC v. Farha (WellCare Securities Litigation), No. 07-cv-1940 (M.D. Fla.)***

On behalf of The New Mexico State Investment Council and the Public Employees Retirement Association of New Mexico, Labaton Sucharow served as co-lead counsel and negotiated a \$200 million settlement over allegations that WellCare Health Plans, Inc., a Florida-based managed healthcare service provider, disguised its profitability by overcharging state Medicaid programs. Under the terms of the settlement approved by the court on May 4, 2011, WellCare agreed to pay an additional \$25 million in cash if, at any time in the next three years, WellCare was acquired or otherwise experienced a change in control at a share price of \$30 or more after adjustments for dilution or stock splits.

- ***In re Bristol-Myers Squibb Securities Litigation, No. 00-cv-1990 (D.N.J.)***

Labaton Sucharow served as lead counsel representing the lead plaintiff, union-owned LongView Collective Investment Fund of the Amalgamated Bank, against drug company Bristol-Myers Squibb (BMS). Lead plaintiff claimed that the company's press release touting its new blood pressure medication, Vanlev, left out critical information, other results from the clinical trials indicated that Vanlev appeared to have life-threatening side effects. The FDA expressed serious concerns about these side effects, and BMS released a statement that it was withdrawing the drug's FDA application, resulting in the company's stock price falling and losing nearly 30 percent of its value in a single day. After a five year battle, we won relief on two critical fronts. First, we secured a \$185 million recovery for shareholders, and second, we negotiated major reforms to the company's drug development

process that will have a significant impact on consumers and medical professionals across the globe. Due to our advocacy, BMS must now disclose the results of clinical studies on all of its drugs marketed in any country.

- ***In re Fannie Mae 2008 Securities Litigation, No. 08-cv-7831 (S.D.N.Y.)***

As co-lead counsel representing co-lead plaintiff Boston Retirement System, Labaton Sucharow secured a \$170 million settlement on March 3, 2015 with Fannie Mae. Lead plaintiffs alleged that Fannie Mae and certain of its current and former senior officers violated federal securities laws, by making false and misleading statements concerning the company's internal controls and risk management with respect to Alt-A and subprime mortgages. Lead plaintiffs also alleged that defendants made misstatements with respect to Fannie Mae's core capital, deferred tax assets, other-than-temporary losses, and loss reserves. This settlement is a significant feat, particularly following the unfavorable result in a similar case for investors of Fannie Mae's sibling company, Freddie Mac. Labaton Sucharow successfully argued that investors' losses were caused by Fannie Mae's misrepresentations and poor risk management, rather than by the financial crisis.

- ***In re Broadcom Corp. Class Action Litigation, No. 06-cv-05036 (C.D. Cal.)***

Labaton Sucharow served as lead counsel on behalf of lead plaintiff New Mexico State Investment Council in a case stemming from Broadcom Corp.'s \$2.2 billion restatement of its historic financial statements for 1998 - 2005. In August 2010, the court granted final approval of a \$160.5 million settlement with Broadcom and two individual defendants to resolve this matter, the second largest up-front cash settlement ever recovered from a company accused of options backdating. Following a Ninth Circuit ruling confirming that outside auditors are subject to the same pleading standards as all other defendants, the district court denied Broadcom's auditor Ernst & Young's motion to dismiss on the ground of loss causation. This ruling is a major victory for the class and a landmark decision by the court—the first of its kind in a case arising from stock-options backdating. In October 2012, the court approved a \$13 million settlement with Ernst & Young.

- ***In re Satyam Computer Services Ltd. Securities Litigation, No. 09-md-2027 (S.D.N.Y.)***

Satyam, referred to as "India's Enron," engaged in one of the most egregious frauds on record. In a case that rivals the Enron and Bernie Madoff scandals, the Firm represented lead plaintiff UK-based Mineworkers' Pension Scheme, which alleged that Satyam Computer Services Ltd., related entities, its auditors, and certain directors and officers made materially false and misleading statements to the investing public about the company's earnings and assets, artificially inflating the price of Satyam securities. On September 13, 2011, the court granted final approval to a settlement with Satyam of \$125 million and a settlement with the company's auditor, PricewaterhouseCoopers, in the amount of \$25.5 million. Judge Barbara S. Jones commended lead counsel during the final approval hearing noting that the "...quality of representation which I found to be very high..."

- ***In re Mercury Interactive Corp. Securities Litigation, No. 05-cv-3395 (N.D. Cal.)***

Labaton Sucharow served as co-lead counsel on behalf of co-lead plaintiff Steamship Trade Association/International Longshoremen's Association Pension Fund, which alleged Mercury backdated option grants used to compensate employees and officers of the company. Mercury's former CEO, CFO, and General Counsel actively participated in and benefited from the options backdating scheme, which came at the expense of the company's shareholders and the investing public. On September 25, 2008, the court granted final approval of the \$117.5 million settlement.

- ***In re Oppenheimer Champion Fund Securities Fraud Class Actions, No. 09-cv-525 (D. Colo.) and In re Core Bond Fund, No. 09-cv-1186 (D. Colo.)***

Labaton Sucharow served as lead counsel and represented individuals and the proposed class in two related securities class actions brought against OppenheimerFunds, Inc., among others, and certain officers and trustees of two funds—Oppenheimer Core Bond Fund and Oppenheimer Champion Income Fund. The lawsuits alleged that the investment policies followed by the funds resulted in investor losses when the funds suffered drops in net asset value although the funds were presented as safe and conservative investments to consumers. In May 2011, the Firm achieved settlements amounting to \$100 million: \$52.5 million in *In re Oppenheimer Champion Fund Securities Fraud Class Actions*, and a \$47.5 million settlement in *In re Core Bond Fund*.

- ***In re Computer Sciences Corporation Securities Litigation, No. 11-cv-610 (E.D. Va.)***

As lead counsel representing Ontario Teachers' Pension Plan Board, Labaton Sucharow secured a \$97.5 million settlement in this "rocket docket" case involving accounting fraud. The settlement was the third largest all cash recovery in a securities class action in the Fourth Circuit and the second largest all cash recovery in such a case in the Eastern District of Virginia. The plaintiffs alleged that IT consulting and outsourcing company Computer Sciences Corporation (CSC) fraudulently inflated its stock price by misrepresenting and omitting the truth about the state of its most visible contract and the state of its internal controls. In particular, the plaintiffs alleged that CSC assured the market that it was performing on a \$5.4 billion contract with the UK National Health Services when CSC internally knew that it could not deliver on the contract, departed from the terms of the contract, and as a result, was not properly accounting for the contract. Judge T.S. Ellis, III stated, "**I have no doubt—that the work product I saw was always of the highest quality for both sides.**"

## Lead Counsel Appointments in Ongoing Litigation

Labaton Sucharow's institutional investor clients are regularly chosen by federal judges to serve as lead plaintiffs in prominent securities litigations brought under the PSLRA. Dozens of public pension funds and union funds have selected Labaton Sucharow to represent them in federal securities class actions and advise them as securities litigation/investigation counsel. Our recent notable lead and co-lead counsel appointments include the following:

- ***In re SCANA Corporation Securities Litigation, No. 17-cv-2616 (D.S.C.)***

Labaton Sucharow represents the West Virginia Investment Management Board against SCANA Corporation and certain of the company's senior executives in this securities class action alleging false and misleading statements about the construction of two new nuclear power plants.

- ***Murphy v. Precision Castparts Corp., No. 16-cv-00521 (D. Or.)***

Labaton Sucharow represents Oklahoma Firefighters Pension and Retirement System in this securities class action against Precision Castparts Corp., an aviation parts manufacturing conglomerate that produces complex metal parts primarily marketed to industrial and aerospace customers.

- ***In re Goldman Sachs Group, Inc. Securities Litigation, No. 10-cv-03461 (S.D.N.Y.)***

Labaton Sucharow represents Arkansas Teacher Retirement System in this high-profile litigation based on the scandals involving Goldman Sachs' sales of the Abacus CDO.

- ***Pension Trust Fund for Operating Engineers v. DeVry Education Group, Inc., No. 16-cv-5198 (N.D. Ill.)***

Labaton Sucharow represents Utah Retirement Systems in this securities class action alleging that DeVry Education Group made false and misleading statements about employment and salary statistics for DeVry University Graduates.

- ***In re PG&E Corporation Securities Litigation, No. 18-cv-03509 (N.D. Cal.)***

Labaton Sucharow represents the Public Employees Retirement Association of New Mexico in a securities class action lawsuit against PG&E related to wildfires that devastated Northern California in 2017.

## Innovative Legal Strategy

Bringing successful litigation against corporate behemoths during a time of financial turmoil presents many challenges, but Labaton Sucharow has kept pace with the evolving financial markets and with corporate wrongdoer's novel approaches to committing fraud.

Our Firm's innovative litigation strategies on behalf of clients include the following:

- ***Mortgage-Related Litigation***

In *In re Countrywide Financial Corporation Securities Litigation*, No. 07-cv-5295 (C.D. Cal.), our client's claims involved complex and data-intensive arguments relating to the mortgage securitization process and the market for residential mortgage-backed securities (RMBS) in the United States. To prove that defendants made false and misleading statements concerning Countrywide's business as an issuer of residential mortgages, Labaton Sucharow utilized both in-house and external expert analysis. This included state-of-the-art statistical analysis of loan level data associated with the creditworthiness of individual mortgage loans. The Firm recovered \$624 million on behalf of investors.

Building on its experience in this area, the Firm has pursued claims on behalf of individual purchasers of RMBS against a variety of investment banks for misrepresentations in the offering documents associated with individual RMBS deals.

- ***Options Backdating***

In 2005, Labaton Sucharow took a pioneering role in identifying options-backdating practices as both damaging to investors and susceptible to securities fraud claims, bringing a case, *In re Mercury Interactive Securities Litigation*, No. 05-cv-3395 (N.D. Cal.), that spawned many other plaintiff recoveries.

Leveraging its experience, the Firm went on to secure other significant options backdating settlements, in, for example, *In re Broadcom Corp. Class Action Litigation*, No. 06-cv-5036 (C.D. Cal.), and in *In re Take-Two Interactive Securities Litigation*, No. 06-cv-0803 (S.D.N.Y.). Moreover, in *Take-Two*, Labaton Sucharow was able to prompt the SEC to reverse its initial position and agree to distribute a disgorgement fund to investors, including class members. The SEC had originally planned for the fund to be distributed to the U.S. Treasury. As a result, investors received a very significant percentage of their recoverable damages.

- **Foreign Exchange Transactions Litigation**

The Firm has pursued or is pursuing claims for state pension funds against BNY Mellon and State Street Bank, the two largest custodian banks in the world. For more than a decade, these banks failed to disclose that they were overcharging their custodial clients for foreign exchange transactions. Given the number of individual transactions this practice affected, the damages caused to our clients and the class were significant. Our claims, involving complex statistical analysis, as well as qui tam jurisprudence, were filed ahead of major actions by federal and state authorities related to similar allegations commenced in 2011. Our team favorably resolved the BNY Mellon matter in 2012. The case against State Street Bank resulted in a \$300 million recovery.

## Appellate Advocacy and Trial Experience

When it is in the best interest of our clients, Labaton Sucharow repeatedly has demonstrated our willingness and ability to litigate these complex cases all the way to trial, a skill unmatched by many firms in the plaintiffs bar.

Labaton Sucharow is one of the few firms in the plaintiffs securities bar to have prevailed in a case before the U.S. Supreme Court. In *Amgen Inc. v. Connecticut Retirement Plans and Trust Funds*, 568 U.S. 455 (2013), the Firm persuaded the court to reject efforts to thwart the certification of a class of investors seeking monetary damages in a securities class action. This represents a significant victory for all plaintiffs in securities class actions.

In *In re Real Estate Associates Limited Partnership Litigation*, Labaton Sucharow's advocacy significantly increased the settlement value for shareholders. The defendants were unwilling to settle for an amount the Firm and its clients viewed as fair, which led to a six-week trial. The Firm and co-counsel ultimately obtained a landmark \$184 million jury verdict. The jury supported the plaintiffs' position that the defendants knowingly violated the federal securities laws, and that the general partner had breached his fiduciary duties to shareholders. The \$184 million award was one of the largest jury verdicts returned in any PSLRA action and one in which the class, consisting of 18,000 investors, recovered 100 percent of their damages.

## Our Clients

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Labaton Sucharow represents and advises the following institutional investor clients, among others:

- Arkansas Teacher Retirement System
- Baltimore County Retirement System
- Boston Retirement System
- California State Teachers' Retirement System
- Chicago Teachers' Pension Fund
- City of New Orleans Employees' Retirement System
- Connecticut Retirement Plans & Trust Funds
- Division of Investment of the New Jersey Department of the Treasury
- Genesee County Employees' Retirement System
- Illinois Municipal Retirement Fund
- Indiana Public Retirement System
- Los Angeles City Employees' Retirement System
- Macomb County Employees Retirement System
- Metropolitan Atlanta Rapid Transit Authority
- Michigan Retirement Systems
- New York State Common Retirement Fund
- Norfolk County Retirement System
- Office of the Ohio Attorney General and several of its Retirement Systems
- Oklahoma Firefighters Pension and Retirement System
- Plymouth County Retirement System
- Office of the New Mexico Attorney General and several of its Retirement Systems
- Public Employees' Retirement System of Mississippi
- Public Employee Retirement System of Idaho
- Rhode Island State Investment Commission
- Santa Barbara County Employees' Retirement System
- State of Oregon Public Employees' Retirement System
- State of Wisconsin Investment Board
- Utah Retirement Systems
- Virginia Retirement System
- West Virginia Investment Management Board

## Awards and Accolades

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Industry publications and peer rankings consistently recognize the Firm as a respected leader in securities litigation.

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### Chambers & Partners USA

Leading Plaintiffs Securities Litigation Firm (2009-2019)

“effective and greatly respected...a bench of partners who are highly esteemed by competitors and adversaries alike”

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### The Legal 500

Leading Plaintiffs Securities Litigation Firm and also recognized in Antitrust (2010-2018) and M&A Litigation (2013, 2015-2018)

“'Superb' and 'at the top of its game.' The Firm's team of 'hard-working lawyers, who push themselves to thoroughly investigate the facts' and conduct 'very diligent research.'”

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### Benchmark Litigation

Recommended in Securities Litigation Nationwide and in New York State (2012-2019); and Noted for Corporate Governance and Shareholder Rights Litigation in the Delaware Court of Chancery (2016-2019), Top 10 Plaintiffs Firm in the United States (2017-2019)

“clearly living up to its stated mission 'reputation matters'...consistently earning mention as a respected litigation-focused firm fighting for the rights of institutional investors”

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### Law360

Most Feared Plaintiffs Firm (2013-2015); Class Action Practice Group of the Year (2012 and 2014-2018); and Securities Practice Group of the Year (2018)

“known for thoroughly investigating claims and conducting due diligence before filing suit, and for fighting defendants tooth and nail in court”

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### The National Law Journal

Winner of the Elite Trial Lawyers Award in Securities Law (2015), Hall of Fame Honoree, and Top Plaintiffs' Firm on the annual Hot List (2006-2016)

“definitely at the top of their field on the plaintiffs' side”

## Community Involvement

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To demonstrate our deep commitment to the community, Labaton Sucharow has devoted significant resources to pro bono legal work and public and community service.

### Firm Commitments

#### Immigration Justice Campaign

Labaton Sucharow has partnered with the Immigration Justice Campaign to represent immigrants in their asylum proceedings.

#### Brooklyn Law School Securities Arbitration Clinic

Labaton Sucharow partnered with Brooklyn Law School to establish a securities arbitration clinic. The program, which ran for five years, assisted defrauded individual investors who could not otherwise afford to pay for legal counsel and provided students with real-world experience in securities arbitration and litigation. Former Partners Mark S. Arisohn and Joel H. Bernstein led the program as adjunct professors.

#### Change for Kids

Labaton Sucharow supports Change for Kids (CFK) as a Strategic Partner of P.S. 182 in East Harlem. One school at a time, CFK rallies communities to provide a broad range of essential educational opportunities at under-resourced public elementary schools. By creating inspiring learning environments at our partner schools, CFK enables students to discover their unique strengths and develop the confidence to achieve.

#### The Lawyers' Committee for Civil Rights Under Law Edward Labaton, Member, Board of Directors

The Firm is a long-time supporter of The Lawyers' Committee for Civil Rights Under Law, a nonpartisan, nonprofit organization formed in 1963 at the request of President John F. Kennedy. The Lawyers' Committee involves the private bar in providing legal services to address racial discrimination.

Labaton Sucharow attorneys have contributed on the federal level to U.S. Supreme Court nominee analyses (analyzing nominees for their views on such topics as ethnic equality, corporate diversity, and gender discrimination) and national voters' rights initiatives.

#### Sidney Hillman Foundation

Labaton Sucharow supports the Sidney Hillman Foundation. Created in honor of the first president of the Amalgamated Clothing Workers of America, Sidney Hillman, the foundation supports investigative and progressive journalism by awarding monthly and yearly prizes. Partner Thomas A. Dubbs is frequently invited to present these awards.

## Individual Attorney Commitments

Labaton Sucharow attorneys give of themselves in many ways, both by volunteering and in leadership positions in charitable organizations. A few of the awards our attorneys have received or organizations they are involved in are:

- Awarded “Champion of Justice” by the Alliance for Justice, a national nonprofit association of over 100 organizations which represent a broad array of groups “committed to progressive values and the creation of an equitable, just, and free society.”
- Pro bono representation of mentally ill tenants facing eviction, appointed as guardian ad litem in several housing court actions.
- Recipient of a Volunteer and Leadership Award from a tenants' advocacy organization for work defending the rights of city residents and preserving their fundamental sense of public safety and home.
- Board Member of the Ovarian Cancer Research Fund—the largest private funding agency of its kind supporting research into a method of early detection and, ultimately, a cure for ovarian cancer.

Our attorneys have also contributed to or continue to volunteer with the following charitable organizations, among others:

- American Heart Association
- Big Brothers/Big Sisters of New York City
- Boys and Girls Club of America
- Carter Burden Center for the Aging
- City Harvest
- City Meals-on-Wheels
- Coalition for the Homeless
- Cycle for Survival
- Cystic Fibrosis Foundation
- Dana Farber Cancer Institute
- Food Bank for New York City
- Fresh Air Fund
- Habitat for Humanity
- Lawyers Committee for Civil Rights
- Legal Aid Society
- Mentoring USA
- National Lung Cancer Partnership
- National MS Society
- National Parkinson Foundation
- New York Cares
- New York Common Pantry
- Peggy Browning Fund
- Sanctuary for Families
- Sandy Hook School Support Fund
- Save the Children
- Special Olympics
- Toys for Tots
- Williams Syndrome Association

## Commitment to Diversity

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Recognizing that business does not always offer equal opportunities for advancement and collaboration to women, Labaton Sucharow launched its Women's Networking and Mentoring Initiative in 2007.

Led by Firm partners and co-chairs Serena P. Hallowell and Carol C. Villegas, the Women's Initiative reflects our commitment to the advancement of women professionals. The goal of the Initiative is to bring professional women together to collectively advance women's influence in business. Each event showcases a successful woman role model as a guest speaker. We actively discuss our respective business initiatives and hear the guest speaker's strategies for success. Labaton Sucharow mentors young women inside and outside of the firm and promotes their professional achievements. The Firm also is a member of the National Association of Women Lawyers (NAWL). For more information regarding Labaton Sucharow's Women's Initiative, please visit [www.labaton.com/en/about/women/Womens-Initiative.cfm](http://www.labaton.com/en/about/women/Womens-Initiative.cfm).

Further demonstrating our commitment to diversity in the legal profession and within our Firm, in 2006, we established the Labaton Sucharow Minority Scholarship and Internship. The annual award—a grant and a summer associate position—is presented to a first-year minority student who is enrolled at a metropolitan New York law school and who has demonstrated academic excellence, community commitment, and personal integrity.

Labaton Sucharow has also instituted a diversity internship which brings two Hunter College students to work at the Firm each summer. These interns rotate through various departments, shadowing Firm partners and getting a feel for the inner workings of the Firm.

## Securities Litigation Attorneys

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Our team of securities class action litigators includes:

### Partners

Christopher J. Keller (Chairman)  
Lawrence A. Sucharow (Chairman Emeritus)  
Eric J. Belfi  
Michael P. Canty  
Marisa N. DeMato  
Thomas A. Dubbs  
Christine M. Fox  
Jonathan Gardner  
David J. Goldsmith  
Louis Gottlieb  
Serena P. Hallowell  
Thomas G. Hoffman, Jr.  
James W. Johnson  
Edward Labaton  
Christopher J. McDonald  
Michael H. Rogers  
Ira A. Schochet  
David J. Schwartz  
Irina Vasilchenko  
Carol C. Villegas  
Ned Weinberger  
Mark S. Willis  
Nicole M. Zeiss

### Of Counsel

Rachel A. Avan  
Mark Bogen  
Joseph H. Einstein  
John J. Esmay  
Derrick Farrell  
Alfred L. Fatale III  
Mark Goldman  
Lara Goldstone  
Francis P. McConville  
James McGovern  
Domenico Minerva  
Corban S. Rhodes  
Elizabeth Rosenberg  
Mark R. Winston

Detailed biographies of the team's qualifications and accomplishments follow.

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#### **Christopher J. Keller, Chairman** [ckeller@labaton.com](mailto:ckeller@labaton.com)

Christopher J. Keller focuses on complex securities litigation. His clients are institutional investors, including some of the world's largest public and private pension funds with tens of billions of dollars under management.

Described by *The Legal 500* as a "sharp and tenacious advocate" who "has his pulse on the trends," Chris has been instrumental in the Firm's appointments as lead counsel in some of the largest securities matters arising out of the financial crisis, such as actions against Countrywide (\$624 million settlement), Bear Stearns (\$275 million settlement with Bear Stearns Companies, plus a \$19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditor), Fannie Mae (\$170 million settlement), and Goldman Sachs.

Chris has also been integral in the prosecution of traditional fraud cases such as *In re Schering-Plough Corporation / ENHANCE Securities Litigation*; *In re Massey Energy Co. Securities Litigation*, where the Firm obtained a \$265 million all-cash settlement with Alpha Natural Resources, Massey's parent company; as well as *In re Satyam Computer Services, Ltd. Securities Litigation*, where the Firm obtained a settlement of more than \$150 million. Chris was also a principal litigator on the trial team of *In re Real Estate Associates Limited Partnership Litigation*. The six-week jury trial resulted in a \$184 million plaintiffs' verdict, one of the largest jury verdicts since the passage of the Private Securities Litigation Reform Act.

In addition to his active caseload, Chris holds a variety of leadership positions within the Firm, including serving on the Firm's Executive Committee. In response to the evolving needs of clients, Chris also established, and currently leads, the Case Development Group, which is composed of attorneys, in-house investigators, financial analysts, and forensic accountants. The group is responsible for evaluating clients' financial losses and analyzing their potential legal claims both in and outside of the U.S. and tracking trends that are of potential concern to investors.

Educating institutional investors is a significant element of Chris' advocacy efforts for shareholder rights. He is regularly called upon for presentations on developing trends in the law and new case theories at annual meetings and seminars for institutional investors.

He is a member of several professional groups, including the New York State Bar Association and the New York County Lawyers' Association. In 2017, he was elected to the New York City Bar Fund Board of Directors. The City Bar Fund is the nonprofit 501(c)(3) arm of the New York City Bar Association aimed at engaging and supporting the legal profession in advancing social justice."

He is admitted to practice in the States of New York and Ohio, as well as before the Supreme Court of the United States, and the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Wisconsin, and the District of Colorado.

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**Lawrence A. Sucharow, Chairman Emeritus**  
[lsucharow@labaton.com](mailto:lsucharow@labaton.com)

With more than four decades of experience, Lawrence A. Sucharow is an internationally recognized trial lawyer and a leader of the class action bar. Under his guidance, the Firm has grown into and earned its position as one of the top plaintiffs securities and antitrust class action firms in the world. As Chairman Emeritus, Larry focuses on counseling the Firm's large institutional clients, developing creative and compelling strategies to advance and protect clients' interests, and the prosecution and resolution of many of the Firm's leading cases.

Over the course of his career, Larry has prosecuted hundreds of cases and the Firm has recovered billions in groundbreaking securities, antitrust, business transaction, product liability, and other class actions. In fact, a landmark case tried in 2002—*In re Real Estate Associates Limited Partnership Litigation*—was the very first securities action successfully tried to a jury verdict following the enactment of the Private Securities Litigation Reform Act (PSLRA). Experience such as this has made Larry uniquely qualified to evaluate and successfully prosecute class actions.

Other representative matters include: *In re CNL Resorts, Inc. Securities Litigation* (\$225 million settlement); *In re Paine Webber Incorporated Limited Partnerships Litigation* (\$200 million settlement); *In re Prudential Securities Incorporated Limited Partnerships Litigation* (\$110 million partial settlement); *In re Prudential Bache Energy Income Partnerships Securities Litigation* (\$91 million settlement) and *Shea v. New York Life Insurance Company* (over \$92 million settlement).

Larry's consumer protection experience includes leading the national litigation against the tobacco companies in *Castano v. American Tobacco Co.*, as well as litigating *In re Imprelis Herbicide Marketing, Sales Practices and Products Liability Litigation*. Currently, he plays a key role in *In re Takata Airbag Products Liability Litigation* and a nationwide consumer class action against Volkswagen Group of America, Inc., arising out of

the wide-scale fraud concerning Volkswagen's "Clean Diesel" vehicles. Larry further conceptualized the establishment of two Dutch foundations, or "Stichtingen" to pursue settlement of claims against Volkswagen on behalf of injured car owners and investors in Europe.

In recognition of his career accomplishments and standing in the securities bar at the Bar, Larry was selected by *Law360* as one the 10 Most Admired Securities Attorneys in the United States and as a Titan of the Plaintiffs Bar. Further, he is one of a small handful of plaintiffs' securities lawyers in the United States recognized by *Chambers & Partners USA*, *The Legal 500*, *Benchmark Litigation*, and *Lawdragon 500* for his successes in securities litigation. Referred to as a "legend" by his peers in *Benchmark Litigation*, *Chambers* describes him as an "an immensely respected plaintiff advocate" and a "renowned figure in the securities plaintiff world...[that] has handled some of the most high-profile litigation in this field." According to *The Legal 500*, clients characterize Larry as a "a strong and passionate advocate with a desire to win." In addition, Brooklyn Law School honored Larry with the 2012 Alumni of the Year Award for his notable achievements in the field.

In 2018, Larry was appointed to serve on Brooklyn Law School's Board of Trustees. He has served a two-year term as President of the National Association of Shareholder and Consumer Attorneys, a membership organization of approximately 100 law firms that practice complex civil litigation including class actions. A longtime supporter of the Federal Bar Council, Larry serves as a trustee of the Federal Bar Council Foundation. He is a member of the Federal Bar Council's Committee on Second Circuit Courts, and the Federal Courts Committee of the New York County Lawyers' Association. He is also a member of the Securities Law Committee of the New Jersey State Bar Association and was the Founding Chairman of the Class Action Committee of the Commercial and Federal Litigation Section of the New York State Bar Association, a position he held from 1988-1994. In addition, Larry serves on the Advocacy Committee of the World Federation of Investors Corporation, a worldwide umbrella organization of national shareholder associations. In May 2013, Larry was elected Vice Chair of the International Financial Litigation Network, a network of law firms from 15 countries seeking international solutions to cross-border financial problems.

Larry is admitted to practice in the States of New York, New Jersey, and Arizona as well as before the Supreme Court of the United States, the United States Court of Appeals for the Second Circuit, and the United States District Courts for the Southern and Eastern Districts of New York, and the District of New Jersey.

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**Eric J. Belfi, Partner**  
[ebelfi@labaton.com](mailto:ebelfi@labaton.com)

Representing many of the world's leading pension funds and other institutional investors, Eric J. Belfi is an accomplished litigator with experience in a broad range of commercial matters. Eric focuses on domestic and international securities and shareholder litigation, as well as direct actions on behalf of governmental entities. He serves as a member of the Firm's Executive Committee.

As an integral member of the Firm's Case Development Group, Eric has brought numerous high-profile domestic securities cases that resulted from the credit crisis, including the prosecution against Goldman Sachs. In *In re Goldman Sachs Group, Inc. Securities Litigation*, he played a significant role in the investigation and drafting of the operative complaint. Eric was also actively involved in securing a combined settlement of \$18.4 million in *In re Colonial BancGroup, Inc. Securities Litigation*, regarding material misstatements and omissions in SEC filings by Colonial BancGroup and certain underwriters.

Along with his domestic securities litigation practice, Eric leads the Firm's Non-U.S. Securities Litigation Practice, which is dedicated exclusively to analyzing potential claims in non-U.S. jurisdictions and advising on the risk and benefits of litigation in those forums. The practice, one of the first of its kind, also serves as liaison counsel to institutional investors in such cases, where appropriate. Currently, Eric represents nearly 30 institutional investors in over a dozen non-U.S. cases against companies including SNC-Lavalin Group Inc. in Canada, Vivendi Universal, S.A. in France, OZ Minerals Ltd. in Australia, Lloyds Banking Group in the UK, and Olympus Corporation in Japan.

Eric's international experience also includes securing settlements on behalf of non-U.S. clients including the UK-based Mineworkers' Pension Scheme in *In re Satyam Computer Securities Services Ltd. Securities Litigation*, an action related to one of the largest securities fraud in India which resulted in \$150.5 million in collective settlements. Representing two of Europe's leading pension funds, Deka Investment GmbH and Deka International S.A., Luxembourg, in *In re General Motors Corp. Securities Litigation*, Eric was integral in securing a \$303 million settlement in a case regarding multiple accounting manipulations and overstatements by General Motors.

Additionally, Eric oversees the Financial Products and Services Litigation Practice, focusing on individual actions against malfeasant investment bankers, including cases against custodial banks that allegedly committed deceptive practices relating to certain foreign currency transactions. Most recently, he served as lead counsel to Arkansas Teacher Retirement System in a class action against State Street Corporation and certain affiliated entities alleging misleading actions in connection with foreign currency exchange trades, which resulted in a \$300 million recovery. He has also represented the Commonwealth of Virginia in its False Claims Act case against Bank of New York Mellon, Inc.

Eric's M&A and derivative experience includes noteworthy cases such as *In re Medco Health Solutions Inc. Shareholders Litigation*, in which he was integrally involved in the negotiation of the settlement that included a significant reduction in the termination fee.

Eric's prior experience included serving as an Assistant Attorney General for the State of New York and as an Assistant District Attorney for the County of Westchester. As a prosecutor, Eric investigated and prosecuted white-collar criminal cases, including many securities law violations. He presented hundreds of cases to the grand jury and obtained numerous felony convictions after jury trials.

Eric is a member of the National Association of Public Pension Attorneys (NAPPA) Securities Litigation Working Group. He has spoken on the topics of shareholder litigation and U.S.-style class actions in European countries and has discussed socially responsible investments for public pension funds.

Eric is admitted to practice in the State of New York, as well as before the United States Court of Appeals for the Tenth Circuit, and the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Michigan, the District of Colorado, the District of Nebraska, and the Eastern District of Wisconsin.

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**Michael P. Canty, Partner**  
[mcanty@labaton.com](mailto:mcanty@labaton.com)

Michael P. Canty prosecutes complex fraud cases on behalf of institutional investors and consumers. Upon joining Labaton, Michael successfully prosecuted a number of high profile securities matters involving technology companies including cases against AMD, a multi-national semiconductor company and Ubiquiti Networks, Inc., a global software company. In both cases Michael played a pivotal role in securing favorable settlements for investors. Recommended by *The Legal 500* in the field of securities litigation, Michael also is an accomplished litigator with more than a decade of trial experience in matters relating to national security, white collar crime, and cybercrime. He currently serves as General Counsel to the Firm.

Prior to joining Labaton Sucharow, Michael was a federal prosecutor in the United States Attorney's Office for the Eastern District of New York, where he served as the Deputy Chief of the Office's General Crimes Section. Michael also served in the Office's National Security and Cybercrimes Section. During his time as lead prosecutor, Michael investigated and prosecuted complex and high-profile white collar, national security, and cybercrime offenses. He also served as an Assistant District Attorney for the Nassau County District Attorney's Office, where he handled complex state criminal offenses and served in the Office's Homicide Unit.

Michael has extensive trial experience both from his days as a prosecutor in New York City for the United States Department of Justice and during his six years as an Assistant District Attorney. He served as trial

counsel in more than 35 matters, many of which related to violent crime, white collar and terrorism related offenses. He played a pivotal role in *United States v. Abid Naseer*, where he prosecuted and convicted an al-Qaeda operative who conspired to carry out attacks in the United States and Europe. Michael also led the investigation in *United States v. Marcos Alonso Zea*, a case in which he successfully prosecuted a citizen for attempting to join a terrorist organization in the Arabian Peninsula and for providing material support intended for planned attacks.

Michael also has a depth of experience investigating and prosecuting cases involving the distribution of prescription opioids. In January 2012, Michael was assigned to the U.S. Attorney's Office Prescription Drug Initiative to mount a comprehensive response to what the United States Department of Health and Human Services' Center for Disease Control and Prevention has called an epidemic increase in the abuse of so-called opioid analgesics. As a member of the initiative, in *United States v. Conway* and *United States v. Deslouches* Michael successfully prosecuted medical professionals who were illegally prescribing opioids. In *United States v. Moss et al.* he was responsible for dismantling one of the largest oxycodone rings operating in the New York metropolitan area at the time. In addition to prosecuting these cases, Michael spoke regularly to the community on the dangers of opioid abuse as part of the Office's community outreach.

Additionally, Michael has extensive experience in investigating and prosecuting data breach cases

Before becoming a prosecutor, Michael worked as a Congressional Staff Member for the United States House of Representatives. He primarily served as a liaison between the Majority Leader's Office and the Government Reform and Oversight Committee. During his time with the House of Representatives, Michael managed congressional oversight of the United States Postal Service and reviewed and analyzed counter-narcotics legislation as it related to national security matters.

Michael is admitted to practice in the State of New York as well as before the United States Courts of Appeals for the Second Circuit, and the United States District Court for the Eastern District of New York.

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**Marisa N. DeMato, Partner**  
[mdemato@labaton.com](mailto:mdemato@labaton.com)

With more than 14 years of securities litigation experience, Marisa N. DeMato advises leading pension funds and other institutional investors in the United States and Canada on issues related to corporate fraud in the U.S. securities markets and represents them in complex civil actions. Her work focuses on counseling clients on best practices in corporate governance of publicly traded companies and advising institutional investors on monitoring the well-being of their investments. Marisa also advises and counsels municipalities and health plans on issues related to U.S. antitrust law and potential violations.

Recently, Marisa represented Seattle City Employees' Retirement System and helped reach a \$90 million derivative settlement and historic corporate governance changes with Twenty-First Century Fox, Inc., regarding allegations surrounding workplace harassment incidents at Fox News. Marisa also represented the Oklahoma Firefighters Pension and Retirement System in securing a \$9.5 million settlement with Castlight Health, Inc. for securities violations in connection with the company's initial public offering. She also served as legal adviser to the West Palm Beach Police Pension Fund in *In re Walgreen Co. Derivative Litigation*, which secured significant corporate governance reforms and required Walgreens to extend its Drug Enforcement Agency commitments as part of the settlement related to the company's violation of the U.S. Controlled Substances Act.

Prior to joining Labaton Sucharow, Marisa worked for a nationally recognized securities litigation firm and devoted a substantial portion of her time to litigating securities fraud, derivative, mergers and acquisitions, and consumer fraud. Over the course of those eight years she represented numerous pension funds, municipalities, and individual investors throughout the United States and was an integral member of the legal teams that helped secure multimillion dollar settlements, including *In re Managed Care Litigation* (\$135 million recovery); *Cornwell v. Credit Suisse Group* (\$70 million recovery); *Michael v. SFBC International, Inc.* (\$28.5

million recovery); *Ross v. Career Education Corporation* (\$27.5 million recovery); and *Village of Dolton v. Taser International Inc.* (\$20 million recovery).

Marisa has spoken on shareholder litigation-related matters, frequently lecturing on topics pertaining to securities fraud litigation, fiduciary responsibility, and corporate governance issues. Most recently, she testified before the Texas House of Representatives Pensions Committee to address the changing legal landscape public pensions have faced since the Supreme Court's Morrison decision and highlighted the best practices for non-U.S. investment recovery. During the 2008 financial crisis, Marisa spoke widely on the subprime mortgage crisis and its disastrous effect on the pension fund community at regional and national conferences, and addressed the crisis' global implications and related fraud to institutional investors internationally in Italy, France, and the United Kingdom. Marisa has also presented on issues pertaining to the federal regulatory response to the 2008 crisis, including implications of the Dodd-Frank legislation and the national debate on executive compensation and proxy access for shareholders. Marisa is an active member of the National Association of Public Pension Attorneys (NAPPA) and also a member of the Federal Bar Council, an organization of lawyers dedicated to promoting excellence in federal practice and fellowship among federal practitioners.

Marisa has also become one of the leading advocates for institutional investing in women and minority-owned investment firms. In 2018, she served as co-chair of the Firm's first annual Women's Initiative forum focusing on institutional investing in women and minority-owned investment firms. Marisa was instrumental in the development and execution of the programming for the inaugural event, which featured two all-female panels, and was praised by attendees for offering an insightful discussion on how pension funds and other institutional investors can provide opportunities for women and minority-owned firms.

In the spring of 2006, Marisa was selected over 250,000 applicants to appear on the sixth season of *The Apprentice*, which aired on January 7, 2007, on NBC. As a result of her role on *The Apprentice*, Marisa has appeared in numerous news media outlets, such as *The Wall Street Journal*, *People* magazine, and various national legal journals.

Marisa is admitted to practice in the State of Florida and the District of Columbia as well as before the United States District Courts for the Northern, Middle, and Southern Districts of Florida.

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**Thomas A. Dubbs, Partner**  
[tdubbs@labaton.com](mailto:tdubbs@labaton.com)

Thomas A. Dubbs focuses on the representation of institutional investors in domestic and multinational securities cases. Recognized as a leading securities class action attorney, Tom has been named as a top litigator by *Chambers & Partners* for nine consecutive years.

Tom has served or is currently serving as lead or co-lead counsel in some of the most important federal securities class actions in recent years, including those against American International Group, Goldman Sachs, the Bear Stearns Companies, Facebook, Fannie Mae, Broadcom, and WellCare. Tom has also played an integral role in securing significant settlements in several high-profile cases including: *In re American International Group, Inc. Securities Litigation* (settlements totaling more than \$1 billion); *In re Bear Stearns Companies, Inc. Securities Litigation* (\$275 million settlement with Bear Stearns Companies, plus a \$19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditor); *In re HealthSouth Securities Litigation* (\$671 million settlement); *Eastwood Enterprises LLC v. Farha et al. (WellCare Securities Litigation)* (over \$200 million settlement); *In re Fannie Mae 2008 Securities Litigation* (\$170 million settlement); *In re Broadcom Corp. Securities Litigation* (\$160.5 million settlement with Broadcom, plus \$13 million settlement with Ernst & Young LLP, Broadcom's outside auditor); *In re St. Paul Travelers Securities Litigation* (\$144.5 million settlement); *In re Amgen Inc. Securities Litigation* (\$95 million settlement); and *In re Vesta Insurance Group, Inc. Securities Litigation* (\$79 million settlement).

Representing an affiliate of the Amalgamated Bank, the largest labor-owned bank in the United States, a team led by Tom successfully litigated a class action against Bristol-Myers Squibb, which resulted in a settlement of \$185 million as well as major corporate governance reforms. He has argued before the United States Supreme Court and has argued 10 appeals dealing with securities or commodities issues before the United States Courts of Appeals.

Due to his reputation in securities law, Tom frequently lectures to institutional investors and other groups such as the Government Finance Officers Association, the National Conference on Public Employee Retirement Systems, and the Council of Institutional Investors. He is a prolific author of articles related to his field, and he recently penned "Textualism and Transnational Securities Law: A Reappraisal of Justice Scalia's Analysis in *Morrison v. National Australia Bank*," *Southwestern Journal of International Law* (2014). He has also written several columns in UK-wide publications regarding securities class action and corporate governance.

Prior to joining Labaton Sucharow, Tom was Senior Vice President & Senior Litigation Counsel for Kidder, Peabody & Co. Incorporated, where he represented the company in many class actions, including the First Executive and Orange County litigation and was first chair in many securities trials. Before joining Kidder, Tom was head of the litigation department at Hall, McNicol, Hamilton & Clark, where he was the principal partner representing Thomson McKinnon Securities Inc. in many matters, including the Petro Lewis and Baldwin-United class actions.

In addition to his *Chambers & Partners* recognition, Tom was named a Leading Lawyer by *The Legal 500*, and inducted into its Hall of Fame, an honor presented to only three other plaintiffs securities litigation lawyers "who have received constant praise by their clients for continued excellence." *Law360* also named him an "MVP of the Year" for distinction in class action litigation in 2012 and 2015, and he has been recognized by *The National Law Journal*, *Lawdragon 500*, and *Benchmark Litigation* as a Securities Litigation Star. Tom has received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory.

Tom serves as a FINRA Arbitrator and is an Advisory Board Member for the Institute for Transnational Arbitration. He is a member of the New York State Bar Association, the Association of the Bar of the City of New York, the American Law Institute, and he is a Patron of the American Society of International Law. He was previously a member of the Members Consultative Group for the Principles of the Law of Aggregate Litigation and the Department of State Advisory Committee on Private International Law. Tom also serves on the Board of Directors for The Sidney Hillman Foundation.

Tom is admitted to practice in the State of New York as well as before the Supreme Court of the United States, the United States Courts of Appeals for the Second, Third, Fourth, Ninth, and Eleventh Circuits, and the United States District Court for the Southern District of New York.

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**Christine M. Fox, Partner**  
[cfox@labaton.com](mailto:cfox@labaton.com)

With more than 20 years of securities litigation experience, Christine M. Fox prosecutes complex securities fraud cases on behalf of institutional investors. Christine is actively involved in litigating matters against Molina Healthcare, Qurate Retail, and Rent-A-Center.

Christine has played a pivotal role in securing favorable settle for investors in class actions against Barrick Gold Corporation, one of the largest gold mining companies in the world (\$140 million recovery); CVS Caremark, the nation's largest pharmacy retail chain (\$48 million recovery); Nu Skin Enterprises, a multilevel marketing company (\$47 million recovery); and Genworth Financial, Inc. (\$20 million recovery).

Prior to joining the Firm, Christine worked at a national litigation firm focusing on securities, antitrust, and consumer litigation in state and federal courts. She played a significant role in securing class action recoveries in a number of high-profile securities cases, including *In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation* (\$475 million recovery); *In re Informix Corp. Securities Litigation* (\$136.5 million recovery); *In re*

*Alcatel Alsthom Securities Litigation* (\$75 million recovery); and *In re Ambac Financial Group, Inc. Securities Litigation* (\$33 million recovery).

Christine received her J.D. from the University of Michigan Law School and her B.A. from Cornell University. She is a member of the American Bar Association, the New York State Bar Association, and the Puerto Rican Bar Association. Christine is actively involved in Labaton Sucharow's pro bono immigration program and recently reunited a father and child separated at the border. She is currently working on their asylum application.

Christine is conversant in Spanish.

Christine is admitted to the practice in the State of New York as well as before the United States District Courts for the Southern and Eastern Districts of New York.

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**Jonathan Gardner, Partner**  
[jgardner@labaton.com](mailto:jgardner@labaton.com)

With more than 25 years of experience, Jonathan Gardner leads one of the litigation teams at the Firm and prosecutes complex securities fraud cases on behalf of institutional investors. He has played an integral role in securing some of the largest class action recoveries against corporate offenders since the global financial crisis. Jonathan also serves as Head of Litigation for the Firm.

A *Benchmark Litigation "Star"* acknowledged by peers as "engaged and strategic," Jonathan also was named an MVP by *Law360* for securing hard-earned successes in high-stakes litigation and complex global matters. Recently, he led the Firm's team in the investigation and prosecution of *In re Barrick Gold Securities Litigation*, which resulted in a \$140 million recovery. Jonathan has also served as the lead attorney in several cases resulting in significant recoveries for injured class members, including: *In re Hewlett-Packard Company Securities Litigation*, resulting in a \$57 million recovery; *Medoff v. CVS Caremark Corporation*, resulting in a \$48 million recovery; *In re Nu Skin Enterprises, Inc., Securities Litigation*, resulting in a \$47 million recovery; *In re Intuitive Surgical Securities Litigation*, resulting in a \$42.5 million recovery; *In re Carter's Inc. Securities Litigation*, resulting in a \$23.3 million recovery against Carter's and certain of its officers as well as PricewaterhouseCoopers, its auditing firm; *In re Aeropostale Inc. Securities Litigation*, resulting in a \$15 million recovery; *In re Lender Processing Services Inc.*, involving claims of fraudulent mortgage processing which resulted in a \$13.1 million recovery; and *In re K-12, Inc. Securities Litigation*, resulting in a \$6.75 million recovery.

Recommended and described by *The Legal 500* as having the "ability to master the nuances of securities class actions," Jonathan has led the Firm's representation of investors in many recent high-profile cases including *Rubin v. MF Global Ltd.*, which involved allegations of material misstatements and omissions in a Registration Statement and Prospectus issued in connection with MF Global's IPO in 2007. In November 2011, the case resulted in a recovery of \$90 million for investors. Jonathan also represented lead plaintiff City of Edinburgh Council as Administering Authority of the Lothian Pension Fund in *In re Lehman Brothers Equity/Debt Securities Litigation*, which resulted in settlements totaling exceeding \$600 million against Lehman Brothers' former officers and directors, Lehman's former public accounting firm as well as the banks that underwrote Lehman Brothers' offerings. In representing lead plaintiff Massachusetts Bricklayers and Masons Trust Funds in an action against Deutsche Bank, Jonathan secured a \$32.5 million dollar recovery for a class of investors injured by the Bank's conduct in connection with certain residential mortgage-backed securities.

Jonathan has also been responsible for prosecuting several of the Firm's options backdating cases, including *In re Monster Worldwide, Inc. Securities Litigation* (\$47.5 million settlement); *In re SafeNet, Inc. Securities Litigation* (\$25 million settlement); *In re Semtech Securities Litigation* (\$20 million settlement); and *In re MRV Communications, Inc. Securities Litigation* (\$10 million settlement). He also was instrumental in *In re Mercury Interactive Corp. Securities Litigation*, which settled for \$117.5 million, one of the largest settlements or judgments in a securities fraud litigation based upon options backdating.

Jonathan also represented the Successor Liquidating Trustee of Lipper Convertibles, a convertible bond hedge fund, in actions against the fund's former independent auditor and a member of the fund's general partner as well as numerous former limited partners who received excess distributions. He successfully recovered over \$5.2 million for the Successor Liquidating Trustee from the limited partners and \$29.9 million from the former auditor.

He is a member of the Federal Bar Council, New York State Bar Association, and the Association of the Bar of the City of New York.

Jonathan is admitted to practice in the State of New York as well as before the United States Court of Appeals for the First, Sixth, Ninth, and Eleventh Circuits, and the United States District Courts for the Southern and Eastern Districts of New York, and the Eastern District of Wisconsin.

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**David J. Goldsmith, Partner**  
[dgoldsmith@labaton.com](mailto:dgoldsmith@labaton.com)

David J. Goldsmith has nearly 20 years of experience representing public and private institutional investors in a variety of securities and class action litigations. He has twice been recommended by *The Legal 500* as part of the Firm's recognition as a top-tier plaintiffs firm in securities class action litigation.

A principal litigator at the Firm, David is responsible for the Firm's appellate practice, and has briefed and argued multiple appeals in the federal Courts of Appeals. He is presently litigating appeals in the Second, Third, Fourth, and Ninth Circuits in significant securities class actions brought against Maximus, Inc., Nimble Storage, Inc., StoneMor Partners L.P., United Technologies Corp., and Xerox Corp. In the Supreme Court of the United States, David recently acted as co-counsel for AARP and AARP Foundation as *amici curiae* in *China Agritech, Inc. v. Resh*, 138 S. Ct. 1800 (2018), and as co-counsel for a group of federal jurisdiction and securities law scholars as *amici curiae* in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, 138 S. Ct. 1061 (2018).

As a trial lawyer, David was an integral member of the team representing the Arkansas Teacher Retirement System in a significant action alleging unfair and deceptive practices by State Street Bank in connection with foreign currency exchange trades executed for its custodial clients. The resulting \$300 million settlement is the largest class action settlement ever reached under the Massachusetts consumer protection statute, and one of the largest class action settlements reached in the First Circuit. David also represented the New York State Common Retirement Fund and New York City pension funds as lead plaintiffs in the landmark *In re Countrywide Financial Corp. Securities Litigation*, which settled for \$624 million. He has successfully represented state and county pension funds in class actions in California state court arising from the IPOs of technology companies, and recovered tens of millions of dollars for a large German bank and a major Irish special-purpose vehicle in individual actions alleging fraud in connection with the sale of residential mortgage-backed securities. David's representation of a hedge fund and individual investors as lead plaintiffs in an action concerning the well-publicized collapse of four Regions Morgan Keegan mutual funds led to a \$62 million settlement.

David regularly advises the Genesee County (Michigan) Employees' Retirement Commission with respect to potential securities, shareholder, and antitrust claims, and represents the System in a major action charging a conspiracy by some of the world's largest banks to manipulate the U.S. Dollar ISDAfix benchmark interest rate. This case was featured in Law360's selection of the Firm as a Class Action Group of the Year for 2017.

In 2016, David participated in a panel moderated by Prof. Arthur Miller at the 22nd Annual Symposium of the Institute for Law and Economic Policy, discussing changes in Rule 23 since the 1966 Amendments. David is an active member of several professional organizations, including The National Association of Shareholder & Consumer Attorneys (NASCAT), a membership organization of approximately 100 law firms that practice complex civil litigation including class actions, the American Association for Justice, New York State Bar Association, and the Association of the Bar of the City of New York.

During law school, David was Managing Editor of the *Cardozo Arts & Entertainment Law Journal* and served as a judicial intern to the Honorable Michael B. Mukasey, then a United States District Judge for the Southern District of New York.

For many years, David has been a member of AmorArtis, a renowned choral organization with a diverse repertoire.

He is admitted to practice in the States of New York and New Jersey as well as before the United States Courts of Appeals for the First, Second, Fourth, Fifth, Eighth, and Ninth Circuits, and the United States District Courts for the Southern and Eastern Districts of New York, the District of New Jersey, the District of Colorado, and the Western District of Michigan.

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**Louis Gottlieb, Partner**  
**lgottlieb@labaton.com**

Louis Gottlieb focuses on representing institutional and individual investors in complex securities and consumer class action cases. He has played a key role in some of the most high-profile securities class actions in recent history, securing significant recoveries for plaintiffs and ensuring essential corporate governance reforms to protect future investors, consumers, and the general public.

Lou was integral in prosecuting *In re American International Group, Inc. Securities Litigation* (settlements totaling more than \$1 billion) and *In re 2008 Fannie Mae Securities Litigation* (\$170 million settlement pending final approval). He also helped lead major class action cases against the company and related defendants in *In re Satyam Computer Services, Ltd. Securities Litigation* (\$150.5 million settlement). He has led successful litigation teams in securities fraud class action litigations against Metromedia Fiber Networks and Pricemart, as well as consumer class actions against various life insurance companies.

In the Firm's representation of the Connecticut Retirement Plans and Trust Funds in *In re Waste Management, Inc. Securities Litigation*, Lou's efforts were essential in securing a \$457 million settlement. The settlement also included important corporate governance enhancements, including an agreement by management to support a campaign to obtain shareholder approval of a resolution to declassify its board of directors, and a resolution to encourage and safeguard whistleblowers among the company's employees. Acting on behalf of New York City pension funds in *In re Orbital Sciences Corporation Securities Litigation*, Lou helped negotiate the implementation of measures concerning the review of financial results, the composition, role and responsibilities of the Company's Audit and Finance committee, and the adoption of a Board resolution providing guidelines regarding senior executives' exercise and sale of vested stock options.

Lou was a leading member of the team in the *Napp Technologies Litigation* that won substantial recoveries for families and firefighters injured in a chemical plant explosion. Lou has had a major role in national product liability actions against the manufacturers of orthopedic bone screws and atrial pacemakers, and in consumer fraud actions in the national litigation against tobacco companies.

A well-respected litigator, Lou has made presentations on punitive damages at Federal Bar Association meetings and has spoken on securities class actions for institutional investors.

Lou brings a depth of experience to his practice from both within and outside of the legal sphere. He graduated first in his class from St. John's School of Law. Prior to joining Labaton Sucharow, he clerked for the Honorable Leonard B. Wexler of the Eastern District of New York, and he worked as an associate at Skadden Arps Slate Meagher & Flom LLP.

Lou is admitted to practice in the States of New York and Connecticut as well as before the United States Courts of Appeals for the Fifth and Seventh Circuits, and the United States District Courts for the Southern and Eastern Districts of New York.

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**Serena P. Hallowell, Partner**  
[shallowell@labaton.com](mailto:shallowell@labaton.com)

Serena P. Hallowell leads the Direct Action Litigation Practice and focuses on complex litigation, prosecuting securities fraud cases on behalf of some of the world's largest institutional investors, including pension funds, hedge funds, mutual funds, asset managers, and other large institutional investors. Serena also regularly advises and/or represents institutional investors who are seeking counsel on evaluating recovery opportunities in connection with fraud-related conduct. In addition to her active caseload, Serena serves as Co-Chair of the Firm's Women's Networking and Mentoring Initiative and is actively involved in the Firm's summer associate and lateral hiring programs.

Recently, Serena was recognized as a "Trailblazer" by *The National Law Journal* and as one of the leading lawyers in America by *Lawdragon*. She has also been recommended by *The Legal 500* in securities litigation, and named a Rising Star by *Benchmark Litigation* and *Law360*.

Currently she is prosecuting cases against Valeant Pharmaceuticals and Endo International, among others. Recently, in Endo, the parties have announced an agreement in principle to settle the matter. Also, in Valeant, Serena leads a team that won a significant motion in the District of New Jersey, when the court sustained claims arising under the NJ RICO Act in direct actions filed against Valeant.

Serena was part of a highly skilled team that reached a \$140 million settlement against one of the world's largest gold mining companies in *In re Barrick Gold Securities Litigation*. Playing a principal role in prosecuting *In re Computer Sciences Corporation Securities Litigation* in a "rocket docket" jurisdiction, she helped secure a settlement of \$97.5 million on behalf of lead plaintiff Ontario Teachers' Pension Plan Board, the third largest all cash settlement in the Fourth Circuit at the time. She was also instrumental in securing a \$48 million recovery in *Medoff v. CVS Caremark Corporation*, as well as a \$41.5 million settlement in *In re NII Holdings, Inc. Securities Litigation*. Serena also has broad appellate and trial experience.

Serena received a J.D. from Boston University School of Law, where she served as the Note Editor for the *Journal of Science & Technology Law*. She earned a B.A. in Political Science from Occidental College.

Serena is a member of the New York City Bar Association, where she serves on the Securities Litigation Committee, the Federal Bar Council, the South Asian Bar Association, the National Association of Public Pension Attorneys (NAPPA), and the National Association of Women Lawyers (NAWL). Her pro bono work includes representing immigrant detainees in removal proceedings for the American Immigrant Representation Project and devoting time to the Securities Arbitration Clinic at Brooklyn Law School.

She is conversational in Urdu/Hindi.

Serena is admitted to practice in the State of New York, as well as before the United States Courts of Appeals for the First, Ninth, and Eleventh Circuits, and the United States District Courts for the Southern and Eastern Districts of New York.

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**Thomas G. Hoffman, Jr., Partner**  
[thoffman@labaton.com](mailto:thoffman@labaton.com)

Thomas G. Hoffman, Jr. focuses on representing institutional investors in complex securities actions.

Thomas was instrumental in securing a \$1 billion recovery in the eight-year litigation against AIG and related defendants. He also was a key member of the Labaton Sucharow team that recovered \$170 million for investors in *In re 2008 Fannie Mae Securities Litigation*. Currently, Thomas is prosecuting cases against BP, Allstate, American Express, and Maximus.

Thomas received a J.D. from UCLA School of Law, where he was Editor-in-Chief of the *UCLA Entertainment Law Review*, and he served as a Moot Court Executive Board Member. In addition, he was a judicial extern to the Honorable William J. Rea, United States District Court for the Central District of California. Thomas earned a B.F.A., with honors, from New York University.

Thomas is admitted to practice in the State of New York as well as before the United States District Courts for the Southern and Eastern Districts of New York.

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**James W. Johnson, Partner**  
[jjohnson@labaton.com](mailto:jjohnson@labaton.com)

James W. Johnson focuses on complex securities fraud cases. In representing investors who have been victimized by securities fraud and breaches of fiduciary responsibility, Jim's advocacy has resulted in record recoveries for wronged investors. Currently, he is prosecuting high-profile cases against financial industry leader Goldman Sachs in *In re Goldman Sachs Group, Inc., Securities Litigation*, and SCANA, an energy-based holding company, in *In re SCANA Securities Litigation*. In addition to his active caseload, Jim holds a variety of leadership positions within the Firm, including serving on the Firm's Executive Committee and acting as the Firm's Hiring Partner. He also serves as the Firm's Executive Partner overseeing firmwide issues.

A recognized leader in his field, Jim has successfully litigated a number of complex securities and RICO class actions including: *In re Bear Stearns Companies, Inc. Securities Litigation* (\$275 million settlement with Bear Stearns Companies, plus a \$19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditor); *In re HealthSouth Corp. Securities Litigation* (\$671 million settlement); *Eastwood Enterprises LLC v. Farha et al. (WellCare Securities Litigation)* (\$200 million settlement); *In re Bristol Myers Squibb Co. Securities Litigation* (\$185 million settlement), in which the court also approved significant corporate governance reforms and recognized plaintiff's counsel as "extremely skilled and efficient"; *In re Amgen Inc. Securities Litigation* (\$95 million settlement); *In re National Health Laboratories, Inc. Securities Litigation*, which resulted in a recovery of \$80 million in the federal action and a related state court derivative action; and *In re Vesta Insurance Group, Inc. Securities Litigation* (\$79 million settlement).

In *County of Suffolk v. Long Island Lighting Co.*, Jim represented the plaintiff in a RICO class action, securing a jury verdict after a two-month trial that resulted in a \$400 million settlement. The Second Circuit quoted the trial judge, Honorable Jack B. Weinstein, as stating "counsel [has] done a superb job [and] tried this case as well as I have ever seen any case tried." On behalf of the Chugach Native Americans, he also assisted in prosecuting environmental damage claims resulting from the Exxon Valdez oil spill.

Jim is a member of the American Bar Association and the Association of the Bar of the City of New York, where he served on the Federal Courts Committee, and he is a Fellow in the Litigation Council of America.

Jim has received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory.

He is admitted to practice in the States of New York and Illinois as well as before the Supreme Court of the United States, the United States Courts of Appeals for the Second, Third, Fourth, Fifth, Seventh, and Eleventh Circuits, and the United States District Courts for the Southern, Eastern, and Northern Districts of New York, and the Northern District of Illinois.

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**Edward Labaton, Partner**  
[elabaton@labaton.com](mailto:elabaton@labaton.com)

An accomplished trial lawyer and partner with the Firm, Edward Labaton has devoted 50 years of practice to representing a full range of clients in class action and complex litigation matters in state and federal court. He is the recipient of the Alliance for Justice's 2015 Champion of Justice Award, given to outstanding individuals whose life and work exemplifies the principle of equal justice.

Ed has played a leading role as plaintiffs' class counsel in a number of successfully prosecuted, high-profile cases, involving companies such as PepsiCo, Dun & Bradstreet, Financial Corporation of America, ZZZZ Best, Revlon, GAF Co., American Brands, Petro Lewis and Jim Walter, as well as several Big Eight (now Four) accounting firms. He has also argued appeals in state and federal courts, achieving results with important precedential value.

Ed has been President of the Institute for Law and Economic Policy (ILEP) since its founding in 1996. Each year, ILEP co-sponsors at least one symposium with a major law school dealing with issues relating to the civil justice system. In 2010, he was appointed to the newly formed Advisory Board of George Washington University's Center for Law, Economics, & Finance (C-LEAF), a think tank within the Law School, for the study and debate of major issues in economic and financial law confronting the United States and the globe. Ed is an Honorary Lifetime Member of the Lawyers' Committee for Civil Rights under Law, a member of the American Law Institute, and a life member of the ABA Foundation. In addition, he has served on the Executive Committee and has been an officer of the Ovarian Cancer Research Fund since its inception in 1996.

Ed is the past Chairman of the Federal Courts Committee of the New York County Lawyers Association, and was a member of the Board of Directors of that organization. He is an active member of the Association of the Bar of the City of New York, where he was Chair of the Senior Lawyers' Committee and served on its Task Force on the Role of Lawyers in Corporate Governance. He has also served on its Federal Courts, Federal Legislation, Securities Regulation, International Human Rights, and Corporation Law Committees. He also served as Chair of the Legal Referral Service Committee, a joint committee of the New York County Lawyers' Association and the Association of the Bar of the City of New York. He has been an active member of the American Bar Association, the Federal Bar Council, and the New York State Bar Association, where he has served as a member of the House of Delegates.

For more than 30 years, he has lectured on many topics including federal civil litigation, securities litigation, and corporate governance.

He is admitted to practice in the State of New York as well as before the Supreme Court of the United States, the United States Courts of Appeals for the Second, Fifth, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits, and the United States District Courts for the Southern and Eastern Districts of New York, and the Central District of Illinois.

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**Christopher J. McDonald, Partner**  
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Christopher J. McDonald works with both the Firm's Antitrust & Competition Litigation Practice and its Securities Litigation Practice.

In the antitrust field, Chris is currently litigating *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, in which the Firm has been appointed to the End-Payor Plaintiffs Steering Committee, *In re Treasury Securities Auction Antitrust Litigation*, in which the Firm serves as interim co-lead counsel, and *In re Platinum and Palladium Antitrust Litigation*, in which the Firm serves as co-lead counsel. Chris was also co-lead counsel in *In re TriCor Indirect Purchaser Antitrust Litigation*, obtaining a \$65.7 million settlement on behalf of the plaintiff class. He has been recommended in Antitrust Litigation Class Action by *The Legal 500*.

Chris' securities practice has developed a focus on life sciences industries; his cases often involve claims against pharmaceutical, biotechnology, or medical device companies. Most recently, Chris served as lead counsel in *In re Amgen Inc. Securities Litigation*, a case against global biotechnology company Amgen and certain of its former executives, resulting in a \$95 million settlement. He also served as co-lead counsel in *In re Schering-Plough Corporation / ENHANCE Securities Litigation*, which resulted in a \$473 million settlement, one of the largest securities class action settlements ever against a pharmaceutical company and among the largest recoveries ever in a securities class action that did not involve a financial restatement. He was also an integral part of the team that successfully litigated *In re Bristol-Myers Squibb Securities Litigation*, where

Labaton Sucharow secured a \$185 million settlement, as well as significant corporate governance reforms, on behalf of Bristol-Myers Squibb shareholders.

Chris began his legal career at Patterson, Belknap, Webb & Tyler LLP, where he gained extensive trial experience in areas ranging from employment contract disputes to false advertising claims. Later, as a senior attorney with a telecommunications company, Chris advocated before regulatory agencies on a variety of complex legal, economic, and public policy issues.

During his time at Fordham University School of Law, Chris was a member of the Law Review. He is currently a member of the New York State Bar Association, its Antitrust Law Section, and the Section's Cartel and Criminal Practice Committee. He is also a member of the New York City Bar Association.

Chris is admitted to practice in the State of New York and the United States Supreme Court. He is also admitted before the United States Courts of Appeals for the Second, Fourth, Third, Ninth, and Federal Circuit, as well as the United States District Courts for the Southern and Eastern Districts of New York, and the Western District of Michigan.

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**Michael H. Rogers, Partner**  
[mrogers@labaton.com](mailto:mrogers@labaton.com)

Michael H. Rogers focuses on prosecuting complex securities fraud cases on behalf of institutional investors. Currently, Mike is actively involved in prosecuting *In re Goldman Sachs, Inc. Securities Litigation*; *3226701 Canada, Inc. v. Qualcomm, Inc.*; *Public Employees' Retirement System of Mississippi v. Sprouts Farmers Markets, Inc.*; *Vancouver Asset Alumni Holdings, Inc. v. Daimler AG*; and *In re Virtus Investment Partners, Inc. Securities Litigation*.

Since joining Labaton Sucharow, Mike has been a member of the lead counsel teams in federal class actions against Countrywide Financial Corp. (\$624 million settlement), HealthSouth Corp. (\$671 million settlement), State Street (\$300 million settlement), Mercury Interactive Corp. (\$117.5 million settlement), and Computer Sciences Corp. (\$97.5 million settlement).

Prior to joining Labaton Sucharow, Mike was an attorney at Kasowitz, Benson, Torres & Friedman LLP, where he practiced securities and antitrust litigation, representing international banking institutions bringing federal securities and other claims against major banks, auditing firms, ratings agencies and individuals in complex multidistrict litigation. He also represented an international chemical shipping firm in arbitration of antitrust and other claims against conspirator ship owners.

Mike began his career as an attorney at Sullivan & Cromwell, where he was part of Microsoft's defense team in the remedies phase of the Department of Justice antitrust action against the company.

Mike received a J.D., *magna cum laude*, from the Benjamin N. Cardozo School of Law, Yeshiva University, where he was a member of the *Cardozo Law Review*. He earned a B.A., *magna cum laude*, in Literature-Writing from Columbia University.

Mike is proficient in Spanish.

He is admitted to practice in the State of New York as well as before the United States Court of Appeals for the Second and Ninth Circuits, and the United States District Courts for the Southern and Eastern Districts of New York.

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**Ira A. Schochet, Partner**  
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A seasoned litigator with three decades of experience, Ira A. Schochet focuses on class actions involving securities fraud. Ira has played a lead role in securing multimillion dollar recoveries in high-profile cases such as those against Countrywide Financial Corporation (\$624 million), Weatherford International Ltd (\$120 million), Massey Energy Company (\$265 million), Caterpillar Inc. (\$23 million), Autoliv Inc. (\$22.5 million), and Fifth Street Financial Corp. (\$14 million).

A longtime leader in the securities class action bar, Ira represented one of the first institutional investors acting as a lead plaintiff in a post-Private Securities Litigation Reform Act case and ultimately obtained one of the first rulings interpreting the statute's intent provision in a manner favorable to investors in *STI Classic Funds, et al. v. Bollinger Industries, Inc.* His efforts are regularly recognized by the courts, including in *Kamarasy v. Coopers & Lybrand*, where the court remarked on "the superior quality of the representation provided to the class." In approving the settlement he achieved in *In re InterMune Securities Litigation*, the court complimented Ira's ability to secure a significant recovery for the class in a very efficient manner, shielding the class from prolonged litigation and substantial risk.

Ira has also played a key role in groundbreaking cases in the field of merger and derivative litigation. In *In re Freeport-McMoRan Copper & Gold Inc. Derivative Litigation*, he achieved the second largest derivative settlement in the Delaware Court of Chancery history, a \$153.75 million settlement with an unprecedented provision of direct payments to stockholders by means of a special dividend. In another first-of-its-kind case, Ira was featured in *The AmLaw Litigation Daily* as Litigator of the Week for his work in *In re El Paso Corporation Shareholder Litigation*. The action alleged breach of fiduciary duties in connection with a merger transaction, including specific reference to wrongdoing by a conflicted financial advisory consultant, and resulted in a \$110 million recovery for a class of shareholders and a waiver by the consultant of its fee.

From 2009-2011, Ira served as President of the National Association of Shareholder and Consumer Attorneys (NASCAT), a membership organization of approximately 100 law firms that practice class action and complex civil litigation. During this time, he represented the plaintiffs' securities bar in meetings with members of Congress, the Administration, and the SEC.

From 1996 through 2012, Ira served as Chairman of the Class Action Committee of the Commercial and Federal Litigation Section of the New York State Bar Association. During his tenure, he has served on the Executive Committee of the Section and authored important papers on issues relating to class action procedure including revisions proposed by both houses of Congress and the Advisory Committee on Civil Procedure of the United States Judicial Conference. Examples include: "Proposed Changes in Federal Class Action Procedure"; "Opting Out On Opting In," and "The Interstate Class Action Jurisdiction Act of 1999."

He also has lectured extensively on securities litigation at continuing legal education seminars. He has also been awarded an AV Preeminent rating, the highest distinction, from the publishers of the Martindale-Hubbell directory.

He is admitted to practice in the State of New York as well as before the United States Court of Appeals for the Second, Fifth, Ninth, and Tenth Circuits, and the United States District Courts for the Southern and Eastern Districts of New York, the Central District of Illinois, the Northern District of Texas, and the Western District of Michigan.

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**David J. Schwartz, Partner**  
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David J. Schwartz's practice focuses on event driven and special situation litigation using legal strategies to enhance clients' investment return.

His extensive experience includes prosecuting as well as defending against securities and corporate governance actions for an array of institutional clients including pension funds, hedge funds, mutual funds, and asset management companies. He played a pivotal role against real estate service provider Altisource Portfolio Solutions, where he helped achieve a \$32 million cash settlement. David has also done substantial work in mergers and acquisitions appraisal litigation.

David obtained his J.D. from Fordham University School of Law, where he served as an editor of the *Urban Law Journal*. He received his B.A. in economics from the University of Chicago.

David is admitted to practice in the State of New York as well as before the United States District Court for the Southern District of New York.

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**Irina Vasilchenko, Partner**  
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Irina Vasilchenko focuses on prosecuting complex securities fraud cases on behalf of institutional investors.

Currently, Irina is actively involved in prosecuting *In re Goldman Sachs Group, Inc. Securities Litigation*, *In re SCANA Corporation Securities Litigation*, *In re Acuity Brands, Inc. Securities Litigation*, and *Vancouver Alumni Asset Holdings, Inc. v. Daimler AG*. Since joining Labaton Sucharow, she has been part of the Firm's teams in *In re Massey Energy Co. Securities Litigation*, where the Firm obtained a \$265 million all-cash settlement with Alpha Natural Resources, Massey's parent company; *In re Fannie Mae 2008 Securities Litigation* (\$170 million settlement); *In re Amgen Inc. Securities Litigation* (\$95 million settlement); and *In re Hewlett-Packard Company Securities Litigation* (\$57 million settlement).

Prior to joining Labaton Sucharow, Irina was an associate in the general litigation practice group at Ropes & Gray LLP, where she focused on securities litigation.

Irina maintains a commitment to pro bono legal service including, most recently, representing an indigent defendant in a criminal appeal case before the New York First Appellate Division, in association with the Office of the Appellate Defender. As part of this representation, she argued the appeal before the First Department panel.

Irina received a J.D., *magna cum laude*, from Boston University School of Law, where she was an editor of the *Boston University Law Review* and was the G. Joseph Tauro Distinguished Scholar (2005), the Paul L. Liacos Distinguished Scholar (2006), and the Edward F. Hennessey Scholar (2007). Irina earned a B.A. in Comparative Literature with Distinction, *summa cum laude* and Phi Beta Kappa, from Yale University.

She is fluent in Russian and proficient in Spanish.

Irina is admitted to practice in the State of New York and the State of Massachusetts as well as before the United States District Courts for the Southern and Eastern Districts of New York.

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**Carol C. Villegas, Partner**  
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Carol C. Villegas focuses on prosecuting complex securities fraud cases on behalf of institutional investors. Leading one of the Firm's litigation teams, she currently oversees litigation against DeVry Education Group, Skechers, U.S.A., Inc., Shanda Games, Prothena Corp., and Danske Bank. In addition to her litigation responsibilities, Carol holds a variety of leadership positions within the Firm, including serving on the Firm's Executive Committee, serving as Co-Chair of the Firm's Women's Networking and Mentoring Initiative, and serving as the Firm's Chief Compliance Officer.

Carol's skillful handling of discovery work, her development of innovative case theories in complex cases, and her adept ability during oral argument earned her recent accolades from the *New York Law Journal* as a Top Woman in Law as well as a Rising Star by *Benchmark Litigation*.

Carol played a pivotal role in securing favorable settlements for investors from AMD, a multi-national semiconductor company, Aeropostale, a leader in the international retail apparel industry, ViroPharma Inc., a biopharmaceutical company, and Vocera, a healthcare communications provider. A true advocate for her clients, Carol's argument in the case against Vocera resulted in a ruling from the bench, denying defendants motion to dismiss in that case.

Prior to joining Labaton Sucharow, Carol served as the Assistant District Attorney in the Supreme Court Bureau for the Richmond County District Attorney's office, where she took several cases to trial. She began her career as an associate at King & Spalding LLP, where she worked as a federal litigator.

Carol received a J.D. from New York University School of Law, and she was the recipient of The Irving H. Jurow Achievement Award for the Study of Law and selected to receive the Association of the Bar of the City of New York Minority Fellowship. Carol served as the Staff Editor, and later the Notes Editor, of the *Environmental Law Journal*. She earned a B.A., with honors, in English and Politics from New York University.

Carol is a member of the National Association of Public Pension Attorneys (NAPPA), the National Association of Women Lawyers (NAWL), the Hispanic National Bar Association, the Association of the Bar of the City of New York, and a member of the Executive Council for the New York State Bar Association's Committee on Women in the Law.

She is fluent in Spanish.

She is admitted to practice in the State of New York, as well as before the United States Court of Appeals for the First, Second, Ninth, Tenth, and Eleventh Circuits, and the United States District Courts for the Southern and Eastern Districts of New York, the District of Colorado, and the Eastern District of Wisconsin.

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**Ned Weinberger, Partner**  
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Ned Weinberger is Chair of the Firm's Corporate Governance and Shareholder Rights Litigation Practice. An experienced advocate of shareholder rights, Ned focuses on representing investors in corporate governance and transactional matters, including class action and derivative litigation. Ned was recognized by *Chambers & Partners USA* in the Delaware Court of Chancery and was named "Up and Coming," noting his impressive range of practice areas. He was also recently named a "Leading Lawyer" by *The Legal 500* and a Rising Star by *Benchmark Litigation*.

Ned is currently prosecuting, among other matters, *In re Straight Path Communications Inc. Consolidated Stockholder Litigation*, which alleges breaches of fiduciary duty by the controlling stockholder of Straight Path Communications, Howard Jonas, in connection with the company's proposed sale to Verizon Communications Inc. He recently led a class and derivative action on behalf of stockholders of Providence Service Corporation—*Haverhill Retirement System v. Kerley*—that challenged an acquisition financing arrangement involving Providence's board chairman and his hedge fund. The case settled for \$10 million.

Ned was part of a team that achieved a \$12 million recovery on behalf of stockholders of ArthroCare Corporation in a case alleging breaches of fiduciary duty by the ArthroCare board of directors and other defendants in connection with Smith & Nephew, Inc.'s acquisition of ArthroCare. Other recent successes on behalf of stockholders include *In re Vaalco Energy Inc. Consolidated Stockholder Litigation*, which resulted in the invalidation of charter and bylaw provisions that interfered with stockholders' fundamental right to remove directors without cause.

Prior to joining Labaton Sucharow, Ned was a litigation associate at Grant & Eisenhofer P.A. where he gained substantial experience in all aspects of investor protection, including representing shareholders in matters relating to securities fraud, mergers and acquisitions, and alternative entities. Representative of Ned's experience in the Delaware Court of Chancery is *In re Barnes & Noble Stockholders Derivative Litigation*, in which Ned assisted in obtaining approximately \$29 million in settlements on behalf of Barnes & Noble investors. Ned was also part of the litigation team in *In re Clear Channel Outdoor Holdings, Inc. Shareholder Litigation*, the settlement of which provided numerous benefits for Clear Channel Outdoor Holdings and its shareholders, including, among other things, a \$200 million cash dividend to the company's shareholders.

Ned received his J.D. from the Louis D. Brandeis School of Law at the University of Louisville where he served on the *Journal of Law and Education*. He earned his B.A. in English Literature, *cum laude*, at Miami University.

Ned is admitted to practice in the States of Delaware, Pennsylvania, and New York as well as before the United States District Court for the District of Delaware.

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**Mark S. Willis, Partner**  
[mwillis@labaton.com](mailto:mwillis@labaton.com)

With nearly three decades of experience, Mark S. Willis' practice focuses on domestic and international securities litigation. Mark advises leading pension funds, investment managers, and other institutional investors from around the world on their legal remedies when impacted by securities fraud and corporate governance breaches. Mark represents clients in U.S. litigation and maintains a significant practice advising clients of their legal rights abroad to pursue securities-related claims.

Mark represents institutions from the United Kingdom, Spain, the Netherlands, Denmark, Germany, Belgium, Canada, Japan, and the United States in a novel lawsuit in Texas against BP plc to salvage claims that were dismissed from the U.S. class action because the claimants' BP shares were purchased abroad (thus running afoul of the Supreme Court's *Morrison* rule that precludes a U.S. legal remedy for such shares). These previously dismissed claims have now been sustained and are being pursued under English law in a Texas federal court.

Mark also represents the Utah Retirement Systems in a shareholder action against the DeVry Education Group, and he represented the Arkansas Public Employees Retirement System in a shareholder action against The Bancorp (which settled for \$17.5 million), and Caisse de dépôt et placement du Québec, one of Canada's largest institutional investors, in a U.S. shareholder class action against Liquidity Services (which settled for \$17 million).

In the *Converium* class action, Mark represented a Greek institution in a nearly four-year battle that eventually became the first U.S. class action settled on two continents. This trans-Atlantic result saw part of the \$145 million recovery approved by a federal court in New York, and the rest by the Amsterdam Court of Appeal. The Dutch portion was resolved using the Netherlands then newly enacted Act on Collective Settlement of Mass Claims. In doing so, the Dutch Court issued a landmark decision that substantially broadened its jurisdictional reach, extending jurisdiction for the first time to a scenario in which the claims were not brought under Dutch law, the alleged wrongdoing took place outside the Netherlands, and none of the potentially liable parties were domiciled in the Netherlands.

In the corporate governance arena, Mark has represented both U.S. and overseas investors. In a shareholder derivative action against Abbott Laboratories' directors, he charged the defendants with mismanagement and fiduciary breaches for causing or allowing the company to engage in a 10-year off-label marketing scheme, which had resulted in a \$1.6 billion payment pursuant to a Justice Department investigation—at the time the second largest in history for a pharmaceutical company. In the derivative action, the company agreed to implement sweeping corporate governance reforms, including an extensive compensation clawback provision going beyond the requirements under the Dodd-Frank Act, as well as the restructuring of a board committee and enhancing the role of the Lead Director. In the *Parmalat* case, known as the "Enron of Europe" due to the

size and scope of the fraud, Mark represented a group of European institutions and eventually recovered nearly \$100 million and negotiated governance reforms with two large European banks who, as part of the settlement, agreed to endorse their future adherence to key corporate governance principles designed to advance investor protection and to minimize the likelihood of future deceptive transactions. Securing governance reforms from a defendant that was not an issuer was a first at that time in a shareholder fraud class action.

Mark has also represented clients in opt-out actions. In one, brought on behalf of the Utah Retirement Systems, Mark negotiated a settlement that was nearly four times more than what its client would have received had it participated in the class action.

On non-U.S. actions Mark has advised clients, and represented their interests as liaison counsel, in more than 30 cases against companies such as Volkswagen, Olympus, the Royal Bank of Scotland, the Lloyds Banking Group, and Petrobras, and in jurisdictions ranging from the UK to Japan to Australia to Brazil to Germany.

Mark has written on corporate, securities, and investor protection issues—often with an international focus—in industry publications such as *International Law News*, *Professional Investor*, *European Lawyer*, and *Investment & Pensions Europe*. He has also authored several chapters in international law treatises on European corporate law and on the listing and subsequent disclosure obligations for issuers listing on European stock exchanges. He also speaks at conferences and at client forums on investor protection through the U.S. federal securities laws, corporate governance measures, and the impact on shareholders of non-U.S. investor remedies.

He is admitted to practice in the State of Massachusetts and the District of Columbia, as well as the U.S. District Court for the District of Columbia.

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**Nicole M. Zeiss, Partner**  
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A litigator with nearly two decades of experience, Nicole M. Zeiss leads the Settlement Group at Labaton Sucharow, analyzing the fairness and adequacy of the procedures used in class action settlements. Her practice focuses on negotiating and documenting complex class action settlements and obtaining the required court approval of the settlements, notice procedures, and payments of attorneys' fees.

Over the past decade, Nicole was actively involved in finalizing settlements with Massey Energy Company (\$265 million), Fannie Mae (\$170 million), and Schering-Plough (\$473 million), among many others.

Nicole was part of the Labaton Sucharow team that successfully litigated the \$185 million settlement in *In re Bristol-Myers Squibb Securities Litigation*, and she played a significant role in *In re Monster Worldwide, Inc. Securities Litigation* (\$47.5 million settlement). Nicole also litigated on behalf of investors who have been damaged by fraud in the telecommunications, hedge fund, and banking industries.

Prior to joining Labaton Sucharow, Nicole practiced in the area of poverty law at MFY Legal Services. She also worked at Gaynor & Bass practicing general complex civil litigation, particularly representing the rights of freelance writers seeking copyright enforcement.

Nicole maintains a commitment to pro bono legal services by continuing to assist mentally ill clients in a variety of matters—from eviction proceedings to trust administration.

She received a J.D. from the Benjamin N. Cardozo School of Law, Yeshiva University and earned a B.A. in Philosophy from Barnard College. Nicole is a member of the Association of the Bar of the City of New York.

She is admitted to practice in the State of New York as well as before the United States Court of Appeals for the Second and Ninth Circuits, and the United States District Courts for the Southern and Eastern Districts of New York, and the District of Colorado.

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**Rachel A. Avan, Of Counsel**  
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Rachel A. Avan prosecutes complex securities fraud cases on behalf of institutional investors. She focuses on advising institutional investor clients regarding fraud-related losses on securities, and on the investigation and development of U.S. and non-U.S. securities fraud class, group, and individual actions. Rachel manages the Firm's Non-U.S. Securities Litigation Practice, which is dedicated to analyzing the merits, risks, and benefits of potential claims outside the United States. She has played a key role in ensuring that the Firm's clients receive substantial recoveries through non-U.S. securities litigation. In addition to her litigation responsibilities, Rachel serves as the Firm's Compliance Officer.

In evaluating new and potential matters, Rachel draws on her extensive experience as a securities litigator. She was an active member of the team prosecuting the securities fraud class action against Satyam Computer Services, Inc., in *In re Satyam Computer Services Ltd. Securities Litigation*, dubbed "India's Enron." That case achieved a \$150.5 million settlement for investors from the company and its auditors. She also had an instrumental part in the pleadings in a number of class actions including, *In re Barrick Gold Securities Litigation* (\$140 million settlement); *Freedman v. Nu Skin Enterprises, Inc.* (\$47 million recovery); and *Iron Workers District Council of New England Pension Fund v. NII Holdings, Inc.* (\$41.5 million recovery).

Rachel has spearheaded the filing of more than 75 motions for lead plaintiff appointment in U.S. securities class actions including, *In re Facebook, Inc. IPO Securities & Derivative Litigation*; *In re Computer Sciences Corporation Securities Litigation*; *In re Petrobras Securities Litigation*; *In re Spectrum Pharmaceuticals, Inc. Securities Litigation*; *Weston v. RCS Capital Corporation*; and *Cummins v. Virtus Investment Partners Inc.*

In addition to her securities class action litigation experience, Rachel also played a role in prosecuting several of the Firm's derivative matters, including *In re Barnes & Noble Stockholder Derivative Litigation*; *In re Coca-Cola Enterprises Inc. Shareholders Litigation*; and *In re The Student Loan Corporation Litigation*.

Rachel brings to the Firm valuable insight into corporate matters, having served as an associate at a corporate law firm, where she counseled domestic and international public companies regarding compliance with federal and state securities laws. Her analysis of corporate securities filings is also informed by her previous work assisting with the preparation of responses to inquiries by the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority.

Before attending Benjamin N. Cardozo School of Law, Rachel enjoyed a career in editing for a Boston-based publishing company. She also earned a Master of Arts in English and American Literature from Boston University.

Since 2015, Rachel has been recognized as a New York Metro "Rising Star" in securities litigation by *Super Lawyers*, a Thomson Reuters publication.

She is proficient in Hebrew.

Rachel is admitted to practice in the States of New York and Connecticut as well as before the United States District Court for the Southern District of New York.

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**Mark Bogen, Of Counsel**  
[mbogen@labaton.com](mailto:mbogen@labaton.com)

Mark Bogen advises leading pension funds and other institutional investors on issues related to corporate fraud in domestic and international securities markets. His work focuses on securities, antitrust, and consumer class action litigation, representing Taft-Hartley and public pension funds across the country.

Among his many efforts to protect his clients' interests and maximize shareholder value, Mark recently helped bring claims against and secure a settlement with Abbott Laboratories' directors, whereby the company agreed to implement sweeping corporate governance reforms, including an extensive compensation clawback provision going beyond the requirements under the Dodd-Frank Act.

Mark has written weekly legal columns for the *Sun-Sentinel*, one of the largest daily newspapers circulated in Florida. He has been legal counsel to the American Association of Professional Athletes, an association of over 4,000 retired professional athletes. He has also served as an Assistant State Attorney and as a Special Assistant to the State Attorney's Office in the State of Florida.

Mark obtained his J.D. from Loyola University School of Law. He received his B.A. in Political Science from the University of Illinois.

He is admitted to practice in the States of Illinois and Florida.

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**Joseph H. Einstein, Of Counsel**  
[jeinstein@labaton.com](mailto:jeinstein@labaton.com)

A seasoned litigator, Joseph H. Einstein represents clients in complex corporate disputes, employment matters, and general commercial litigation. He has litigated major cases in the state and federal courts and has argued many appeals, including appearing before the United States Supreme Court.

His experience encompasses extensive work in the computer software field including licensing and consulting agreements. Joe also counsels and advises business entities in a broad variety of transactions.

Joe serves as an official mediator for the United States District Court for the Southern District of New York. He is an arbitrator for the American Arbitration Association and FINRA. Joe is a former member of the New York State Bar Association Committee on Civil Practice Law and Rules and the Council on Judicial Administration of the Association of the Bar of the City of New York. He currently is a member of the Arbitration Committee of the Association of the Bar of the City of New York.

During Joe's time at New York University School of Law, he was a Pomeroy and Hirschman Foundation Scholar, and served as an Associate Editor of the *Law Review*.

Joe has been awarded an AV Preeminent rating, the highest distinction, from the publishers of the Martindale-Hubbell directory.

He is admitted to practice in the State of New York as well as before the Supreme Court of the United States, the United States Courts of Appeals for the First and Second Circuits, and the United States District Courts for the Southern and Eastern Districts of New York.

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**John J. Esmay, Of Counsel**  
[jesmay@labaton.com](mailto:jesmay@labaton.com)

John J. Esmay focuses on prosecuting complex securities fraud cases on behalf of institutional investors.

Prior to joining Labaton Sucharow, John was an associate at a white collar defense firm where he assisted in all aspects of complex litigation including securities fraud, banking regulation violations, and other regulatory matters. John successfully defended a disciplinary hearing brought by the Financial Industry Regulatory Authority's (FINRA) enforcement division for allegations of insider trading and securities fraud. John helped reach a successful conclusion of a criminal prosecution of a trader for one of the nation's largest financial institutions involved in a major bid-rigging scheme. He was also instrumental in clearing charges and settling a regulatory matter against a healthcare provider brought by the New York State Office of the Attorney General.

Prior to his white collar defense experience, John was an associate at Hogan Lovells US LLP and litigated many large complex civil matters including securities fraud cases, antitrust violations, and intellectual property disputes.

John also previously worked as a judicial clerk for the Honorable William H. Pauley III in the Southern District of New York. He received his J.D., *magna cum laude*, from Brooklyn Law School and his B.S. from Pomona College.

John is admitted to practice in the State of New York.

---

**Derrick Farrell, Of Counsel**  
[dfarrell@labaton.com](mailto:dfarrell@labaton.com)

Derrick Farrell focuses on representing shareholders in appraisal, class, and derivative actions. He has substantial trial experience as both a petitioner and a respondent on a number of high profile matters, including: *In re Appraisal of Ancestry.com, Inc.*, C.A. No. 8173-VCG, *IQ Holdings, Inc. v. Am. Commercial Lines Inc.*, Case No. 6369-VCL, and *In re Cogent, Inc. S'holder Litig.*, C.A. No. 5780-VCP. He has also argued before the Delaware Supreme Court on multiple occasions.

Prior to joining Labaton Sucharow, Derrick started his career as an associate at Latham & Watkins LLP, where he gained substantial insight into the inner workings of corporate boards and the role of investment bankers in a sale process. He has guest lectured at Harvard University and co-authored numerous articles including articles published by the Harvard Law School Forum on Corporate Governance and Financial Regulation and PLI.

Derrick graduated from Texas A&M University (B.S., Biomedical Science) and the Georgetown University Law Center (J.D. cum laude). At Georgetown Mr. Farrell served as an advocate and coach to the Barrister's Council (Moot Court Team) and was Magister of Phi Delta Phi. Following his graduation Derrick clerked for the Honorable Donald F. Parsons, Jr., Vice Chancellor, Court of Chancery of the State of Delaware.

Derrick is licensed to practice law in the States of Delaware and Massachusetts and is admitted to practice before the U.S. District Court for the District of Delaware.

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**Alfred L. Fatale III, Of Counsel**  
[afatale@labaton.com](mailto:afatale@labaton.com)

Alfred L. Fatale III focuses on prosecuting complex securities fraud cases on behalf of institutional and individual investors.

Alfred represents investors in cases related to the protection of the financial markets in trial and appellate courts throughout the country. In particular, he is leading the firm's efforts in litigating securities claims against several companies in state courts following the U.S. Supreme Court's decision in *Cyan, Inc. v. Beaver County Employees Retirement Fund*. This includes prosecuting *In re ADT Inc. Shareholder Litigation*, a case alleging that the offering documents for ADT's \$1.47 billion IPO misrepresented the competition the company was facing from do-it-yourself home security products.

He recently secured an \$11 million settlement for investors in *In re CPI Card Group Inc., Securities Litigation*, a class action brought by an individual retail investor against a debit and credit card manufacturer that allegedly misrepresented demand for its products prior to the company's IPO.

Alfred is also actively involved in *Murphy v. Precision Castparts Corp.*, a case against a major aerospace parts manufacturer that allegedly misled investors about its market share and demand for its products, and *Boston Retirement System v. Alexion Pharmaceuticals Inc.*, a class action arising from the company's conduct in

connection with sales of Soliris – a drug that costs between \$500,000 and \$700,000 a year. He is also currently engaged in litigating an appeal in *Oklahoma Firefighters Pension and Retirement System v. Xerox Corporation*.

Prior to joining Labaton Sucharow, Alfred was an associate at Fried, Frank, Harris, Shriver & Jacobson LLP, where he advised and represented financial institutions, investors, officers, and directors in a broad range of complex disputes and litigations including cases involving violations of federal securities law and business torts.

Alfred earned his J.D. from Cornell Law School, where he was a member of the *Cornell Law Review*, as well as the Moot Court Board. He also served as a judicial extern under the Honorable Robert C. Mulvey. He received his B.A., *summa cum laude*, from Montclair State University.

Alfred is an active member of the American Bar Association, Federal Bar Council, New York State Bar Association, New York County Bar Association, and New York City Bar Association.

Alfred is admitted to practice in the State of New York as well as before the United States Court of Appeals for the Second Circuit, and the United States District Courts for the Southern and Eastern Districts of New York.

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**Mark Goldman, Of Counsel**  
[mgoldman@labaton.com](mailto:mgoldman@labaton.com)

Mark S. Goldman has 30 years of experience in commercial litigation, primarily litigating class actions involving securities fraud, consumer fraud, and violations of federal and state antitrust laws.

Mr. Goldman has extensive experience in data protection and consumer litigation, including representing numerous victims of identity theft seeking to hold accountable companies that failed to protect the safety of private data maintained on their networks, including *In re Community Health Systems, Inc. Customer Data Security Breach Litigation*, No. 15-cv-222 (N.D. Ala.), *In re Anthem, Inc. Data Breach Litigation*, No. 15-md-02617 (N.D. Cal.), *In re Intuit Data Litigation*, No. 15-cv-1778 (N.D. Cal.), and *In re Medical Informatics Engineering, Inc. Customer Data Security Breach Litigation*, MDL No. 2667 (N.D. Ind.).

In the antitrust field, Mr. Goldman litigated several cases that led to recoveries exceeding \$1 billion each, for the benefit of the consumers and small businesses he represented, including *In re Air Cargo Antitrust Litigation*, No. 06-md-1775 (E.D.N.Y.), *In re Vitamins Antitrust Litigation*, MDL No. 1285 (D.D.C.), *In re NASDAQ Antitrust Litigation*, No. 94-cv-3996 (S.D.N.Y.), and *In re Brand Name Prescription Drugs Antitrust Litigation*, No. 94-c-897 (N.D. Ill.).

In the area of securities litigation, Mr. Goldman played a prominent role in class actions brought under the antifraud provisions of the Securities Exchange Act of 1934, including *In re Nuskin Enterprises, Inc. Securities Litigation*, No. 14-cv-0033 (D. Utah), *In re Spectrum Pharmaceuticals, Inc. Securities Litigation*, No. 13-cv-0433 (D. Nev.), and *In re OmniVision Technologies, Inc. Securities Litigation*, No. 11-cv-05235 (N.D. Cal.).

Mr. Goldman also prosecuted a number of insider trading cases brought against company insiders who, in violation of Section 16(b) of the Securities Exchange Act of 1934, engaged in short swing trading. Mr. Goldman has also served as co-lead counsel in a number of class actions brought against life insurance companies, challenging the manner in which premiums are charged during the first year of coverage.

Mr. Goldman is a member of the Philadelphia Bar Association. Mr. Goldman has been awarded an AV Preeminent rating, the highest distinction, from the publishers of the Martindale-Hubbell directory.

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**Lara Goldstone, Of Counsel**  
[lgoldstone@labaton.com](mailto:lgoldstone@labaton.com)

Lara Goldstone advises pension funds and other institutional investors on issues related to corporate fraud in the U.S. securities markets. Before joining Labaton Sucharow, Lara worked as a legal intern in the Larimer County District Attorney's Office and the Jefferson County District Attorney's Office.

Prior to her legal career, Lara worked at Industrial Labs where she worked closely with Federal Drug Administration standards and regulations. In addition, she was a teacher in Irvine, California.

Lara received a J.D. from University of Denver Sturm College of Law, where she was a judge of The Providence Foundation of Law & Leadership Mock Trial and a competitor of the Daniel S. Hoffman Trial Advocacy Competition. She earned a B.A. from The George Washington University where she was a recipient of a Presidential Scholarship for academic excellence. She earned a B.A. from The George Washington University where she was a recipient of a Presidential Scholarship for academic excellence.

Lara is admitted to practice in the State of Colorado.

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**Francis P. McConville, Of Counsel**  
[fmconville@labaton.com](mailto:fmconville@labaton.com)

Francis P. McConville focuses on prosecuting complex securities fraud cases on behalf of institutional investor clients. As a lead member of the Firm's Case Development Group, he focuses on the identification, investigation, and development of potential actions to recover investment losses resulting from violations of the federal securities laws and various actions to vindicate shareholder rights in response to corporate and fiduciary misconduct.

Most recently, Francis has played a key role in filing several matters on behalf of the Firm including *Oklahoma Firefighters Pension and Retirement System v. Xerox Corporation*; *In re Target Corporation Securities Litigation*; *City of Warwick Municipal Employees Pension Fund v. Rackspace Hosting, Inc.*; and *Frankfurt-Trust Investment Luxemburg AG v. United Technologies Corporation*.

Prior to joining Labaton Sucharow, Francis was a litigation associate at a national law firm primarily focused on securities and consumer class action litigation. Francis has represented institutional and individual clients in federal and state court across the country in class action securities litigation and shareholder disputes, along with a variety of commercial litigation matters. He assisted in the prosecution of several matters, including *Kiken v. Lumber Liquidators Holdings, Inc.* (\$42 million recovery); *Hayes v. MagnaChip Semiconductor Corp.* (\$23.5 million recovery); and *In re Galena Biopharma, Inc. Securities Litigation* (\$20 million recovery).

Francis received his J.D. from New York Law School, *magna cum laude*, where he served as Associate Managing Editor of the *New York Law School Law Review*, worked in the Urban Law Clinic, named a John Marshall Harlan Scholar, and received a Public Service Certificate. He earned his B.A. from the University of Notre Dame.

He is admitted to practice in the State of New York as well as in the United States District Courts for the Southern and Eastern Districts of New York, the District of Colorado, and the Eastern District of Michigan.

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**James McGovern, Of Counsel**  
[jmcgovern@labaton.com](mailto:jmcgovern@labaton.com)

James McGovern advises leading pension funds and other institutional investors on issues related to corporate fraud in domestic and international securities markets. His work focuses primarily on securities litigation and corporate governance, representing Taft-Hartley, public pension funds, and other institutional investors across

the country in domestic securities actions. He also advises clients as to their potential claims tied to securities-related actions in foreign jurisdictions.

James has worked on a number of large securities class action matters, including *In re Worldcom, Inc. Securities Litigation*, the second-largest securities class action settlement since the passage of the PSLRA (\$6.1 billion recovery); *In re Parmalat Securities Litigation* (\$90 million recovery); *In re American Home Mortgage Securities Litigation* (amount of the opt-out client's recovery is confidential); *In re The Bancorp Inc. Securities Litigation* (\$17.5 million recovery); *In re Pozen Securities Litigation* (\$11.2 million recovery); *In re Cabletron Systems, Inc. Securities Litigation* (\$10.5 million settlement); and *In re UICI Securities Litigation* (\$6.5 million recovery).

In the corporate governance arena, James helped bring claims against Abbott Laboratories' directors, on account of their mismanagement and breach of fiduciary duties for allowing the company to engage in a 10-year off-label marketing scheme. Upon settlement of this action, the company agreed to implement sweeping corporate governance reforms, including an extensive compensation clawback provision going beyond the requirements under the Dodd-Frank Act.

Following the unprecedented takeover of Fannie Mae and Freddie Mac by the federal government in 2008, James was retained by a group of individual and institutional investors to seek recovery of the massive losses they had incurred when the value of their shares in these companies was essentially destroyed. He brought and continues to litigate a complex takings class action against the federal government for depriving Fannie Mae and Freddie Mac shareholders of their property interests in violation of the Fifth Amendment of the U.S. Constitution, and causing damages in the tens of billions of dollars.

James also has addressed members of several public pension associations, including the Texas Association of Public Employee Retirement Systems and the Michigan Association of Public Employee Retirement Systems, where he discussed how institutional investors could guard their assets against the risks of corporate fraud and poor corporate governance.

Prior to focusing his practice on plaintiffs' securities litigation, James was an attorney at Latham & Watkins where he worked on complex litigation and FIFRA arbitrations, as well as matters relating to corporate bankruptcy and project finance. At that time, he co-authored two articles on issues related to bankruptcy filings: *Special Issues In Partnership and Limited Liability Company Bankruptcies* and *When Things Go Bad: The Ramifications of a Bankruptcy Filing*.

James earned his J.D., *magna cum laude*, from Georgetown University Law Center. He received his B.A. and M.B.A. from American University, where he was awarded a Presidential Scholarship and graduated with high honors.

He is admitted to practice in the State of Vermont and the District of Columbia.

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**Domenico Minerva, Of Counsel**  
[dminerva@labaton.com](mailto:dminerva@labaton.com)

Domenico "Nico" Minerva advises leading pension funds and other institutional investors on issues related to corporate fraud in the U.S. securities markets. A former financial advisor, his work focuses on securities, antitrust, and consumer class action litigation and shareholder derivative litigation, representing Taft-Hartley and public pension funds across the country.

Nico's extensive experience litigating securities cases includes those against global securities systems company Tyco and co-defendant PricewaterhouseCoopers (*In re Tyco International Ltd., Securities Litigation*), which resulted in a \$3.2 billion settlement, achieving the largest single defendant settlement in post-PSLRA history. He also has counseled companies and institutional investors on corporate governance reform.

Nico has also done substantial work in antitrust class actions in pay-for-delay or "product hopping" cases in which pharmaceutical companies allegedly obstructed generic competitors in order to preserve monopoly profits on patented drugs, including *Mylan Pharmaceuticals Inc. v. Warner Chilcott Public Limited Co.*, *In re Lidoderm Antitrust Litigation*, *In re Solodyn (MinocyclineHydrochloride) Antitrust Litigation*, *In re Niaspan Antitrust Litigation*, *In re Aggrenox Antitrust Litigation*, and *Sergeants Benevolent Association Health & Welfare Fund et al. v. Actavis PLC et al.* In an anticompetitive antitrust matter, *The Infirmary LLC vs. National Football League Inc et al.*, Nico played a part in challenging an exclusivity agreement between the NFL and DirectTV over the service's "NFL Sunday Ticket" package, and he litigated on behalf of indirect purchasers of potatoes in a case alleging that growers conspired to control and suppress the nation's potato supply *In re Fresh and Process Potatoes Antitrust Litigation*.

On behalf of consumers, Nico represented a plaintiff in *In Re ConAgra Foods Inc.* over its claims that Wesson-brand vegetable oils are 100 percent natural.

An accomplished speaker, Nico has given numerous presentations to investors on a variety of topics of interest regarding corporate fraud, wrongdoing, and waste. He is also an active member of the National Association of Public Pension Plan Attorneys (NAPPA).

Nico obtained his J.D. from Tulane University Law School, where he also completed a two-year externship with the Honorable Kurt D. Engelhardt of the United States District Court for the Eastern District of Louisiana. He earned his B.S. in Business Administration from the University of Florida.

Nico is admitted to practice in the States of New York and Delaware, as well as the United States District Courts for the Eastern and Southern Districts of New York.

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**Corban S. Rhodes, Of Counsel**  
[crhodes@labaton.com](mailto:crhodes@labaton.com)

Corban S. Rhodes focuses on prosecuting complex securities fraud cases on behalf of institutional investors, as well as consumer data privacy litigation.

Currently, Corban represents shareholders litigating fraud-based claims against TerraVia (formerly Solazyme) and Alexion Pharmaceuticals. He has successfully litigated dozens of cases against most of the largest Wall Street banks in connection with their underwriting and securitization of mortgage-backed securities leading up to the financial crisis.

Recognized as a "Rising Star" in Consumer Protection Law by *Law360*, Corban is also pursuing a number of matters involving consumer data privacy, including cases of intentional misuse or misappropriation of consumer data, and cases of negligence or other malfeasance leading to data breaches, including *In re Facebook Biometric Information Privacy Litigation* and *Schwartz v. Yahoo Inc.*

Before joining Labaton Sucharow, Corban was an associate at Sidley Austin LLP where he practiced complex commercial litigation and securities regulation and served as the lead associate on behalf of large financial institutions in several investigations by regulatory and enforcement agencies related to the financial crisis.

In 2008, Corban received a Thurgood Marshall Award for his pro bono representation on a habeas petition of a capital punishment sentence. He also later co-authored "Parmalat Judge: Fraud by Former Executives of Bankrupt Company Bars Trustee's Claims Against Auditors," published by the American Bar Association.

Corban received a J.D., *cum laude*, from Fordham University School of Law, where he received the 2007 Lawrence J. McKay Advocacy Award for excellence in oral advocacy and was a board member of the Fordham Moot Court team. He earned his B.A., *magna cum laude*, in History from Boston College.

Corban serves on the Securities Litigation Committee of the New York City Bar Association. Additionally, *Super Lawyers*, a Thomson Reuters publication, recognized Corban as a New York Metro "Rising Star," noting his experience and contribution to the securities litigation field.

Corban is admitted to practice in the State of New York, as well as before the United States Court of Appeals for the Second Circuit and the United States District Courts for Southern District of New York and the Central District of California.

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**Elizabeth Rosenberg, Of Counsel**  
[ewierzbowski@labaton.com](mailto:ewierzbowski@labaton.com)

Elizabeth Rosenberg focuses on prosecuting complex securities fraud cases on behalf of institutional investors, with a focus on obtaining court approval of class action settlements, notice procedures, and payment of attorneys' fees.

Prior to joining Labaton Sucharow, Elizabeth was an associate at Whatley Drake & Kallas LLP, where she litigated securities and consumer fraud class actions. Elizabeth began her career as an associate at Milberg LLP where she practiced securities litigation and was also involved in the pro bono representation of individuals seeking to obtain relief from the World Trade Center Victims' Compensation Fund.

Elizabeth received her J.D. from Brooklyn Law School. She obtained her B.A. in Psychology from the University of Michigan.

Elizabeth is admitted to practice in the State of New York and the District Courts for the Southern and Eastern Districts of New York.

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**Mark R. Winston, Of Counsel**  
[mwinston@labaton.com](mailto:mwinston@labaton.com)

Mark R. Winston prosecutes securities and consumer fraud actions on behalf of institutional investors and other victims of wrongful conduct. He also has extensive experience with white collar criminal matters, the product of years of government and private practice experience. He has litigated cases involving various types of fraud, as well as tax evasion, the Racketeer Influenced and Corrupt Organizations Act (RICO), and environmental crimes.

Earlier in his career, Mark held senior positions at several national consulting firms, where, among other responsibilities, he handled corporate internal investigations and compliance projects. During his 14-year tenure as an Assistant U.S. Attorney in the United States Attorney's Office for the District of New Jersey, Mark served as the Financial Institution Fraud Coordinator and, later, as the Environmental Crimes Coordinator. Mark tried a number of cases to successful verdicts and received numerous commendations from the Justice Department and other federal agencies for his service, including the Director's Award from the Executive Office for United States Attorneys.

Mark has been spoken at various events and seminars over the years and conducts a seminar for Master of Law students on international criminal law, including the U.S. Foreign Corrupt Practices Act, at the Instituto Superior de Derecho y Economía (ISDE) in Barcelona, Spain.

Mark has authored articles published in the *New York Law Journal* and *GC New York*. He has been interviewed by publications such as *Law360*, *Bloomberg* television and radio, and has also been quoted in various publications, including *The New York Times*.

Immediately after law school, Mark clerked for Judge John V. Corrigan, Ohio Court of Appeals, Eighth Appellate District and then for Judge Neal P. McCurn, U.S. District Court, Northern District of New York.

Mark is admitted to practice in the States of New York and Ohio.

# **Exhibit 4**

1 **LABATON SUCHAROW LLP**  
Carol C. Villegas (*pro hac vice*)  
2 Alec T. Coquin (*pro hac vice*)  
140 Broadway  
3 New York, NY 10005  
Telephone: (212) 907-0700  
4 Facsimile: (212) 818-0477  
Email: cvillegas@labaton.com  
5 acoquin@labaton.com

6 *Attorneys for Lead Plaintiff and Lead Counsel*  
7 *for the Class*

8 **BERMAN TABACCO**  
Nicole Lavallee (SBN 165755)  
9 A. Chowning Poppler (SBN 272870)  
44 Montgomery Street, Ste. 650  
10 San Francisco, CA 94104  
Telephone: (415) 433-3200  
11 Facsimile: (415) 433-6382  
Email: nvallee@bermantabacco.com  
12 cpoppler@bermantabacco.com

13 *Liaison Counsel for the Class*

14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN JOSE DIVISION**

18 In re EXTREME NETWORKS, INC. ) Master File No. 5:15-cv-04883-BLF-SVK  
19 SECURITIES LITIGATION ) **DECLARATION OF NICOLE**  
20 ) **LAVALLEE FILED ON BEHALF OF**  
21 This Document Relates to: ) **BERMAN TABACCO IN SUPPORT OF**  
22 All Actions. ) **APPLICATION FOR AWARD OF**  
23 ) **ATTORNEYS' FEES AND EXPENSES**  
24 )  
25 )  
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Date: June 20, 2019 1:30 p.m.  
Dept.: Courtroom 4, 5th Floor  
Judge: Hon. Beth Labson Freeman

1 I, NICOLE LAVALLEE, declare as follows under penalty of perjury, pursuant to  
2 28 U.S.C. § 1746:

3 1. I am the managing partner of the San Francisco office of Berman Tabacco. I  
4 submit this declaration in support of Lead Counsel’s motion for an award of attorneys’ fees and  
5 payment of expenses, on behalf of all Plaintiffs’ Counsel who contributed to the prosecution of  
6 the claims in the above-captioned action (the “Action”), from inception through April 15, 2019  
7 (the “Time Period”). I have personal knowledge of the facts set forth herein and, if called upon,  
8 could and would testify thereto.

9 2. My firm, which served as Liaison Counsel in the Action, advised Lead Counsel  
10 Labaton Sucharow LLP on various matters throughout the litigation, which are described in  
11 detail in the Declaration of Carol C. Villegas in Support of Lead Plaintiff’s Motion for Final  
12 Approval of Class Action Settlement and Plan of Allocation and Lead Counsel’s Motion for an  
13 Award of Attorneys’ Fees and Payment of Expenses, submitted herewith.

14 3. The information in this declaration regarding my firm’s time and expenses is  
15 taken from time and expense reports and supporting documentation prepared and/or maintained  
16 by the firm in the ordinary course of business. These reports were reviewed by me, in  
17 connection with the preparation of this declaration. As a result of this review, reductions were  
18 made to time in the exercise of billing judgment. As a result of this review and the adjustments  
19 made, I believe that the time reflected in the firm’s lodestar calculation and the expenses for  
20 which payment is sought as set forth in this declaration are reasonable in amount and were  
21 necessary for the effective and efficient prosecution and resolution of the litigation. In addition,  
22 I believe that the expenses are all of a type that would normally be charged to a fee-paying client  
23 in the private legal marketplace.

24 4. After the reductions referred to above, the schedule attached hereto as Exhibit A  
25 is a summary indicating the amount of time spent by the attorneys and professional support staff  
26 members of my firm who were involved in the prosecution of the Action and the lodestar  
27 calculation based on my firm’s current rates. For personnel who are no longer employed by my  
28

1 firm, the lodestar calculation is based upon the rates for such personnel in his or her final year of  
2 employment by my firm. The schedule was prepared from daily time records regularly prepared  
3 and maintained by my firm, which are available at the request of the Court. Time expended in  
4 preparing this application for fees and payment of expenses has not been included in this request.

5 5. The hourly rates for the attorneys and professional support staff of my firm  
6 included in Exhibit A are their usual and customary rates.

7 6. The total number of hours expended on this litigation by my firm during the Time  
8 Period is 123.10 hours. The total lodestar for my firm for those hours is \$70,142.00.

9 7. Attached as Exhibit B is a task-based summary of the work performed by the  
10 attorneys and professional staff members who performed services in this Action.

11 8. My firm's lodestar figures are based upon the firm's hourly rates, which rates do  
12 not include charges for expense items. Expense items are recorded separately and are not  
13 duplicated in my firm's hourly rates.

14 9. As detailed in Exhibit C, my firm has incurred a total of \$2,552.13 in expenses  
15 and charges in connection with the prosecution of the litigation. These expenses and charges are  
16 summarized by category in Exhibit C.

17 10. The following is additional information regarding certain of my firm's expenses:

18 (a) Filing, Witness and Other Fees: \$915.00. These expenses have been paid  
19 to courts in connection with *pro hac vice* motions.

20 (b) Work-Related Transportation, Hotels & Meals: \$95.30. In connection  
21 with the prosecution of this case, the firm has paid for work-related transportation expenses,  
22 meals and travel expenses related to, among other things, attending court conferences and  
23 hearings.

24 (c) Court Hearing and Deposition Reporting: \$276.25. These expenses have  
25 been paid to court reporters in connection with transcripts of court hearings or to court reporting  
26 services, in connection with the depositions taken in the Action.

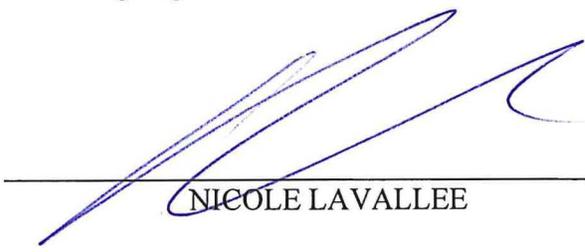
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(d) Online Legal and Factual Research: \$47.41. The firm conducted research using databases maintained by vendors such as PACER, Bloomberg and Westlaw. These databases were used to obtain access to financial information, factual information, and to conduct legal research. This expense represents the expense incurred by my firm for use of these services in connection with this litigation. The charges for these vendors vary depending upon the type of services requested.

11. The expenses pertaining to the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses.

12. With respect to the standing of my firm, attached hereto as Exhibit D is a biography of my firm, as well as biographies of the firm's attorneys who worked on this litigation and who are currently employed by the firm.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3<sup>rd</sup> day of May, 2019, at San Francisco.



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NICOLE LAVALLEE

## **Exhibit A**

**EXHIBIT A**

***IN RE EXTREME NETWORKS, INC. SEC. LITIG.***

**Berman Tabacco**

**Inception through April 15, 2019**

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Beaulieu, Karen	FA	1.00	\$395.00	\$395.00
Becker, Kathy	PL	20.70	\$370.00	\$7,659.00
Giblin, Wendy (former)	OC	14.30	\$615.00	\$8,794.50
Lavallee, Nicole	P	19.50	\$920.00	\$17,940.00
Poppler, Chowning	A	63.30	\$525.00	\$33,232.50
Scarsciotti, Jeannine	FA	.80	\$505.00	\$404.00
Soboleva, Yelena	PL	2.20	\$225.00	\$495.00
Tabacco, Joseph	P	1.30	\$940.00	\$1,222.00
<b>TOTAL</b>		<b>123.10</b>		<b>\$70,142.00</b>

Partner (P) Financial Analyst (FA)  
 Of Counsel (OC) Investigator (I)  
 Associate (A) Paralegal (PL)

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## **Exhibit B**

**EXHIBIT B*****IN RE EXTREME NETWORKS INC. SEC. LITIG.*****Berman Tabacco****Inception through April 15, 2019**

Categories:

- |                                |                                  |
|--------------------------------|----------------------------------|
| (1) Factual Investigation      | (6) Court Appearances            |
| (2) Pleadings                  | (7) Experts/Consultants          |
| (3) Discovery                  | (8) Settlement                   |
| (4) Case Management            | (9) Litigation Strategy/Analysis |
| (5) Motions and Legal Research |                                  |

Name	Status	1	2	3	4	5	6	7	8	9	Total Hours	Rate	Total Lodestar
Beaulieu, Karen	FA	1.00									1.00	\$395.00	\$395.00
Becker, Kathy	PL	1.80	18.30						0.60		20.70	\$370.00	\$7,659.00
Giblin, Wendy	OC	14.30									14.30	\$615.00	\$8,794.50
Lavallee, Nicole	P	1.90	4.10			5.50		6.50	1.50		19.50	\$920.00	\$17,940.00
Poppler, Chowning	A	0.10	26.70			33.00		1.50	2.00		63.30	\$525.00	\$33,232.50
Scarsciotti, Jeannine	FA	0.80									0.80	\$505.00	\$404.00
Soboleva, Yelena	PL	0.30	1.90								2.20	\$225.00	\$495.00
Tabacco, Joseph	P							1.30			1.30	\$940.00	\$1,222.00
<b>TOTAL:</b>		20.20	51.00	0.00	0.00	0.00	38.50	0.00	9.90	3.50	123.10		\$70,142.00

Partner (P)	Financial Analyst (FA)
Of Counsel (OC)	Investigator (I)
Associate (A)	Paralegal (PL)

## **Exhibit C**

**EXHIBIT C*****IN RE EXTREME NETWORKS, INC. SEC. LITIG.*****Berman Tabacco****Inception through April 15, 2019**

<b><i>CATEGORY</i></b>	<b><i>AMOUNT</i></b>
Filing, Witness and Other Fees	\$915.00
Work-Related Transportation, Hotels & Meals	\$95.30
Long-Distance Telephone, Facsimile and Conference Calling	\$0.00
Messenger, Overnight Delivery	\$697.85
Court Hearing and Deposition Reporting	\$276.25
Experts/Consultants	\$0.00
Duplicating	\$520.32
Online Legal and Factual Research	\$47.41
Litigation Support	\$0.00
Research Materials	\$0.00
<b><i>TOTAL</i></b>	<b>\$2,552.13</b>

## **Exhibit D**

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**EXHIBIT D**

***IN RE EXTREME NETWORKS, INC. SEC. LITIG.***

**Berman Tabacco**

**FIRM RESUME**

## THE FIRM

Berman Tabacco is a national law firm with 35 attorneys located in offices in Boston and San Francisco. Since its founding in 1982, the firm has devoted its practice to complex litigation, primarily representing plaintiffs seeking redress under U.S. federal and state securities and antitrust laws.

Over the past three-and-a-half decades, Berman Tabacco's attorneys have prosecuted hundreds of class actions, recovering billions of dollars on behalf of the firm's clients and the classes they represented. In addition to financial recoveries, the firm has achieved significant changes in corporate governance and business practices of defendant companies. Indeed, the firm appears as among the firms with the most settlements on the list of the top 100 largest securities class actions in SCAS' published report, *Top 100 U.S. Class Action Settlements of All Time (as of 12/31/2017)*. According to ISS Securities Class Action Services' "Top 50 for 2015" report, Berman Tabacco was one of only six firms that recovered more than half-a-billion dollars for investors in 2015.<sup>1</sup> SCAS similarly ranked the firm among the few that obtained over half-a-billion in settlements in 2004 and 2009, and ranked the firm 3rd in terms of settlement averages for class actions in 2009, 2010 and 4th in 2004 (SCAS ceased rankings according to settlement sizes in 2012). The firm currently holds leadership positions in securities and antitrust cases around the country.

Berman Tabacco is rated AV Preeminent® by *Martindale-Hubbell*®. *Benchmark Litigation* ranked the firm as a "Top Ten Plaintiffs' Firm" for its work "on behalf of individuals and institutions who have suffered financial harm due to violations of securities or antitrust laws" in its 2017 10th Anniversary edition, as well as a "Top Plaintiffs" firm in its 2018 and 2019 editions (only seven firms were so named). *Benchmark Litigation* also ranked the firm as "Highly Recommended" in 2019 – the eighth time the firm has received that distinction.<sup>2</sup> *The Legal 500* also ranked the firm as "recommended" in securities litigation in its 2017 and 2018 U.S. editions (as well as ranking seven of the firm's attorneys in the same category each year). Additionally, *Chambers USA* nationwide edition recognized the firm in the Securities Litigation – Mainly Plaintiff category in 2017 and 2018. In addition, the firm was recently recognized in litigation – antitrust by *U.S. News – Best Lawyers* in its *Best Law Firms* (2019 ed.). Berman Tabacco's lawyers are frequently singled out for favorable comments by our clients, presiding judges and opposing counsel. For examples, please see:

## SECURITIES PRACTICE

Berman Tabacco has more than 37 years of experience in securities litigation and has represented public pension funds and other institutional investors in this area since 1998. As reported by Cornerstone Research, the firm has successfully prosecuted some of the most significant shareholder class action

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<sup>1</sup> ISS's report "lists the top 50 plaintiffs' law firms ranked by the total dollar value of the final class action settlements occurring in 2015 in which the law firm served as lead or co-lead counsel." ISS Securities Class Action Services, *Top 50 for 2015* (May 2016).

<sup>2</sup> See <https://www.benchmarklitigation.com/firms/berman-tabacco/f-195>.

lawsuits.<sup>3</sup> Indeed, the firm appears as among the firms with the most settlements on the list of the top 100 largest securities class actions in SCAS' published report, *Top 100 U.S. Class Action Settlements of All Time (as of 12/31/2017)*. According to the most recent ISS Securities Class Action Services "Top 50 for 2015" report, Berman Tabacco was one of only six firms that recovered more than half-a-billion dollars for investors in 2015.<sup>4</sup> SCAS similarly ranked the firm among the few that obtained over half-a-billion in settlements in 2004 and 2009, and ranked the firm 3rd in terms of settlement averages for class actions in 2009, 2010 and 4th in 2004 (SCAS ceased rankings according to settlement sizes in 2012).

Specifically, the firm has been appointed lead or co-lead counsel in more than 100 actions, recovering billions of dollars on behalf of defrauded investors and the classes they represent under the Private Securities Litigation Reform Act of 1995 ("PSLRA"). The firm has an extremely rigorous case-evaluation process and highly experienced litigation attorneys. Its dismissal rate for cases brought under the PSLRA is less than half the overall dismissal rate for such cases according to one authoritative study.<sup>5</sup>

Berman Tabacco serves as monitoring, evaluation and/or litigation counsel to nearly 100 institutional investors, including statewide public employee retirement systems in more than 17 states, 15 public funds with more than \$50 billion in assets, six of the 10 largest public pension plans in the country and 12 of the largest 20.<sup>6</sup> For many institutional investors, the firm's services include electronically monitoring the client's portfolio for losses due to securities fraud in U.S. securities cases.

The firm provides portfolio monitoring, case evaluation and litigation services to its institutional clients, including the litigation of class and individual claims pursuant to U.S. federal and state securities laws, as well as derivative cases pursuant to state law. The firm also offers institutional investors legal services in other areas, including (a) representing institutional investors in general commercial litigation; (b) representing institutional investors in their capacity as defendants in constructive fraudulent transfer cases; (c) negotiating resolution of disputes with money managers and custodians; and (d) pursuing shareholder rights, such as books and records demands and merger and acquisition cases.

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<sup>3</sup> Cornerstone Research, *Securities Class Action Filings: 2011 Year in Review* (2012), at p. 23, available at <http://securities.stanford.edu/research-reports/1996-2011/Cornerstone-Research-Securities-Class-Action-Filings-2011-YIR.pdf>.

<sup>4</sup> ISS's report "lists the top 50 plaintiffs' law firms ranked by the total dollar value of the final class action settlements occurring in 2015 in which the law firm served as lead or co-lead counsel." ISS Securities Class Action Services, *Top 50 for 2015* (May 2, 2016).

<sup>5</sup> Firm data reflects dismissal rates through present. Overall dismissal rates come from *Securities Class Action Filings: 2017 Year in Review*, p. 15 (Cornerstone Research 2017), <https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Filings-2017-YIR>.

<sup>6</sup> Based on an May 2018 query of the Standard & Poor's Money Market Directories, [www.mmdwebaccess.com](http://www.mmdwebaccess.com), whereby public pension funds were ranked according to defined benefit assets under management. Actual valuation dates vary.

## RESULTS

### SECURITIES SETTLEMENTS

Examples of the firm's settlements include:

*Carlson v. Xerox Corp.*, No. 00-cv-1621 (D. Conn.). Representing the Louisiana State Employees' Retirement System as co-lead counsel, Berman Tabacco negotiated a \$750 million settlement to resolve claims of securities fraud against Xerox, certain top officers and its auditor KPMG LLP. When it received final court approval in January 2009, the recovery was the 10th largest securities class action settlement of all time. The judge praised plaintiffs' counsel for obtaining "a very large settlement" despite vigorous opposition in a case complicated by an alleged fraud that "involved multiple accounting standards that touched on numerous aspects of a multinational corporation's business, implicated operating units around the world, and spanned five annual reporting periods. ... [and] the rudiments of the accounting principles at issue in the case were complex, as were numerous other aspects of the case. ... The class received high-quality legal representation and obtained a very large settlement in the face of vigorous opposition by highly experienced and skilled defense counsel."

*In re IndyMac Mortgage-Backed Litigation*, No. 09-cv-4583 (S.D.N.Y.). Representing the Wyoming State Treasurer's Office and the Wyoming Retirement System as lead plaintiffs, Berman Tabacco achieved settlements totaling \$346 million in a case regarding the securitization and sale of mortgage-backed securities ("MBS") by IndyMac Bank and related entities. In February 2015, the court approved a \$340 million settlement with six underwriters of IndyMac MBS offerings, adding to a previous \$6 million partial settlement and making the total recovery one of the largest MBS class action settlements to date. This settlement is extraordinary, not only because of its size but also because \$340 million of the settlement amount was paid entirely by underwriters who had due diligence defenses. In most other MBS cases, by contrast, plaintiffs were able to recover the settlement fund monies from the issuing entities, who are held to a strict liability standard for which there is no due diligence defense. (The issuer in this action, IndyMac Bank, is no longer in existence.)

*In re Bristol-Myers Squibb Securities Litigation*, No. 02-cv-2251 (S.D.N.Y.). Berman Tabacco represented the Fresno County Employees' Retirement Association and Louisiana State Employees' Retirement System as co-lead plaintiffs and negotiated a settlement of \$300 million in July 2004. At that time, the settlement was the largest by a drug company in a U.S. securities fraud case.

*In re The Bear Stearns Cos. Inc. Securities, Derivative and ERISA Litigation*, Master File No. 08-MDL No. 1963/08 Civ. 2793 (S.D.N.Y.). Berman Tabacco acted as co-lead counsel for court-appointed lead plaintiff the State of Michigan Retirement Systems in this case arising from investment losses suffered in the Bear Stearns Companies' 2008 collapse. The firm negotiated \$294.9 million in settlements, comprised of \$275 million from Bear Stearns and \$19.9 million from auditor Deloitte & Touche LLP. The settlement received final approval November 9, 2012. At the time, the settlement for \$294.9 million represented one of the 40 largest securities class action settlements under the PSLRA. This is particularly significant in light of the fact that no government entity had pursued actions or claims against Bear Stearns or its former officers and directors related to the same conduct complained of in the firm's action.

*In re El Paso Securities Litigation*, No. H-02-2717 (S.D. Tex.). Representing the Oklahoma Firefighters Pension and Retirement System as co-lead plaintiff, Berman Tabacco helped negotiate a settlement totaling \$285 million, including \$12 million from auditors PricewaterhouseCoopers. The court granted final approval of the settlement in March 2007.

*California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.). As lead counsel representing the California Public Employees' Retirement System (CalPERS), the firm negotiated a combined \$255 million settlement with the credit rating agencies Moody's and Standard & Poor's to settle CalPERS' claim that "Aaa" ratings on three structured investment vehicles were negligent misrepresentations under California law. In addition to obtaining a substantial recovery for investment losses, this case was groundbreaking in that (a) the settlements rank as the largest known recoveries from Moody's and S&P in a private lawsuit for civil damages, and (b) it resulted in a published appellate court opinion finding that rating agencies can, in certain circumstances, be liable for negligent misrepresentations under California law for their ratings of privately-placed securities.

*In re Centennial Technologies Securities Litigation*, No. 97-cv-10304 (D. Mass.). Berman Tabacco served as sole lead counsel in a class action involving a massive accounting scandal that shot down the company's high-flying stock. Berman Tabacco negotiated a settlement that permitted a turnaround of the company and provided a substantial recovery for class members. The firm negotiated changes in corporate practice, including strengthening internal financial controls and obtaining 37% of the company's stock for the class. The firm also recovered \$20 million from Coopers & Lybrand, Centennial's auditor at the time. In addition, the firm recovered \$2.1 million from defendants Jay Alix & Associates and Lawrence J. Ramaekers for a total recovery of more than \$35 million for the class. The firm subsequently obtained a \$207 million judgment against former Centennial CEO Emanuel Pinez.

*In re Digital Lightwave Securities Litigation*, No. 98-152-cv-T-24C (M.D. Fla.). As co-lead counsel, Berman Tabacco negotiated a settlement that included changing company management and strengthening the company's internal financial controls. The class received 1.8 million shares of freely tradable common stock that traded at just below \$4 per share when the court approved the settlement. At the time the shares were distributed to the members of the class, the stock traded at approximately \$100 per share and class members received more than 200% of their losses after the payment of attorneys' fees and expenses. The total value of the settlement, at the time of distribution, was almost \$200 million.

*In re Lernout & Hauspie Securities Litigation*, No. 00-11589 (D. Mass.), and *Quaak v. Dexia, S.A.*, No. 03-11566 (D. Mass.). In December 2004, as co-lead counsel, Berman Tabacco negotiated what was then the third-largest settlement ever paid by accounting firms in a securities class action – a \$115 million agreement with the U.S. and Belgian affiliates of KPMG International. The case stemmed from KPMG's work for Lernout & Hauspie Speech Products, a software company driven into bankruptcy by a massive fraud. In March 2005, the firm reached an additional settlement worth \$5.27 million with certain of Lernout & Hauspie's former top officers and directors. In the related *Quaak* case, the firm negotiated a \$60 million settlement with Dexia Bank Belgium to settle claims stemming from the bank's alleged role in the fraudulent scheme at Lernout & Hauspie. The court granted final approval of the Dexia settlement in June 2007, bringing the total settlement value to more than \$180 million.

*In re BP PLC Securities Litigation*, No. 10-md-2185 (S.D. Tex.). The firm was co-lead counsel representing co-lead plaintiff Ohio Public Employees Retirement System. Lead plaintiffs reached a \$175 million settlement to resolve claims brought on behalf of a class of investors who purchased BP's American Depositary Shares ("ADS") between April 26, 2010 and May 28, 2010. The action alleged that BP and two of its former officers made false and misleading statements regarding the severity of the Gulf of Mexico oil spill. More specifically, plaintiffs alleged that BP misrepresented that its best estimate of the oil spill flow rate was from 1,000 to 5,000 barrels of oil per day, when internal BP estimates showed substantially higher potential flow rates. On February 13, 2017, the court granted final approval of the settlement, ending more than six years of hard fought litigation that included extensive fact and expert discovery, multiple rounds of briefing on defendants' motions to dismiss, two rounds of briefing on class certification, a successful defense of BP's appeal of the district court's class certification decision and briefing on cross-motions for summary judgment. This settlement reportedly represents one of only four mega securities class action settlements (settlements of \$100 million or more) in 2017. See *Securities Class Action Settlements—2017 Review and Analysis*, p. 4 (Cornerstone Research 2018), <https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2017-Review-and-Analysis>. It was also listed as the highest valued settlement during the first half of 2017 by ISS Securities Class Action Services. See ISS Securities Class Action Services, *Top 100 U.S. Class Action Settlements of All Time as of Dec. 31, 2017* (2018), p. 2, available at <https://www.bermantabacco.com/wp-content/uploads/2018/03/SCAS-Top-100-Settlements-of-All-Time-2017-12-31.pdf>.

*In re Fannie Mae 2008 Securities Litigation*, No. 08-cv-7831 (S.D.N.Y.). As co-lead counsel representing the Massachusetts Pension Reserves Investment Management Board, a co-lead plaintiff for the common stock class, Berman Tabacco helped negotiate a \$170 million settlement with Fannie Mae. To achieve the settlement, which was approved in March 2015, plaintiffs had to overcome the challenges posed by the federal government's placement of Fannie Mae into conservatorship and by the Second Circuit's upholding of dismissal of similar claims against Freddie Mac, Fannie Mae's sibling Government-Sponsored Enterprise.

*In re Symbol Technologies, Inc. Securities Litigation*, No. 2:02-cv-01383 (E.D.N.Y.). Berman Tabacco represented the Louisiana Municipal Police Employees' Retirement System as co-lead plaintiff, obtaining a \$139 million partial settlement in June 2004. Subsequently, Symbol's former auditor, Deloitte & Touche LLP, agreed to pay \$24 million, bringing the total settlement to \$163 million. The court granted final approval in September 2006.

*In re Prison Realty Securities Litigation*, No. 3:99-cv-0452 (M.D. Tenn.) (*In re Old CCA Securities Litigation*, No. 3:99-cv-0458). The firm represented the former shareholders of Corrections Corporation of America, which merged with another company to form Prison Realty Trust, Inc. The action charged that the registration statement issued in connection with the merger contained untrue statements. Overcoming arguments that the class' claims of securities fraud were released in prior litigation involving the merger, the firm successfully defeated the motions to dismiss. It subsequently negotiated a global settlement of approximately \$120 million in cash and stock for this case and other related litigation.

*Oracle Cases*, Coordination Proceeding, Special Title (Rule 1550(b)) No. 4180 (Cal. Super. Ct. San Mateo Cty.). In this coordinated derivative action, Oracle Corporation shareholders alleged that the company's Chief Executive Officer, Lawrence J. Ellison, profited from illegal insider trading. Acting as co-lead counsel, the firm reached a settlement, pursuant to which Mr. Ellison would personally make charitable donations of

\$100 million over five years in Oracle's name to an institution or charity approved by the company and pay \$22 million in attorneys' fees and expenses associated with the prosecution of the case. The innovative agreement, approved by a judge in December 2005, benefited Oracle through increased goodwill and brand recognition, while minimizing concerns that would have been raised by a payment from Mr. Ellison to the company, given his significant ownership stake. The lawsuit resulted in important changes to Oracle's internal trading policies that decrease the chances that an insider will be able to trade in possession of material, non-public information.

*In re International Rectifier Securities Litigation*, No. 07-cv-2544 (C.D. Cal.). As co-lead counsel representing the Massachusetts Laborers' Pension Fund, the firm negotiated a \$90 million settlement with International Rectifier Corporation and certain top officers and directors. The case alleged that the company engaged in numerous accounting improprieties to inflate its financial results. The court granted final approval of the settlement in February 2010. At the settlement approval hearing, the Honorable John F. Walter, the presiding judge, praised counsel, stating: "I think the work by the lawyers – all the lawyers in this case – was excellent. ... In this case, the papers were excellent. So it makes our job easier and, quite frankly, more interesting when I have lawyers with the skill of the lawyers that are present in the courtroom today who have worked on this case ... the motion practice in this case was, quite frankly, very intellectually challenging and well done. ... I've presided over this consolidated action since its commencement and have nothing but the highest respect for the professionalism of the attorneys involved in this case. ... The fact that plaintiffs' counsel were able to successfully prosecute this action against such formidable opponents is an impressive feat."

*In re State Street Bank & Trust Co. ERISA Litigation*, No. 07-cv-8488 (S.D.N.Y.). The firm acted as co-lead counsel in this consolidated class action case, which alleged that defendant State Street Bank and Trust Company and its affiliate, State Street Global Advisors, Inc., (collectively, "State Street") breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") by failing to prudently manage the assets of ERISA plans invested in State Street fixed income funds during 2007. After well over a year of litigation, during which Berman Tabacco and its co-counsel reviewed approximately 13 million pages of documents and took more than 30 depositions, the parties negotiated an all-cash \$89.75 million settlement, which received final approval in 2010.

*In re Philip Services Corp. Securities Litigation*, No. 98-cv-0835 (S.D.N.Y.). As co-lead counsel, Berman Tabacco negotiated settlements totaling \$79.75 million with the bankrupt company's former auditors, top officers, directors and underwriters. The case alleged that Philip Services and its top officers and directors made false and misleading statements regarding the company's publicly reported revenues, earnings, assets and liabilities. The district court initially dismissed the claims on grounds of *forum non conveniens*, but the firm successfully obtained a reversal by the United States Court of Appeals for the Second Circuit. The court granted final approval of the settlements in March 2007.

*In re Reliant Securities Litigation*, No. 02-cv-1810 (S.D. Tex.). As lead counsel representing the Louisiana Municipal Police Employees' Retirement System, the firm negotiated a \$75 million cash settlement from the company and Deloitte & Touche LLP. The settlement received final approval in January 2006.

*In re KLA-Tencor Corp. Securities Litigation*, No. 06-cv-04065 (N.D. Cal.). Representing co-lead plaintiff Louisiana Municipal Police Employees' Retirement System, Berman Tabacco negotiated a \$65 million

agreement to settle claims that KLA-Tencor illegally backdated stock option grants, issued false and misleading statements regarding grants to key executives and inflated the company's financial results by understating expenses associated with the backdated options. The court granted final approval of the settlement in 2008. At the conclusion of the case, Judge Charles R. Breyer praised plaintiffs' counsel for "working very hard" in exchange for an "extraordinarily reasonable" fee, stating: "I appreciate the fact that you've done an outstanding job, and you've been entirely reasonable in what you've done. Congratulations for working very hard on this."

*City of Brockton Retirement System v. Avon Products Inc.*, No. 11-cv-04665 (S.D.N.Y.). As a member of the executive committee representing named plaintiffs City of Brockton Retirement System and Louisiana Municipal Police Employees' Retirement System, the firm negotiated a \$62 million settlement. The action alleged that Avon Products, Inc. violated federal securities laws by failing to disclose to investors the size and scope of the Company's violations of the Foreign Corrupt Practices Act of 1977 ("FCPA"). In response to Avon's piecemeal disclosures over the course of more than a year, which ultimately revealed the true extent of the FCPA violations, the company's stock lost nearly 20% of its pre-disclosure value. This case was one of the very few successful securities cases premised on FCPA violations.

*Ehrenreich v. Witter*, No. 95-cv-6637 (S.D. Fla.). The firm was co-lead counsel in this case involving Sensormatic Electronics Corp., which resulted in a settlement of \$53.5 million. When it was approved in 1998, the settlement was one of the largest class action settlements in the state of Florida.

*In re Thomas & Betts Securities Litigation*, No. 2:00-cv-2127 (W.D. Tenn.). The firm served as co-lead counsel in this class action, which settled for more than \$51 million in 2004. Plaintiffs had accused the company and other defendants of issuing false and misleading financial statements for 1996, 1997, 1998, 1999 and the first two quarters of 2000.

*In re Enterasys Networks, Inc. Securities Litigation*, No. C-02-071-M (D.N.H.). Berman Tabacco acted as sole lead counsel in a case against Enterasys Networks, Inc., in which the Los Angeles County Employees Retirement Association was lead plaintiff. The company settled in October 2003 for \$17 million in cash, stock valued at \$33 million and major corporate governance improvements that opened the computer networking company to greater public scrutiny. Changes included requiring the company to back a proposal to eliminate its staggered board of directors, allowing certain large shareholders to propose candidates to the board and expanding the company's annual proxy disclosures. The settlement received final court approval in December 2003.

*Giarraputo v. UNUMProvident Corp.*, No. 2:99-cv-00301 (D. Me.). As a member of the executive committee representing plaintiffs, Berman Tabacco secured a \$45 million settlement in a lawsuit stemming from the 1999 merger that created UNUMProvident. Shareholders of both predecessor companies accused the insurer of misleading the public about its business condition before the merger. The settlement received final approval in June 2002.

*In re General Electric Co. Securities Litigation*, No. 09 Civ. 1951 (S.D.N.Y.). The firm serves as Lead Counsel on behalf of the State Universities Retirement System of Illinois in a lawsuit against General Electric Co. and certain of its officers. A settlement in the amount of \$40 million was reached with all the parties. The court approved the settlement on September 6, 2013.

*In re UCAR International, Inc. Securities Litigation*, No. 98-cv-0600 (D. Conn.). The firm represented the Florida State Board of Administration as the lead plaintiff in a securities claim arising from an accounting restatement. The case settled for \$40 million cash and the requirement that UCAR appoint an independent director to its board of directors. The settlement was approved in 2000.

*In re American Home Mortgage Securities Litigation*, No. 07-MD-1898 (E.D.N.Y.). As co-lead counsel representing the Oklahoma Police Pension & Retirement System, the firm negotiated a \$37.25 million settlement – including \$4.75 million from auditors Deloitte & Touche and \$8.5 million from underwriters – despite the difficulties American Home’s bankruptcy posed to asset recovery. The plaintiffs contended that American Home had failed to write down the value of certain loans in its portfolio, which declined substantially in value as the credit markets unraveled. The settlement received final approval in 2010 and was distributed in 2011.

*In re Avant, Securities Litigation*, No. 96-cv-20132 (N.D. Cal.). Avant!, a software company, was charged with securities fraud in connection with its alleged theft of a competitor’s software code, which Avant! incorporated into its flagship software product. Serving as lead counsel, the firm recovered \$35 million for the class. The recovery resulted in eligible class claimants receiving almost 50% of their losses after attorneys’ fees and expenses.

*In re SmartForce PLC d/b/a SkillSoft Securities Litigation*, No. 02-cv-544 (D.N.H.). Representing the Teachers’ Retirement System of Louisiana as co-lead plaintiff, Berman Tabacco negotiated a \$30.5 million partial settlement with SkillSoft. Subsequently, the firm also negotiated an \$8 million cash settlement with Ernst & Young Chartered Accountants and Ernst & Young LLP, SkillSoft’s auditors at the time. The settlements received final approval in September 2004 and November 2005, respectively.

*In re Sykes Enterprises, Inc. Securities Litigation*, No. 8:00-cv-212-T-26F (M.D. Fla.). The firm represented the Florida State Board of Administration as co-lead plaintiff. Sykes Enterprises was accused of using improper means to match the company’s earnings with Wall Street’s expectations. The firm negotiated a \$30 million settlement.

*In re Valence Securities Litigation*, No. 95-cv-20459 (N.D. Cal.). Berman Tabacco served as co-lead counsel in this action against a Silicon Valley-based company for overstating its performance and the development of an allegedly revolutionary battery technology. After the Ninth Circuit reversed the district court’s decision to grant summary judgment in favor of defendants, the case settled for \$30 million in Valence common stock.

*In re Sybase II, Securities Litigation*, No. 98-cv-0252-CAL (N.D. Cal.). Sybase was charged with inflating its quarterly financial results by improperly recognizing revenue at its wholly owned subsidiary in Japan. Acting as co-lead counsel, the firm obtained a \$28.5 million settlement.

*In re Force Protection Inc. Securities Litigation*, No. 08-cv-845 (D.S.C.). As co-lead counsel representing the Laborers’ Annuity and Benefit System of Chicago, the firm negotiated a \$24 million settlement in a securities class action against armored vehicle manufacturer Force Protection, Inc. The settlement addressed the claims of shareholders who accused the company and its top officers of making false and

misleading statements regarding financial results, failing to maintain effective internal controls over financial reporting and failing to comply with government contracting standards.

*In re Zynga Inc. Securities Litigation*, No. 12-cv-04007 (N.D. Cal.). As co-lead counsel, the firm negotiated a \$23 million recovery to settle claims against the company and certain of its officers. The case alleged that the company and its highest-level officers falsely touted accelerated bookings and aggressive growth through 2012, while concealing crucial information that Zynga was experiencing significant declines in bookings for its games and upcoming Facebook platform changes that would negatively impact Zynga's bookings. Then, while Zynga's stock was trading at near a class-period high, defendants obtained an early release from the IPO lock-up on their shares to enable them and a few other insiders to reap over \$593 million in proceeds in a secondary offering of personally held shares. The secondary offering was timed just three months before Zynga announced its dismal Q2 2012 earnings at the end of the class period, which caused Zynga's stock to plummet. The court granted final approval of the settlement in February 2016.

*In re ICG Communications Inc. Securities Litigation*, No. 00-cv-1864 (D. Colo.). As co-lead counsel representing the Strategic Marketing Analysis Fund, the firm negotiated an \$18 million settlement with ICG Communications Inc. The case alleged that ICG executives misled investors and misrepresented growth, revenues and network capabilities. The court granted final approval of the settlement in January 2007.

*In re Critical Path, Inc. Securities Litigation*, No. 01-cv-0551 (N.D. Cal.). The firm negotiated a \$17.5 million recovery to settle claims of accounting improprieties at a California software development company. Representing the Florida State Board of Administration, the firm was able to obtain this recovery despite difficulties arising from the fact that Critical Path teetered on the edge of bankruptcy. The settlement was approved in June 2002.

*In re Sunrise Senior Living, Inc. Securities Litigation*, No. 07-cv-00102 (D.D.C.). A federal judge granted final approval of a \$13.5 million settlement between Oklahoma Firefighters Pension and Retirement System, represented by Berman Tabacco, and Sunrise Senior Living Inc.

*Hallet v. Li & Fung, Ltd.*, No. 95-cv-08917 (S.D.N.Y.). Cyrk Inc. was charged with misrepresenting its financial results and failing to disclose that its largest customer was ending its relationship with the company. In 1998, Berman Tabacco successfully recovered more than \$13 million for defrauded investors.

*In re Warnaco Group, Inc. Securities Litigation*, No. 00-cv-6266 (S.D.N.Y.). Representing the Fresno County Employees' Retirement Association as co-lead plaintiff, the firm negotiated a \$12.85 million settlement with several current and former top officers of the company.

*Gelfer v. Pegasystems, Inc.*, No. 98-cv-12527 (D. Mass.). As co-lead counsel, Berman Tabacco negotiated a settlement valued at \$12.5 million, \$4.5 million in cash and \$7.5 million in shares of the company's stock or cash, at the company's option.

*Sand Point Partners, L.P. v. Pediatrix Medical Group, Inc.*, No. 99-cv-6181 (S.D. Fla.). Berman Tabacco represented the Florida State Board of Administration, which was appointed co-lead plaintiff along with several other public pension funds. The complaint accused Pediatrix of Medicaid billing fraud, claiming that

the company illegally increased revenue and profit margins by improperly coding treatment rendered. The case settled for \$12 million on the eve of trial in 2002.

*In re Molten Metal Technology Inc. Securities Litigation*, No. 1:97-cv-10325 (D. Mass.), and *Axler v. Scientific Ecology Group, Inc.*, No. 1:98-cv-10161 (D. Mass.). As co-lead counsel, Berman Tabacco played a key role in settling the actions after Molten Metal and several affiliates filed a petition for bankruptcy reorganization in Massachusetts. The individual defendants and the insurance carriers in Molten Metal agreed to settle for \$11.91 million. After the bankruptcy, a trustee objected to the use of insurance proceeds for the settlement. The parties agreed to pay the trustee \$1.325 million of the Molten Metal settlement. The parties also agreed to settle claims against Scientific Ecology Group for \$1.25 million, giving Molten Metal's investors \$11.835 million.

*In re CHS Electronics, Inc. Securities Litigation*, No. 99-8186-CIV (S.D. Fla.). The firm helped obtain an \$11.5 million settlement for co-lead plaintiff Warburg, Dillon, Read, LLC (now UBS Warburg).

*In re Summit Technology Securities Litigation*, No. 96-cv-11589 (D. Mass.). Berman Tabacco, as co-lead counsel, negotiated a \$10 million settlement for the benefit of the class.

*In re Exide Corp. Securities Litigation*, No. 98-cv-60061 (E.D. Mich.). Exide was charged with having altered its inventory accounting system to artificially inflate profits by reselling used, outdated or unsuitable batteries as new ones. As co-lead counsel for the class, Berman Tabacco recovered more than \$10 million in cash for class members.

*In re Fidelity/Micron Securities Litigation*, No. 95-cv-12676 (D. Mass.). The firm recovered \$10 million in cash for Micron investors after a Fidelity Fund manager touted Micron while secretly selling the stock.

*In re Par Pharmaceutical Securities Litigation*, No. 06-cv-03226 (D.N.J.). As counsel for court-appointed plaintiff, the Louisiana Municipal Police Employees' Retirement System, Berman Tabacco obtained an \$8.1 million settlement from the company and its former CEO and CFO, which the court approved in January 2013. The case alleged that the company had misled investors about its accounting practices, including overstatement of revenues.

*In re Interspeed, Inc. Securities Litigation*, No. 00-cv-12090-EFH (D. Mass.). Berman Tabacco served as co-lead counsel and negotiated a \$7.5 million settlement on behalf of the class. The settlement was reached in an early stage of the proceedings, largely as a result of the financial condition of Interspeed and the need to salvage a recovery from its available assets and insurance.

*In re Abercrombie & Fitch Co. Securities Litigation*, No. M21-83 (S.D.N.Y.). As a member of the executive committee in this case, the firm recovered more than \$6 million on behalf of investors. The case alleged that the clothing company misled investors with respect to declining sales, which affected the company's financial condition. The court granted final approval of the settlement in January 2007.

*In re Digital Domain Media Group, Inc. Securities Litigation*, No. 12-14333-CIV (S.D. Fla.). As co-lead counsel, Berman Tabacco obtained a \$5.5 million settlement on behalf investors of Digital Domain Media

Group, Inc. that was approved by the both bankruptcy court and the Southern District of Florida. The lead plaintiffs alleged that DDMG, a digital production company that was forced to file for bankruptcy in September 2012, less than 10 months after its initial public offering (“IPO”), misled investors in documents filed with the U.S. Securities and Exchange Commission as part of the IPO and in other statements made throughout the class period. Among other things, the lawsuit alleged that the defendants misled the public about DDMG’s ability to raise capital and fund its operations, falsely reassuring investors about the company’s ability to meet operating expenses while it “burned” cash at a rate that threatened its viability. In fact, according to a September 18, 2012 article in the Palm Beach Post, DDMG had difficulties meeting payroll as far back as 2010. According to the same article, then-Chairman and CEO John C. Textor “himself predicted a ‘train wreck’ in an email to an investor in early 2010.”

*In re WorldCom, Inc. Securities Litigation*, No. 02-cv-3288 (S.D.N.Y.). As counsel to court-appointed bondholder representatives, the County of Fresno, California and the Fresno County Employees’ Retirement Association, Berman Tabacco helped a team of lawyers representing the lead plaintiff, the New York State Common Retirement Fund, obtain settlements worth more than \$6.13 billion.

## **ANTITRUST PRACTICE**

Berman Tabacco has a national reputation for our work prosecuting antitrust class actions involving price-fixing, market allocation agreements, patent misuse, monopolization and group boycotts among other types of anticompetitive conduct. Representing clients ranging from Fortune 500 companies and public pension funds to individual consumers, the experienced senior attorneys in our Antitrust Practice Group have engineered substantial settlements and changed business practices of defendant companies, recovering more than \$1 billion for our clients overall.

Berman Tabacco has played a major role in the prosecution of numerous landmark antitrust cases. For example, the firm was lead counsel in the Toys “R” Us litigation, which developed the antitrust laws with respect to “hub and spoke” conspiracies and resulted in a \$56 million settlement. Berman Tabacco brought the first action centered on so-called “reverse payments” between a brand name drug maker and a generic drug maker, resulting in an \$80 million settlement from the drug makers, which had been accused of keeping a generic version of their blood pressure medication off the market.

The firm’s victories for victims of antitrust violations have come at the trial court level and also through landmark appellate court victories, which have contributed to shaping private enforcement of antitrust law. For example, in the Cardizem CD case, Berman Tabacco was co-lead counsel representing health insurer Aetna in an antitrust class action and obtained a pioneering ruling in the federal court of appeals regarding the “reverse payment” by a generic drug manufacturer to the brand name drug manufacturer. In a first of its kind ruling, the appellate court held that the brand name drug manufacturer’s payment of \$40 million per year to the generic company for the generic to delay bringing its competing drug to market was a *per se* unlawful market allocation agreement. Today that victory still shapes the ongoing antitrust battle over competition in the pharmaceutical market.

In the firm’s case against diamond giant De Beers, the Third Circuit, sitting *en banc*, vacated an earlier panel decision and upheld the certification of a nationwide settlement class, removing the last obstacle to

final approval of a historic \$295 million settlement. The Third Circuit's important decision provides a roadmap for obtaining settlement class certification in complex, nationwide class actions involving laws of numerous states.

In 2016, the firm won reversal of a grant of summary judgment for defendant automakers in a group boycott-conspiracy case involving the export of new motor vehicles from Canada to the U.S. The California Court of Appeal found that plaintiffs had presented evidence of "patently anticompetitive conduct" with evidence gathered in the pre-trial phase, which was powerful enough to go to a jury. The ruling is a rare example of an appellate court analyzing and reversing a trial court's evidentiary rulings to find evidence of a conspiracy.

Today the firm currently represents clients in significant antitrust class actions around the country, including actively representing major public pension funds in prosecuting price-fixing in the financial derivatives and commodities markets in the Euribor, Yen LIBOR and Canadian Dollar Offered Rate actions and the Foreign Currency Exchange Rate action.

While the majority of antitrust cases settle, our attorneys have experience taking antitrust class actions to trial. Because we represent only plaintiffs in antitrust matters, we do not have the conflicts of interest of other national law firms that represent both plaintiffs and defendants. Our experience also allows us to counsel medium and larger-sized corporations considering whether to participate as a class member or opt-out and pursue an individual strategy.

## RESULTS

### ANTITRUST SETTLEMENTS

Over the past two-and-a-half decades, Berman Tabacco has actively prosecuted scores of complex antitrust cases that led to substantial settlements for its clients. These include:

*In re NASDAQ Market-Makers Antitrust Litigation*, No. 94-cv-3996 (S.D.N.Y.). The firm played a significant role in one of the largest antitrust settlements on record in a case that involved alleged price-fixing by more than 30 NASDAQ Market-Makers on about 6,000 NASDAQ-listed stocks over a four-year period. The settlement was valued at nearly \$1 billion.

*In re Foreign Currency Conversion Fee Antitrust Litigation*, MDL No. 1409 (S.D.N.Y.). Berman Tabacco, as head of discovery against defendant Citigroup Inc., played a key role in reaching a \$336 million settlement. The agreement settled claims that the defendants, which include the VISA, MasterCard and Diners Club networks and other leading bank members of the VISA and MasterCard networks, violated federal and state antitrust laws in connection with fees charged to U.S. cardholders for transactions effected in foreign currencies.

*In re DRAM Antitrust Litigation*, No. M:02-cv-01486 (N.D. Cal.). As liaison counsel, the firm actively participated in this multidistrict litigation, which ultimately resulted in significant settlements with some of the world's leading manufacturers of Dynamic Random Access Memory (DRAM) chips. The defendant chip-

makers allegedly conspired to fix prices of the DRAM memory chips sold in the United States during the class period. The negotiated settlements totaled nearly \$326 million.

*Sullivan v. DB Investments, Inc.*, No. 04-02819 (D.N.J.). Berman Tabacco represented a class of diamond resellers, such as diamond jewelry stores, in this case alleging that the De Beers group of companies unlawfully monopolized the worldwide supply of diamonds in a scheme to overcharge resellers and consumers. In May 2008, a federal judge approved the settlement, which included a cash payment to class members of \$295 million, an agreement by De Beers to submit to the jurisdiction of the United States court to enforce the terms of the settlement and a comprehensive injunction limiting De Beers' ability to restrict the worldwide supply of diamonds in the future. This case is significant not only because of the large cash recovery but also because previous efforts to obtain jurisdiction over De Beers in both private and government actions had failed. On August 27, 2010, the United States Court of Appeals for the Third Circuit agreed to hear arguments over whether to uphold the district court's certification of the settlement class. By agreeing to schedule an *en banc* appeal before the full court, the Third Circuit vacated a July 13, 2010 ruling by a three-judge panel of the appeals court that, in a 2-to-1 decision, had ordered a remand of the case back to the district court, which may have required substantial adjustments to the original settlement. On February 23, 2011, the Third Circuit, sitting *en banc*, again heard oral argument from the parties. On December 20, 2011, the *en banc* Third Circuit handed down its decision affirming the district court in all respects.

*In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.). As co-lead class counsel for Direct Purchaser Plaintiffs ("DPPs") in this multidistrict antitrust litigation, the firm achieved settlements totaling \$139.3 million. The litigation arose from an alleged worldwide conspiracy to fix prices of lithium-ion rechargeable batteries ("LiBs"). LiBs are components of LiB camcorders, digital cameras, and laptop computers. The alleged conspiracy involved some of the largest companies in the world—Sony, Samsung SDI, Panasonic, Sanyo, LG Chem, Toshiba, Hitachi Maxell, and NEC Corp. The lawsuit alleges that defendants participated in a conspiracy to fix the prices of LiBs, which affected the prices paid for the batteries and certain products in which the batteries are used. Plaintiffs successfully defeated multiple motions to dismiss involving complex issues of antitrust standing and the pleading of conspiracy allegations. Berman Tabacco and the team negotiated multiple settlements totaling \$139.3 million. The court granted final approval on May 16, 2018.

*In re Sorbates Direct Purchaser Antitrust Litigation*, No. C 98-4886 CAL (N.D. Cal.). The firm served as lead counsel alleging that six manufacturers of Sorbates, a food preservative, violated antitrust laws through participation in a worldwide conspiracy to fix prices and allocations to customers in the United States. The firm negotiated a partial settlement of \$82 million with four of the defendants in 2000. Following intensive pretrial litigation, the firm achieved a further \$14.5 million settlement with the two remaining defendants, Japanese manufacturers, in 2002. The total settlement achieved for the class was \$96.5 million.

*In re Disposable Contact Lens Antitrust Litigation*, MDL No. 1030 (M.D. Fla.). The firm acted as co-lead counsel and chief trial counsel. Representing both a national class and the State of Florida, the firm helped secure settlements from defendants Bausch & Lomb and the American Optometric Association before trial and from Johnson & Johnson after five weeks of trial. The settlements were valued at more than \$92 million and also included significant injunctive relief to make disposable contact lenses available at more discount outlets and more competitive prices.

*In re Cardizem CD Antitrust Litigation*, No. 99-01278 (E.D. Mich.). In another case involving generic drug competition, Berman Tabacco, as co-lead counsel, helped secure an \$80 million settlement from French-German drug maker Aventis Pharmaceuticals and the Andrx Corporation of Florida. The payment to consumers, state agencies and insurance companies settled claims that the companies conspired to prevent the marketing of a less expensive generic version of the blood pressure medication Cardizem CD. The state attorneys general of New York and Michigan joined the case in support of the class. The firm achieved a significant appellate victory in a first of its kind ruling that the brand name drugmaker's payment of \$40 million per year for the generic company to delay bringing its generic version of blood-pressure medication Cardizem CD to market constituted an agreement not to compete that is a *per se* violation of the antitrust laws.

*In re Toys "R" Us Antitrust Litigation*, MDL No. 1211 (E.D.N.Y.). The California office negotiated a \$56 million settlement to answer claims that the retailer violated laws by colluding to cut off or limit supplies of popular toys to stores that sold the products at lower prices. The case developed the antitrust laws with respect to a "hub and spoke" conspiracy, where a downstream power seller coerces upstream manufacturers to the detriment of consumers. One component of the settlement required Toys "R" Us to donate \$36 million worth of toys to needy children throughout the United States over a three-year period.

*In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation*, MDL No. 05-1671 (C.D. Cal.). Berman Tabacco, as co-lead counsel, negotiated a \$48 million settlement with Union Oil Company and Unocal. The agreement settled claims that the defendants manipulated the California gas market for summertime reformulated gasoline and increased prices for consumers. The noteworthy settlement delivered to consumers a combination of clean air benefits and funding for alternative fuel research.

*In re Abbott Laboratories Norvir Antitrust Litigation*, Nos. 04-1511, 04-4203 (N.D. Cal.). Berman Tabacco acted as co-lead counsel in a case on behalf of indirect purchasers alleging that the defendant pharmaceutical company engaged in an illegal leveraged monopoly in the sale of its AIDS boosting drug known as Norvir (or Ritanovir). Plaintiffs were successful through summary judgment, including the invalidation of two key patents based on prior art, but were reversed on appeal in the Ninth Circuit as to the leveraged monopoly theory. The case settled for \$10 million, which was distributed net of fees and costs on a *cy pres* basis to 10 different AIDS research and charity organizations throughout the United States.

*Automotive Refinishing Paint Antitrust*, J.C.C.P. No. 4199 (Cal. Super. Ct.). In this class action, indirect purchaser-plaintiffs brought suit in California State Court against five manufacturers of automotive refinishing coatings and chemicals alleging that they violated California law by unlawfully conspiring to fix paint prices. Settlements were reached with all defendants totaling \$9.4 million, 55% of which was allocated among an End-User Class consisting of consumers and distributed on a *cy pres*, or charitable, basis to thirty-nine court-approved organizations throughout California, and the remaining 45% of which was distributed directly to a Refinishing Class consisting principally of auto-body shops located throughout California.

## LEADERSHIP ROLES

The firm currently acts as lead or co-lead counsel in high-profile securities and antitrust class actions and also represents investors in individual actions, ERISA cases and derivative cases.

The following is a representative list of active class action cases in which the firm serves as lead or co-lead counsel or as executive committee member.

- > *In re Aqua Metals, Inc. Securities Litigation*, No. 4:17-CV-07142-HSG (N.D. Cal.). Co-lead counsel for court-appointed lead plaintiff Plymouth County Retirement Association.
- > *In re Apple Processor Litigation*, No. 18-cv-00147-EJD (N.D. Cal.). Co-lead counsel for a proposed nationwide class of purchasers of Apple devices, such as iPhones, iPads, and Apple TVs.
- > *Fire & Police Pension Assoc. of Colorado. v. Bank of Montreal, et al.*, No. 1:18-CV-00342 (S.D.N.Y.). Member of two-firm Executive Committee.
- > *In re Facebook, Inc. Shareholder Derivative Privacy Litigation*, No. 4:18-cv-01792-HSG (N.D. Cal.). Liaison Counsel for plaintiffs and member of Plaintiffs' Executive Committee.
- > *Okla. Firefighters Pension & Ret. Sys. v. Chew, et al.*, No. 4:18-cv-04698-KAW (N.D. Cal.). Counsel for Oklahoma Firefighters Pension and Retirement System in derivative action against PG&E's Board of Director related to the catastrophic 2017 wildfires in Northern California.
- > *In re EpiPen ERISA Litigation*, No. 17-CV-1884 (PAM/SER) (D. Minn.). Co-lead counsel for class.
- > *San Antonio Fire & Police Pension Fund v. AmerisourceBergen Corp.*, C.A. No. 2018-0551 (Del. Ch.). Counsel for San Antonio Fire & Police Pension Fund in books and records action.
- > *Solomon v. American Web Loan, Inc., et al.*, No. 4:17-CV-145 (E.D. VA.). Co-Lead counsel for class.
- > *Gingras v. Rosette*, No. 5:15-CV-00101-GWC (D. VT.), and *Gingras v. Victory Park Capital Advisors, LLC, et al.*, No. 5:17-CV-233 (D. VT.). Co-lead counsel for plaintiffs.
- > *Granger v. Great Plains Lending, LLC, et al.*, No. 1:18-cv-00112 (M.D.N.C.) Co-lead counsel for plaintiffs.
- > *In re UnitedHealth Section 220 Litigation*, C.A. No. 0681-TMR (Del. Ch.). Co-lead counsel representing plaintiff Amalgamated Bank.
- > *Massachusetts Laborers' Pension Fund v. Wells Fargo & Co., et al.*, C.A. No. 12997-VCG (Del. Ch. Ct.). Counsel for Massachusetts Laborers' Pension Fund and the Employees' Retirement System of the City of Providence in action under Section 220 of the Delaware General Corporation Law in order to evaluate whether the facts support a derivative suit on behalf of Wells Fargo against its officers and directors for breaches of their fiduciary duties.
- > *Ohio Public Employees Retirement System v. BP America, Inc.*, No. 12-cv-01837 (S.D. Tex.).

Counsel for plaintiffs in individual action.

- > *Sullivan v. Barclays PLC*, No. 13-cv-2811 (S.D.N.Y.). Counsel for plaintiffs and represents California State Teachers' Retirement System.
- > *Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y.). Counsel for plaintiffs and represents California State Teachers' Retirement System and Oklahoma Police Pension and Retirement System.
- > *Carlin v. DairyAmerica, Inc.*, No. 09-cv-00430 (E.D. Cal.). Member of the Interim Executive Committee and Liaison Counsel.

## TRIAL EXPERIENCE

The firm has significant experience taking class actions to trial. Over the years, Berman Tabacco's attorneys have tried cases against pharmaceutical companies in courtrooms in New York and Boston, a railroad conglomerate in Delaware, one of the nation's largest trustee banks in Philadelphia, a major food retailer in St. Louis and the top officers of a failed New England bank.

The firm has been involved in more trials than most of the firms in the plaintiffs' class action bar. Our partners' trial experience includes:

- > *MAZ Partners, LP v. Bruce A. Shear, et al.*, No. 1:11-cv-11049-PBS (D. Mass.). After two-week trial in 2017 in this breach of fiduciary class action, jury verdict for plaintiffs but no damage award. Following post-trial briefing, court exercised its equitable power and ordered \$3 million award by defendant.
- > *Conway v. Licata*, No. 13-12193 (D. Mass.). 2015 jury verdict for defendants (firm's client) after two-week trial on the vast majority of counts, awarding the plaintiffs a mere fraction of the damages sought. Jury also returned a verdict for defendants on one of their counterclaims.
- > *In re MetLife Demutualization Litigation*, No. 00-Civ-2258 (E.D.N.Y.). This case settled for \$50 million after the jury was empaneled.
- > *White v. Heartland High-Yield Municipal Bond Fund*, No. 00-C-1388 (E.D. Wis.). firm attorneys conducted three weeks of a jury trial against final defendant, PwC, before a settlement was reached for \$8.25 million. The total settlement amount was \$23.25 million.
- > *In re Disposable Contact Lens Antitrust Litigation*, MDL No. 1030 (M.D. Fla.). Settled for \$60 million with defendant Johnson & Johnson after five weeks of trial.
- > *Gutman v. Howard Savings Bank*, No. 2:90-cv-02397 (D.N.J.). Jury verdict for plaintiffs after three weeks of trial in individual action. The firm also obtained a landmark opinion allowing investors to pursue common law fraud claims arising out of their decision to retain securities as opposed to purchasing new shares. See *Gutman v. Howard Savings Bank*, 748 F. Supp. 254 (D.N.J. 1990).

- > *Hurley v. Federal Deposit Insurance Corp.*, No. 88-cv-940 (D. Mass.). Bench verdict for plaintiffs.
- > *Levine v. Fenster*, No. 2-cv-895131 (D.N.J.). Plaintiffs' verdict of \$3 million following four-week trial.
- > *In re Equitec Securities Litigation*, No. 90-cv-2064 (N.D. Cal.). Parties reached a \$35 million settlement at the close of evidence following five-month trial.
- > *In re ICN/Viratek Securities Litigation*, No. 87-cv-4296 (S.D.N.Y.). Hung jury with 8-1 vote in favor of plaintiffs; the case eventually settled for over \$14.5 million.
- > *In re Biogen Securities Litigation*, No. 94-cv-12177 (D. Mass.). Verdict for defendants.
- > *Upp v. Mellon*, No. 91-5219 (E.D. Pa.). In this bench trial, tried through verdict in 1992, the court found for a class of trust beneficiaries in a suit against the trustee bank and ordered disgorgement of fees. The Third Circuit later reversed based on lack of jurisdiction.

## OUR ATTORNEYS

### *Partners*

#### **NICOLE LAVALLEE**

Nicole Lavallee, the managing partner of the firm's San Francisco office and member of the firm's executive committee, focuses her practice on securities and derivative litigation. She is an integral member of the firm's New Case Investigations Team, which oversees the firm's portfolio monitoring program and investigates potential securities law violations to determine whether a case meets the firm's exacting standards. She also advises clients on foreign litigation.

Since the enactment of the PSLRA, Ms. Lavallee has prosecuted numerous high-profile securities fraud cases for the firm. Most recently, she was one of the lead attorneys overseeing the *IndyMac Mortgage-Backed Securities Litigation*, which settled for \$346 million – one of the largest private MBS recoveries on record and the largest of any case where the issuer bank was in bankruptcy. She was the lead partner handling the day-to-day prosecution of numerous other cases, where she handled or oversaw case investigation and factual development and briefing (including appeal briefing), conducted depositions, argued key motions (including motions to dismiss, motions for summary judgment and/or discovery motions), and participated in settlement negotiations.

Examples receiving favorable judicial commentary include: (i) *In re KLA-Tencor Corp. Securities Litigation*, No. C06-04065 (N.D. Cal.), an options-backdating class action, representing co-lead plaintiff the Louisiana Municipal Police Employees' Retirement System, which settled for \$65 million; (ii) *In re International Rectifier Securities Litigation*, No. 07-cv-02544 (C.D. Cal.), on behalf of the co-lead plaintiff Massachusetts Laborers' Pension Fund, alleging manipulation of the company's financial results, which settled for \$90 million in 2009; (iii) *Oracle Cases*, Coordination Proceeding, Special Title (Rule 1550(b)), No. JCCP 4180 (Cal. Super. Ct. San Mateo Cty.), a derivative case alleging that Lawrence Ellison engaged in illicit insider trading, and which settled weeks before trial when Mr. Ellison agreed to make \$100 million in charitable donations in Oracle's name; and (iv) opt-out actions on behalf of State of Michigan Retirement System and Fresno County Employees' Retirement Association against Countrywide Financial Corp. (*State Treasurer of The State of Michigan v. Countrywide Financial Corp.*, No. CV-11-00809 (C.D. Cal.) and *Fresno County Employees Retirement Association v. Countrywide Financial Corp.*, No. CV-11-00811 (C.D. Cal.)). She also played a key role in trial preparation for the *In re GenesisIntermedia, Inc. Securities Litigation*, No. CV 01-9024 (N.D. Cal.), class action. She also acted as local counsel in a number of cases where she played a significant role such as *State of Oregon v. McKesson HBOC, Inc.*, Master File No. 307619 (Cal. Super. Ct. San Francisco Cty.), an individual opt out action brought on behalf of the retirement systems for Colorado, Utah and Minnesota, which settled very favorably. Most recently, she oversaw the prosecution of *In re Zynga, Inc. Securities Litigation*, No. 12-cv-04007 (N.D. Cal.), which settled for \$23 million in February 2016.

Currently, Ms. Lavallee is the lead partner at Berman Tabacco on *In re Aqua Metals, Inc. Securities Litigation*, No. 4:17-CV-07142-HSG (N.D. Cal.), in which the Firm is co-lead counsel representing court-appointed lead plaintiff Plymouth County Retirement Association. The action alleges that defendants Aqua Metals, Inc. and company executives falsely misled investors about the status of its implementation of and

operations of its AquaRefining technology, which the company claimed had the potential to revolutionize lead recycling and make lead-acid batteries the only truly sustainable battery technology. She also oversees *San Antonio Fire & Police Pension Fund v. AmerisourceBergen Corp.*, C.A. No. 2018-0551 (Del. Ch.), an action pursuant to 8 Del. C. § 220 on behalf of the San Antonio Fire & Police Pension Fund against AmerisourceBergen Corp. to compel the company to provide certain of its books and records. The primary purpose of this books and records request is to ascertain whether Amerisource's directors breached their fiduciary duties in connection with its subsidiary's alleged illegal scheme to produce and market unapproved prefilled syringes ("PFS") in violation of federal and state laws. In 2017, Amerisource entered a guilty plea related to the alleged illegal PFS scheme and has paid more than \$875 million in penalties and fines to settle related civil and criminal claims. She is also a lead partner on *Oklahoma Firefighters Pension & Retirement System v. Chew, et al.*, No. 18-cv-04698 (N.D. Cal.), a derivative action alleging the officers and directors of PG&E Corporation abdicated their fiduciary duties to oversee the company's safety and risk functions and thereby failed to ensure that PG&E's electrical power and distribution lines complied with state regulations and other safety protocols designed to prevent power and distribution lines from sparking wildfires in California. This lack of oversight allegedly caused a series of catastrophic wildfires that ravaged areas of Northern California beginning in October 2017.

Ms. Lavalée has an AV Preeminent® rating from *Martindale-Hubbell®* and was named a Super Lawyer in 2017 and 2018 by *Northern California Super Lawyers Magazine*. She was also recognized as a *Recommended Attorney in Securities Litigation* by *The Legal 500* in 2017 and 2018. She was also designated a *Local Litigation Star* by *Benchmark Litigation* in 2019. She has authored numerous articles and lectured on securities litigation. She was also included in *San Francisco Magazine's Top Women Attorneys in Northern California* in 2017-2018. She is also co-chair for the 2016 Cross-Border Litigation Forum, a gathering of the most senior legal practitioners in U.S./Canada cross-border litigation (was also on the Steering Committee for the 2012 and 2014 forums). Ms. Lavalée is admitted to practice in California (1993), all federal courts in the Ninth Circuit and the Ninth Circuit of the U.S. Courts of Appeals.

## **JOSEPH J. TABACCO, JR.**

Joseph J. Tabacco, Jr., the founding member of Berman Tabacco's San Francisco office, actively litigates antitrust, securities fraud, commercial high tech and intellectual property matters.

Prior to 1981, Mr. Tabacco served as senior trial attorney for the U.S. Department of Justice, Antitrust Division in both the Central District of California and the Southern District of New York. In that capacity, he had major responsibility for several criminal and civil matters, including the antitrust trial of *United States v. IBM*. Since entering private practice in the early 1980s, Mr. Tabacco has served as trial or lead counsel in numerous antitrust and securities cases and has been involved in all aspects of state and federal litigation. In private practice, Mr. Tabacco has also tried a number of securities cases, each of which resolved successfully at various points during or after trial, including *In re MetLife Demutualization Litigation* (settled after jury empaneled), *Gutman v. Howard Savings Bank* (plaintiffs' verdict after six-week trial), *In re Equitec Securities Litigation* (settled after six months of trial) and *In re Ramtek Securities Litigation*.

Mr. Tabacco was one of the firm's lead attorneys representing the Wyoming State Treasurer and Wyoming Retirement System in the *In re IndyMac Mortgage-Backed Securities Litigation* in which the firm achieved settlements totaling \$346 million. He also oversaw *California Public Employees' Retirement System v.*

*Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.), the pioneering case that held credit rating agencies (Standard & Poor's and Moody's) financially responsible for their negligence in rating structured investment vehicles. After settling with both McGraw Hill Companies and Moody's, California Public Employees' Retirement System' total recovery for the case was \$255 million. Over the decades, Mr. Tabacco has prosecuted numerous securities fraud and antitrust cases against both domestic and international companies. In addition, he has engaged in depositions and discovery outside the U.S., including most recently in England in *CalPERS v. Moody's Corp.*

Mr. Tabacco recently oversaw *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.), which achieved settlements in the total amount of \$139.3 million for a class of direct purchasers of lithium-ion rechargeable batteries (final approval on the last three settlements was granted on May 16, 2018). The lawsuit alleged that defendants, including LG, Panasonic, Sony, Hitachi, and Samsung, participated in a conspiracy to fix the prices of lithium ion rechargeable batteries, which affected the prices paid for the batteries and certain products in which the batteries are used and which the defendants sell.

Since 2008, Mr. Tabacco has served as an independent member of the Board of Directors of Overstock.com, a publicly-traded company internet retailer. He is Chair of the Board's Corporate Governance Committee and also serves as a member of the Board's Audit and Compensation Committees. He also frequently lectures and authors articles on securities and antitrust law issues and is a member of the Advisory Board of the Institute for Consumer Antitrust Studies at Loyola University Chicago School of Law and the Advisory Board of the Center for Law, Economics & Finance at the George Washington School of Law. Mr. Tabacco is also a former teaching fellow of the Attorney General's Advocacy Institute in Washington, D.C., and has served on the faculty of ALI-ABA on programs about U.S.-Canadian business litigation and trial of complex securities cases.

For 12 consecutive years, he has been among the top U.S. securities litigators ranked by *Chambers USA* and is also AV Preeminent® rated by *Martindale-Hubbell®*. Mr. Tabacco has been featured by the *Daily Journal* as one of California's top 30 securities litigators, a group chosen from both the plaintiff and defense bars, and as one of the *Top Plaintiffs Lawyers in California in 2017*. He was also recognized by *Who's Who Legal: Competition*, most recently in 2018 – a designation he has received for the past 5 years since the creation of the publication's Plaintiffs section. Additionally, for 15 consecutive years, Mr. Tabacco has been named a Super Lawyer by *Northern California Super Lawyers Magazine*, which features the top 5% of attorneys in the region. He was ranked as a *Recommended Attorney in Securities Litigation* by *The Legal 500* in 2017 and 2018 and was ranked by *Benchmark Litigation* as a Local Litigation Star in 2017 and 2018 and as a *Benchmark California Star* in 2019. He was recognized by *Best Lawyers®* for Litigation-Antitrust (2018 and 2019) and for Litigation-Securities (2019). Mr. Tabacco was also singled out by a top defense attorney for exemplifying "the finest tradition of the trial bar." In 2018, *Chambers USA* hailed Mr. Tabacco as "a well-known plaintiff-side securities litigator with a very strong profile among peers [ , who] achieves impressive results in class actions involving issues such as the securitization of mortgaged-backed securities and manipulation of exchange rates." *Chambers* highlighted a client's praise for Joe: "His legal knowledge and skills are at the highest level. His combined intelligence and experience results in well-reasoned and thoughtful arguments to further our case."

Mr. Tabacco has been admitted to practice law in the states of California, Massachusetts, New York and the District of Columbia (currently inactive).

**Associates**

**A. CHOWNING POPPLER**

Chowning Poppler focuses her practice on antitrust and securities litigation. Prior to joining the firm in 2015, she worked as a litigation associate at a San Francisco law firm where she represented plaintiffs in employment-related individual and class action matters in state and federal court. Ms. Poppler started her legal career at a plaintiffs' firm in San Diego which specializes in securities and consumer class actions.

While in law school, Ms. Poppler interned at the Public Integrity Bureau of the State of New York Office of the Attorney General where she investigated alleged corruption and fraud in local governments. Ms. Poppler served on her law school's Pro Bono Legal Advocates board where she oversaw and coordinated volunteers for the unlawful detainer law clinic. She was also a member of the *San Diego International Law Journal*.

Northern California *Super Lawyers Magazine* named Ms. Poppler a "Rising Star" in 2017 and 2018. She was also included in *San Francisco Magazine's Top Women Attorneys in Northern California* in 2017-2018. She has served as an Executive Board Member on the ACLU – North Peninsula Chapter Board since 2012. She is admitted to practice law in the State of California and the U.S. District Courts for the Northern, Central and Eastern Districts of California.

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###

# **Exhibit 5**

*In re Extreme Networks, Inc. Securities Litigation*  
No. 5:15-cv-04883-BLF-SVK

**SUMMARY OF LODESTARS AND EXPENSES**

<b>FIRM</b>	<b>HOURS</b>	<b>LODESTAR</b>	<b>EXPENSES</b>
Labaton Sucharow LLP	5,778.7	\$3,260,714.50	\$164,647.87
Berman Tabacco	123.1	\$70,142.00	\$2,552.13
<b>TOTALS</b>	<b>5,901.8</b>	<b>\$3,330,856.50</b>	<b>\$167,200.00</b>

# **Exhibit 6**

	Count	Low		25th Percentile		Median		75th Percentile		High	
		Rate (%Δ)	Rate (\$)	Rate (%Δ)	Rate (\$)	Rate (%Δ)	Rate (\$)	Rate (%Δ)	Rate (\$)	Rate (%Δ)	Rate (\$)
<b>Partners</b>											
All Partners	<b>519</b>	<b>\$734 (+13%)</b>	<b>\$1,045 (+5%)</b>	<b>\$1,150 (+5%)</b>	<b>\$1,364 (+3%)</b>	<b>\$1,725 (+13%)</b>					
2018	545	\$650 (+24%)	\$995 (+7%)	\$1,100 (+7%)	\$1,325 (+10%)	\$1,525 (+7%)					
2017	245	\$525 (-22%)	\$930 (+6%)	\$1,025 (+5%)	\$1,200 (+9%)	\$1,425 (+2%)					
2016	206	\$675 (+17%)	\$876 (+4%)	\$975 (+3%)	\$1,102 (+1%)	\$1,400 (+14%)					
2015	185	\$575 (+0%)	\$840 (+3%)	\$950 (-3%)	\$1,095 (-0%)	\$1,225 (+6%)					
2014	239	\$575 (+28%)	\$815 (+3%)	\$975 (+11%)	\$1,100 (+11%)	\$1,160 (-2%)					
2013	217	\$450	\$790	\$875	\$995	\$1,180					
2012											
Sr. Partners	<b>366</b>	<b>\$759 (+17%)</b>	<b>\$1,075 (+8%)</b>	<b>\$1,250 (+11%)</b>	<b>\$1,450 (+9%)</b>	<b>\$1,725 (+13%)</b>					
2018	460	\$650 (-26%)	\$1,000 (-4%)	\$1,130 (-2%)	\$1,330 (+4%)	\$1,525 (+7%)					
2017	191	\$875 (+25%)	\$1,044 (+16%)	\$1,150 (+18%)	\$1,275 (+13%)	\$1,425 (+2%)					
2016	141	\$700 (+22%)	\$900 (+1%)	\$975 (-2%)	\$1,125 (+0%)	\$1,400 (+14%)					
2015	139	\$575 (+0%)	\$893 (+2%)	\$995 (+0%)	\$1,125 (-0%)	\$1,225 (+6%)					
2014	182	\$575 (+28%)	\$875 (+7%)	\$993 (+8%)	\$1,129 (+10%)	\$1,160 (-2%)					
2013	168	\$450	\$818	\$915	\$1,030	\$1,180					
2012											
Mid-Level Partners	<b>64</b>	<b>\$750 (+15%)</b>	<b>\$1,045 (+16%)</b>	<b>\$1,110 (+9%)</b>	<b>\$1,191 (+11%)</b>	<b>\$1,480 (+14%)</b>					
2018	54	\$650 (-4%)	\$900 (+6%)	\$1,015 (+8%)	\$1,075 (+5%)	\$1,295 (+11%)					
2017	32	\$675 (+0%)	\$850 (+0%)	\$940 (+5%)	\$1,025 (+7%)	\$1,165 (-6%)					
2016	23	\$675 (+5%)	\$848 (+5%)	\$895 (+7%)	\$955 (+7%)	\$1,245 (+16%)					
2015	25	\$640 (+1%)	\$810 (+8%)	\$840 (+2%)	\$895 (+4%)	\$1,075 (+5%)					
2014	23	\$635 (+15%)	\$750 (+7%)	\$825 (+10%)	\$863 (+5%)	\$1,025 (-9%)					
2013	27	\$550	\$700	\$750	\$818	\$1,125					
2012											
Jr. Partners	<b>89</b>	<b>\$734 (+13%)</b>	<b>\$1,015 (+13%)</b>	<b>\$1,055 (+8%)</b>	<b>\$1,120 (+8%)</b>	<b>\$1,375 (+26%)</b>					
2018	28	\$650 (+24%)	\$898 (-0%)	\$980 (+4%)	\$1,035 (+6%)	\$1,095 (+4%)					
2017	22	\$525 (-25%)	\$900 (+9%)	\$940 (+7%)	\$975 (+7%)	\$1,050 (+6%)					
2016	23	\$700 (-7%)	\$825 (+6%)	\$880 (+12%)	\$915 (+12%)	\$995 (+2%)					
2015	14	\$750 (+3%)	\$775 (+0%)	\$785 (+1%)	\$819 (-3%)	\$975 (-15%)					
2014	28	\$725 (+14%)	\$774 (+7%)	\$780 (+7%)	\$846 (+7%)	\$1,150 (+5%)					
2013	17	\$635	\$725	\$730	\$790	\$1,100					
2012											

Rate Distribution by Title Over Time

	Count	Low Rate (%Δ)	25th Percentile Rate (%Δ)	Median Rate (%Δ)	75th Percentile Rate (%Δ)	High Rate (%Δ)
<b>Of Counsel</b>						
<b>2018</b>	<b>151</b>	<b>\$590 (+69%)</b>	<b>\$850 (+3%)</b>	<b>\$950 (+0%)</b>	<b>\$1,050 (+3%)</b>	<b>\$1,350 (+4%)</b>
2017	227	\$350 (-47%)	\$825 (+6%)	\$950 (+16%)	\$1,015 (+4%)	\$1,295 (+13%)
2016	81	\$660 (+32%)	\$775 (+12%)	\$818 (+5%)	\$978 (+12%)	\$1,145 (+2%)
2015	53	\$500 (-9%)	\$695 (+7%)	\$778 (+0%)	\$875 (-1%)	\$1,125 (+10%)
2014	53	\$550 (+16%)	\$650 (-8%)	\$775 (-2%)	\$885 (+2%)	\$1,025 (-11%)
2013	67	\$475 (+6%)	\$710 (+5%)	\$790 (+5%)	\$870 (+9%)	\$1,150 (+0%)
2012	53	\$450	\$675	\$750	\$795	\$1,150
<b>Associates</b>						
<b>All Associates</b>						
<b>2018</b>	<b>929</b>	<b>\$275 (-5%)</b>	<b>\$600 (+8%)</b>	<b>\$750 (+3%)</b>	<b>\$875 (+5%)</b>	<b>\$1,500 (+48%)</b>
2017	956	\$290 (-17%)	\$555 (+1%)	\$725 (+7%)	\$835 (+5%)	\$1,015 (+7%)
2016	362	\$350 (+56%)	\$550 (+15%)	\$675 (+15%)	\$795 (+10%)	\$945 (+8%)
2015	320	\$225 (+10%)	\$480 (-1%)	\$585 (-4%)	\$725 (+1%)	\$875 (-3%)
2014	322	\$205 (+3%)	\$485 (+1%)	\$610 (+3%)	\$720 (+3%)	\$900 (+3%)
2013	457	\$200 (-11%)	\$480 (+7%)	\$595 (+5%)	\$700 (+9%)	\$875 (+3%)
2012	293	\$225	\$450	\$565	\$645	\$850
<b>Sr. Associates</b>						
<b>2018</b>	<b>150</b>	<b>\$275 (-31%)</b>	<b>\$835 (+5%)</b>	<b>\$930 (+5%)</b>	<b>\$975 (+5%)</b>	<b>\$1,500 (+51%)</b>
2017	230	\$400 (-11%)	\$795 (+10%)	\$885 (+7%)	\$930 (+5%)	\$995 (+8%)
2016	62	\$450 (+14%)	\$725 (+12%)	\$830 (+14%)	\$885 (+13%)	\$920 (+8%)
2015	53	\$395 (+32%)	\$650 (+8%)	\$730 (-2%)	\$780 (+0%)	\$850 (-6%)
2014	69	\$300 (+9%)	\$600 (+0%)	\$745 (+5%)	\$780 (+2%)	\$900 (+3%)
2013	106	\$275 (-8%)	\$600 (+4%)	\$710 (+9%)	\$765 (+4%)	\$875 (+6%)
2012	50	\$300	\$575	\$650	\$735	\$825
<b>Mid-Level Associates</b>						
<b>2018</b>	<b>378</b>	<b>\$425 (+31%)</b>	<b>\$750 (+17%)</b>	<b>\$830 (+14%)</b>	<b>\$890 (+10%)</b>	<b>\$1,075 (+6%)</b>
2017	400	\$325 (-13%)	\$640 (-4%)	\$725 (-1%)	\$810 (+1%)	\$1,015 (+7%)
2016	142	\$375 (+15%)	\$666 (+31%)	\$735 (+16%)	\$803 (+13%)	\$945 (+12%)
2015	104	\$325 (+5%)	\$508 (-13%)	\$635 (-5%)	\$710 (-1%)	\$845 (+4%)
2014	134	\$310 (+13%)	\$584 (+10%)	\$665 (+8%)	\$720 (+5%)	\$810 (-5%)
2013	224	\$275 (-8%)	\$530 (+12%)	\$615 (+7%)	\$685 (+6%)	\$850 (+0%)

	Count	Low Rate (%Δ)	25th Percentile Rate (%Δ)	Median Rate (%Δ)	75th Percentile Rate (%Δ)	High Rate (%Δ)
2012	125	\$300	\$475	\$575	\$645	\$850
Jr. Associates						
2018	402	\$375 (+29%)	\$535 (+9%)	\$610 (+16%)	\$675 (+5%)	\$895 (+0%)
2017	301	\$290 (-17%)	\$490 (+3%)	\$525 (-6%)	\$640 (+6%)	\$895 (+3%)
2016	126	\$350 (+56%)	\$475 (+6%)	\$560 (+17%)	\$605 (+14%)	\$870 (+25%)
2015	88	\$225 (-4%)	\$449 (+1%)	\$480 (+5%)	\$531 (+1%)	\$695 (-9%)
2014	88	\$235 (-6%)	\$444 (+3%)	\$458 (+3%)	\$525 (+6%)	\$760 (-4%)
2013	95	\$250 (+11%)	\$430 (+5%)	\$445 (-1%)	\$495 (-4%)	\$795 (+15%)
2012	90	\$225	\$410	\$450	\$514	\$690

	Count	Low	25th Percentile	Median	75th Percentile	High
<b>Partners</b>						
1) Kirkland & Ellis LLP	176	\$930	\$1,078	\$1,160	\$1,325	\$1,725
2) Proskauer Rose LLP	29	\$759	\$759	\$759	\$1,125	\$1,625
3) Morrison & Foerster LLP	24	\$800	\$980	\$1,025	\$1,125	\$1,500
4) Sidley Austin LLP	13	\$925	\$1,038	\$1,125	\$1,219	\$1,500
5) Weil, Gotshal & Manges LLP	62	\$950	\$1,125	\$1,245	\$1,450	\$1,500
6) Willkie Farr & Gallagher LLP	15	\$1,025	\$1,275	\$1,400	\$1,500	\$1,500
7) Akin Gump Strauss Hauer & Feld LLP	39	\$860	\$970	\$1,070	\$1,266	\$1,475
8) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	25	\$1,017	\$1,395	\$1,470	\$1,470	\$1,470
9) Milbank, Tweed, Hadley & McCloy LLP	16	\$1,030	\$1,465	\$1,465	\$1,465	\$1,465
10) Jones Day	36	\$750	\$900	\$975	\$1,050	\$1,450
11) Latham & Watkins LLP	26	\$1,030	\$1,060	\$1,250	\$1,295	\$1,395
12) Paul Hastings LLP	14	\$1,050	\$1,131	\$1,188	\$1,250	\$1,395
13) Kramer Levin Naftalis & Frankel	14	\$995	\$1,088	\$1,113	\$1,194	\$1,295
14) Skadden, Arps, Slate, Meagher, & Flom LLP	4	\$975	\$975	\$1,071	\$1,197	\$1,280
15) Quinn Emanuel Urquhart & Sullivan, LLP	5	\$734	\$855	\$1,080	\$1,188	\$1,225
16) Kasowitz Benson Torres LLP	2	\$1,050	\$1,088	\$1,125	\$1,163	\$1,200
17) O'Melveny & Myers LLP	15	\$808	\$808	\$871	\$1,016	\$1,148
18) Davis Polk & Wardwell LLP	4	\$1,001	\$1,001	\$1,001	\$1,001	\$1,001
19) Labaton Sucharow LLP	17	\$775	\$875	\$900	\$975	\$995

**Of Counsel**

1) Jones Day	4	\$590	\$875	\$990	\$1,065	\$1,350
2) Paul Hastings LLP	8	\$795	\$1,024	\$1,163	\$1,200	\$1,350
3) Kirkland & Ellis LLP	6	\$590	\$1,003	\$1,160	\$1,290	\$1,325
4) Latham & Watkins LLP	6	\$990	\$990	\$1,010	\$1,150	\$1,250
5) Sidley Austin LLP	6	\$750	\$875	\$875	\$888	\$1,200
6) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	12	\$1,015	\$1,050	\$1,050	\$1,095	\$1,095
7) Akin Gump Strauss Hauer & Feld LLP	38	\$860	\$815	\$885	\$910	\$1,090
8) Morrison & Foerster LLP	12	\$700	\$850	\$880	\$938	\$1,075
9) Milbank, Tweed, Hadley & McCloy LLP	5	\$1,015	\$1,040	\$1,065	\$1,065	\$1,065
10) Skadden, Arps, Slate, Meagher, & Flom LLP	4	\$975	\$1,020	\$1,040	\$1,047	\$1,052
11) Weil, Gotshal & Manges LLP	19	\$940	\$990	\$990	\$990	\$1,050
12) Willkie Farr & Gallagher LLP	2	\$1,015	\$1,015	\$1,015	\$1,015	\$1,015
13) Proskauer Rose LLP	2	\$759	\$867	\$975	\$975	\$975
14) Kramer Levin Naftalis & Frankel	7	\$935	\$935	\$935	\$943	\$950
15) Davis Polk & Wardwell LLP	4	\$823	\$823	\$823	\$835	\$872
16) O'Melveny & Myers LLP	16	\$646	\$692	\$706	\$740	\$808
17) Labaton Sucharow LLP	5	\$600	\$700	\$700	\$775	\$775

**Associates**

	Count	Low	25th Percentile	Median	75th Percentile	High
1) Sidley Austin LLP	32	\$495	\$675	\$793	\$860	\$1,500
2) Kirkland & Ellis LLP	231	\$465	\$675	\$770	\$875	\$1,075
3) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	54	\$610	\$690	\$865	\$895	\$1,015
4) Latham & Watkins LLP	29	\$535	\$660	\$755	\$930	\$1,005
5) Weil, Gotshal & Manges LLP	230	\$395	\$575	\$750	\$875	\$1,005
6) Milbank, Tweed, Hadley & McCloy LLP	51	\$390	\$565	\$790	\$835	\$995
7) Willkie Farr & Gallagher LLP	32	\$525	\$660	\$790	\$890	\$990
8) Paul Hastings LLP	23	\$610	\$675	\$788	\$845	\$955
9) Proskauer Rose LLP	33	\$545	\$759	\$759	\$759	\$950
10) Skadden, Arps, Slate, Meagher, & Flom LLP	13	\$524	\$595	\$595	\$816	\$937
11) Kramer Levin Naftalis & Frankel	25	\$515	\$680	\$795	\$856	\$935
12) Morrison & Foerster LLP	50	\$275	\$525	\$600	\$765	\$875
13) Jones Day	44	\$350	\$475	\$575	\$663	\$850
14) Akin Gump Strauss Hauer & Feld LLP	45	\$495	\$590	\$645	\$725	\$835
15) Quinn Emanuel Urquhart & Sullivan, LLP	4	\$550	\$603	\$680	\$788	\$820
16) Labaton Sucharow LLP	31	\$375	\$460	\$510	\$688	\$725
17) Davis Polk & Wardwell LLP	15	\$410	\$490	\$679	\$679	\$721
18) O'Melveny & Myers LLP	16	\$412	\$489	\$623	\$625	\$650
19) Kasowitz Benson Torres LLP	2	\$380	\$410	\$440	\$470	\$500

### Paralegals

1) Akin Gump Strauss Hauer & Feld LLP	26	\$185	\$250	\$330	\$385	\$675
2) Latham & Watkins LLP	6	\$380	\$395	\$405	\$440	\$500
3) Proskauer Rose LLP	17	\$260	\$260	\$260	\$260	\$460
4) Kirkland & Ellis LLP	58	\$210	\$250	\$310	\$380	\$440
5) Paul Hastings LLP	8	\$295	\$385	\$405	\$405	\$430
6) Sidley Austin LLP	3	\$350	\$355	\$410	\$410	\$410
7) Willkie Farr & Gallagher LLP	7	\$240	\$240	\$278	\$344	\$395
8) Skadden, Arps, Slate, Meagher, & Flom LLP	24	\$209	\$285	\$347	\$367	\$390
9) Morrison & Foerster LLP	10	\$230	\$340	\$340	\$355	\$385
10) Kramer Levin Naftalis & Frankel	7	\$370	\$370	\$370	\$380	\$380
11) Weil, Gotshal & Manges LLP	54	\$140	\$220	\$295	\$350	\$375
12) Milbank, Tweed, Hadley & McCloy LLP	12	\$200	\$210	\$265	\$280	\$355
13) Jones Day	3	\$275	\$275	\$325	\$338	\$350
14) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	23	\$280	\$300	\$350	\$350	\$350
15) Davis Polk & Wardwell LLP	3	\$343	\$343	\$343	\$343	\$343
16) Labaton Sucharow LLP	14	\$295	\$325	\$325	\$325	\$340
17) Quinn Emanuel Urquhart & Sullivan, LLP	2	\$302	\$305	\$308	\$312	\$315
18) O'Melveny & Myers LLP	2	\$204	\$232	\$259	\$287	\$315
19) Kasowitz Benson Torres LLP	3	\$175	\$223	\$270	\$273	\$275

# **Exhibit 7**

29 January 2019



# Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review

Record Pace of Filings, Despite Slower Merger-Objection Growth  
Average Case Size Surges to Record High  
Settlement Values Rebound from Near-Record Lows

By Stefan Boettrich and Svetlana Starykh

## Foreword

I am excited to share NERA's *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review* with you. This year's edition builds on work carried out over numerous years by many members of NERA's Securities and Finance Practice. In this year's report, we continue our analyses of trends in filings and settlements and present new analyses, such as how post-class-period stock price movements relate to voluntary dismissals. While space does not permit us to present all the analyses the authors have undertaken while working on this year's edition, or to provide details on the statistical analysis of settlement amounts, we hope you will contact us if you want to learn more about our work related to securities litigation. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope you find it informative.

Dr. David Tabak  
Managing Director

A handwritten signature in white ink, appearing to read 'D. Tabak', is positioned above a grid of blue 3D cubes. One cube in the lower-left foreground is highlighted in a bright yellow color.

## Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review

Record Pace of Filings, Despite Slower Merger-Objection Growth  
Average Case Size Surges to Record High  
Settlement Values Rebound from Near-Record Lows

By Stefan Boettrich and Svetlana Starykh<sup>1</sup>

29 January 2019

### Introduction and Summary<sup>2</sup>

In 2018, the pace of securities class action filings was the highest since the aftermath of the 2000 dot-com crash, with 441 new cases. While merger objections constituted about half the total, filing growth of such cases slowed versus 2017, indicating that the explosion in filings sparked by the *Trulia* decision may have run its course.<sup>3</sup> Filings alleging violations of Rule 10b-5, Section 11, and/or Section 12 of the Securities Act of 1933 (“Securities Act”) were roughly unchanged compared to 2017, but accelerated over the second half of the year, with the fourth quarter being one of the busiest on record.

The steady pace of new securities class actions masked fundamental changes in filing characteristics. Aggregate NERA-defined Investor Losses, a measure of total case size, came to a record \$939 billion, nearly four times the preceding five-year average. Even excluding substantial litigation against General Electric (GE), aggregate Investor Losses doubled versus 2017. Most growth in Investor Losses stemmed from cases alleging issues with accounting, earnings, or firm performance, contrasting with prior years when most growth was tied to regulatory allegations. Filings against technology firms jumped nearly 70% from 2017, primarily due to cases alleging accounting issues or missed earnings guidance.

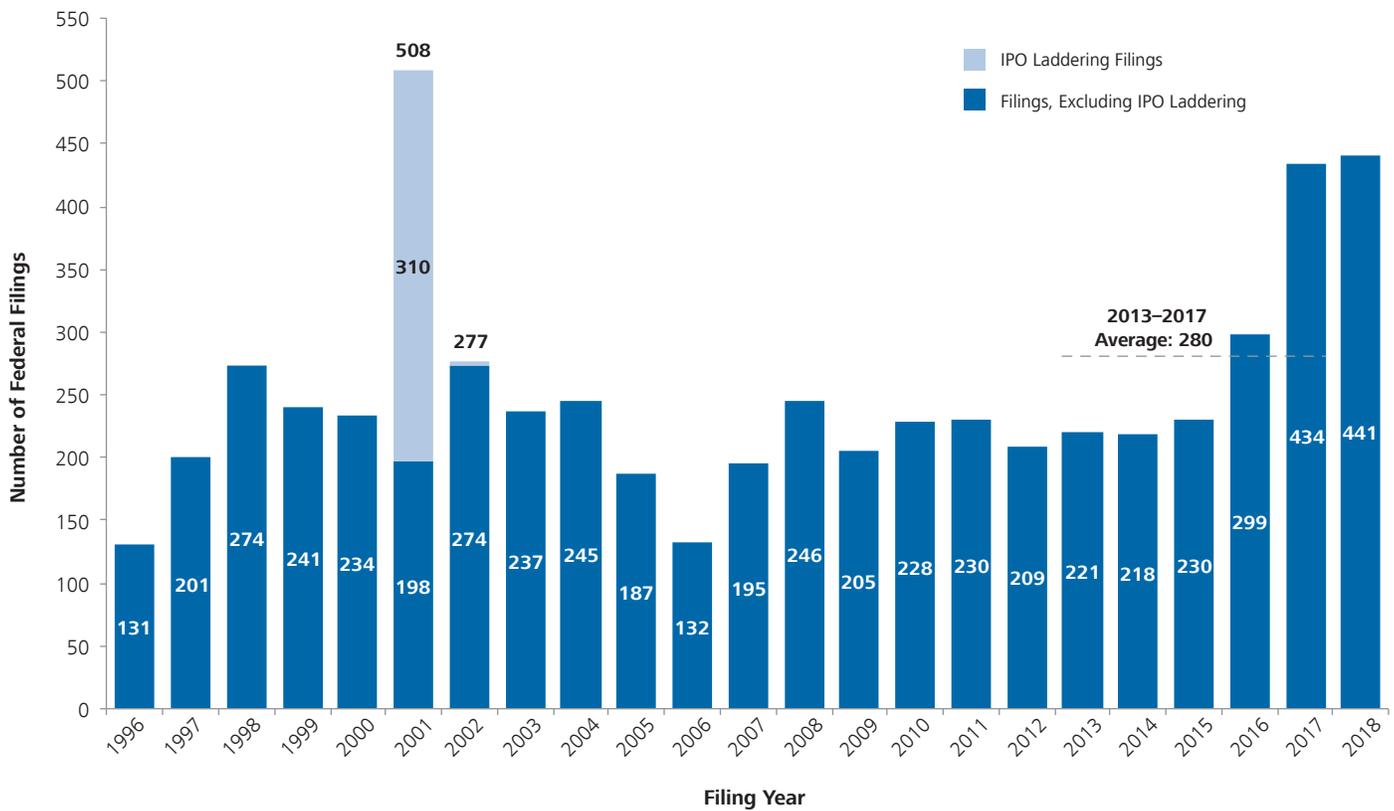
The average settlement value rebounded from the 2017 near-record low, mostly due to the \$3 billion settlement against *Petróleo Brasileiro S.A.—Petrobras*. The median settlement nearly doubled, primarily due to higher settlements of many moderately sized cases. Despite a rebound in settlement values in 2018, the number of settlements remained low, with dismissals outnumbering settlements more than two-to-one. An adverse number of cases were voluntarily dismissed, which can partially be explained by positive returns of targeted securities during the PSLRA bounce-back periods. The robust rate of case resolutions has not kept up with the record filing rate, driving pending litigation up more than 6%.

## Trends in Filings

### Number of Cases Filed

There were 441 federal securities class actions filed in 2018, the fourth consecutive year of growth (see Figure 1). The filing rate was the highest since passage of the PSLRA, with the exception of 2001 when new IPO laddering cases dominated federal dockets. The dramatic year-over-year growth seen in each of the past few years resulted in a near doubling of filings since 2015, but growth moderated considerably in 2018 to 1.6%. The 2018 filing rate is well above the post-PSLRA average of approximately 253 cases per year, and solidifies a departure from the generally stable filing rate in the years following the 2008 financial crisis.

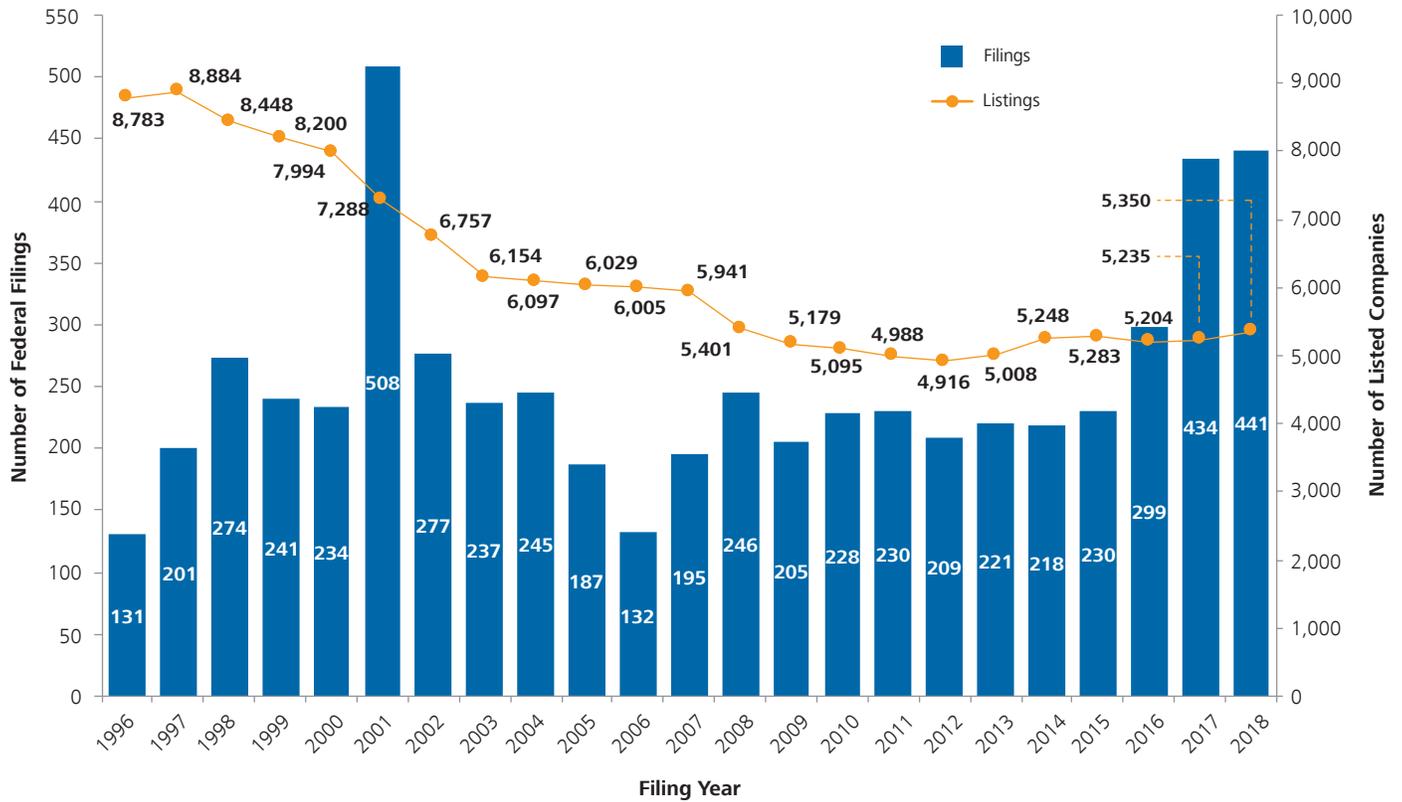
Figure 1. **Federal Filings**  
January 1996–December 2018



As of November 2018, there were 5,350 companies listed on the major US securities exchanges (see Figure 2). The 441 federal securities class action suits filed in 2018 involved approximately 8.2% of publicly listed companies. The overall risk of litigation to listed firms has increased substantially since early in the decade, when only about 4.0% of public companies listed on US exchanges were subject to a securities class action.

Broadly, the chance of a publicly listed company being subject to securities litigation depends on the number of filings relative to the number of listed companies. While the number of listed companies has increased by 7% over the last five years, the longer-term trend is toward fewer listings. Since the passage of the PSLRA in 1995, the number of listings on major US exchanges has steadily declined by about 3,000, or nearly 40%. Recent research attributed this decline to fewer new listings and an increase in delistings, mostly through mergers and acquisitions.<sup>4</sup>

Figure 2. **Federal Filings and Number of Companies Listed in the United States**  
January 1996–December 2018



Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data from 2016 through 2018 were obtained from World Federation of Exchanges (WFE). The 2018 listings data is as of November 2018. Data for prior years was obtained from Meridian Securities Markets and WFE.

Despite the long-term drop in the number of listed companies, the average number of securities class action filings has *increased* from 216 per year over the first five years after the PSLRA to about 324 per year over the past five years. The long-term trend toward fewer listed companies coupled with more class actions implies that the average probability of a listed firm being subject to such litigation has increased from about 2.6% after passage of the PSLRA to 3.7% over the past five years, and 8.0% over the past two years.

Recently, the rising average risk of class action litigation was driven by dramatic growth in merger-objection cases that, prior to 2016, were mostly filed in various state courts. Since then, state court rulings have driven such litigation onto federal dockets. Hence the increase in the typical firm's litigation risk might be less than indicated above, since 1) the risk of merger-objection litigation is specific to firms planning or engaged in M&A activity and 2) many merger-objection cases would otherwise have been filed in state courts.

The average probability of a firm being targeted by what is often regarded as a "Standard" securities class action—one that alleges violations of Rule 10b-5, Section 11, and/or Section 12—was only 4.0% in 2018, albeit higher than the average probability of about 2.6% following the PSLRA and 3.5% between 2013 and 2017.

### **Filings by Type**

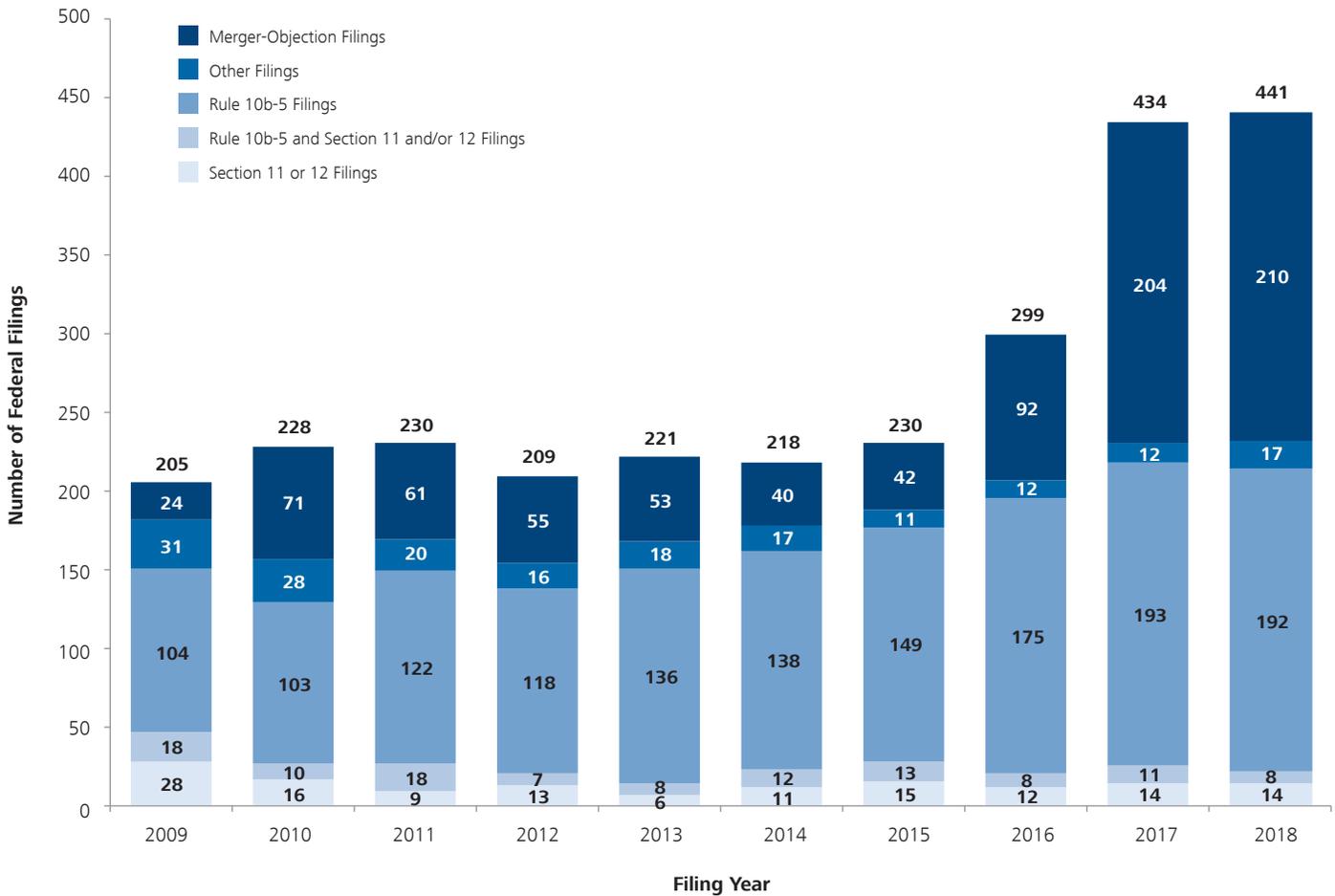
In 2018, the 441 securities class action filings were about evenly split between Standard securities class actions and merger objections, roughly matching the number seen in 2017 (see Figure 3). There were 214 Standard securities cases filed, down slightly from 2017. Prior to 2018, Standard filings grew for five consecutive years, the longest expansion on record, and by over 50% since 2013. Despite the slowdown in 2018, monthly filing growth over the second half of the year was robust, and capped by 64 filings in the fourth quarter, one of the busiest quarters on record.

Despite the 210 merger-objection filings in 2018 making up about half of all filings, yearly filing growth of such cases slowed to almost zero, as the number of filings roughly matched the level seen in 2017. The tepid filing growth implies that the rapid growth following various state-level decisions limiting "disclosure-only" settlements (including the *Trulia* decision) has likely run its course.<sup>5</sup> Rather, the stagnant growth in federal merger-objection filings was likely driven by relatively stagnant M&A activity.<sup>6</sup>

Although aggregate merger-objection filings (including those at the state level) may correspond with the rate of mergers and acquisitions, such deal activity does not appear to have historically been the primary driver of federal merger-objection filings over multiple years. The number of federal merger-objection filings generally fell between 2010 and 2015, despite increased M&A activity. The higher filing counts in 2016 and 2017 likely stemmed from trends in the choice of jurisdiction rather than trends in deal volume.<sup>5</sup>

Besides Standard and merger-objection cases, a variety of other filings rounded out 2018. Several filings alleged fraudulent initial coin and cryptocurrency offerings, manipulation of derivatives (e.g., VIX products and metals futures), and breaches of fiduciary duty (including client-broker disputes involving churning and improper asset allocation).

Figure 3. **Federal Filings by Type**  
January 2009–December 2018



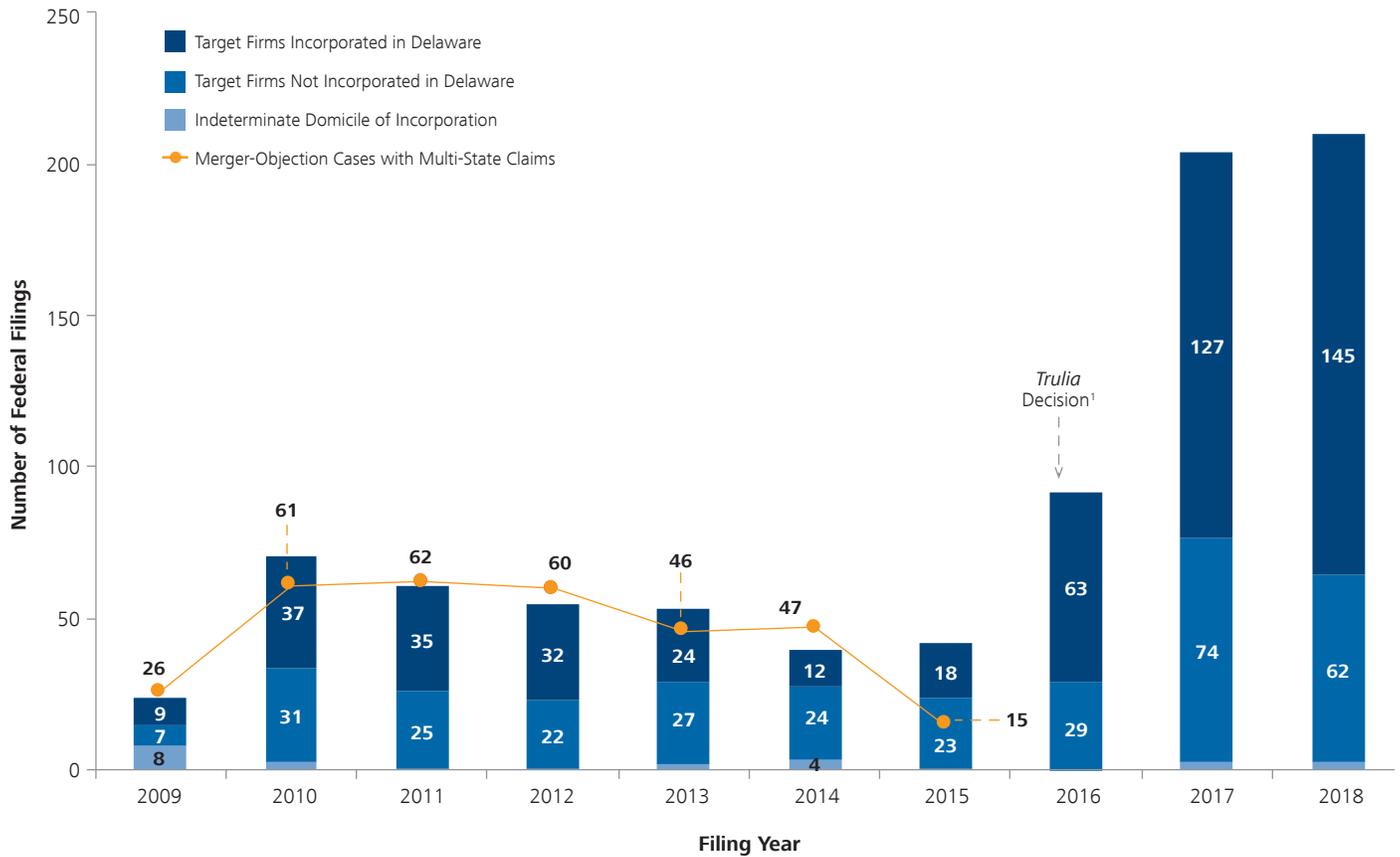
### Merger-Objection Filings

In 2018, federal merger-objection filings were relatively unchanged versus 2017 (see Figure 4). Growth in federal merger-objection filings in 2016 and 2017 largely followed various state court rulings barring disclosure-only settlements, the most notable being the 22 January 2016 *Trulia* decision in the Delaware Court of Chancery.<sup>7</sup> Research suggested that such state court decisions would simply drive merger objections to alternative jurisdictions, such as federal courts.<sup>8</sup> This has largely been borne out thus far.

The dramatic slowdown in merger-objection filings growth implies that plaintiff forum selection is less of a growth factor; in 2018 and going forward, merger and acquisition activity will likely be the primary driver of federal merger-objection litigation. This assumes, however, that corporations don't increasingly adopt forum selection bylaws, and that federal courts don't increasingly follow the Delaware Court of Chancery's lead on rejecting disclosure-only settlements.<sup>9</sup> For instance, after the Seventh Circuit ruled strongly against a disclosure-only settlement in *In re: Walgreen Co. Stockholder Litigation*, the proportion of merger objections filed in that circuit fell by more than 60% the following year.<sup>10</sup>

Federal merger-objection filings typically allege a violation of Section 14(a), 14(d), and/or 14(e) of the Securities Exchange Act of 1934, and/or a breach of fiduciary duty by managers of a firm being acquired. Such filings are frequently voluntarily dismissed.

Figure 4. **Federal Merger-Objection Cases and Merger-Objection Cases with Multi-State Claims**  
January 2009–December 2018



Notes: Counts of merger-objection cases with multi-state claims based on data obtained from Matthew D. Cain and Steven D. Solomon, "Takeover Litigation in 2015," Berkeley Center for Law, Business and the Economy, 14 January 2016. Data on multi-state claims unavailable for 2016–2018. State of incorporation obtained from the Securities and Exchange Commission.

<sup>1</sup>In re Trulia, Inc. Stockholder Litigation, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

### **Filings Targeting Foreign Companies**

Foreign companies with securities listed on US exchanges have been disproportionately targeted in Standard securities class actions since 2010 (see Figure 5).<sup>11</sup> In 2018, foreign companies were targeted in about 25% fewer cases than in 2017, and in only about 20% of complaints, just above the share of listings. This contrasts with persistent growth in foreign firm exposure to securities litigation over the preceding four years.

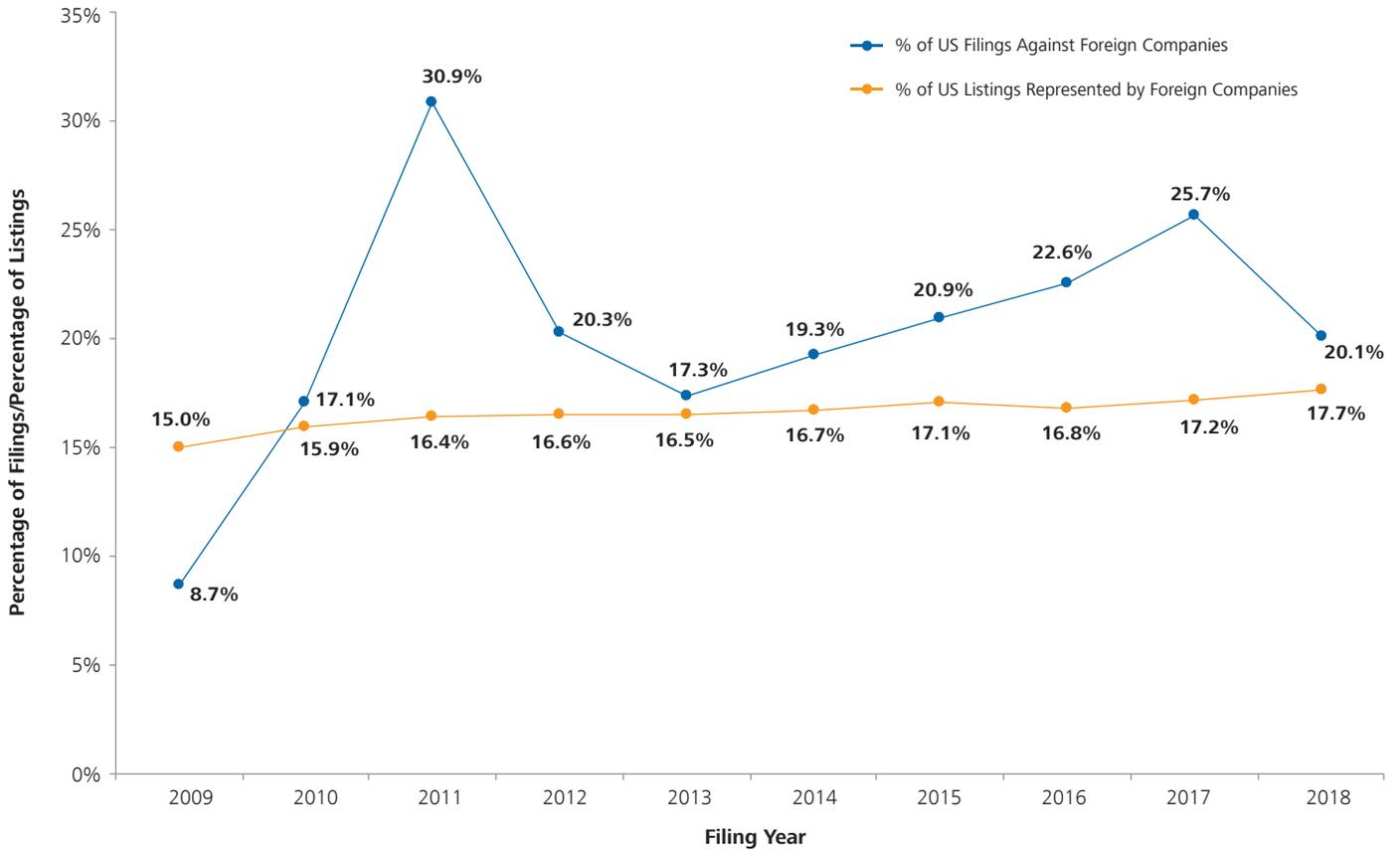
The reversion in claims against foreign firms mirrors a wider slowdown in filings with regulatory allegations. Over the last few years, growth in regulatory filings explained much of the growth in foreign filings, with 50% to 80% of new foreign cases including such allegations. That trend has reversed; in 2018, 75% of the drop in foreign filings stemmed from fewer claims related to regulation.

The slowdown in foreign regulatory filings can also be tied to fewer complaints in 2018 alleging similar regulatory violations, which adversely targeted foreign firms and particularly those domiciled in Europe. For instance, in 2017 there were multiple filings related to pharmaceutical price fixing, emissions defeat devices, and financing schemes by Kalani Investments Limited.

Filings against foreign companies spanned several economic sectors, led by a considerable jump against firms in the Electronic Technology and Technology Services sector (accounting issues were most common). Filings against foreign companies in the Health Technology and Services sector dropped by half. In past years, such filings usually claimed regulatory violations; none did in 2018.

In 2011, a record 31% of filings targeted foreign companies, mostly due to a surge in litigation against Chinese companies, which was mainly related to a proliferation in so-called “reverse mergers” years earlier. A reverse merger is a merger in which a private company merges with a publicly traded company listed in the US, thereby enabling access to US capital markets without going through the process of obtaining a new listing.

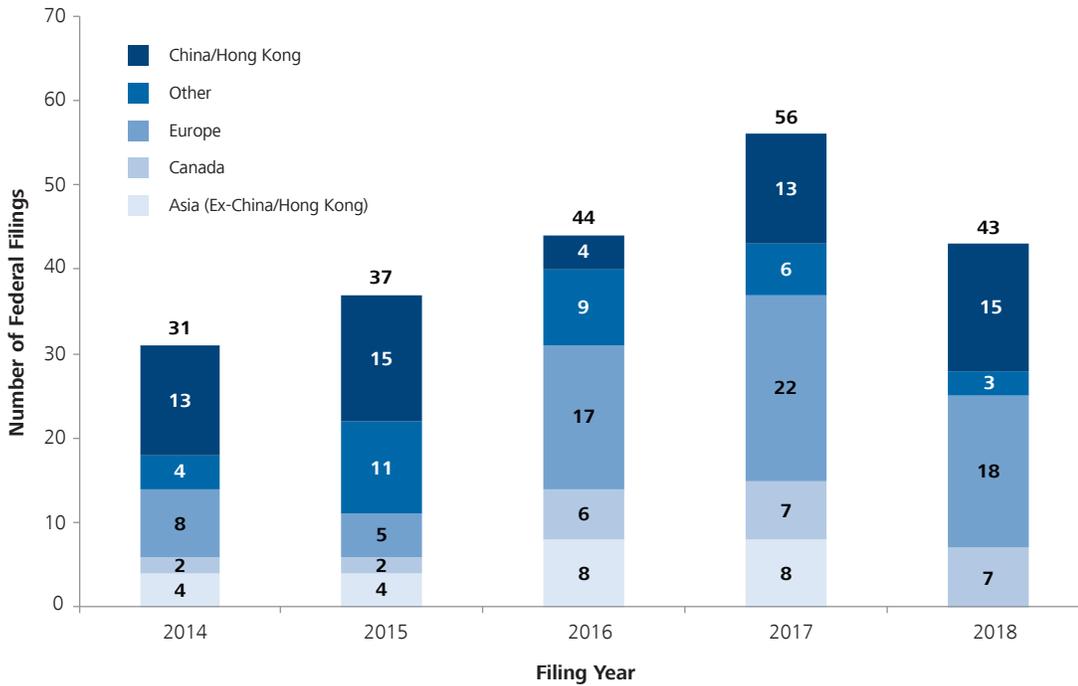
Figure 5. **Foreign Companies: Share of Filings and Share of Companies Listed on US Exchanges**  
 Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12  
 January 2009–December 2018



Note: Foreign issuer status determined based on location of principal executive offices.

Internationally, only Chinese firms listed on US exchanges were subject to more securities class actions in 2018 than in 2017 (see Figure 6). Filings against European firms slowed, partially due to fewer regulatory filings. There were zero filings against Israeli companies, despite an increase in listings and litigation against such companies in previous years.

Figure 6. **Filings Against Foreign Companies**  
 Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12 by Region  
 January 2014–December 2018



Note: Foreign issuer status determined based on location of principal executive offices.

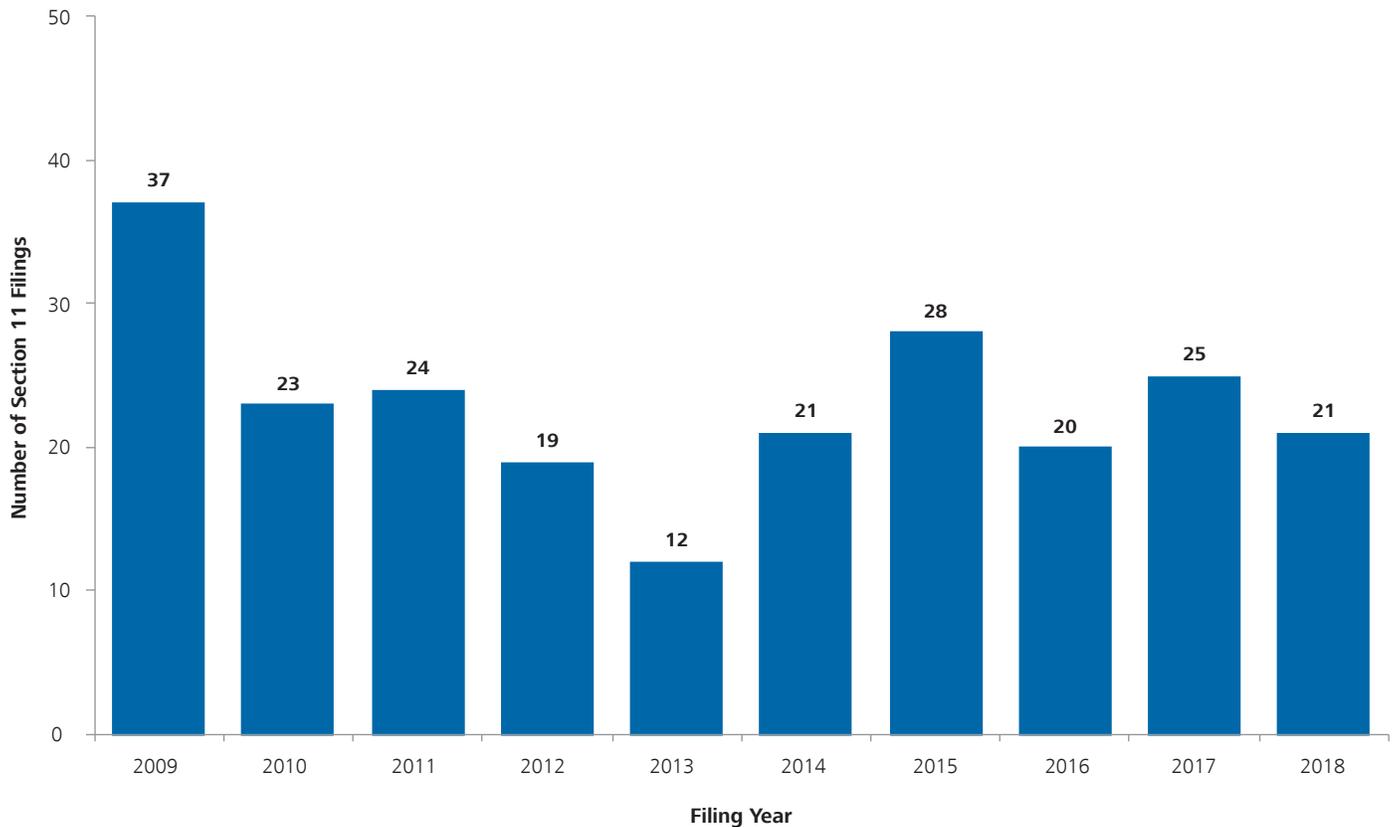
### Section 11 Filings

There were 21 federal filings alleging violations of Section 11 in 2018, which approximates the five-year average (see Figure 7).

On 20 March 2018, the US Supreme Court ruled in *Cyan, Inc. v. Beaver County Employees Retirement Fund* that state courts have jurisdiction over class actions with claims brought under the Securities Act.<sup>12</sup> The ruling allows plaintiffs to litigate Section 11 claims in state courts, including plaintiff-friendly California state courts.

The full effect of the *Cyan* decision on federal filing trends remains to be seen, but of the 21 Section 11 filings in 2018, 14% involved firms headquartered in California, down from a quarter in 2016 (prior to the US Supreme Court granting certiorari). Of the three California firms, at least two have stated in filings with the SEC that claims under the Securities Act must only be brought in federal courts.<sup>12</sup>

Figure 7. **Section 11 Filings**  
January 2009–December 2018



### Aggregate NERA-Defined Investor Losses

In addition to the number of cases filed, we also consider the total potential size of these cases using a metric we label “NERA-defined Investor Losses.”

NERA’s Investor Losses variable is a proxy for the aggregate amount that investors lost from buying the defendant’s stock, rather than investing in the broader market during the alleged class period. Note that the Investor Losses variable is not a measure of damages because any stock that underperforms the S&P 500 would have Investor Losses over the period of underperformance; rather, it is a rough proxy for the relative size of investors’ potential claims. Historically, Investor Losses have been a powerful predictor of settlement size. Investor Losses can explain more than half of the variance in the settlement values in our database.

We do not compute NERA-defined Investor Losses for all cases included in this publication. For instance, class actions in which only bonds and not common stock are alleged to have been damaged are not included. The largest excluded groups are IPO laddering cases and merger-objection cases.

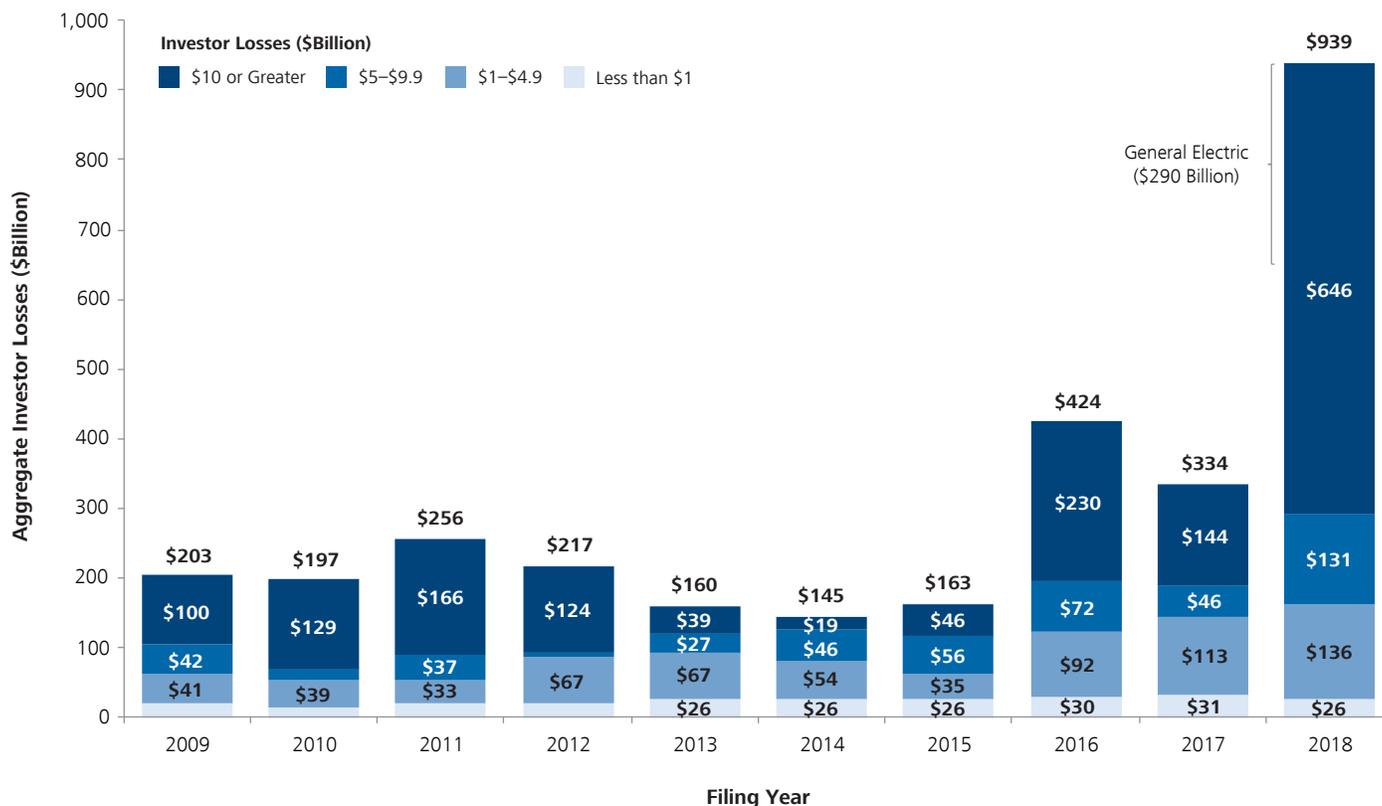
Despite a relatively constant rate of Standard filings in 2018, the size of those filings (as measured by NERA-defined Investor Losses) surged to nearly \$1 trillion (see Figure 8). Total Investor Losses were dominated by litigation against GE, equal to about 45% of Investor Losses from all other cases combined, an especially impressive metric given the record aggregate case size.

NERA-defined Investor losses in 2018 totaled \$939 billion, more than double that of any prior year and nearly four times the preceding five-year average of \$245 billion. The total size of filings in all but the smallest strata grew, led by cases with more than \$10 billion in Investor Losses. Coupled with the relatively stable overall filing rate, this suggests a systematic shift toward larger filings. In 2018, there were a record number of filings in each of the three largest strata, while only 88 cases had Investor Losses less than \$1 billion, a record low.

Once again, there were several very large filings alleging regulatory violations, including a stock drop case against Johnson & Johnson related to claims of allegedly carcinogenic talcum powder, and a data privacy case against Facebook. Besides cases alleging regulatory violations, other very large cases included a filing against NVIDIA regarding excess inventory of GPUs (used for cryptocurrency mining) and large drug development cases against Bristol-Myers Squibb and Celgene.

Figure 8. **Aggregate NERA-Defined Investor Losses**

Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12  
January 2009–December 2018



Over the past couple of years, growth in aggregate Investor Losses was concentrated in filings alleging regulatory violations, a substantial number of which were also *event-driven* securities cases (i.e., stock drop cases stemming from a specific event or occurrence). Between 2015 and 2017, growth in the total size of regulatory cases was due to an increased filing rate (from 31 to 57 cases) and higher median Investor Losses (from \$308 million to \$811 million).

In 2018, regulatory cases were again large (half had Investor Losses greater than \$4 billion), but the vast majority of total Investor Losses stemmed from what have historically been more typical securities cases, namely those that allege accounting issues, misleading earnings guidance, and/or firm performance issues.<sup>14</sup> This was led by litigation related to accounting issues at GE. Excluding GE, aggregate Investor Losses of such cases nearly doubled to a record \$258 billion (see Figure 9).

Growth in the total size of cases alleging accounting, earnings, and/or performance issues primarily stems from growth in individual case size, as opposed to more filings. The median case with such allegations had more than \$650 million in Investor Losses, about twice the average of \$322 million over the preceding five years.

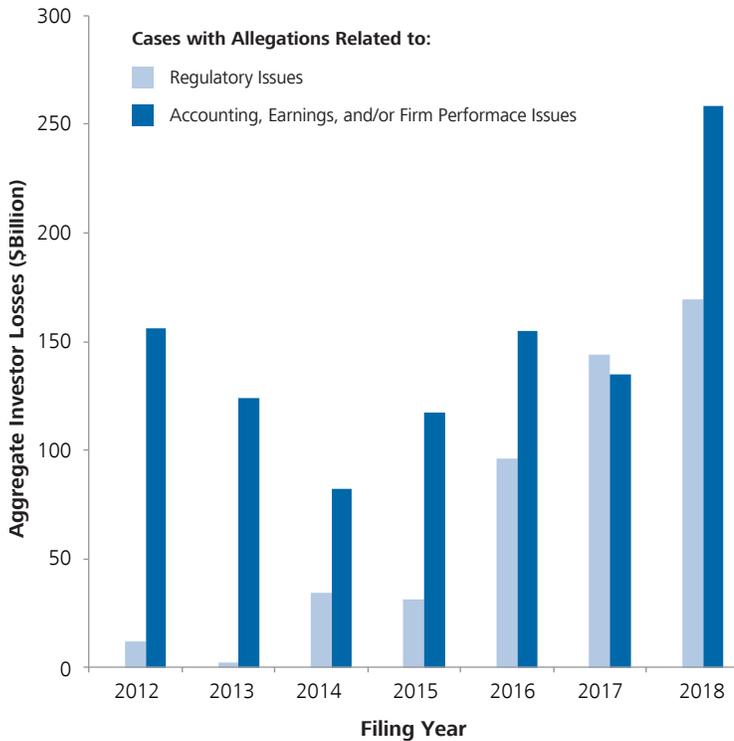
Details of the size of cases with specific types of allegations are discussed in the *Allegations* section below.

Figure 9. **NERA-Defined Investor Losses**

Filings Alleging Accounting Issues, Missed Earnings Guidance, and/or Misleading Future Performance  
Excludes 2018 GE Filings

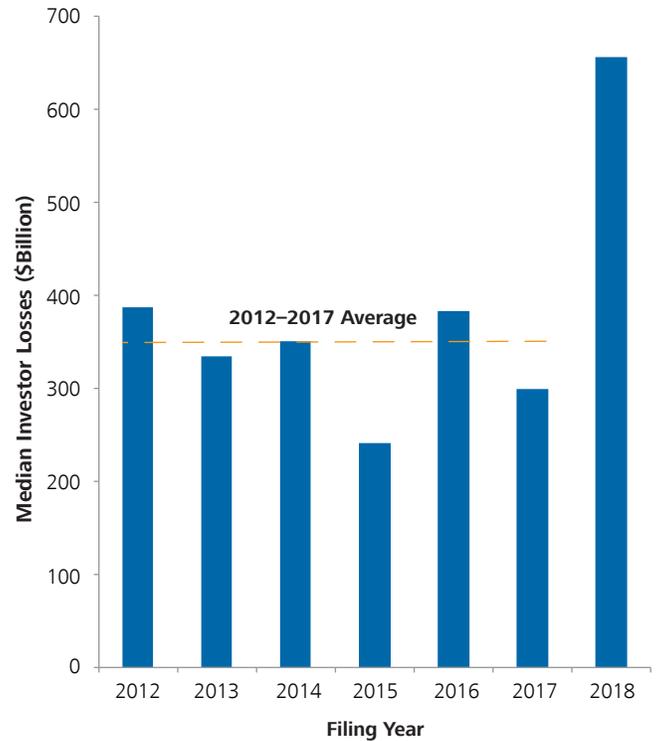
**Aggregate NERA-Defined Investor Losses**

January 2012–December 2018



**Median NERA-Defined Investor Losses**

January 2012–December 2018



Note: Regulatory cases with parallel accounting, performance, or missed earnings claims are excluded.

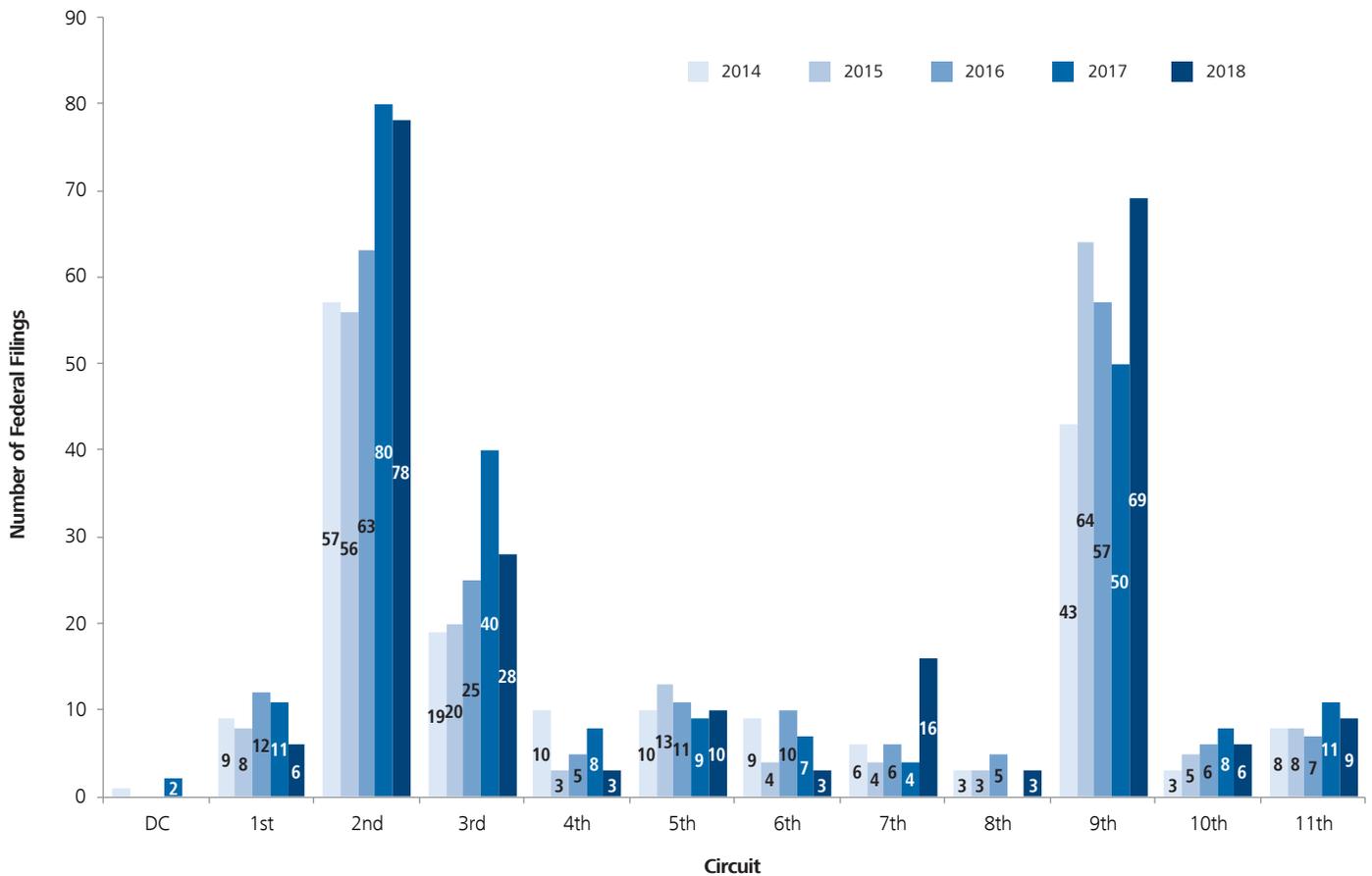
### Filings by Circuit

Filings in 2018 (excluding merger objections) were again concentrated in the Second and Ninth Circuits. The concentration of filings in these circuits has increased in 2018, during which they received 64% of filings, up from an average of 57% over the prior two years (see Figure 10). While the Second Circuit received the most filings, the most growth was in the Ninth Circuit, which includes Silicon Valley, mostly due to more litigation against firms in the Electronic Technology and Technology Services sector.

Merger-objection filings, not included in Figure 10, have become increasingly active in the Third Circuit, which includes Delaware. The Third Circuit received 82 merger-objection cases in 2018, double the number in 2017 and more than an eightfold increase over 2016. Nearly four-in-ten merger-objection cases were filed in the Third Circuit, twice the concentration of 2017 and coming amidst only a slight increase in the percentage of target firms incorporated in Delaware (see Figure 4). This corresponds with a decline in filings in every other circuit except the Second Circuit, where filings increased from 15 to 26.

Figure 10. **Federal Filings by Circuit and Year**

Excludes Merger Objections  
January 2014–December 2018

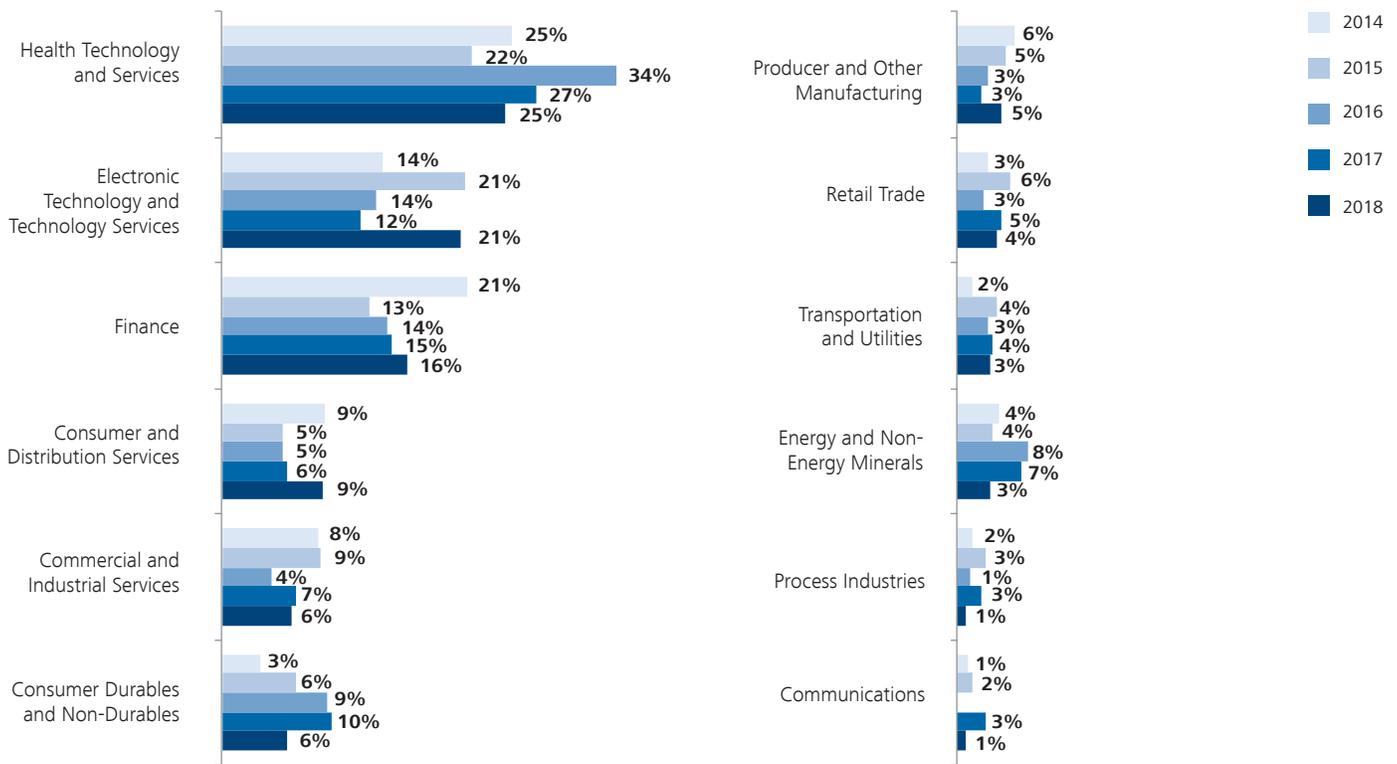


### Filings by Sector

In 2018, filing counts were highest in the three historically dominant sectors, which include firms involved in health care, technology, and financial services (see Figure 11). The share of filings in these sectors increased to 62% in 2018 from about 54% in 2017, primarily due to a surge in filings against firms in the technology sector. Despite the drop in the percentage of health care companies targeted, the percentage of targeted firms in the Drugs industry (SIC 283) was nearly unchanged from 2017.

Firms in technological industries were especially at risk of securities class actions alleging accounting issues, misleading earnings guidance, or firm performance issues.<sup>15</sup> The industry with the highest percentage of constituent companies targeted with such allegations was the Computer and Office Equipment industry (SIC 357), with more than 9% of listed companies subject to litigation. This was followed by the Electronic Components and Accessories industry (SIC 367), with 6% of firms targeted. In the Drugs industry (SIC 283), 5% of firms were targeted with a filing with such claims (mostly related to misleading announcements regarding future performance).

Figure 11. **Percentage of Filings by Sector and Year**  
 Excludes Merger Objections  
 January 2014–December 2018



Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

### **Allegations**

In contrast with growth observed in recent years, filings with regulatory claims (i.e., those alleging a failure to disclose a regulatory issue) slowed to 41 in 2018 from 57 in 2017, a drop from 26% of Standard cases to 19% (see Figure 12). While fewer regulatory cases were filed, the median case size grew fourfold to over \$4 billion (as measured by NERA-defined Investor Losses). The slowdown in regulatory filings was partially offset by more allegations of accounting issues and missed earnings guidance, which grew 8% and 13%, respectively.

While the size of filed cases (as measured by NERA-defined Investor Losses) grew in each allegation category, those alleging accounting issues and missed earnings guidance were especially large and more frequently targeted technology firms. The median size of accounting claims exceeded \$600 million in 2018 (a level not seen since 2008), with filings over the second half of the year being especially large. Firms in the technology sector had the most accounting claims, making up 29% of the total (up from 21% in 2017). Moreover, more than one-in-three filings against firms in the technology sector alleged accounting issues.

Filings claiming missed earnings guidance grew for the second straight year. Although the percentage of filings alleging missed guidance roughly matched that of 2015, the median case size (as measured by Investor Losses) was three times larger in 2018 than in 2015. Filings against firms in the technology sector with missed earnings guidance claims grew 70% since 2017 and constituted the largest share of such claims (at 27%).

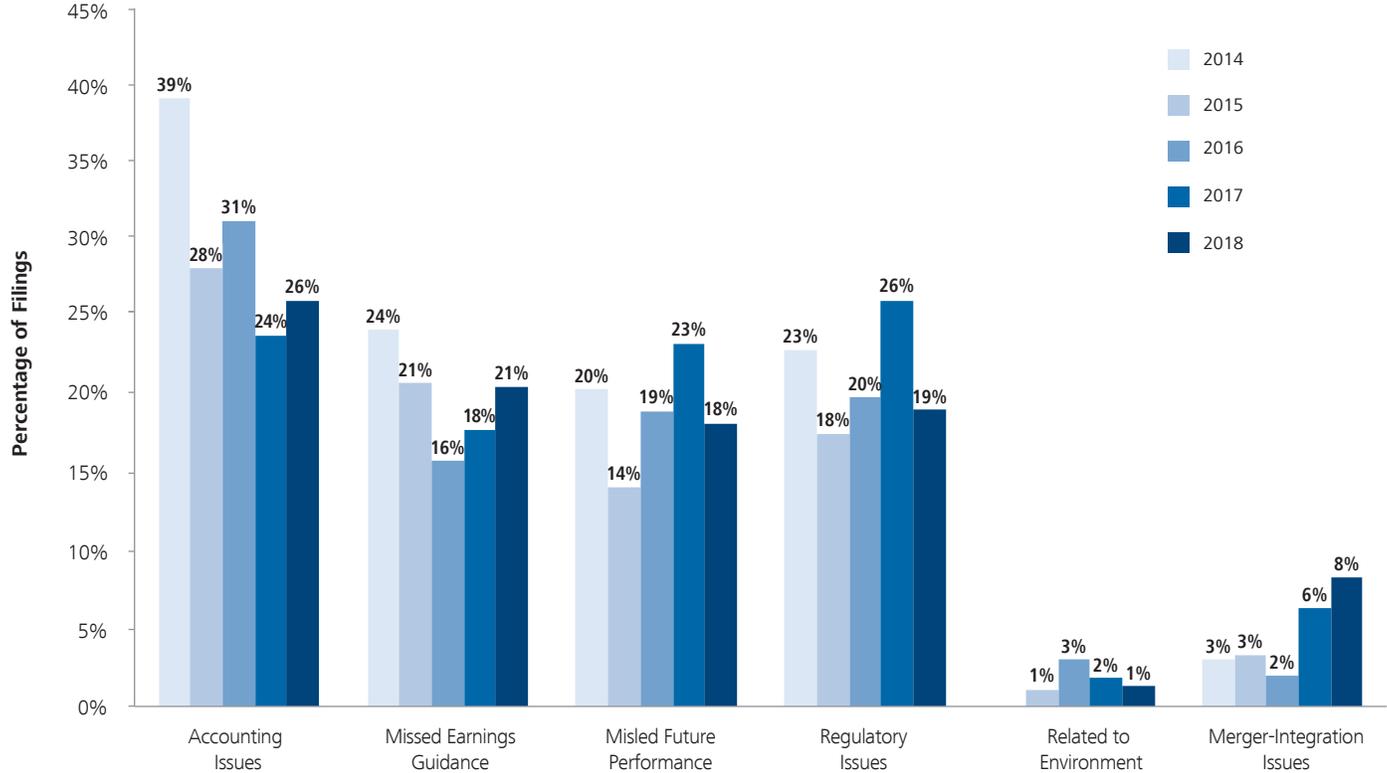
In 2018, 8% of filings included merger integration allegations (i.e., claims of misrepresentations by a firm involved in a merger or acquisition). The substantial increase in litigation in 2017 corresponded with a 14% increase in announced M&A deals with US targets.<sup>16</sup> However, in 2018, despite a 12% slowdown in announced deal activity over the first three quarters, the number of federal merger integration filings rose.<sup>17</sup> The largest merger integration filing related to the failed Tribune Media/Sinclair merger, making up 20% of total Investor Losses.

As in prior years, most allegations related to misleading firm performance in 2018 were against firms in the health care sector. Within health care, firms in the Drugs industry (SIC 283) were subject to two-in-three filings.

Most complaints include a wide variety of allegations, not all of which are depicted here. Due to multiple types of allegations in complaints, the same case may be included in multiple categories.

Figure 12. **Allegations**

Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12  
January 2014–December 2018

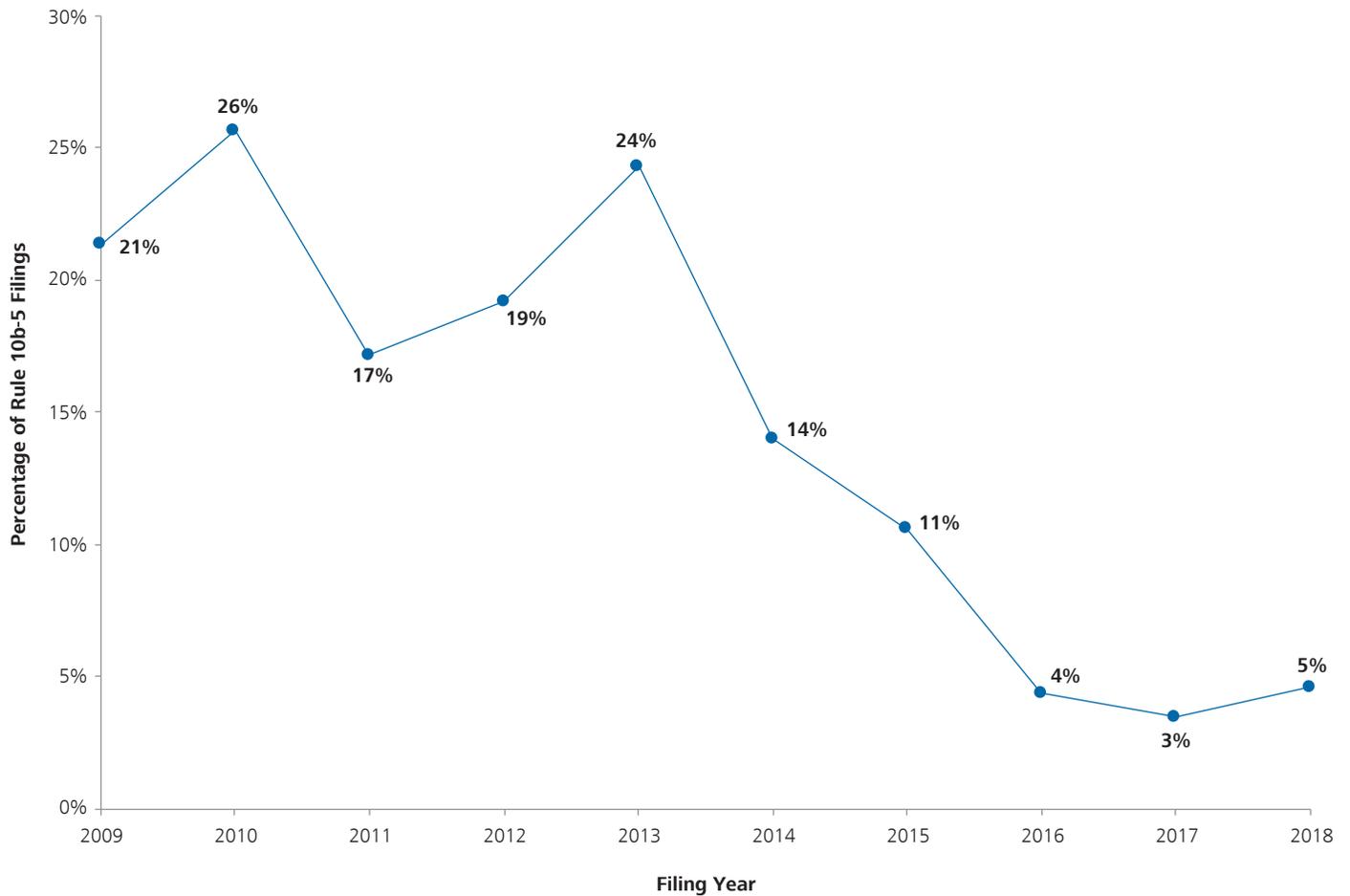


### Alleged Insider Sales

Historically, Rule 10b-5 class action complaints have frequently alleged insider sales by directors and officers, usually as part of a scienter argument. Since 2013, in the wake of a multiyear crackdown on insider trading by prosecutors, the percentage of 10b-5 class actions that alleged insider sales has decreased nearly every year (see Figure 13).<sup>18</sup> This trend also corresponds with increased corporate adoption of 10b5-1 trading plans, allowing insiders to plan share sales while purportedly not in possession of material non-public information.<sup>19</sup>

Cases alleging insider sales were more common in the aftermath of the financial crisis, when a quarter of filings included insider trading claims. In 2005, half of class actions filed included such claims.

Figure 13. **Percentage of Rule 10b-5 Filings Alleging Insider Sales by Filing Year**  
January 2009–December 2018



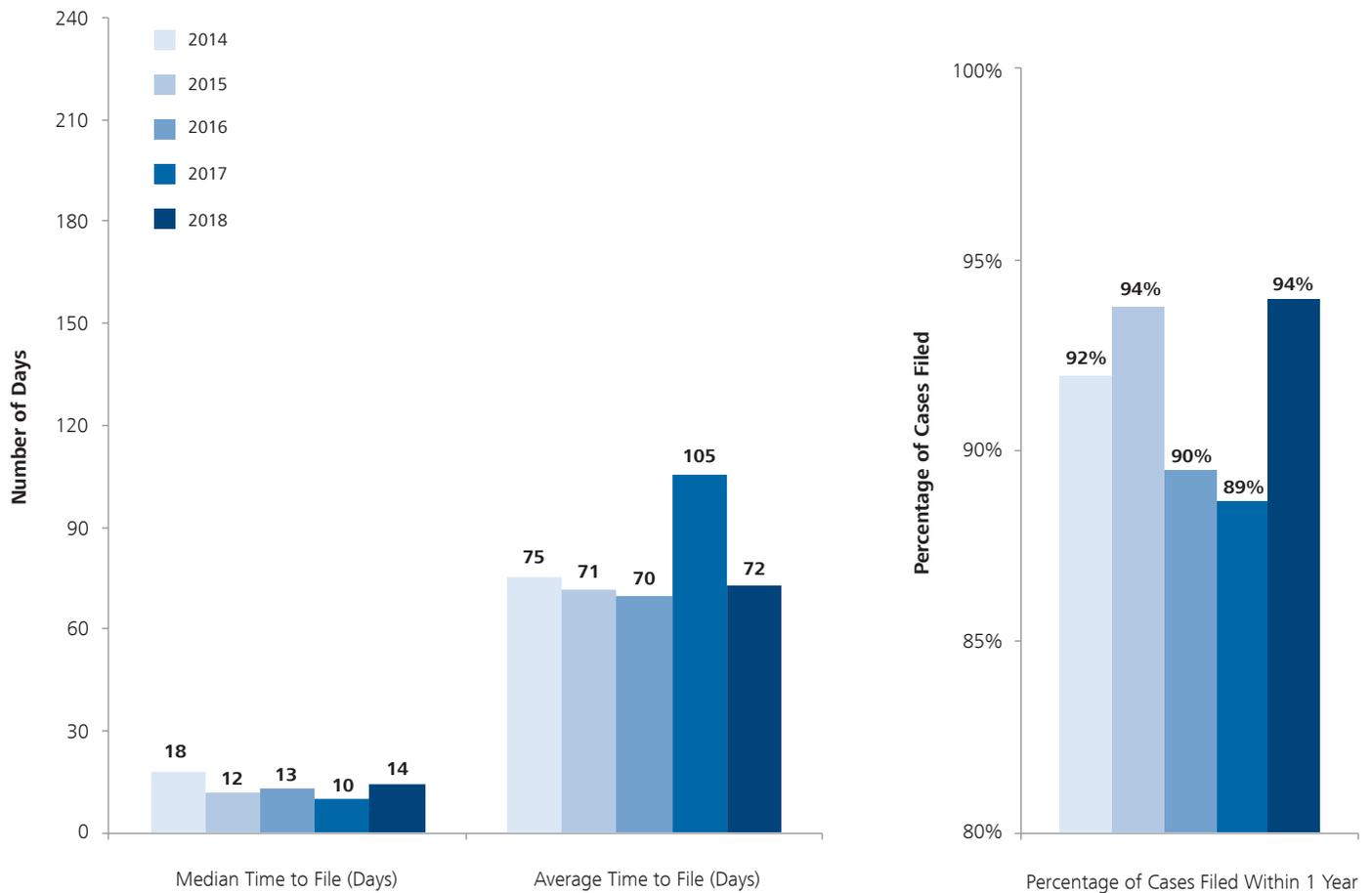
### Time to File

The term “time to file” denotes the time that has elapsed between the end of the alleged class period and the filing date of the first complaint. Figure 14 illustrates how the median time and average time to file Rule 10b-5 cases (in days) have changed over the past five years.

The median time to file fell by about half over the last decade, to 14 days in 2018, indicating that it took 14 days or less to file a complaint in 50% of cases. Since the beginning of the decade, there has been a lower frequency of cases with long periods between the point when an alleged fraud was revealed and the filing of a related claim. The average time to file has followed a similar trajectory, but in 2017 was affected by 10 cases with very long filing delays. In 2017, one case against Rio Tinto, regarding the valuation of mining assets in Mozambique, took more than 4.5 years to file and boosted the average time to file by nearly 9%.<sup>20</sup>

Despite the small minority of cases with very long times to file, the data generally point toward a lower incidence of cases with long periods between revelations of alleged fraud and the date a related claim is filed.

Figure 14. **Time to File Rule 10b-5 Cases from End of Alleged Class Period to File Date**  
January 2014–December 2018



Note: This analysis excludes cases where the alleged class period could not be unambiguously determined.

## Analysis of Motions

NERA's statistical analysis has found robust relationships between settlement amounts and the stage of the litigation at which settlements occur. We track filings and decisions on three types of motions: motion to dismiss, motion for class certification, and motion for summary judgment. For this analysis, we include securities class actions in which purchasers of common stock are part of the class and in which a violation of Rule 10b-5, Section 11, and/or Section 12 is alleged (i.e., Standard cases).

As shown in the figures below, we record the status of any motion as of the resolution of the case. For example, a motion to dismiss that had been granted but was later denied on appeal is recorded as denied.

Motions for summary judgment were filed by defendants in 7.1%, and by plaintiffs in only 1.9%, of the securities class actions filed and resolved over the 2000–2018 period, among those we tracked.<sup>21</sup>

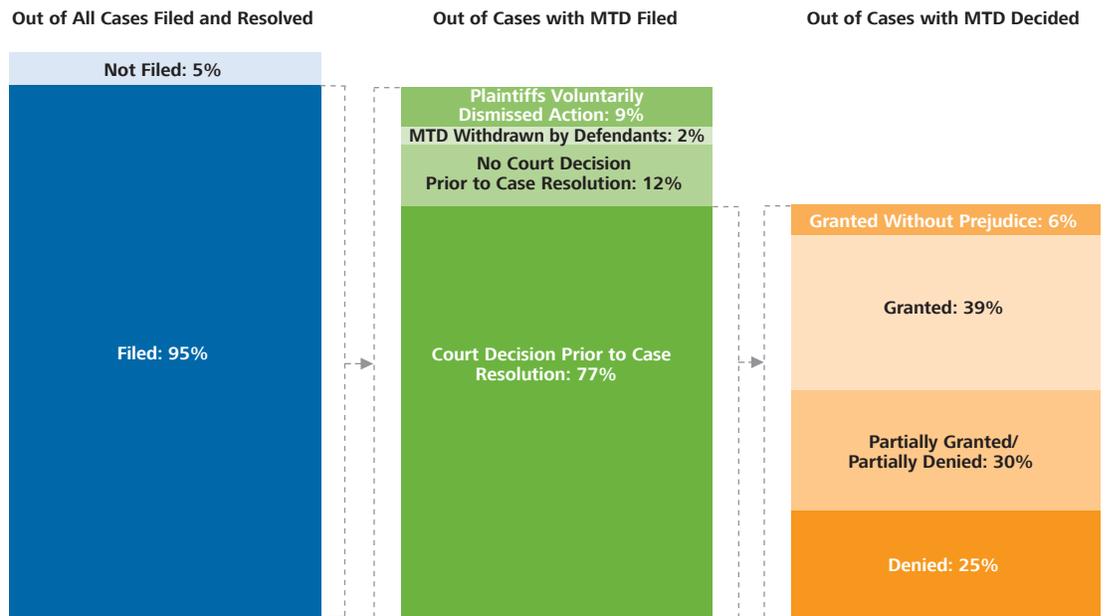
Outcomes of motions to dismiss and motions for class certification are discussed below.

**Motion to Dismiss**

A motion to dismiss was filed in 95% of the securities class actions tracked. However, the court reached a decision on only 77% of the motions filed. In the remaining 23% of cases, either the case resolved before a decision was reached, plaintiffs voluntarily dismissed the action, or the motion to dismiss was withdrawn by defendants (see Figure 15).

Out of the motions to dismiss for which a court decision was reached, the following three outcomes classify all of the decisions: granted with or without prejudice (45%), granted in part and denied in part (30%), and denied (25%).

Figure 15. **Filing and Resolutions of Motions to Dismiss**  
Cases Filed and Resolved January 2000–December 2018



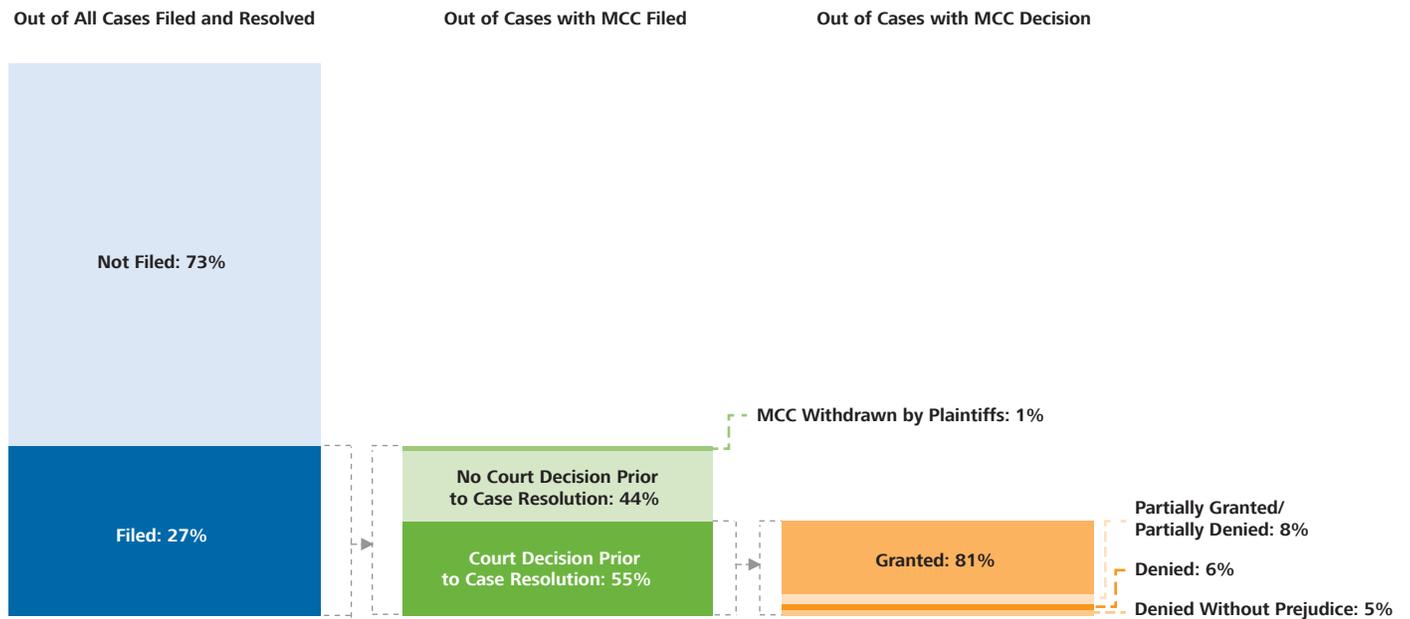
Note: Includes cases in which holders of common stock are part of the class and a Rule 10b-5, Section 11, and/or Section 12 is alleged. Excludes IPO laddering cases.

**Motion for Class Certification**

Most cases were settled or dismissed before a motion for class certification was filed: 73% of cases fell into this category. Of the remaining 27% (in which a motion for class certification was filed), the court reached a decision in only 55% of cases. Overall, only 15% of the securities class actions filed (or 55% of the 27%) reached a decision on the motion for class certification (see Figure 16).

According to our data, 89% of the motions for class certification that were decided were granted partially or in full.

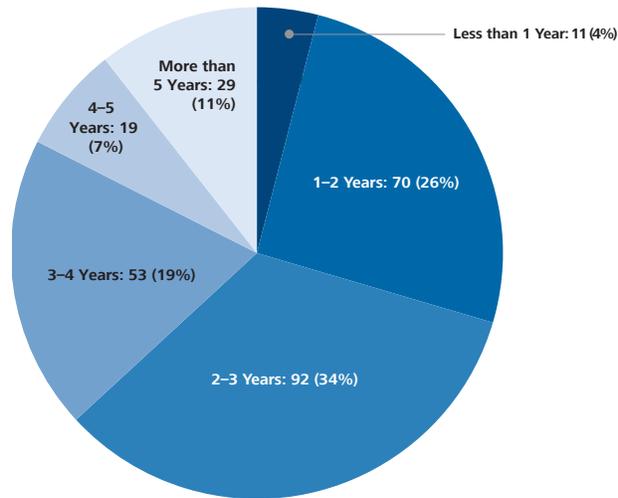
Figure 16. **Filing and Resolutions of Motions for Class Certification**  
Cases Filed and Resolved January 2000–December 2018



Note: Includes cases in which holders of common stock are part of the class and a Rule 10b-5, Section 11, and/or Section 12 is alleged. Excludes IPO laddering cases.

Approximately 64% of the decisions handed down on motions for class certification were reached within three years of the complaint’s original filing date (see Figure 17). The median time was about 2.5 years.

Figure 17. **Time from First Complaint Filing to Class Certification Decision**  
 Cases Filed and Resolved January 2000–December 2018



Note: Includes cases in which holders of common stock are part of the class and a 10b-5 or Rule 10b-5, Section 11, and/or Section 12 is alleged. Excludes IPO laddering cases.

## Trends in Case Resolutions

### Number of Cases Settled or Dismissed

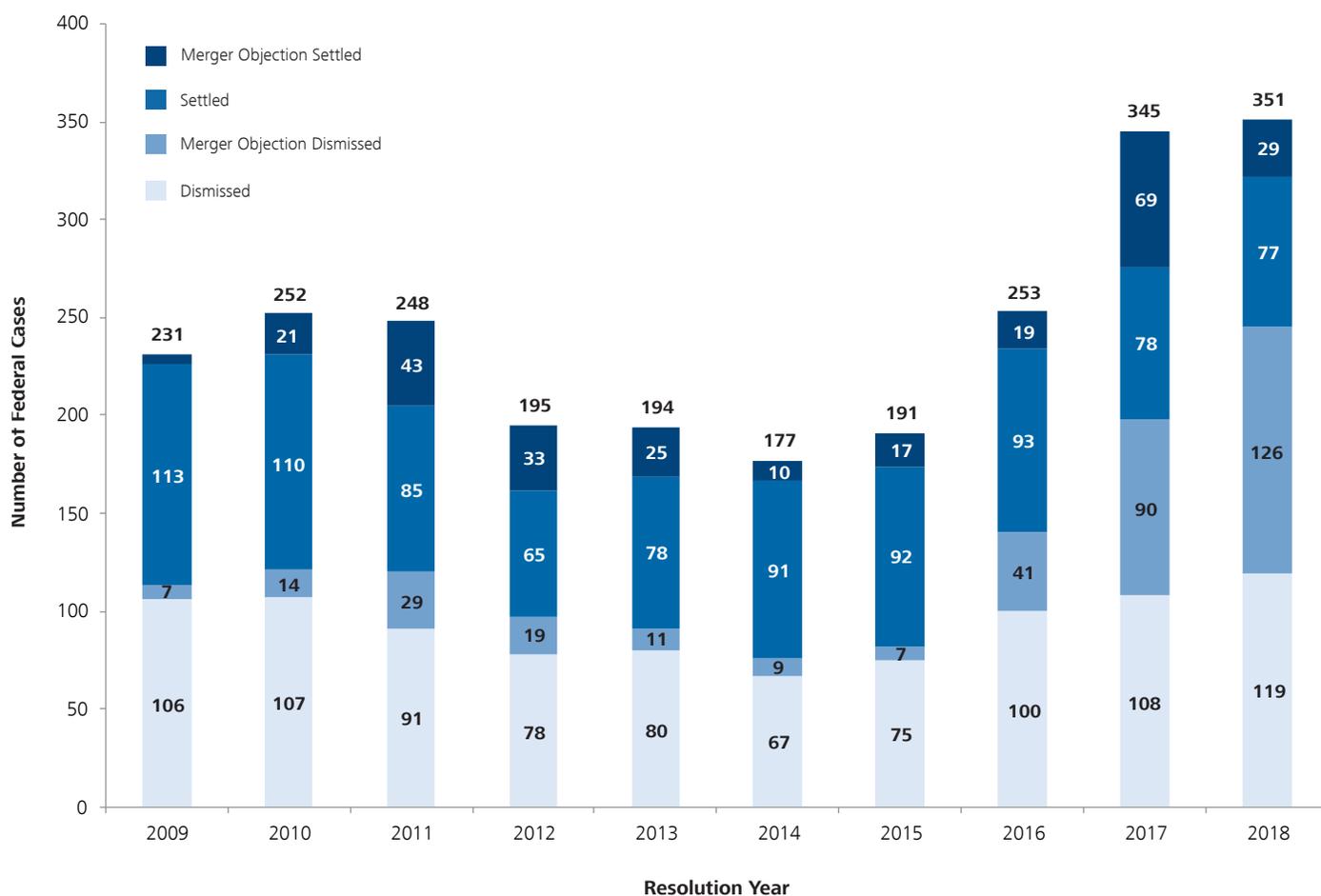
In total, 351 securities class actions were resolved in 2018, the second consecutive year in which a record number of cases concluded (see Figure 18). Resolution numbers were once again dominated by a record number of dismissals, which outnumbered settlements two-to-one for the first time.

Of the 351 resolutions, slightly less than half were resolutions of merger-objection cases (most of which were voluntarily dismissed). The uptick in resolutions over the last few years is largely due to the surge of federal merger-objection cases in the wake of the *Trulia* decision in early 2016.<sup>22</sup> Prior to *Trulia*, only about 13% of resolutions concerned merger-objection litigation. Merger objections had an outsized impact on resolution statistics: despite making up only about 33% of all active cases, they constituted 44% of resolutions.<sup>23</sup>

In 2018, 196 resolutions were of “Standard” securities class actions—those alleging violations of Rule 10b-5, Section 11, and/or Section 12. Standard settlement and dismissal counts closely matched those of 2017, and again more cases were dismissed than settled.

For the second consecutive year, an inordinate number of Standard cases were dismissed within a year of filing, most of which were voluntary dismissals. As shown in Figure 31, the decision to voluntarily dismiss litigation may change with the size of estimated damages to the class. For instance, plaintiffs may be more likely to voluntarily dismiss litigation if the price of the security at issue subsequently increases during the PSLRA bounce-back period.

Figure 18. **Number of Resolved Cases: Dismissed or Settled**  
January 2009–December 2018



### Case Status by Year

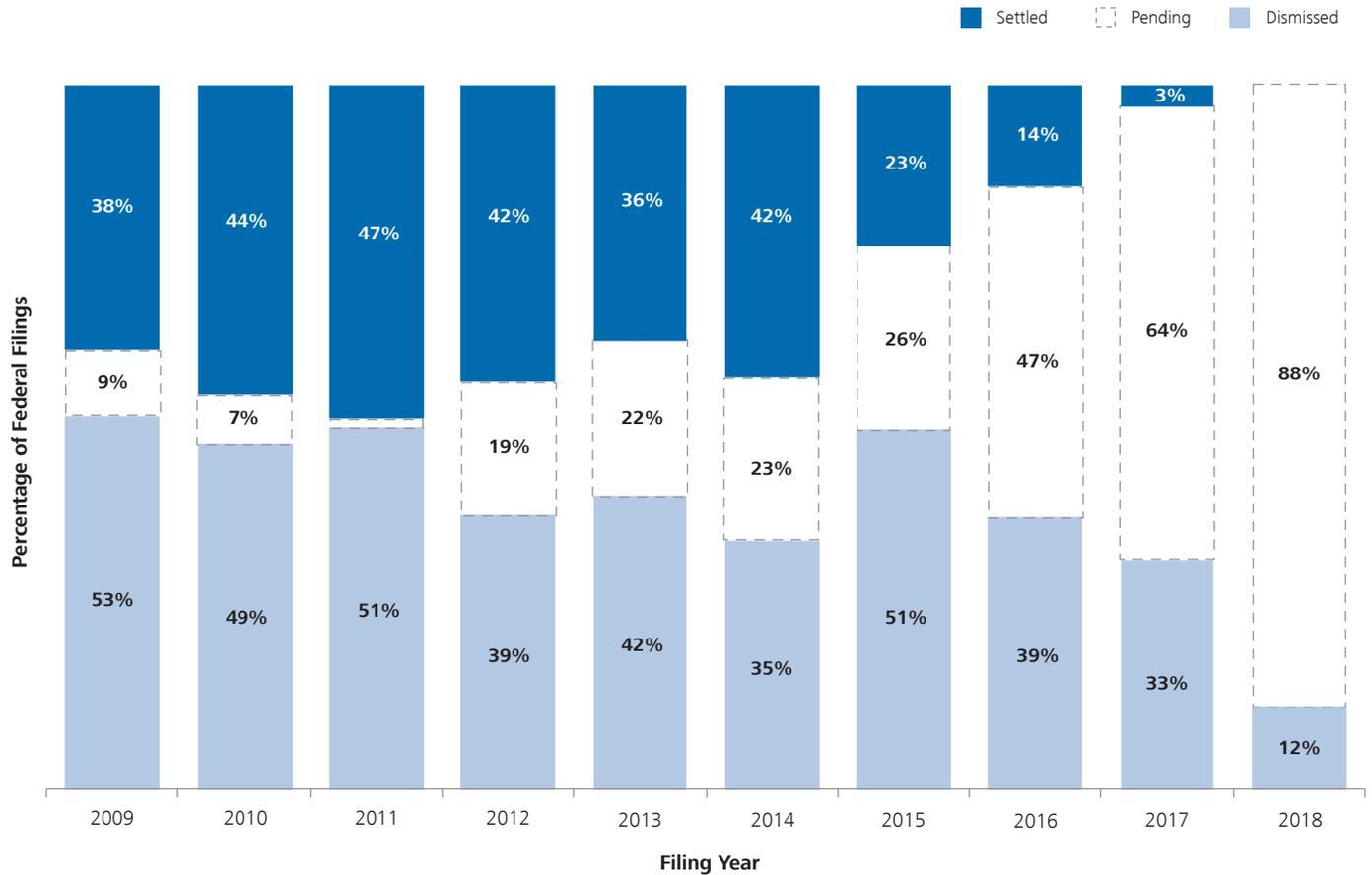
Figure 19 shows the current resolution status of cases by filing year. Each percentage represents the current resolution status of cases filed in each year as a proportion of all cases filed in that year. Merger-objection cases are excluded, as are verdicts.

Historically, more cases settled than were dismissed. However, the rate of case dismissal has steadily increased. While only about a third of cases filed between 2000 and 2002 were dismissed, in 2015, the most recent year with substantial resolution data, at least half of filed cases were dismissed.<sup>24</sup>

While dismissal rates have been climbing since 2000, the ultimate dismissal rate for cases filed in more recent years is less certain. On one hand, the dismissal rate may increase further, as there are more pending cases awaiting resolution. On the other hand, it may decrease because recent dismissals have more potential than older ones to be appealed or re-filed, and cases that were recently dismissed without prejudice may ultimately result in settlements.

Figure 19. **Status of Cases as Percentage of Federal Filings by Filing Year**

Excludes Merger Objections and Verdicts  
January 2009–December 2018



Note: Dismissals may include dismissals without prejudice and dismissals under appeal.

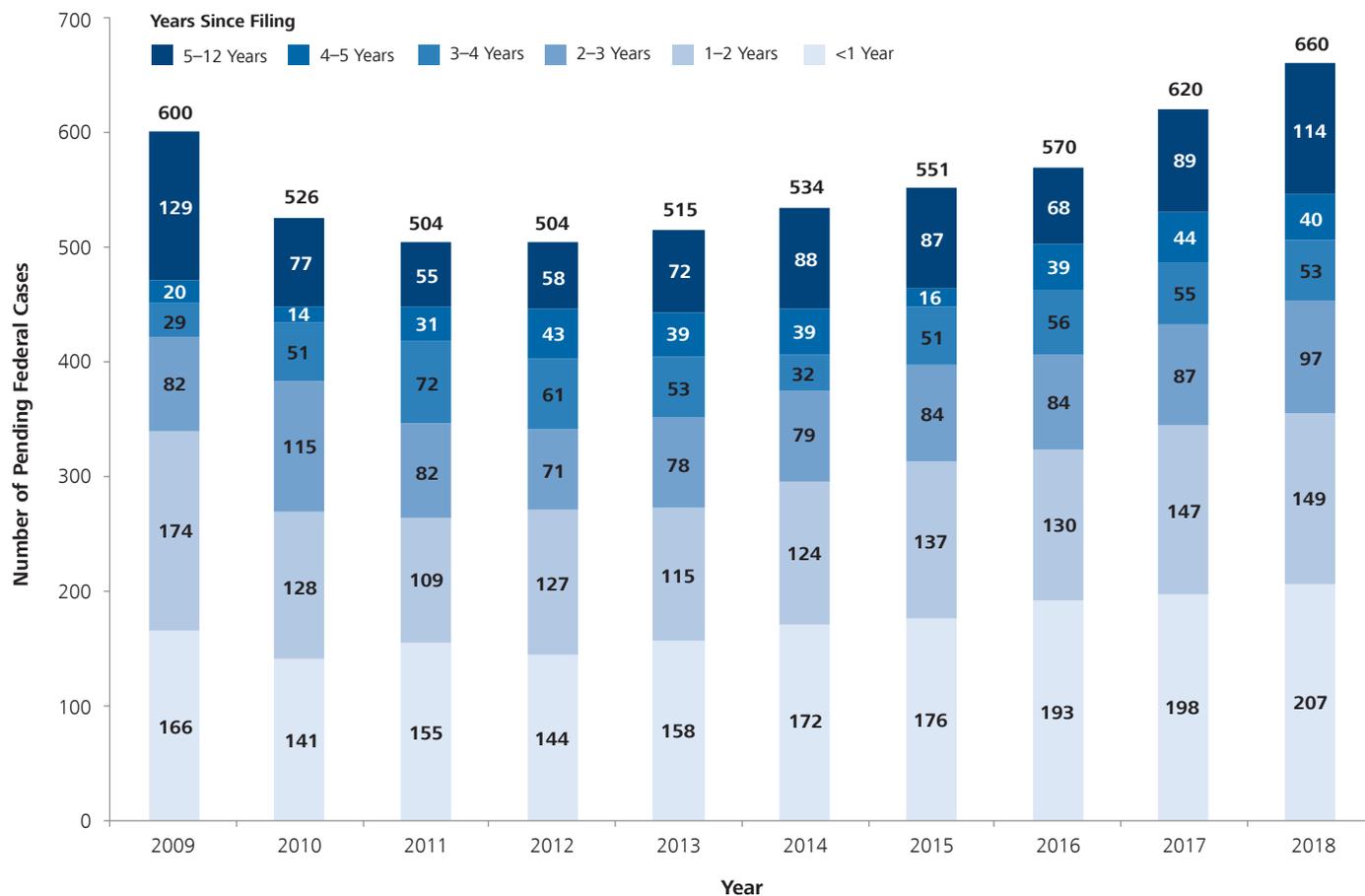
### Number of Cases Pending

The number of Standard securities class actions pending in the federal system has steadily increased from a post-PSLRA low of 504 in 2012 (see Figure 20).<sup>25</sup> Since then, pending case counts have increased between 2% and 9% annually. In 2018, the number of pending Standard cases on federal dockets increased to 660, up 6% from 2017 and 31% from 2012.

Generally, since cases are either pending or resolved, a change in filing rate or a lengthening of the time to case resolution potentially contributes to changes in the number of cases pending. If the number of new filings is constant, the change in the number of pending cases can be indicative of whether the time to case resolution is generally shortening or lengthening.

About 50% of the long-term growth in pending litigation can be explained by recent filing growth (filed over the past two years), the vast majority of which is simply due to more cases being filed that have yet to be resolved. Delayed resolution of older filings (i.e., cases filed before 2017) explains the other 50% or so of growth in pending litigation since 2011. More old cases on federal dockets has driven the median age of pending cases up 14% since 2015 to about 1.9 years, the highest since 2010.<sup>26</sup>

Figure 20. **Number of Pending Federal Cases**  
 Excludes Merger Objections  
 January 2009–December 2018



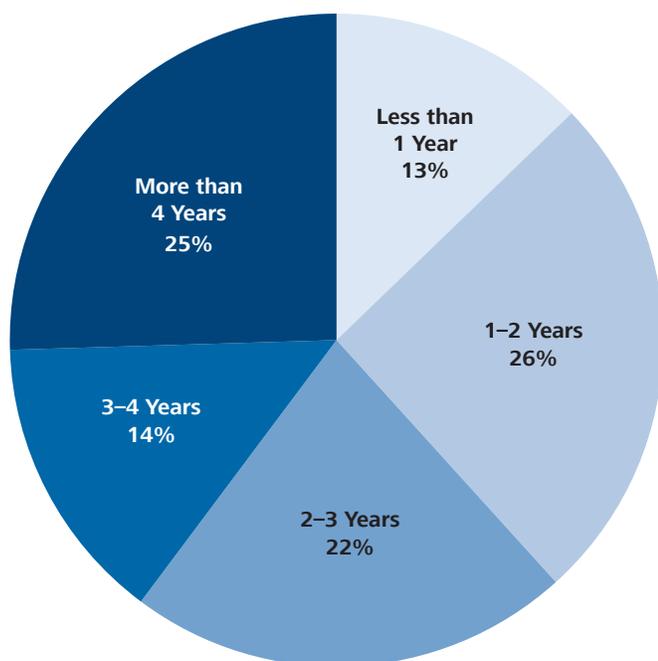
Note: The figure excludes, in each year, cases that had been filed more than 12 years earlier. Years since filing are end-of-year calculations. The figure also excludes IPO laddering cases. The 12-year limit ensure that all pending cases were filed post-PSLRA.

### Time to Resolution

The term “time to resolution” denotes the time between the filing of the first complaint and resolution (whether through settlement or dismissal). Figure 21 illustrates the time to resolution for all securities class actions filed between 2001 and 2014, and shows that about 39% of cases are resolved within two years of initial filing and about 61% are resolved within three years.<sup>27</sup>

The median time to resolution for cases filed in 2016 (the last year with sufficient resolution data) was 2.3 years, similar to the range over the preceding five years. Over the past decade, the median time to resolution declined by more than 10%, primarily due to an increase in the dismissal rate (dismissals are generally resolved faster than settlements).

Figure 21. **Time from First Complaint Filing to Resolution**  
Cases Filed January 2001–December 2014



## Trends in Settlements

We present several settlement metrics to highlight attributes of cases that settled in 2018 and to compare them with cases settled in past years. We discuss two ways of measuring average settlement amounts and calculate the median settlement amount. Each calculation excludes merger-objection cases and cases that settle with no cash payment to the class, as settlements of such cases may obscure trends in what have historically been more typical cases.

In 2018, the average settlement rebounded to \$69 million from a near-record low in 2017, largely due to the \$3 billion settlement involving *Petróleo Brasileiro S.A.—Petrobras*, the fifth-highest settlement ever. Even excluding *Petrobras* (the only settlement of the year exceeding \$1 billion), the average settlement exceeded \$30 million, which is about average in the post-PSLRA era (after adjusting for inflation). The median settlement in 2018 was more than twice that of 2017, primarily due to higher settlements of many moderately sized cases and, generally, fewer very small settlements.

The upswing in 2018 settlement metrics may be a prelude to higher settlements in the future. Aggregate NERA-defined Investor Losses of pending cases, a factor that has historically been significantly correlated with settlement amounts, increased for the third consecutive year and currently exceeds \$1.4 trillion (or \$1.1 trillion excluding 2018 litigation against GE). Excluding GE, average Investor Losses of pending Standard cases have also increased for the third consecutive year to \$2.4 billion, but have receded from a 10-year high of \$3.8 billion in 2011.

To illustrate how many cases settled over various ranges in 2017 compared with prior years, we provide a distribution of settlements over the past five years. We also tabulated the 10 largest settlements of the year.

### Average and Median Settlement Amounts

The average settlement exceeded \$69 million in 2018, somewhat less than three times the \$25 million average settlement in 2017 (see Figure 22). Infrequent large settlements, such as the 2018 Petrobras settlement, are generally responsible for the wide variability in average settlements over the past decade. Similar spikes to the one observed this year were also seen in 2010, 2013, and 2016, each primarily stemming from mega-settlements.

Figure 22. **Average Settlement Value**  
 Excludes Merger Objections and Settlements for \$0 to the Class  
 January 2009–December 2018

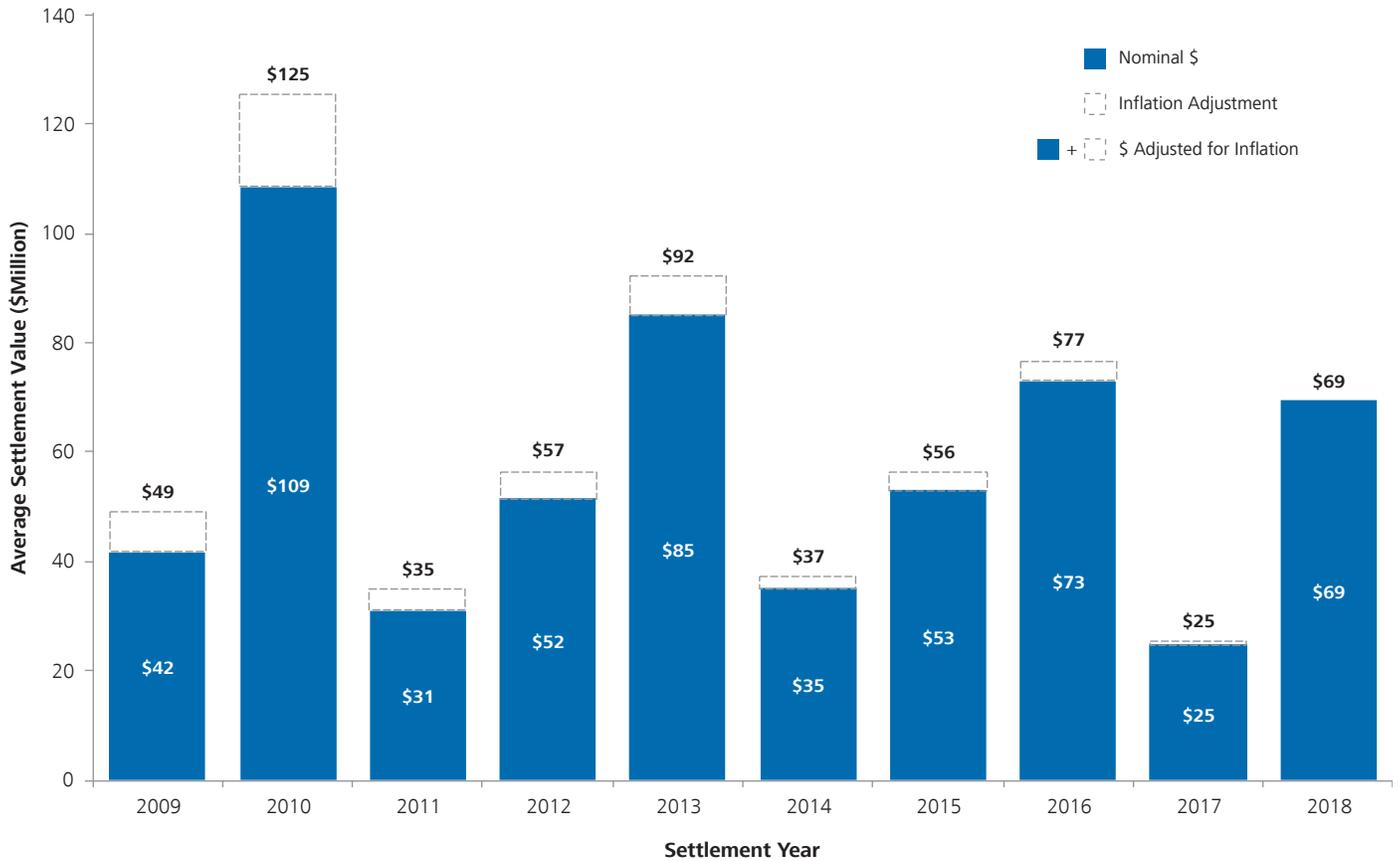
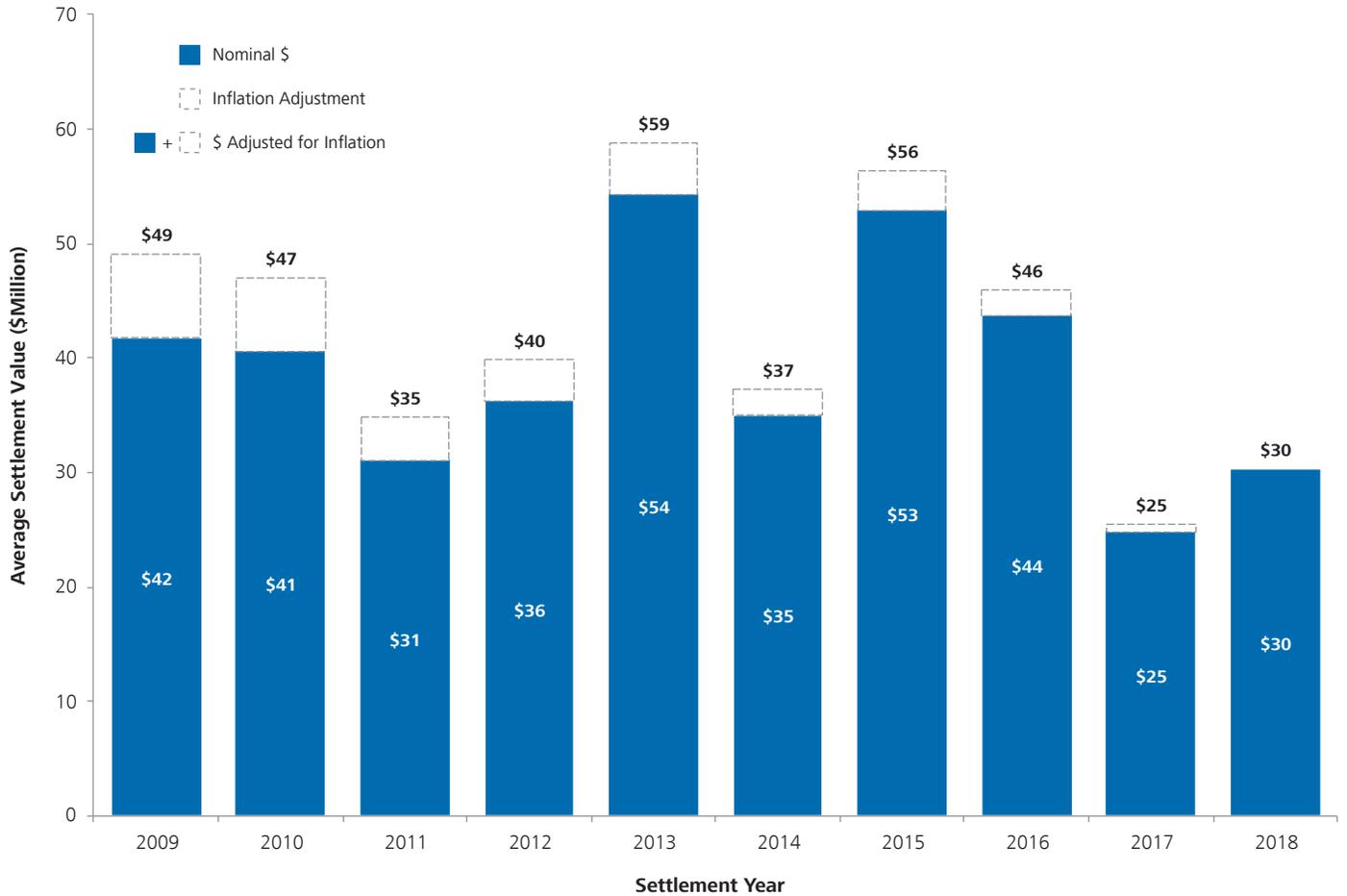


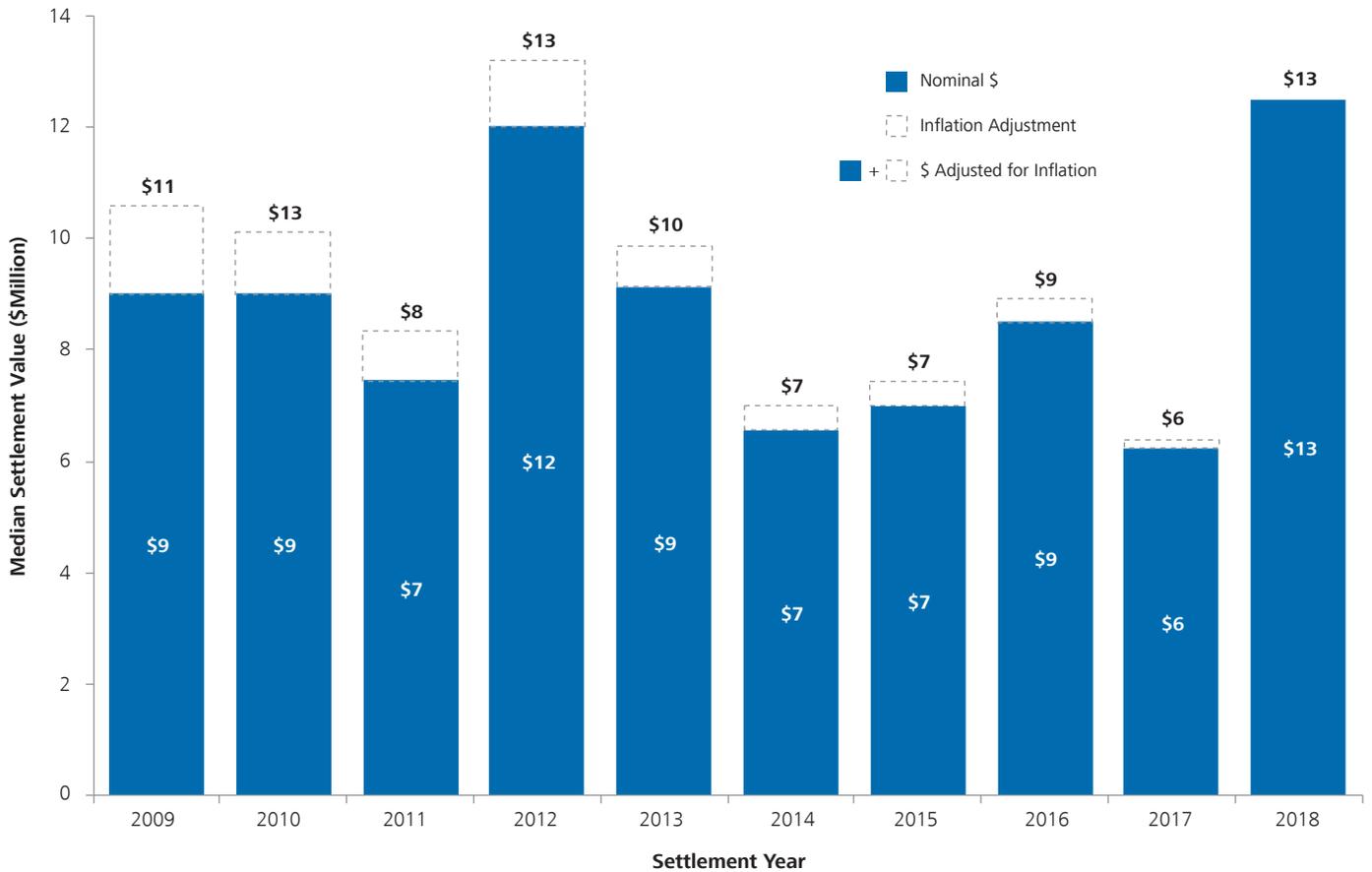
Figure 23 illustrates that, excluding settlements over \$1 billion, the average settlement rebounded from the record low seen in 2017 to \$30 million. Despite this rebound, and setting aside the \$3 billion Petrobras settlement, the 2018 average settlement remained below average compared to the past decade. The metric would have roughly matched the near-record low seen in 2017 but for the \$480 million Wells Fargo settlement that was finalized in mid-December 2018.

Figure 23. **Average Settlement Value**  
 Excludes Settlements over \$1 Billion, Merger Objections, and Settlements for \$0 to the Class  
 January 2009–December 2018



The 2018 median settlement was a near-record \$13 million. This was driven primarily by relatively high settlements of moderately sized cases (as measured by NERA-defined Investor Losses). Cases of moderate size not only made up the bulk of settlements in 2018 but also had a median ratio of settlement to Investor Losses more than 50% higher than in past years. Moreover, unlike 2017, there were generally few very small settlements.

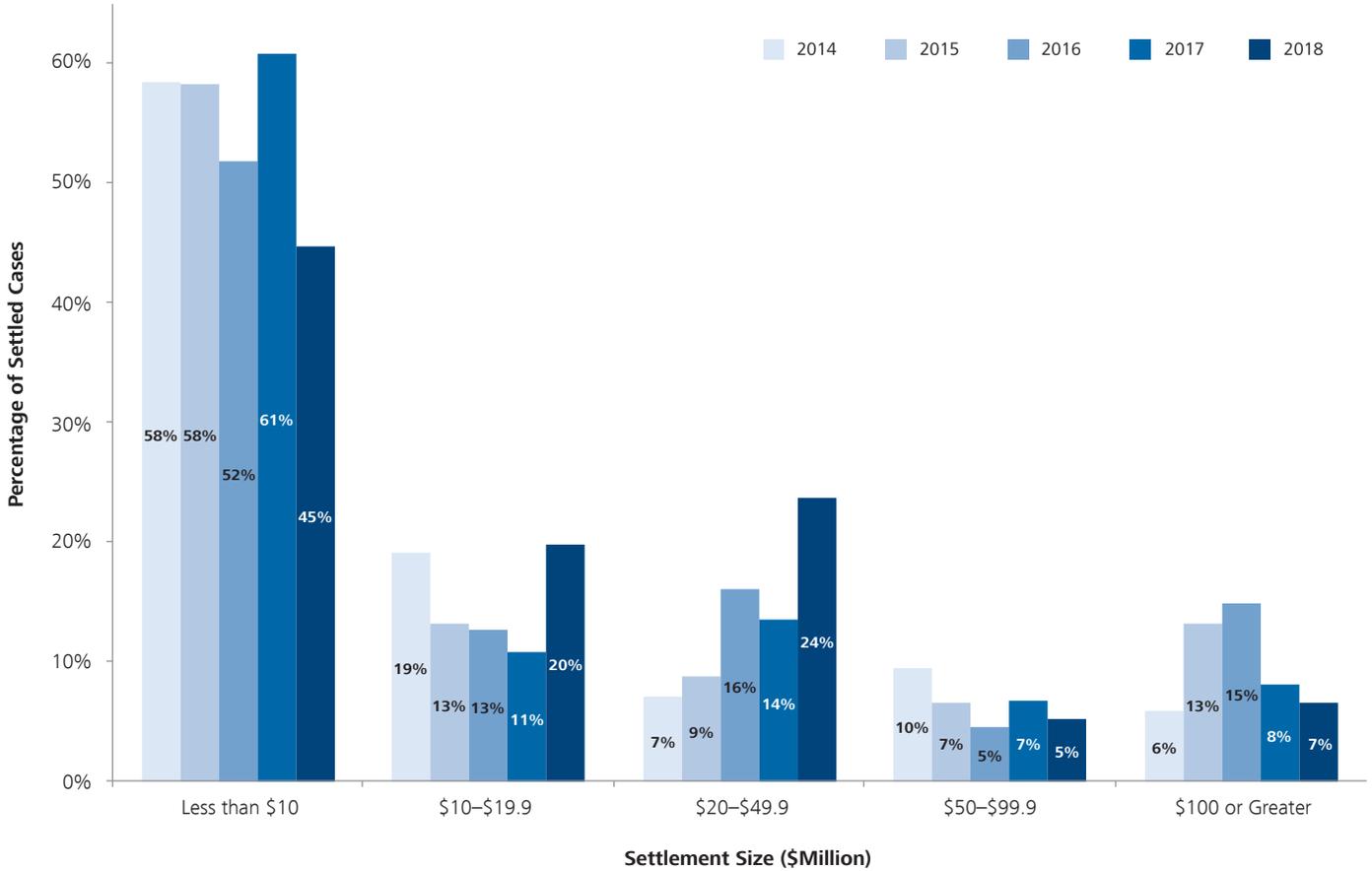
Figure 24. **Median Settlement Value**  
 Excludes Settlements over \$1 Billion, Merger Objections, and Settlements for \$0 to the Class  
 January 2009–December 2018



**Distribution of Settlement Amounts**

The relatively high settlements of moderately sized cases in 2018 are also captured in the distribution of settlement values (see Figure 25). In 2018, fewer than 45% of settlements were for less than \$10 million (the lowest rate since 2010), which stands in stark contrast with 2017, when more than 60% of settlements were in the smallest strata (the highest rate since 2011).

Figure 25. **Distribution of Settlement Values**  
 Excludes Merger Objections and Settlements for \$0 to the Class  
 January 2014–December 2018



### The 10 Largest Settlements of Securities Class Actions of 2018

The 10 largest securities class action settlements of 2018 are shown in Table 1. The two largest settlements, against Petrobras and Wells Fargo & Company, are among many large regulatory cases filed in recent years. Three of the 10 largest settlements involved defendants in the Finance sector. Overall, these 10 cases accounted for about \$4.4 billion in settlement value, a near-record 84% of the \$5.3 billion in aggregate settlements.

Despite the size of the Petrobras settlement, it is not even half the size of the second-largest settlement since passage of the PSLRA, WorldCom, Inc., at \$6.2 billion (see Table 2).

Table 1. **Top 10 2018 Securities Class Action Settlements**

Ranking	Case Name	Total Settlement Value (\$Million)	Plaintiffs' Attorneys' Fees and Expenses Value (\$Million)
1	Petróleo Brasileiro S.A.—Petrobras (2014)	\$3,000.0	\$205.0
2	Wells Fargo & Company (2016)	\$480.0	\$96.4
3	Allergan, Inc.	\$290.0	\$71.0
4	Wilmington Trust Corporation	\$210.0	\$66.3
5	LendingClub Corporation	\$125.0	\$16.8
6	Yahoo! Inc. (2017)	\$80.0	\$14.8
7	SunEdison, Inc.	\$73.9	\$19.0
8	Marvell Technology Group Ltd. (2015)	\$72.5	\$14.1
9	3D Systems Corporation	\$50.0	\$15.5
10	Medtronic, Inc. (2013)	\$43.0	\$8.6
	<b>Total</b>	<b>\$4,424.4</b>	<b>\$527.4</b>

Table 2. **Top 10 Securities Class Action Settlements**  
As of 31 December 2018

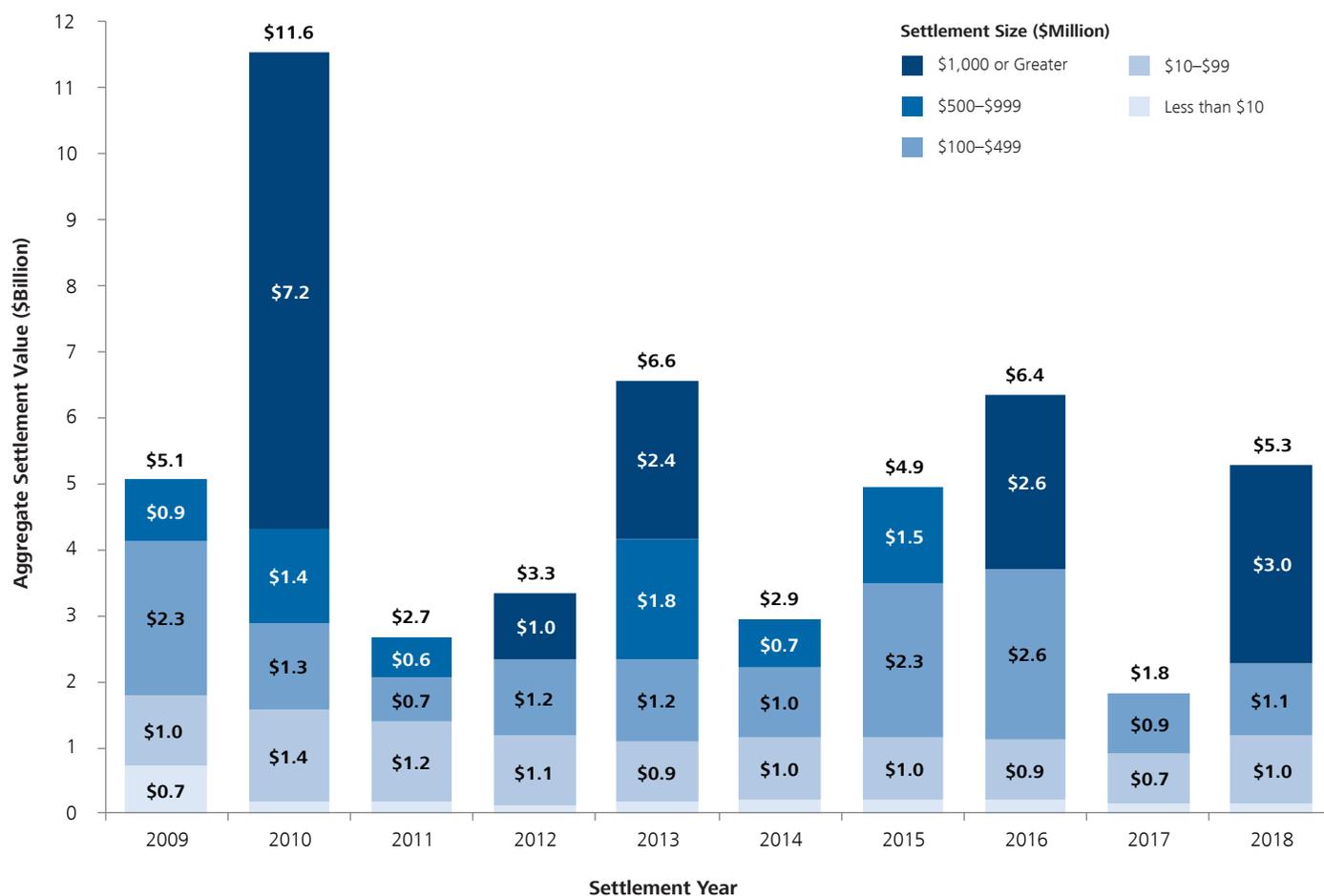
Ranking	Defendant	Settlement Year(s)	Total Settlement Value (\$Million)	Codefendant Settlements		
				Financial Institutions Value (\$Million)	Accounting Firms Value (\$Million)	Plaintiffs' Attorneys' Fees and Expenses Value (\$Million)
1	ENRON Corp.	2003–2010	\$7,242	\$6,903	\$73	\$798
2	WorldCom, Inc.	2004–2005	\$6,196	\$6,004	\$103	\$530
3	Cendant Corp.	2000	\$3,692	\$342	\$467	\$324
4	Tyco International, Ltd.	2007	\$3,200	No codefendant	\$225	\$493
5	Petróleo Brasileiro S.A.—Petrobras	2018	\$3,000	\$0	\$50	\$205
6	AOL Time Warner Inc.	2006	\$2,650	No codefendant	\$100	\$151
7	Bank of America Corp.	2013	\$2,425	No codefendant	No codefendant	\$177
8	Household International, Inc.	2006–2016	\$1,577	Dismissed	Dismissed	\$427
9	Nortel Networks (I)	2006	\$1,143	No codefendant	\$0	\$94
10	Royal Ahold, NV	2006	\$1,100	\$0	\$0	\$170
	<b>Total</b>		<b>\$32,224</b>	<b>\$13,249</b>	<b>\$1,017</b>	<b>\$3,368</b>

### Aggregate Settlements

We use the term “aggregate settlements” to denote the total amount of money to be paid to settle litigation by (non-dismissed) defendants based on the court-approved settlements during a year.

Aggregate settlements rebounded to nearly \$5.3 billion in 2018, more than double the 2017 total (see Figure 26). More than 80% of the growth stems from the \$3.0 billion Petrobras settlement. Excluding Petrobras and Wells Fargo, aggregate settlements are near the 2017 record low, reflecting a persistent slowdown in overall settlement activity.

Figure 26. **Aggregate Settlement Value by Settlement Size**  
January 2009–December 2018



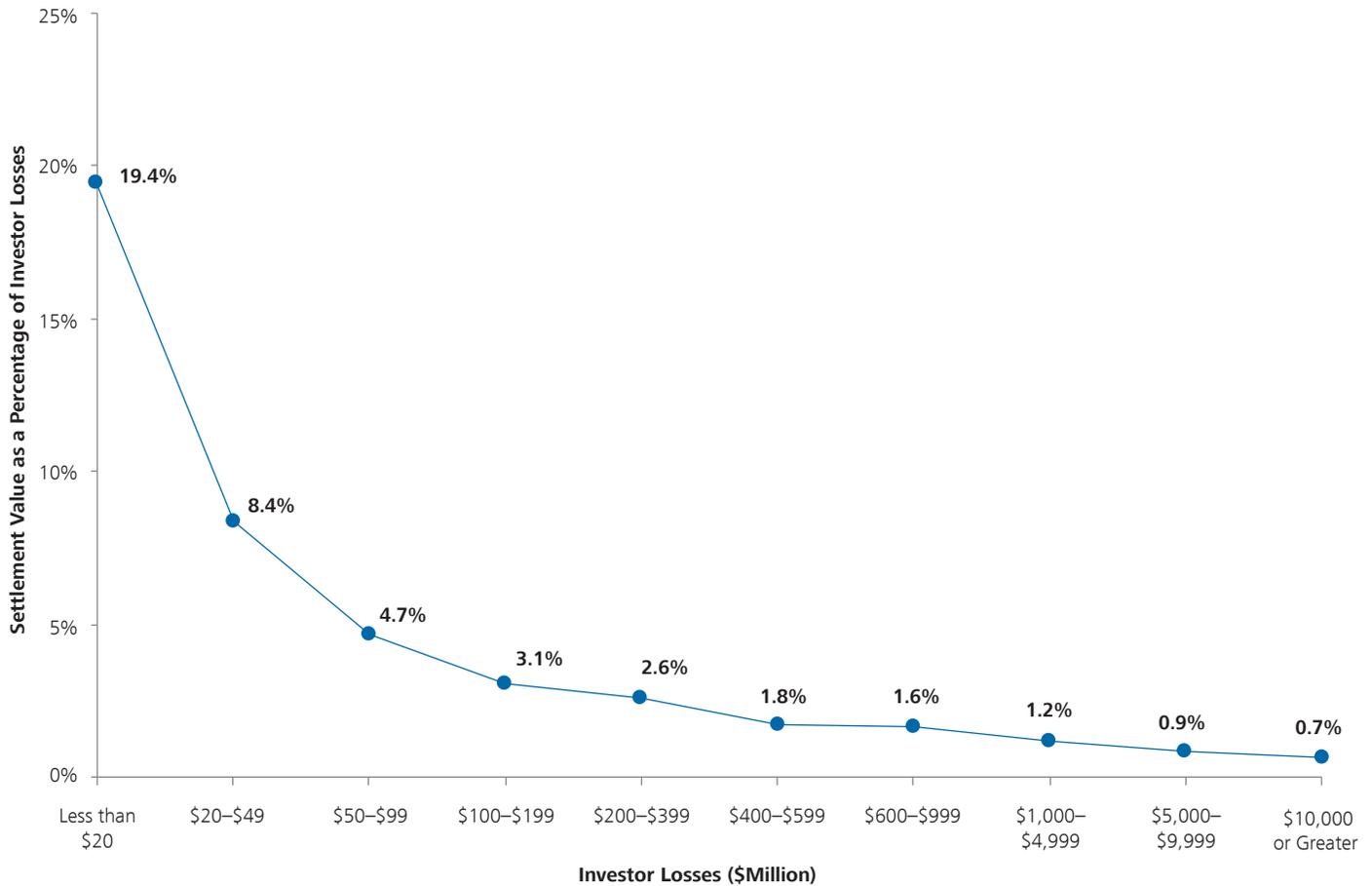
### NERA-Defined Investor Losses vs. Settlements

As noted above, our proxy for case size, NERA-defined Investor Losses, is a measure of the aggregate amount investors lost from buying the defendant's stock rather than investing in the broader market during the alleged class period.

In general, settlement size grows as NERA-defined Investor Losses grow, but the relationship is not linear. Based on our analysis of data from 1996 to 2018, settlement size grows less than proportionately with Investor Losses. In particular, small cases typically settle for a higher fraction of Investor Losses (i.e., more cents on the dollar) than larger cases. For example, the ratio of settlement to Investor Loss for the median case was 19.4% for cases with Investor Losses of less than \$20 million, while it was 0.7% for cases with Investor Losses over \$10 billion (see Figure 27).

Our findings about the ratio of settlement amount to NERA-defined Investor Losses should not be interpreted as the share of damages recovered in settlement, but rather as the recovery compared to a rough measure of the "size" of the case. Notably, the percentages given here apply *only* to NERA-defined Investor Losses. Using a different definition of investor losses would result in a different ratio. Also, the use of the ratio alone to forecast the likely settlement amount would be inferior to a proper all-encompassing analysis of the various characteristics shown to impact settlement amounts, as discussed in the section *Explaining Settlement Values*.

Figure 27. **Median of Settlement Value as a Percentage of NERA-Defined Investor Losses by Level of Investor Losses**  
 Excludes Settlements for \$0 to the Class  
 January 1996–December 2018

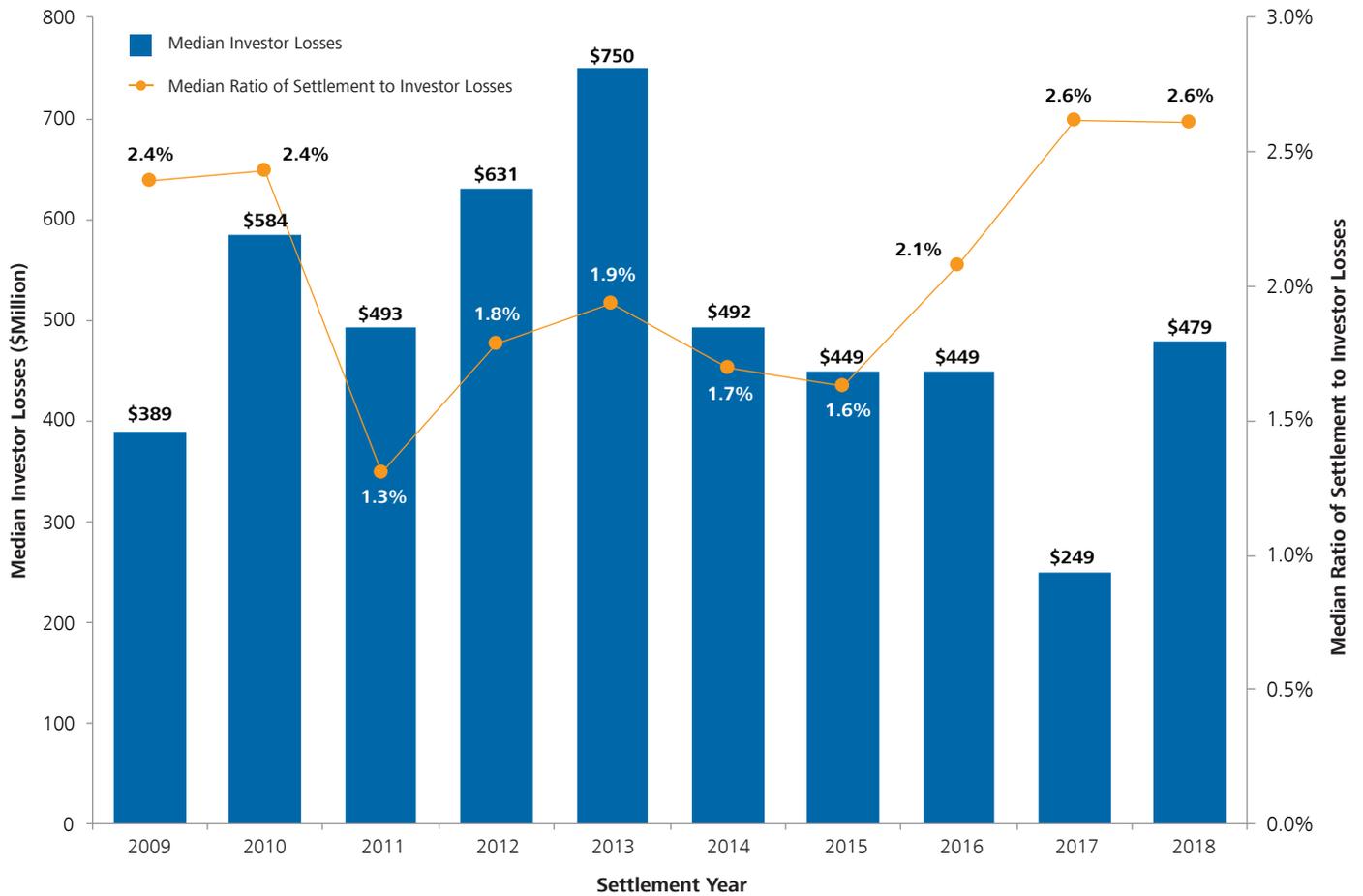


### Median NERA-Defined Investor Losses over Time

Prior to 2014, median NERA-defined Investor Losses for settled cases had been on an upward trajectory since the passage of the PSLRA. As described above, the median ratio of settlement size to Investor Losses generally decreases as Investor Losses increase. Over time, the increase in median Investor Losses coincided with a decreasing trend in the median ratio of settlement to Investor Losses. Of course, there are also year-to-year fluctuations.

As shown in Figure 28, the median ratio of settlements to NERA-defined Investor Losses was 2.6% in 2018. This was the third consecutive year of at least a short-term reversal of a long-term downtrend of the ratio between passage of the PSLRA and 2015.

Figure 28. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**  
January 2009–December 2018



### Explaining Settlement Amounts

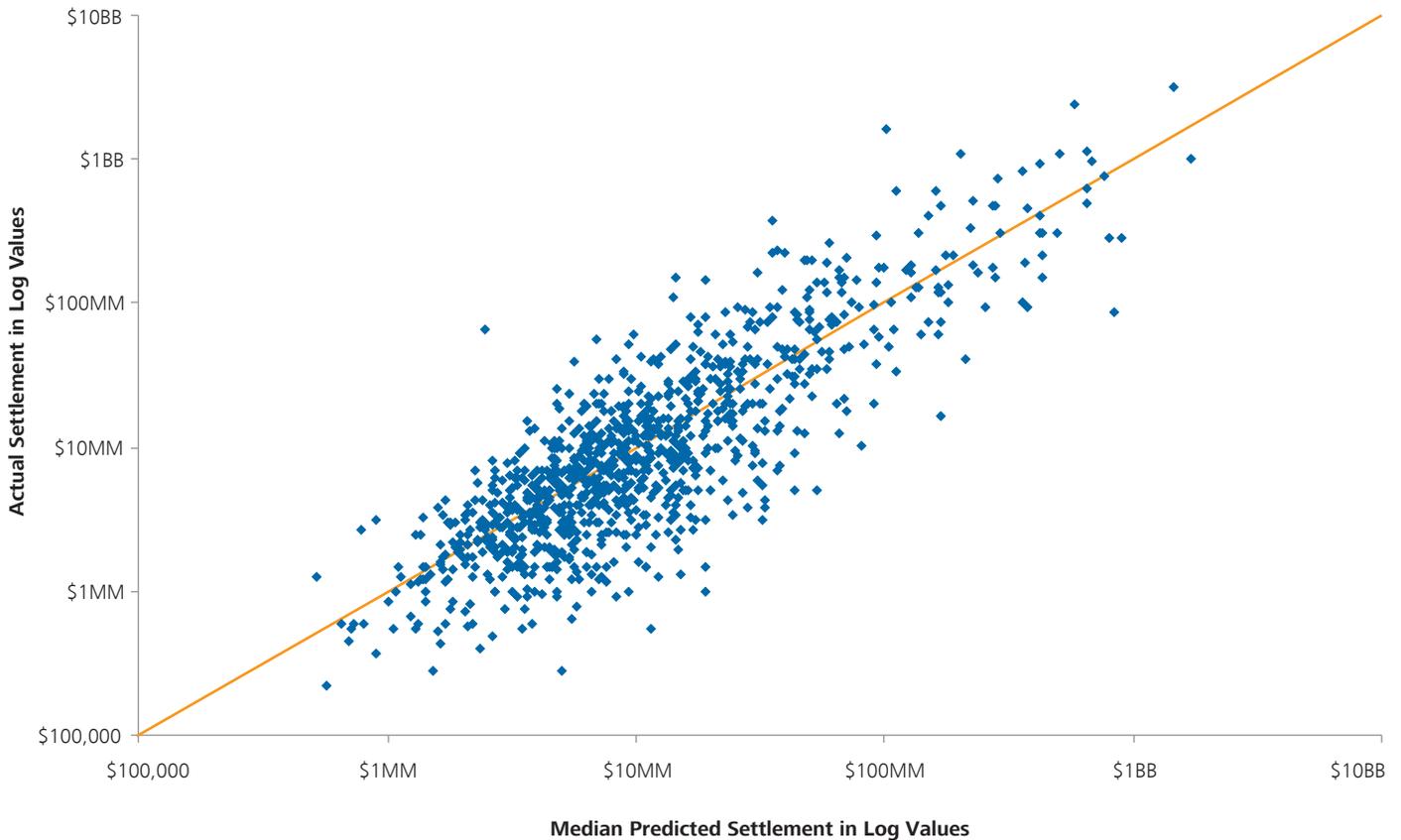
The historical relationship between case attributes and other case- and industry-specific factors can be used to measure the factors correlated with settlement amounts. NERA has examined settlements in more than 1,000 securities class actions and identified key drivers of settlement amounts, many of which have been summarized in this report.

Generally, we find that the following factors have historically been significantly correlated with settlements:

- NERA-defined Investor Losses (a proxy for the size of the case);
- The market capitalization of the issuer;
- Types of securities alleged to have been affected by the fraud;
- Variables that serve as a proxy for the “merit” of plaintiffs’ allegations (such as whether the company has already been sanctioned by a governmental or regulatory agency or paid a fine in connection with the allegations);
- Admitted accounting irregularities or restated financial statements;
- The existence of a parallel derivative litigation; and
- An institution or public pension fund as lead plaintiff.

Together, these characteristics and others explain most of the variation in settlement amounts, as illustrated in Figure 29.<sup>28</sup>

Figure 29. **Predicted vs. Actual Settlements**

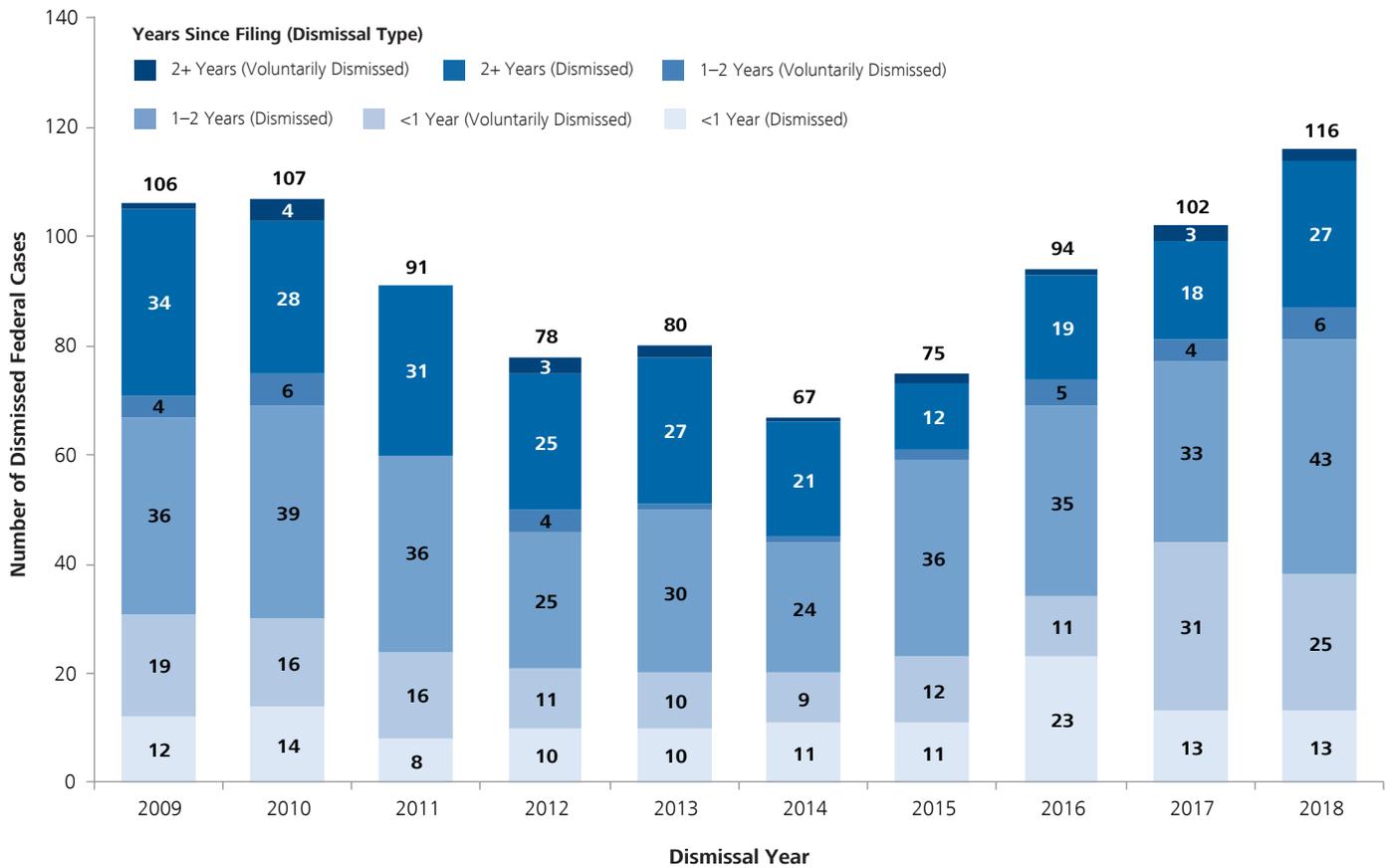


## Trends in Dismissals

The elevated rate of case dismissal persisted in 2018 (excluding merger objections), with more than 100 dismissals for the second consecutive year (see Figure 30). This partially stems from more cases being filed over the past couple of years, as 75% of dismissals are of cases less than two years old. Additionally, there were 25 voluntary dismissals within a year of filing, an elevated rate for the second year in a row.

Figure 30. **Number of Dismissed Cases by Case Age**

Excludes Merger Objections  
January 2009–December 2018



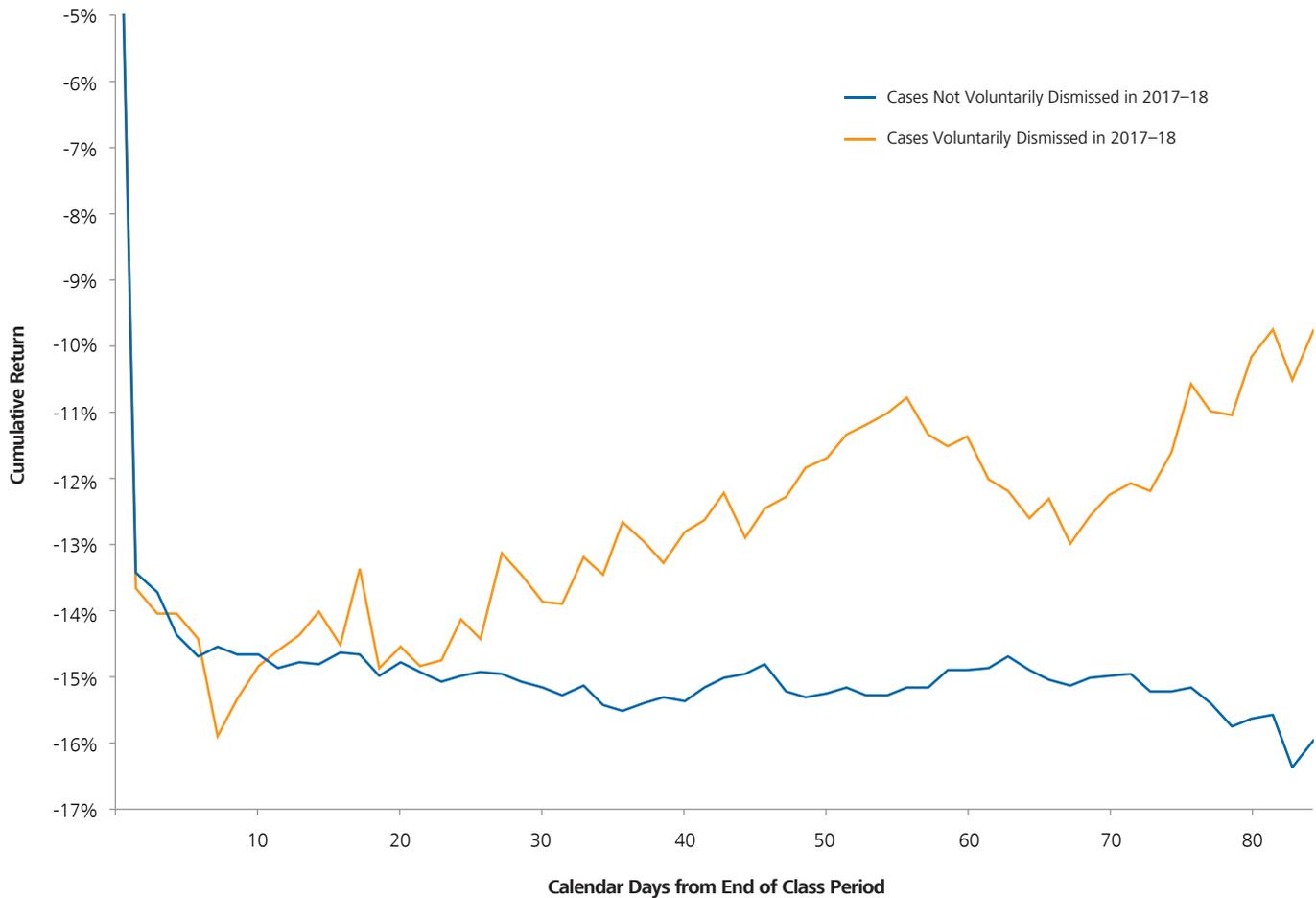
In 2018, about 12% of Standard cases were filed and resolved within the same calendar year, the second-highest rate in at least a decade (after 2017). By the end of the year, 8% of cases were voluntarily dismissed (down from 11% in 2017, but double the 2012–2016 average). Plaintiffs' voluntary dismissal of a case may be a result of perceived case weakness or changes in financial incentives. Recent research also documented forum selection by plaintiffs as a driver of voluntary dismissal without prejudice.<sup>29</sup>

The incentive for plaintiffs (and/or their counsel) to proceed with litigation may change with estimated damages to the class and expected recoveries since filing. For instance, the PSLRA 90-day bounce-back provision caps the award of damages to plaintiffs by the difference between the purchase price of a security and the mean trading price of the security during the 90-day period beginning on the date of the alleged corrective disclosure.

Since most securities class actions are filed well before the end of the bounce-back period (see Figure 14 for time-to-file metrics), plaintiffs may be more likely to voluntarily dismiss litigation if the price of the security at issue subsequently increases. As shown in Figure 31, in 2017 and 2018, the 90-day return of securities underlying cases voluntarily dismissed was about seven percentage points greater, on average, than securities underlying cases not voluntarily dismissed.<sup>30</sup>

The rate of voluntary dismissals was not particularly concentrated in terms of jurisdiction or the specific allegations we track.

Figure 31. **Average PSLRA Bounce-Back Period Returns of Voluntary Dismissals**  
 Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, or Section 12  
 January 2017–December 2018



Note: To control for the impact of outliers on the average of each group, for each day the most extreme 5% of cumulative returns are dropped. Observations on the three final trading days of the bounce-back period for each category are dropped due to incomplete return data.

## Trends in Attorneys’ Fees

### Plaintiffs’ Attorneys’ Fees and Expenses

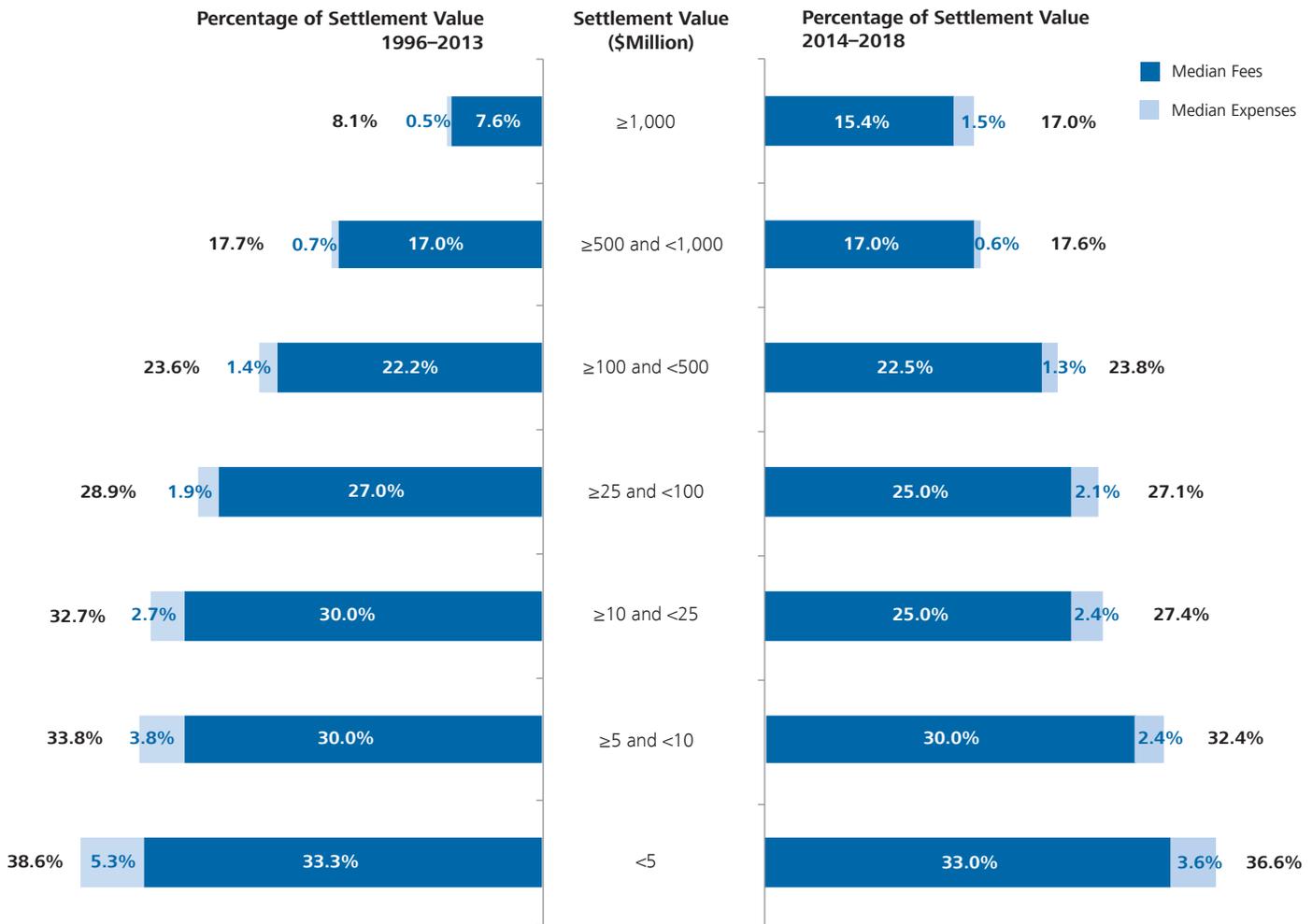
Usually, plaintiffs’ attorneys’ remuneration is determined as a fraction of any settlement amount in the form of fees, plus expenses. Figure 32 depicts plaintiffs’ attorneys’ fees and expenses as a proportion of settlement values over ranges of settlement amounts. The data shown in this figure excludes settlements for merger-objection cases and cases with no cash payment to the class.

A strong pattern is evident in Figure 32; typically, fees grow with settlement size, but less than proportionally (i.e., the fee percentage shrinks as the settlement size grows).

To illustrate that the fee percentage typically shrinks as settlement size grows, we grouped settlements by settlement value and reported the median fee percentage for each group. While fees are stable at around 30% of settlement values for settlements below \$10 million, this percentage declines as settlement size increases.

We also observe that fee percentages have been decreasing over time, except for fees awarded on very large settlements. For settlements above \$1 billion, fee rates have increased.

Figure 32. **Median of Plaintiffs' Attorneys' Fees and Expenses by Size of Settlement**  
Excludes Merger Objections and Settlements for \$0 to the Class



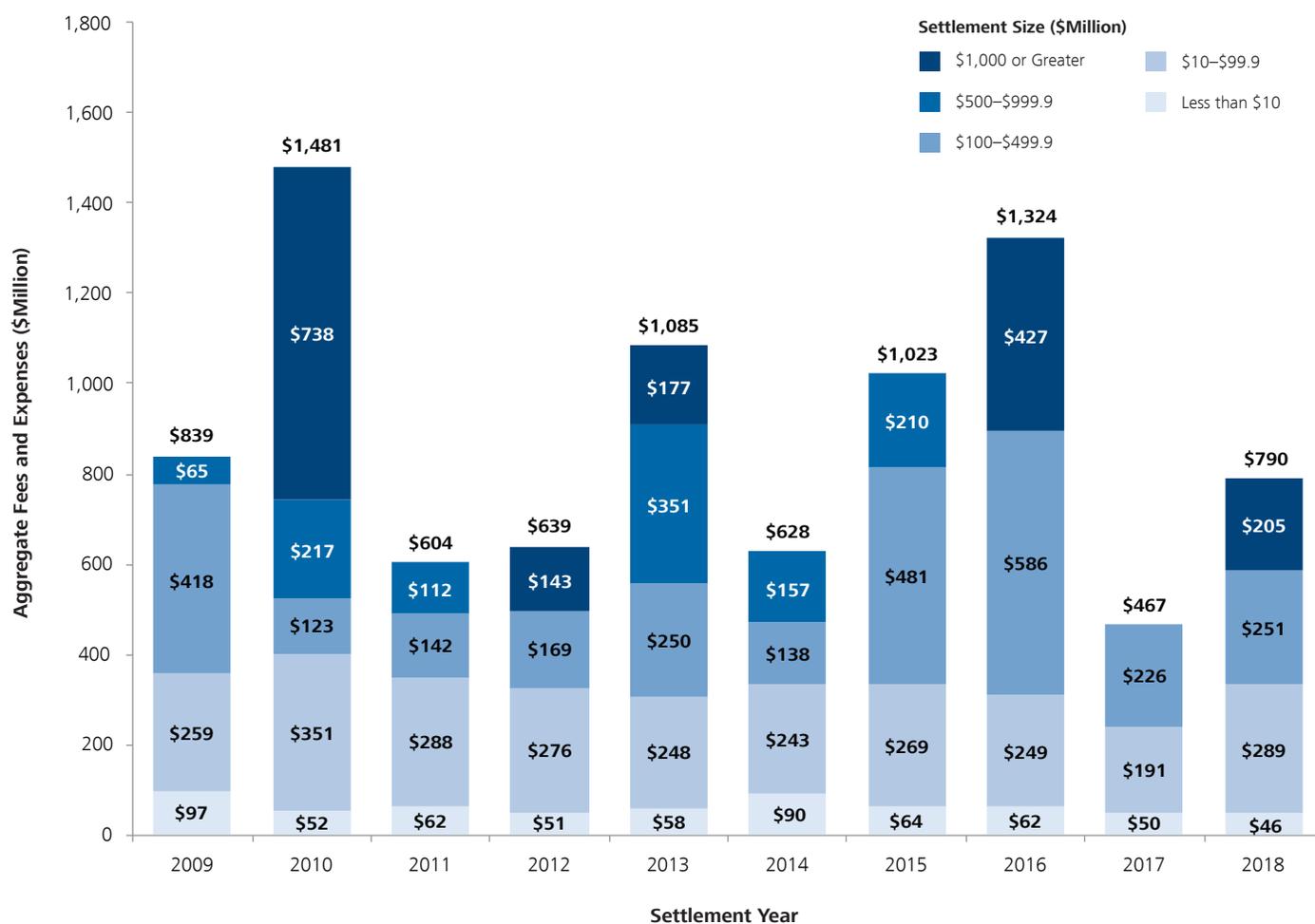
### Aggregate Plaintiffs’ Attorneys’ Fees and Expenses

Aggregate plaintiffs’ attorneys’ fees and expenses are the sum of all fees and expenses received by plaintiffs’ attorneys for all securities class actions that receive judicial approval in a given year.

In 2018, aggregate plaintiffs’ attorneys’ fees and expenses were \$790 million, about 70% higher than in 2017 (see Figure 33). The increase in fees partially reflects the rebound in settlements, but fees grew substantially less than the near-tripling of aggregate settlements. This is partially due to the outsized impact of the \$3 billion Petrobras settlement, one of several mega-settlements that historically generates lower fees as a percentage of settlement value.

Note that Figure 33 differs from the other figures in this section because the aggregate includes fees and expenses that plaintiffs’ attorneys receive for settlements in which no cash payment was made to the class.

Figure 33. **Aggregate Plaintiffs’ Attorneys’ Fees and Expenses by Settlement Size**  
January 2009–December 2018



## Notes

- <sup>1</sup> This edition of NERA's report on recent trends in securities class action litigation expands on previous work by our colleagues Lucy Allen, Dr. Vinita Juneja, Dr. Denise Neumann Martin, Dr. Jordan Milev, Robert Patton, Dr. Stephanie Plancich, and others. The authors also thank Dr. Milev for helpful comments on this edition. These individuals receive credit for improving this paper; all errors and omissions are ours.
- <sup>2</sup> Data for this report are collected from multiple sources, including Institutional Shareholder Services Inc., complaints, case dockets, Dow Jones Factiva, Bloomberg Finance L.P., FactSet Research Systems, Inc., Nasdaq, Inc., Intercontinental Exchange, Inc., US Securities and Exchange Commission (SEC) filings, and public press reports.
- <sup>3</sup> *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).
- <sup>4</sup> Craig Doidge, G. Andrew Karolyi, and René M. Stulz, "The U.S. Listing Gap," National Bureau of Economic Research Working Paper No. 21181, May 2015.
- <sup>5</sup> *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).
- <sup>6</sup> For M&A statistics, see "Mergers & Acquisitions Review: First Nine Months 2018," Thomson Reuters, October 2018, available at [http://dmi.thomsonreuters.com/Content/Files/3Q2018\\_MA\\_Legal\\_Advisor\\_Review.pdf](http://dmi.thomsonreuters.com/Content/Files/3Q2018_MA_Legal_Advisor_Review.pdf).
- <sup>7</sup> *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).
- <sup>8</sup> Matthew D. Cain and Steven D. Solomon, "Takeover Litigation in 2015," Berkeley Center for Law, Business and the Economy, 14 January 2016.
- <sup>9</sup> Warren S. de Wied, "Delaware Forum Selection Bylaws After Trulia," Harvard Law School Forum on Corporate Governance and Financial Regulation, 25 February 2016.
- <sup>10</sup> *In re: Walgreen Co. Stockholder Litigation*, No. 15-3799 (7th Cir. Aug. 10, 2016).
- <sup>11</sup> Federal securities class actions that allege violations of Rule 10b-5, Section 11, and/or Section 12 have historically dominated federal securities class action dockets and often been referred to as "Standard" cases.
- <sup>12</sup> *Cyan, Inc. v. Beaver County Employees Retirement Fund*, Supreme Court No. 15-1439.
- <sup>13</sup> See Restoration Robotics Inc. SEC Form 8-K, filed 17 October 2017, and Snap, Inc. SEC Form S-1, filed 2 February 2017.
- <sup>14</sup> Regulatory cases with parallel accounting, performance, or missed earnings claims are excluded.
- <sup>15</sup> Industries with fewer than 25 firms listed on US exchanges are dropped.
- <sup>16</sup> For M&A statistics, see "Mergers & Acquisitions Review, Full Year 2017," Thomson Reuters, December 2017.
- <sup>17</sup> For M&A statistics, see "Mergers & Acquisitions Review, First Nine Months 2018," Thomson Reuters, October 2018.
- <sup>18</sup> "SAC to pay \$1.8 billion to settle insider trading charges," Chicago Tribune, 4 November 2013, available at <https://www.chicagotribune.com/business/ct-xpm-2013-11-04-chi-sac-to-pay-18-billion-to-settle-insider-trading-charges-20131104-story.html>.
- <sup>19</sup> Filings indicate that most firms in the SP 500 have adopted 10b5-1 plans as of 2014. See "Balancing Act: Trends in 10b5-1 Adoption and Oversight Article," Morgan Stanley, 2019.
- <sup>20</sup> This case was filed after the SEC filed a complaint, more than four years after the end of the proposed class period, which plaintiffs in the class action state first revealed the alleged fraud.
- <sup>21</sup> Outcomes of the motions for summary judgment are available from NERA but are not shown in this report.
- <sup>22</sup> *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).
- <sup>23</sup> Active cases equals the sum of pending cases at the beginning of 2018 plus those filed during the year.
- <sup>24</sup> Nearly 90% of cases filed before 2012 have been resolved, providing evidence of longer-term trends about dismissal and settlement rates. Data since then is inconclusive given pending litigation.
- <sup>25</sup> We only consider pending litigation filed after the PSLRA.
- <sup>26</sup> These metrics exclude merger objections.
- <sup>27</sup> Each of the metrics in the *Time to Resolution* sub-section exclude IPO laddering cases and merger-objection cases because the former usually take much longer to resolve and the latter are usually much shorter to resolve.
- <sup>28</sup> The axes are in logarithmic scale, and the two largest settlements are excluded from this figure.
- <sup>29</sup> Commentary regarding a 2017 ruling in the Southern District of New York indicated that "[p]laintiffs in [*Cheung v. Bristol-Myers Squibb*] had originally filed their lawsuits in a federal district court, but after the federal district court issued a ruling that was unfavorable for the plaintiffs, the plaintiffs voluntarily dismissed their lawsuits without prejudice and then refiled them in Delaware state court." See Colin E. Wrabley and Joshua T. Newborn, "Getting Your Company's Case Removed to Federal Court When Sued in Your 'Home' State," *The Legal Intelligencer*, 19 December 2017. The case referred to is *Cheung v. Bristol-Myers Squibb*, Case No. 17cv6223(DLC), (S.D.N.Y. Oct. 12, 2017).
- <sup>30</sup> To control for the impact of outliers on the average of each group, for each day the most extreme 5% of daily cumulative returns are dropped. Observations on the three final days of the bounce-back period for each category are dropped due to incomplete return data.

## About NERA

NERA Economic Consulting ([www.nera.com](http://www.nera.com)) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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# **Exhibit 8**

## Compendium of Unreported Cases

<i>In re Broadcom Corp. Class Action Litig.</i> No. CV-06-5036, slip op. (C.D. Cal. Dec. 4, 2012) .....	1
<i>In re Gilead Sci. Sec. Litig.</i> No. C-03-4999, slip op. (N.D. Cal. Nov. 5, 2010) .....	2
<i>Hatamian v. Advanced Micro Devices Inc.</i> No. 14-cv-0226, slip op. (N.D. Cal. Mar. 2, 2018) .....	3
<i>In re Hewlett-Packard Co. Sec. Litig.</i> No. SACV 11-1404, slip op. (C.D. Cal. Sept. 15, 2014).....	4
<i>Mulligan v. Impax Labs, Inc.</i> No. 13-cv-01037, slip op. (N.D. Cal. July 23, 2015).....	5
<i>Public Pension Fund Grp. v. KV Pharm. Co.</i> No. 4:08-cv-1859 slip op. (E.D. Mo. Apr. 23, 2014) .....	6
<i>In re Satyam Comput. Servs. Ltd. Sec. Litig.</i> No. 09-MD-2027, slip op. (S.D.N.Y. Sept. 13, 2011) .....	7
<i>Stanley v. Safeskin Corp.</i> No. 99cv454, slip op. (S.D. Cal. Apr. 2, 2003) .....	8
<i>In re Van Der Moolen Holding N.V. Sec. Litig.</i> No.03-cv-8284, slip op. (S.D.N.Y. Dec. 6, 2006) .....	9
<i>In re Vocera Comm'cns Inc.</i> No. 3:13 cv 03567, slip op. (N.D. Cal. July 29, 2016) .....	10

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13 *Class Counsel for Class Representative*  
14 *New Mexico State Investment Council and the Class*

15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**  
17 **WESTERN DIVISION**

18 \_\_\_\_\_ )  
19 In re BROADCOM CORPORATION ) Lead Case No.: CV-06-5036-R (CWx)  
CLASS ACTION LITIGATION )  
20 ) **ORDER AWARDING CLASS**  
21 ) **COUNSEL ATTORNEYS' FEES**  
22 ) **AND REIMBURSEMENT OF**  
23 ) **LITIGATION EXPENSES**  
24 )  
25 ) Date: December 3, 2012  
26 ) Time: 10:00 a.m.  
27 ) Before: The Hon. Manuel L. Real  
28 )



1 obligations of the Stipulation, and pursuant to the timing set forth in ¶12 thereof,  
2 which terms, conditions and obligations are incorporated herein.

3 6. The Court hereby awards Class Representative New Mexico State  
4 Investment Council, as Class Representative, reimbursement of its reasonable lost  
5 wages directly relating to its representation of the Class, pursuant to the Private  
6 Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §78u-4(a)(4).  
7 The Court awards Class Representative the requested amount of \$21,087, which  
8 may be paid upon entry of this Order.

9 **IT IS SO ORDERED.**

10 DATED: Dec. 4, 2012, 2012



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12 \_\_\_\_\_  
13 THE HONORABLE MANUEL L. REAL  
14 UNITED STATES DISTRICT JUDGE  
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**TAB 2**

**CHAMBERS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re GILEAD SCIENCES SECURITIES  
LITIGATION

) Master File No. C-03-4999-SI

) CLASS ACTION

This Document Relates To:

) ~~[PROPOSED]~~ ORDER AWARDING  
) ATTORNEYS' FEES AND EXPENSES

ALL ACTIONS.

) DATE: November 5, 2010  
) TIME: 10:30 a.m.  
) COURTROOM: The Honorable Susan Illston

1 THIS MATTER having come before the Court on November 5, 2010, on the motion of  
2 Plaintiffs' Co-Lead Counsel for an award of attorneys' fees and expenses incurred in the Action; the  
3 Court, having considered all papers filed and proceedings conducted herein, having found the  
4 settlement of this Action to be fair, reasonable, and adequate and otherwise being fully informed in  
5 the premises and good cause appearing therefore;

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

7 1. All of the capitalized terms used herein shall have the same meanings as set forth in  
8 the Stipulation of Settlement dated as of June 28, 2010 (the "Stipulation").

9 2. This Court has jurisdiction over the subject matter of this application and all matters  
10 relating thereto, including all Members of the Class who have not timely and validly requested  
11 exclusion.

12 3. The Court hereby awards Plaintiffs' Co-Lead Counsel attorneys' fees of 30% of the  
13 Settlement Fund and expenses in an aggregate amount of \$282,906.73, together with the interest  
14 earned thereon for the same time period and at the same rate as that earned on the Settlement Fund  
15 until paid. Said fees shall be allocated by Plaintiffs' Co-Lead Counsel in a manner which, in their  
16 good-faith judgment, reflects each counsel's contribution to the institution, prosecution, and  
17 resolution of the Action. The Court finds that the amount of fees awarded is fair and reasonable  
18 under the "percentage-of-recovery" method.

19 4. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid  
20 to Plaintiffs' Co-Lead Counsel from the Settlement Fund immediately after the date this Order is  
21 executed subject to the terms, conditions, and obligations of the Stipulation, which are incorporated  
22 herein.

23 IT IS SO ORDERED.

24  
25 DATED: 11/5/10



26 THE HONORABLE SUSAN ILLSTON  
27 UNITED STATES DISTRICT JUDGE

1 Submitted by:

2 ROBBINS GELLER RUDMAN  
3 & DOWD LLP  
4 JEFFREY D. LIGHT

4

5 s/ Jeffrey D. Light  
6 JEFFREY D. LIGHT

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10 619/231-7423 (fax)

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28 MILBERG LLP  
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36 Co-Lead Counsel for Plaintiffs

37 KAPLAN FOX & KILSHEIMER LLP  
38 LAURENCE D. KING  
39 350 Sansome Street, Suite 400  
40 San Francisco, CA 94104  
41 Telephone: 415/772-4700  
42 415/772-4707 (fax)

43 Liaison Counsel for Plaintiffs

44

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2010, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I further certify that I caused this document to be forwarded to the following Designated Internet Site at: <http://securities.stanford.edu>.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 29, 2010.

s/ JEFFREY D. LIGHT  
JEFFREY D. LIGHT

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& DOWD LLP  
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**TAB 3**

**LIEFF CABRASER HEIMANN & BERNSTEIN, LLP**

Katherine L. Benson (State Bar No. 259826)  
275 Battery Street, 29th Floor  
San Francisco, CA 94111-3339  
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*Liaison Counsel*

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*Co-Lead Counsel for the Class*

**MOTLEY RICE LLC**

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Michael J. Pendell (*pro hac vice*)  
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*Co-Lead Counsel for the Class*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

BABAK HATAMIAN and LUSSA DENNJ  
SALVATORE, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

ADVANCED MICRO DEVICES, INC.,  
RORY P. READ, THOMAS J. SEIFERT,  
RICHARD A. BERGMAN, AND LISA T.  
SU,

Defendants.

Case No. 4:14-cv-00226-YGR

CLASS ACTION

**[PROPOSED] ORDER AWARDING  
ATTORNEYS' FEES, PAYMENT OF  
LITIGATION EXPENSES, AND  
PAYMENT OF CLASS  
REPRESENTATIVES' EXPENSES**



1 circumstances, and constituted due and sufficient notice to all persons and entities entitled  
2 thereto.

3 4. Class Counsel are hereby awarded, on behalf of all plaintiffs' counsel, attorneys'  
4 fees in the amount of \$7,375,000 plus interest at the same rate earned by the Settlement Fund (or  
5 25% of the Settlement Fund, which includes interest earned thereon), and payment of litigation  
6 expenses in the amount of \$2,812,817.52, which sums the Court finds to be fair and reasonable.

7 5. The award of attorneys' fees and litigation expenses may be paid to Class Counsel  
8 from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions,  
9 and obligations of the Stipulation, which terms, conditions, and obligations are incorporated  
10 herein.

11 6. In making this award of attorneys' fees and payment of litigation expenses to be  
12 paid from the Settlement Fund, the Court has analyzed the factors considered within the Ninth  
13 Circuit and found that:

14 (a) The Settlement has created a common fund of \$29.5 million in cash and  
15 that numerous Class Members who submit acceptable Claim Forms will benefit from the  
16 Settlement created by the efforts of plaintiffs' counsel;

17 (b) The requested attorneys' fees and payment of litigation expenses have  
18 been reviewed and approved as fair and reasonable by Class Representatives, sophisticated  
19 institutional investors that were directly involved in the prosecution and resolution of the Action  
20 and who have a substantial interest in ensuring that any fees paid to plaintiffs' counsel are duly  
21 earned and not excessive;

22 (c) Plaintiffs' counsel undertook the Action on a contingent basis, and have  
23 received no compensation during the Action, and any fee and expense award has been contingent  
24 on the result achieved;

25 (d) The Action involves complex factual and legal issues and, in the absence  
26 of settlement, would involve lengthy proceedings whose resolution would be uncertain;

1 (e) Plaintiffs' counsel conducted the Action and achieved the Settlement  
2 with skillful and diligent advocacy;

3 (f) Plaintiffs' counsel have devoted approximately 62,765 hours, with a  
4 lodestar value of \$31,122,958.75 to achieve the Settlement;

5 (g) The amount of attorneys' fees awarded are fair and reasonable and  
6 consistent with fee awards approved in cases within the Ninth Circuit with similar recoveries;

7 (h) Notice was disseminated to putative Class Members stating that Class  
8 Counsel would be submitting an application for attorneys' fees in an amount not to exceed 30%  
9 of the Settlement Fund, which includes interest, and payment of litigation expenses incurred in  
10 connection with the prosecution of this Action in an amount not to exceed \$3,000,000, plus  
11 interest, and that such application also might include a request that Class Representatives be  
12 reimbursed their reasonable costs and expenses (including lost wages) directly related to their  
13 representation of the Class; and

14 (i) There were no objections to the application for attorneys' fees or  
15 expenses.

16 7. In accordance with the PSLRA, the Court hereby awards Class Representative  
17 Arkansas Teacher Retirement System \$8,348.25 for its costs and expenses directly related to its  
18 representation of the Class, and KBC Asset Management NV \$14,875.00 for its costs and  
19 expenses directly related to its representation of the Class.

20 8. Any appeal or challenge affecting this Court's approval of any attorneys' fee,  
21 expense application, or award of costs and expenses to Class Representatives in the Action shall  
22 in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

23 9. Exclusive jurisdiction is retained over the subject matter of this Action and over  
24 all parties to the Action, including the administration and distribution of the Net Settlement Fund  
25 to Class Members.

1           10.     In the event that the Settlement is terminated or does not become Final or the  
2 Effective Date does not occur in accordance with the terms of the Stipulation, this order shall be  
3 rendered null and void to the extent provided by the Stipulation and shall be vacated in  
4 accordance with the Stipulation.

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Dated: March 2, 2018

  
HONORABLE YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT JUDGE

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**TAB 4**

1 ISAACS FRIEDBERG & LABATON LLP  
2 Mark Labaton (Bar No. 159555)  
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Facsimile: (212) 818-0477

11 *Attorneys for Lead Plaintiff Institutional Investor Group*  
12 *and Co-Lead Counsel for the Settlement Class*

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15 SOUTHERN DIVISION

16 IN RE HEWLETT-PACKARD  
17 COMPANY SECURITIES  
18 LITIGATION

) Case No. SACV 11-1404-AG (RNBx)  
)  
) **ORDER AWARDING**  
) **ATTORNEYS' FEES, PAYMENT**  
) **OF LITIGATION EXPENSES,**  
) **AND REIMBURSEMENT OF**  
) **LEAD PLAINTIFFS' EXPENSES**  
) **INCLUDING LOST WAGES**  
)  
)  
) Judge: Hon. Andrew J. Guilford  
) Dept.: Courtroom 10D  
) Hearing Date: September 15, 2014  
) Hearing Time: 10:00 a.m.  
)

1           THIS MATTER having come before the Court on September 15, 2014 for a  
2 hearing to determine, among other things, whether and in what amount to award:  
3 (1) Plaintiffs’ Counsel’s fees and litigation expenses relating to their  
4 representation of the Settlement Class in the above-captioned securities class  
5 action (the “Action”); and (2) Lead Plaintiffs’ costs and expenses (including lost  
6 wages). The Court having considered all matters submitted to it at the hearing and  
7 otherwise; and it appearing that a notice of the hearing, substantially in the form  
8 approved by the Court (the “Notice”), was mailed to all reasonably identified  
9 Persons who purchased the publicly traded common stock of Hewlett-Packard  
10 Company in the open market during the period from November 22, 2010 to  
11 August 18, 2011, inclusive; and that a summary notice of the hearing (the  
12 “Summary Notice”), substantially in the form approved by the Court, was  
13 published in *The Wall Street Journal* and transmitted over *PR Newswire*; and the  
14 Court having considered and determined the fairness and reasonableness of:  
15 (1) the award of attorneys’ fees and litigation expenses requested; and (2) the  
16 costs and expenses (including lost wages) requested by Lead Plaintiffs;

17           NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED  
18 that:

19           1.       The Court has jurisdiction over the subject matter of this Action and  
20 over all parties to the Action, including all Settlement Class Members and the  
21 Claims Administrator.

22           2.       All capitalized terms used in this order have the meanings as set forth  
23 and defined in the Stipulation and Agreement of Settlement (the “Stipulation”),  
24 dated as of March 31, 2014.

25           3.       Settlement Class Members were notified that Plaintiffs’ Counsel  
26 would be applying for an award of attorneys’ fees and litigation expenses and,  
27 further, that such application also might include a request for an award to Lead  
28

1 Plaintiffs for reimbursement of their reasonable costs and expenses, including lost  
 2 wages, in an amount not to exceed \$75,000. The form and method of notifying  
 3 the Settlement Class of the application for attorneys’ fees and expenses met the  
 4 requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, Section  
 5 21(D)(a)(7) of the Securities Act of 1934, 15 U.S.C. §78u-4(a)(7), as amended by  
 6 the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), due process,  
 7 and any other applicable law, constituted the best notice practicable under the  
 8 circumstances, and constituted due and sufficient notice to all persons and entities  
 9 entitled to it.

10 4. Plaintiffs’ Counsel are awarded attorneys’ fees in the amount of  
 11 \$14,250,000, plus interest at the same rate earned by the Settlement Fund (i.e.,  
 12 25% of the Settlement Fund, which includes interest earned thereon), and payment  
 13 of litigation expenses in the amount of \$333,443.39, plus interest at the same rate  
 14 earned by the Settlement Fund, which sums the Court finds to be fair and  
 15 reasonable.

16 5. The award of attorneys’ fees and litigation expenses shall be paid to  
 17 Co-Lead Counsel from the Settlement Fund immediately upon entry of this Order,  
 18 subject to the terms, conditions, and obligations of the Stipulation, which terms,  
 19 conditions, and obligations are incorporated into this order.

20 6. Lead Plaintiffs are awarded costs and expenses (which includes lost  
 21 wages) in the following amounts, which sums the Court finds to be fair and  
 22 reasonable:

<u>LEAD PLAINTIFF</u>	<u>AMOUNT AWARDED</u>
Arkansas Teacher Retirement System	\$5,654.61
Union Asset Management Holding AG	\$4,970.00
Labourers’ Pension Fund of Central and Eastern Canada	\$2,922.24

1           LIUNA National (Industrial) Pension Fund and  
 2           LIUNA Staff & Affiliates Pension Fund           \$6,570.00

3 The foregoing sums shall be paid to the Lead Plaintiffs from the Settlement Fund  
 4 immediately upon entry of this Order, subject to the terms, conditions, and  
 5 obligations of the Stipulation, which terms, conditions, and obligations are  
 6 incorporated into this order.

7           7. In making this award of attorneys’ fees and litigation expenses and  
 8 reimbursement of Lead Plaintiffs’ costs and expenses (including lost wages) to be  
 9 paid from the Settlement Fund, the Court has considered and found that:

10           (a) The Settlement has created a fund of \$57 million in cash and  
 11 that numerous Settlement Class Members who submit acceptable Proofs of Claim  
 12 will benefit from the Settlement created by the efforts of Plaintiffs’ Counsel;

13           (b) The requested attorneys’ fees and payment of litigation  
 14 expenses have been reviewed and approved as fair and reasonable by Lead  
 15 Plaintiffs, sophisticated institutional investors that were directly involved in the  
 16 prosecution and resolution of the Action and who have a substantial interest in  
 17 ensuring that any fees paid to Plaintiffs’ Counsel are duly earned and not  
 18 excessive;

19           (c) Notice was disseminated to putative Settlement Class  
 20 Members stating that Plaintiffs’ Counsel would be submitting an application for  
 21 attorneys’ fees in an amount not to exceed 25% of the Settlement Fund, plus  
 22 interest, and payment of litigation expenses incurred in connection with the  
 23 prosecution of this Action in an amount not to exceed \$525,000, plus interest, and  
 24 that such application also might include a request that Lead Plaintiffs be  
 25 reimbursed their reasonable costs and expenses (including lost wages) directly  
 26 related to their representation of the Settlement Class in an amount not to exceed

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1 \$75,000. No Settlement Class Members have filed an objection to the application  
2 for fees and expenses submitted by Plaintiffs' Counsel;

3 (d) Plaintiffs' Counsel conducted the Action and achieved the  
4 Settlement with skillful and diligent advocacy;

5 (e) The Action involves complex factual and legal issues and, in  
6 the absence of settlement, would involve lengthy proceedings whose resolution  
7 would be uncertain;

8 (f) Plaintiffs' Counsel undertook the Action on a contingent basis  
9 and have devoted more than 13,000 hours, with a lodestar value of \$7,525,051.75  
10 to achieve the Settlement; and

11 (g) The amount of attorneys' fees, litigation expenses, and  
12 reimbursement of Lead Plaintiffs' costs and expenses (including lost wages) paid  
13 from the Settlement Fund is fair and reasonable and consistent with awards in  
14 similar cases.

15 8. Any appeal or challenge affecting this Court's approval of any  
16 attorneys' fee, expense application, or award of costs and expenses (including lost  
17 wages) to Lead Plaintiffs in the Action shall in no way disturb or affect the finality  
18 of the Judgment entered with respect to the Settlement.

19 9. Exclusive jurisdiction is retained over the subject matter of this  
20 Action and over all parties to the Action, including the administration and  
21 distribution of the Net Settlement Fund to Settlement Class Members.

22 10. In the event that the Settlement is terminated or does not become  
23 Final or the Effective Date does not occur in accordance with the terms of the  
24 Stipulation, this order shall be rendered null and void to the extent provided by the  
25 Stipulation and shall be vacated in accordance with the Stipulation.

1 SO ORDERED this 15th day of September, 2014

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ANDREW J. GUILFORD  
UNITED STATES DISTRICT JUDGE

**TAB 5**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DENIS MULLIGAN, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

IMPAX LABORATORIES, INC., LARRY HSU,  
and ARTHUR A. KOCH,

Defendants.

Case No. 3:13-cv-01037-EMC

HAVERHILL RETIREMENT SYSTEM,  
individually and on behalf of all others similarly  
situated,

Plaintiff,

v.

IMPAX LABORATORIES, INC., LARRY HSU,  
and ARTHUR A. KOCH,

Defendants.

Case No. 3:13-cv-01566-EMC

**~~PROPOSED~~ ORDER AND FINAL JUDGMENT**

On the 11th day of June, 2015, a hearing having been held before this Court to determine: (a) whether the above-captioned federal securities class action (the “Action”) satisfies the applicable prerequisites for class action treatment under Rule 23 of the Federal Rules of Civil Procedure; (b) whether the terms of the proposed settlement (“Settlement”) described in the Stipulation of Settlement dated November 25, 2014 (the “Stipulation”), are fair, reasonable and adequate, and should be approved by the Court; (c) whether the proposed allocation of the Settlement Fund (the “Plan of Allocation”) is fair and reasonable and should be approved by the Court; (d) whether the Order and Final

Judgment as provided under the Stipulation should be entered, dismissing the Action on the merits and with prejudice, and to determine whether the release of the Released Claims as against the Released Persons, as set forth in the Stipulation, should be ordered; (e) whether the Fee and Expense Application should be approved; and (f) such other matters as the Court might deem appropriate; and

The Court having considered all matters submitted to it at the hearing held on June 11, 2015 and otherwise; and

It appearing that a Notice of Pendency and Proposed Settlement of Class Action (“Notice”) substantially in the form approved by the Order for Notice and Hearing dated January 16, 2015 was mailed to all persons and entities reasonably identifiable who purchased the common stock that is the subject of the Action, except those persons and entities excluded from the definition of the Class; and

It appearing that a Summary Notice of Pendency and Proposed Settlement of Class Action (“Summary Notice”) substantially in the form approved by the Court in the Order for Notice and Hearing was published pursuant to the specifications of the Court, and that a website was used for further availability of the Notice to the Class;

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

1. The Court has jurisdiction over the subject matter of the Action, Plaintiffs, all Class Members, and Defendants.
2. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings as set forth and defined in the Stipulation.

3. The Court finds that the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Lead Plaintiff are typical of the claims of the Class it seeks to represent; (d) Lead Plaintiff fairly and adequately represents the interests of the Class; (e) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. The Court hereby finds that the Notice distributed to the Class provided the best notice practicable under the circumstances. The Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation of the Settlement Fund, to all persons and entities entitled to such notice, and the Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and any other applicable law. A full opportunity has been offered to the Class Members to object to the proposed Settlement and to participate in the hearing thereon. Thus, it is hereby determined that all Class Members who did not timely elect to exclude themselves by written communication are bound by this Order and Final Judgment.

5. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and for purposes of the Settlement only, the Court hereby certifies the Action as a class action on behalf of all persons or entities who purchased Impax's common stock on the NASDAQ during the period between June 6, 2011 and March 4, 2013, inclusive and

were purportedly injured by virtue of the misconduct alleged in the Complaint. Excluded from the Class are Defendants; any officers or directors of Impax during or after the Class Period; any corporation, trust, or other entity in which Defendants have a controlling interest; and the members of the immediate family of Defendants Hsu and Koch or their successors, heirs, assigns, and legal representatives. Also excluded from the Class are any putative Class Members who have excluded themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice; these persons and entities are listed on Exhibit A attached hereto.

6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of the Settlement only, Lead Plaintiff is certified as the class representative and Lead Plaintiff's selection of Cohen Milstein Sellers & Toll PLLC as counsel for the Class is approved.

7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Settlement is approved as fair, reasonable, and adequate, and in the best interests of the Class. Lead Plaintiff and Defendants are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

8. The Action is hereby dismissed with prejudice and without costs.

9. Upon the Effective Date of this Settlement, Lead Plaintiff and members of the Class on behalf of themselves and each of their past and present subsidiaries, affiliates, parents, assigns, employees, successors and predecessors, estates, heirs, executors, issue, administrators, and their respective officers, directors, shareholders, general or limited partners, managers, members, agents, attorneys and legal representatives, spouses, representatives, and any persons they represent, shall and do,

with respect to each and every Released Claim, release and forever discharge, and shall forever be enjoined from instituting, commencing, or prosecuting, any Released Claims against any of the Released Persons; and

(a) “Released Claims” shall mean any and all claims, suits, actions, appeals, causes of action, damages (including, without limitation, compensatory, punitive, exemplary, rescissory, direct, consequential or special damages, and restitution and disgorgement), demands, rights, debts, penalties, costs, expenses, fees, injunctive relief, attorneys’ fees, expert or consulting fees, prejudgment interest, indemnities, duties, liability, losses, or obligations of every nature and description whatsoever, known or unknown, whether or not concealed or hidden, fixed or contingent, direct or indirect, anticipated or unanticipated, asserted or that could have been asserted by Lead Plaintiff or any Class Member, whether legal, contractual, rescissory, statutory, or equitable in nature, whether arising under federal, state, common, or foreign law, that are based upon, arise from, are in connection with, or relate to (a) the purchase, acquisition, sale, or holding of Impax securities for the time period between June 6, 2011 and March 4, 2013, inclusive; (b) the subject matter of the *Mulligan* action for the time period between June 6, 2011 and March 4, 2013, inclusive; or (c) the facts alleged or that could have been alleged in the *Mulligan* action for the time period between June 6, 2011 and March 4, 2013, inclusive. “Released Claims” does not include the claims that are the subject of those currently pled in *Aruliah v. Impax Laboratories, Inc.*, No. 14-cv-03673-JD (N.D. Cal.), which are separate and apart from the claims subject to the Stipulation and Settlement.

(b) “Released Persons” means Defendants, their Related Parties, and their

insurers, insurers' affiliates, and reinsurers and their related parties. "Related Parties" means each of Defendants' past or present agents, employees, officers, directors, managers, attorneys and legal representatives, spouses and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest and successors-in-interest or assigns of Defendants.

10. Upon the Effective Date of this Settlement, Defendants and their Related Parties, on behalf of themselves and each of their past or present subsidiaries, affiliates, parents, assigns, successors and predecessors, estates, heirs, executors, administrators, and the respective officers, directors, shareholders, agents, legal representatives, spouses and any persons they represent, shall, with respect to each and every one of Settled Defendants' Claims, release and forever discharge each and every one of the Settled Defendants' Claims, and shall forever be enjoined from instituting, commencing, or prosecuting the Settled Defendants' Claims.

11. The Court finds that all Parties to the Action and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

12. The Stipulation and all negotiations, statements, and proceedings in connection with the Settlement shall not, in any event, be construed or deemed to be evidence of an admission or concession on the part of Lead Plaintiff, the Defendants, any member of the Class, or any other person or entity, of any liability or wrongdoing by them, or any of them, and shall not be offered or received in evidence in any action or proceeding (except an action to enforce the Stipulation and the Settlement contemplated hereby), or be used in any way as an admission, concession, or evidence of any liability

or wrongdoing of any nature, and shall not be construed as, or deemed to be evidence of, an admission or concession that Lead Plaintiff, any member of the Class, any present or former stockholder of Impax, or any other person or entity, has or has not suffered any damage, except that the Released Persons may file the Stipulation and/or this Order and Final Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. The Plan of Allocation is approved as fair and reasonable, and Lead Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.

14. Lead Counsel, on behalf of itself and Plaintiff's Counsel, are awarded attorneys' fees of twenty-nine percent (29%) of the Settlement Amount, plus interest at the same rate as earned by the Settlement Fund, which shall be paid out of the Settlement Fund. This award of attorneys' fees is reasonable, and represents a reasonable percentage of the Settlement Fund, in view of the applicable legal principles and the particular facts and circumstances of this action. The award of attorneys' fees shall be allocated among Plaintiff's Counsel in a manner which, in the opinion and sole discretion of Lead Counsel, fairly compensates Plaintiff's Counsel for their respective contributions to the prosecution of the action.

15. Lead Counsel, on behalf of itself and Plaintiff's counsel, are awarded reimbursement of expenses in the aggregate amount of \$117,986.29, which shall be paid

out of the Settlement Fund. These expenses are fair, reasonable, and were necessarily incurred in connection with the prosecution and settlement of this litigation.

16. The Claims Administrator is awarded \$107,398.29 for fees and expenses accrued through June 30, 2015, which shall be paid out of the Settlement Fund.

17. The attorneys' fees and expenses approved by the Court herein shall be payable from the Settlement Fund to Lead Counsel and Plaintiff's Counsel immediately upon entry of this Order, notwithstanding the existence of any potential appeal or collateral attack on this Order.

18. Exclusive jurisdiction is hereby retained over the Parties and the Class Members for all matters relating to the Action, including the administration, interpretation, effectuation, or enforcement of the Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the Class Members.

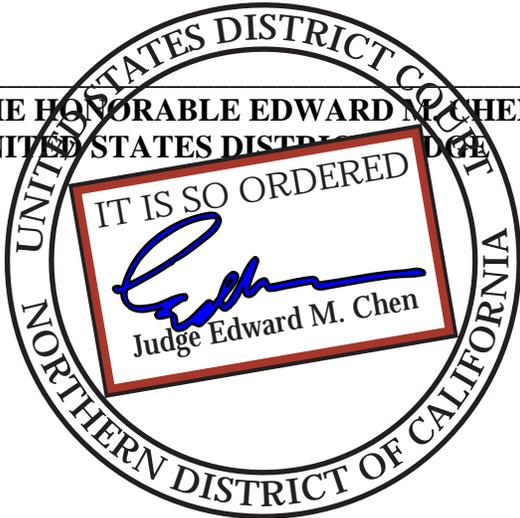
19. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

20. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered, including those certifying a settlement Class, and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

21. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

SIGNED this 23<sup>rd</sup> day of July 2015.

\_\_\_\_\_  
THE HONORABLE EDWARD M. CHEN  
UNITED STATES DISTRICT JUDGE



**EXHIBIT A**

Walter Mirczak

**TAB 6**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

<hr/>		X
<b>PUBLIC PENSION GROUP, et al.,</b>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	
v.	:	<b>Cause No. 4:08-cv-1859 (CEJ)</b>
	:	
<b>KV PHARMACEUTICAL COMPANY, et al.,</b>	:	
	:	
<b>Defendant.</b>	:	
<hr/>		X

**ORDER AWARDING ATTORNEYS' FEES AND EXPENSES**

THIS MATTER having come before the Court on April 23, 2014 for a hearing to determine, among other things, whether and in what amount to award Lead Counsel in the above-captioned securities class action attorneys' fees and litigation expenses. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing, substantially in the form approved by the Court, was mailed to all reasonably identified Class Members; and that a summary notice of the hearing, substantially in the form approved by the Court, was published in *Investor's Business Daily* and transmitted over *PR Newswire*; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested;

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Court has jurisdiction over the subject matter of this Action and over all parties to the Action, including all Class Members and the claims administrator, A.B. Data Ltd.
2. All capitalized terms used herein have the meanings as set forth and defined in the Stipulation and Agreement of Settlement, dated as of December 20, 2013 (the "Stipulation").

3. Notice of Lead Counsel's motion for attorneys' fees and payment of expenses was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the motion for attorneys' fees and expenses met the requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Lead Counsel is hereby awarded attorneys' fees in the amount of \$3,840,000 plus interest at the same rate earned by the Settlement Fund (or 30% of the Settlement Fund) and payment of litigation expenses in the amount of \$488,531.75, plus interest, which sums the Court finds to be fair and reasonable.

5. The award of attorneys' fees and expenses may be paid to Lead Counsel from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

6. In making the award to Lead Counsel of attorneys' fees and litigation expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a common fund of \$12.8 million in cash and that numerous Class Members who submit acceptable proofs of claim will benefit from the Settlement created by the efforts of Lead Counsel;

(b) The requested attorneys' fees and payment of litigation expenses have been reviewed and approved as fair and reasonable by Lead Plaintiffs, Norfolk County Retirement System and the State-Boston Retirement System, two sophisticated institutional

investors that have been directly involved in the prosecution and resolution of the Action and have a substantial interest in ensuring that any fees paid to Lead Counsel are duly earned and not excessive;

(c) Notice was disseminated to putative Class Members stating that Lead Counsel would be moving for attorneys' fees in an amount not to exceed 30% of the Settlement Fund, plus interest, and payment of expenses incurred in connection with the prosecution of this Action in an amount not to exceed \$750,000, plus interest, and no Class Member has filed an objection to the fees and expenses requested by Lead Counsel;

(d) The Action presented substantial risks and uncertainties and would involve lengthy proceedings whose resolution would be uncertain, especially in light of the Company's bankruptcy;

(e) The Action involved complex factual and legal issues, including technical and scientific subject matter;

(f) Lead Counsel is an experienced law firm in the area of securities class action and conducted the litigation and achieved the Settlement with skillful and diligent advocacy;

(g) Lead Counsel has devoted more than 4,200 hours, with a lodestar value of \$2,346,367.25 to achieve the Settlement;

(h) The amount of attorneys' fees awarded and litigation expenses paid from the Settlement Fund are fair and reasonable and consistent with awards in similar cases; and

(i) Public policy favors granting Lead Counsel's fee and expense request.

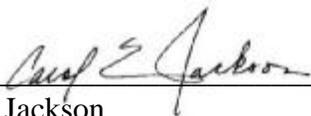
7. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fee and expense application shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

8. Exclusive jurisdiction is hereby retained over the subject matter of this Action and over all parties to the Action, including the administration and distribution of the Net Settlement Fund to Class Members.

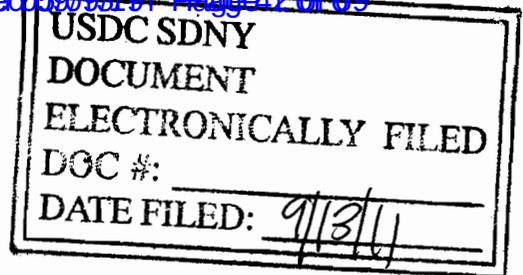
9. In the event that the Settlement is terminated or does not become final or the Effective Date does not occur in accordance with the terms of the Stipulation, this order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with the Stipulation.

IT IS SO ORDERED.

Dated: April 23, 2014

  
\_\_\_\_\_  
Carol E. Jackson  
UNITED STATES DISTRICT JUDGE

**TAB 7**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: SATYAM COMPUTER SERVICES LTD.  
SECURITIES LITIGATION

No.: 09-MD-2027-BSJ

**ORDER AWARDING ATTORNEYS' FEES AND EXPENSES**

This matter came on for hearing on September 8, 2011 (the "Settlement Hearing") on the motion of Lead Counsel to determine, among other things, whether and in what amount to award Lead Counsel in the above-captioned consolidated securities class action (the "Action") fees and reimbursement of expenses.

The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notices of the Settlement Hearing substantially in the form approved by the Court were mailed to all Class Members who or which could be identified with reasonable effort, except those persons or entities excluded from the definition of the Class, and that summary notices of the hearing substantially in the form approved by the Court were published in *The Wall Street Journal*, *Investor's Business Daily* and *The Financial Times* and transmitted over *Business Wire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order Awarding Attorneys' Fees and Expenses incorporates by reference the definitions in the Stipulations and Agreements of Settlement (the "Settlement Stipulations") and all

terms used herein shall, with respect to the respective Settlement Stipulations, have the same meanings as set forth in the applicable Settlement Stipulations.<sup>1</sup>

2. The Court has jurisdiction to enter this Order Awarding Attorneys' Fees and Expenses, and over the subject matter of the Action and all parties to the Action, including all Class Members.

3. Notice of Lead Counsel's application for attorneys' fees and reimbursement of expenses was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the motion for attorneys' fees and expenses constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the motion and satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4, et seq.) (the "PSLRA"), and all other applicable law and rules.

4. Lead Counsel are hereby awarded attorneys' fees in the amount of 17% of the total Settlement Funds, as well as 17% of any additional Settlement Funds recovered by Satyam from the PwC Entities, net of any taxes withheld from the Initial Escrow Accounts and ultimately paid pursuant to Indian tax law, and \$1,027,076.94 in reimbursement of litigation expenses advanced or incurred by Lead Counsel collectively while prosecuting this Action (which expenses shall be paid from the Settlement Funds) with interest on such fees and expenses at the same rate as earned by the Settlement Funds from the dates the Settlement Funds were funded to the date of payment, which sums the Court finds to be fair and reasonable. The foregoing award of Attorneys' Fees and

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<sup>1</sup> The Settlement Stipulations are: the Stipulation and Agreement of Settlement with Defendant Satyam Computer Services Ltd., dated February 16, 2011 (the "Satyam Stipulation") and the Stipulation and Agreement of Settlement between Lead Plaintiffs and the PwC Entities, dated April 27, 2011 (the "PwC Entities Stipulation") entered into by and among Lead Plaintiffs and the Settling Defendants (together, the "Settlement Stipulations").

Expenses shall be payable immediately in accordance with the terms set forth in ¶¶ 19 and 16, respectively of the Satyam Stipulation and the PwC Entities Stipulation. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a manner which, in the opinion of Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution and settlement of the Action.

5. Also in accordance with the terms set forth in ¶¶ 20 and 17, respectively of the Satyam Stipulation and the PwC Entities Stipulation, Lead Counsel who seek to be paid their share of the attorney fee and expense award prior to the Effective Date shall be jointly and severally obligated to make appropriate refunds or repayments of attorneys' fees and expenses and any interest thereon paid to Lead Counsel to the Settlement Funds or to the Settling Defendants who contributed the Settlement Funds in direct proportion to their contributions to the Settlement Funds, as applicable, plus accrued interest at the same net rate as is earned by the Settlement Funds, if the Settlements are terminated pursuant to the terms of the Stipulations or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or litigation expenses is reduced or reversed by final non-appealable court order.

6. Class Representative the Public Employees' Retirement System of Mississippi is awarded \$14,400 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

7. Class Representative Mineworkers' Pension Scheme is awarded \$98,711 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

8. Class Representative SKAGEN AS is awarded \$59,000 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

9. Class Representative Sampension KP Livsforsikring A/S is awarded \$21,000 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

10. Subclass Representative Brian F. Adams is awarded \$2,000 as reimbursement for his costs and expenses directly relating to his services in representing the Class and Subclass.

11. A litigation fund in the amount of \$1,000,000 from the Satyam Settlement Fund shall be established to fund the continued prosecution of the Action against the Non-Settling Defendants.

12. In making this award of attorneys' fees, and reimbursement of expenses to be paid from the Settlement Funds, the Court has considered and found that:

(a) The Settlements have created a total settlement amount of \$150.5 million in cash that is already on deposit and has been earning interest, and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlements created by the efforts of Lead Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as fair and reasonable by the Court-appointed Lead Plaintiffs, sophisticated institutional investors that were substantially involved in all aspects of the prosecution and resolution of the Action;

(c) To date, over 208,000 copies of the Notices were disseminated to putative Class Members stating that Lead Counsel were moving for attorneys' fees not to exceed 17% of proposed Settlements and reimbursement of expenses incurred in connection with the prosecution of this Action. Only one objection to the terms of the Settlement and the fees and expenses requested by Lead Counsel contained in the Notice was received, although it was untimely and not filed with the Court as required by the Preliminary Approval Orders. The objector has not proven that he is a member of the Class, nor does he have standing; even if he did, his objection has been considered and overruled;

(d) Lead Counsel have conducted the litigation and achieved the Settlements with skill, perseverance and diligent advocacy;

(e) The Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(f) Had the Settlements not been achieved, there would remain a significant risk that Lead Plaintiffs and the other members of the Class may have recovered less or nothing from the Settling Defendants; and

(g) The amount of attorneys' fees awarded and expenses reimbursed from the Settlement Funds are fair and reasonable and consistent with awards in similar cases.

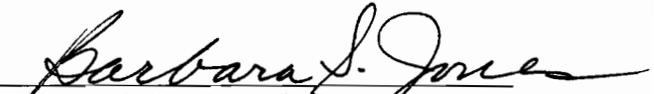
13. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgments entered with respect to the Settlements.

14. Continuing jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Settlement Stipulations and this Order, including any further application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the Class.

15. In the event that any of the Settlements are terminated or do not become Final or the Effective Date does not occur in accordance with the terms of the applicable Settlement Stipulation(s), this Order, except for ¶ 5 above, shall be rendered null and void to the extent provided by the applicable Settlement Stipulation(s) and shall be vacated in accordance with the terms of the applicable Settlement Stipulation(s).

16. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

Dated: New York, New York  
September 13, 2011

  
**Honorable Barbara S. Jones**  
**UNITED STATES DISTRICT JUDGE**

**TAB 8**



TKL 4/3/03 15:08

3:99-CV-00454 STANLEY V. SAFESKIN CORPORATION

\*244\*

\*O.\*

FILED

03 APR -3 PM 12:40

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JASON STANLEY, et al., On Behalf of  
Themselves and All Others Similarly  
Situated,

Plaintiff,

vs.

SAFESKIN CORPORATION, et al.,

Defendant.

CASE NO. 99CV454 BTM (LSP)

ORDER APPROVING SETTLEMENT  
AND AWARD OF ATTORNEYS'  
FEES

On March 20, 2003, the Court held a hearing on Plaintiff's motion for approval of the settlement of this case and awarding attorneys' fees and expenses. For the reasons set forth below, the Court approves the Settlement and Plaintiffs' request for an award of attorneys' fees.

**I. BACKGROUND**

On and after March 12, 1999, eighteen actions were filed in this district as securities class actions on behalf of persons who purchased the publicly traded common stock or options of Safeskin Corporation ("Safeskin" or the "Company"). These actions were subsequently consolidated for all purposes as Stanley v. Safeskin, et al., Lead Case No. 99cv454 BTM (LSP).

The operative complaint in this Litigation is the Consolidated Amended Class Action

1  
244

1 Complaint ("Complaint"). The Complaint alleges violations of §§ 10(b) and 20(a) of the  
2 Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The Litigation  
3 is brought on behalf of a class consisting of all persons who purchased the common stock  
4 or options of Safeskin between February 18, 1998 and March 11, 1999. On September 18,  
5 2000, the Court denied in part Defendants' Motion to Dismiss the Complaint, and on  
6 December 20, 2000, Defendants answered the Complaint. The Class was certified on  
7 August 8, 2001, and notice to Class Members was duly provided. On June 7, 2002,  
8 Defendants filed two motions for partial summary judgment and Defendant Martin filed a  
9 motion for summary judgment.

10 On March 25, 1999, a derivative action purportedly on behalf of Safeskin, Steckel v.  
11 Jaffe, et al., was filed in the Superior Court of California, County of San Diego, Case No.  
12 729294 (the "Derivative Action"). The Derivative Action alleged, among other things, that the  
13 Defendants (former officers and directors of Safeskin) had breached their fiduciary duties  
14 in connection with their management of the Company. The Litigation and the Derivative  
15 Action are hereinafter referred to collectively as the "Actions."

16 The parties in the Derivative Action briefed Defendants' demurrer to the Complaint  
17 in that action and Defendants' subsequent motion for summary judgment. The Honorable  
18 William C. Pate, Judge of the Superior Court, denied Defendants' demurrer on or about  
19 August 9, 1999 and their motion for summary judgment on or about December 15, 2000.

20 Under the auspices of United States Magistrate Judge Leo S. Papas, beginning in  
21 September 2002, the parties negotiated and thereafter memorialized an agreement in  
22 principle to settle the Litigation. Concurrently, the parties reached an agreement in principle  
23 to settle the Derivative Action as well. The parties then further negotiated and drafted the  
24 terms of an Agreement in Principle and a Memorandum of Understanding to memorialize  
25 their agreement to settle the Actions. On January 14, 2003, Magistrate Judge Papas issued  
26 an order preliminarily approving the settlement and approving the form and substance of the  
27 notice to the Class, including the proof of claim and release form. The case is now before  
28 this Court for final approval.

1 **II. THE SETTLEMENT**

2 The proposed settlement creates a fund in the principal amount of \$55,000,000 in  
3 cash and will include interest that accrues on the fund prior to distribution. Based on  
4 Representative Plaintiffs' estimate of the number of shares entitled to participate in the  
5 settlement and the anticipated number of claims to be submitted by Class Members, the  
6 average distribution per share would be approximately \$3.58 before deduction of Court-  
7 approved fees and expenses. Plaintiffs seek attorneys' fees of 26% of the gross settlement  
8 proceeds and reimbursement of expenses not to exceed \$3,500,000 to be paid from the  
9 settlement proceeds. In addition, several of the Representative Plaintiffs seek  
10 reimbursement for their costs and expenses, including lost wages, incurred in prosecuting  
11 the Litigation. This compensation is to be paid from the Settlement Fund. Class members  
12 are not personally liable for any such fees or expenses. To date, Representative Plaintiffs'  
13 Counsel have not received any payment for their services in conducting the Actions on  
14 behalf of Representative Plaintiffs and the Members of the Class, nor have counsel been  
15 reimbursed for their out-of-pocket expenses.

16 Under Rule 23 a "class action shall not be dismissed or compromised without the  
17 approval of the court, and notice of the proposed dismissal or compromise shall be given to  
18 all members of the class in such manner as the court directs." Fed. R. Civ. P. 23(e). Courts  
19 interpret Rule 23 as requiring them to determine whether the proposed settlement is "fair,  
20 adequate, and reasonable." See, Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir.  
21 1998). This determination requires that a court balance a number of factors: "the strength  
22 of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation;  
23 the risk of maintaining a class action status throughout the trial; the amount offered in  
24 settlement; the extent of discovery completed and the stage of the proceedings; the  
25 experience and views of counsel; . . . and the reaction of the class members to the proposed  
26 settlement." Id.

27 The Court finds that all these factors favor the determination that the settlement is  
28 "fair, adequate, and reasonable." First, while Plaintiffs' case was strong enough to survive

1 a motion to dismiss, there was still considerable risk and expense in proceeding to trial. As  
2 previously stated, the parties reached settlement while several motions for summary  
3 judgment were pending. There were still serious questions of law and fact in dispute, for  
4 example Defendants asserted various defenses such as lack of scienter and "truth on the  
5 market" claims. Due to the complexity of Plaintiffs' theories of liability and damages, the risk  
6 that they could fail to convince a jury as to either was substantial. Furthermore, there were  
7 serious questions as to whether Safeskin would have sufficient assets to satisfy a judgment  
8 and whether its parent company would be liable for any deficit. While the case was very  
9 close to trial, there was every indication that proceedings could continue for several more  
10 years. Not only were Defendants likely to appeal an adverse verdict, an initial victory by  
11 Plaintiffs could also spawn a host of other suits and legal actions in order to collect on any  
12 judgment.

13 Second, the settlement obtained for the class is a substantial amount, \$55 million.  
14 Based on each party's assessment of potential judgments, Defendants' potential liability at  
15 the low end ranged from \$1-16 million and at the high end from \$55-100+ million. Therefore,  
16 a settlement of \$55 million represents a reasonable compromise. The value of this  
17 settlement is increased by the fact that it is in cash and has already been fully funded. Both  
18 of these facts make the settlement much more valuable to the class than funds that are  
19 either in non-cash form such as stock or will be paid to the common fund over several years.

20 Third, the settlement was reached after extensive discovery had been completed and  
21 the case was almost ready to proceed to trial. Prior to settlement, the following discovery  
22 had been conducted: (1) document production by Defendants, by Plaintiffs, and pursuant  
23 to third-party subpoenas for a total of over 1 million pages of documents; (2) interrogatories  
24 and answers to interrogatories; and (3) over 75 fact depositions, including Federal Rule of  
25 Civil Procedure 30(b)(6) depositions of Safeskin, depositions of former Safeskin employees,  
26 depositions of each of the named Defendants, and depositions of third parties. Additionally,  
27 the parties conducted extensive expert discovery, including exchanges of reports and  
28 depositions. While there were motions for summary judgment pending, the case was set to

1 go to trial after they were decided. Therefore, the parties were fully aware of the strengths  
2 and weaknesses of their cases and were in a good position to reach an appropriate  
3 settlement based thereon.

4 Fourth, all counsel have a great deal of experience in class action litigation and are  
5 highly regarded in this area of the law. Plaintiffs' counsel also has a strong record of  
6 presenting legitimate settlements to the Court in the past. While both parties expressed  
7 belief that they had a strong case, each acknowledged the substantial risks they would face  
8 should the case be presented to a jury. Furthermore, there was substantial involvement by  
9 Magistrate Judge Papas in the entire settlement process. This also supports the Court's  
10 determination that the settlement was adversarial and at arms-length and that there was no  
11 collusion between the parties.

12 The Court also finds that the involvement of the Chicago Teachers' Fund to be of  
13 particular importance in determining the reasonableness of the settlement. The Fund was  
14 appointed Co-Lead Plaintiff in the Litigation and vigorously participated in all aspects of the  
15 case's prosecution including (1) reviewing expert opinions regarding substantive issues  
16 relating to Class Member status; (2) studying derivative shareholder claims and issues  
17 respecting corporate governance; (3) independently evaluating Plaintiffs' claims and  
18 Defendants' defenses; (4) providing significant input respecting litigation and settlement  
19 strategy; and (5) attending extended mediation sessions in Washington, D.C. and San  
20 Diego, California. Additionally, the Fund's board of trustees met to extensively review,  
21 analyze and evaluate the merits of this action and determine whether the proposed \$55  
22 million settlement should be approved as fair, reasonable and in the best interests of the  
23 Class. The Court finds the Fund's support of the settlement extremely persuasive as to its  
24 reasonableness.

25 Finally, out of the approximately 45,000 notices that were sent to class members  
26 there was not a single opposition to the terms of the settlement. There were also no  
27 objections presented to the Court at the hearing to approve the settlement.

28

1 In conclusion, the Court finds that all these various factors weigh in favor of the  
2 determination that the settlement reached was fair, adequate, and reasonable.

3

4 **III. THE ATTORNEYS' FEE AWARD**

5 As part of the settlement, Plaintiffs are requesting an award of 26% of the gross  
6 settlement fund. In determining the reasonableness of an award of attorneys' fees, the court  
7 "has discretion to use the lodestar method or the percentage of the fund method in common  
8 fund cases." See, In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.,  
9 109 F.3d 602, 607 (9th Cir. 1997). The Ninth Circuit has established 25% of the recovery  
10 as a "benchmark" for attorneys' fees calculations under the percentage of recovery  
11 approach. See, Paul, Johnson, Alston & Hunt v. Grauly, 886 F.2d 268, 272 (9th Cir. 1989).  
12 A court may depart from the benchmark but, "[i]f such an adjustment [to the benchmark] is  
13 warranted, . . . it must be made clear by the district court how it arrives at the figure ultimately  
14 awarded." Id.

15 Plaintiffs argue that the attorneys' fees award should be calculated on a percentage  
16 of the gross recovery rather than a percentage of the recovery minus expenses. Under the  
17 Private Securities Litigation Reform Act of 1995, "[t]otal attorneys's fees and expenses  
18 awarded by the court to counsel for the plaintiff class shall not exceed a reasonable  
19 percentage of the amount of any damages and prejudgment interest actually paid to the  
20 class." 15 U.S.C. § 78u-4(a)(6). While the purpose of this legislation was to prevent fee  
21 awards under the lodestar method from taking up too great a percentage of the recovery,  
22 it did not eliminate the use of this method. See, e.g., H.R. Conf. Rep. No. 104-369 (1995).  
23 As the Court stated at the hearing, the rationale behind the common fund approach to  
24 awarding attorneys' fees is that the purpose of the litigation is to produce a recovery for the  
25 class members, in which the lawyers can share on a percentage basis, not simply to  
26 generate fees for the lawyers, such as where the lawyers take the lion's share of the fund.

27 It is clear that no matter what formula is used, lodestar v. percentage/gross v. net, the  
28 ultimate inquiry is whether the amount awarded in fees is "reasonable." See, e.g.,

1 Washington Public Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1294 n.2 (“Because a  
2 reasonable fee award is the hallmark of common fund cases, and because arbitrary, and  
3 thus unreasonable, fee awards are to be avoided, neither [the lodestar nor the percentage]  
4 method should be applied in a formulaic or mechanical fashion.”); Powers v. Eichen, 229  
5 F.3d 1249, 1258 (9th Cir. 2000) (“If twenty-five percent of gross is reasonable, perhaps thirty-  
6 five percent of net would be reasonable.”).

7 In this case, the Court finds that an award of attorneys’ fees in the amount of 26% of  
8 the gross recovery is reasonable. The increase of 1% above the benchmark is supported  
9 by some of the same reasons why the Court concluded that the settlement was fair: (1) the  
10 case was complex both factually and in regard to the theories of causality, liability, and  
11 damages; (2) Plaintiffs’ attorneys expended considerable time, effort, and expense in  
12 vigorously litigating the case at all stages and almost reached trial; (3) counsel diligently  
13 pursued the Litigation for almost four years, without compensation or reimbursement of the  
14 expenses they advanced in this case, and therefore bore the risk that they might never be  
15 paid; (4) through these efforts Plaintiffs’ attorneys procured an exceptional award for the  
16 class, namely a \$55 million recovery; and (5) there were no objections to the  
17 appropriateness of this fee.

18 The Court also finds that the involvement of the Chicago Teachers’ Fund was of  
19 particular importance in determining the reasonableness of this 1% increase. As an  
20 experienced and sophisticated institutional investor, the Fund had the wherewithal to  
21 evaluate the appropriateness of the fees in this case, a pecuniary interest in the result, and  
22 a fiduciary duty to its investors to ensure that it recovered the maximum amount from the  
23 common fund. After reviewing the request for attorneys’ fees at two separate board  
24 meetings, the Fund voted to award Plaintiffs’ attorneys a 1% increase over the benchmark  
25 as recognition of their superlative performance. The Court finds the Fund’s support of the  
26 1% increase over the benchmark extremely persuasive as to its reasonableness.

27 Therefore, the Court finds that an award of attorneys’ fees in the amount of 26% of  
28 the gross recovery is reasonable under these circumstances.

1 **IV. Expense Request**

2 Plaintiffs also submitted a request for reimbursement of expenses in the amount of  
3 \$3,080,486.64 together with the interest earned thereon. The Court is only prepared to rule  
4 on the reasonableness of two of the categories of items requested at this time. First, the  
5 Court determines that Plaintiffs are entitled to a maximum of ten cents per page for in-house  
6 photocopying. Second, Plaintiffs are not entitled to reimbursement for the costs of  
7 conducting general legal research via electronic means. Attorneys do not charge clients a  
8 pro rata fee for the costs of maintaining a firm's office library. In the present day and age,  
9 electronic research constitutes a substantial substitute for the law library. Law firms can  
10 have trunk rates with electronic research providers. This cost is part of an attorney's  
11 overhead just like a law library. Therefore, no compensation shall be allowed for electronic  
12 legal research. Plaintiffs are entitled, however, to reimbursement of expenses in  
13 electronically gathering facts, as fact-gathering, by whatever means, is not properly part of  
14 traditional overhead costs.

15 The Court holds that counsel are entitled only to reimbursement for actual expenses  
16 they advanced on behalf of the class. Counsel may not obtain payment for services that are  
17 considered overhead such as stenographic, word processing, and clerical services. Nor can  
18 counsel receive payment for items for which they did not actually expend money. For  
19 example, counsel cannot receive compensation for faxes or phone calls unless they  
20 specifically paid providers for these services. The Court has already considered that counsel  
21 have substantial overhead in calculating their fee of 26% of the gross recovery. Payment  
22 of items that are not actual expenses paid for by counsel and are part of an attorney's  
23 overhead costs would be inconsistent with the amount awarded in attorneys' fees.

24 As to the rest of Plaintiffs' request, the majority of these expenses stem from the use  
25 of various expert witnesses. Because Magistrate Judge Papas worked with the parties  
26 throughout the various stages of discovery in the Litigation, he is in a better position to  
27 evaluate the relevance, importance, and thus reasonableness of these various experts and  
28 the work product they produced. Accordingly, the Court refers Plaintiffs' request for

1 reimbursement of expenses to Judge Papas, that is, as to all expenses with the limitations  
2 the Court has already noted, for a report and recommendation as to the reasonableness of  
3 their request and the amount to be awarded.

4  
5 **V. CONCLUSION**

6 For the above mentioned reasons, the Court approves the settlement and GRANTS  
7 in part Plaintiffs' motion for attorneys' fees and expenses [doc. 223-1]. The Court awards  
8 Plaintiffs attorneys' fees in the amount of 26% of the gross recovery before the deduction  
9 of expenses. The Court's decision as to the reasonableness of Plaintiffs' request for  
10 reimbursement of \$3,080,486.64 in expenses will be made after the Court receives Judge  
11 Papas' Report and Recommendation on this issue.

12  
13 **IT IS SO ORDERED.**

14 Dated: April 2, 2003

  
**HONORABLE BARRY TED MOSKOWITZ**  
United States District Judge

15  
16 Copies to:  
17 All Parties and Counsel of Record

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**TAB 9**

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JUDGE ROBERT W. SWEET

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

IN RE VAN DER MOOLEN HOLDING N.V.  
SECURITIES LITIGATION

---

)  
) Civil Action No. 1:03-CV-8284 (RWS)  
)  
)

**[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND  
REIMBURSEMENT OF EXPENSES**

This matter came before the Court for hearing pursuant to an Order of this Court, dated October 6, 2006, on the application of the Parties for approval of the settlement (the "Settlement") set forth in the Stipulation of Settlement, dated as of October 3, 2006 (the "Stipulation"). Due and adequate notice having been given of the Settlement as required in said Order, and the Court having considered all papers filed and proceedings held herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Order incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings set forth in the Stipulation.
2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.
3. The Court finds that Co-Lead Counsels' request for attorneys' fees is fair and reasonable, and that the request is supported by the relevant factors, which have been considered by this Court. The Court finds that the fee request is supported by, *inter alia*, the following:
  - (a) the Settlement provides for an \$8 million cash fund, plus interest, (the "Gross Settlement Fund"); and that Settlement Class Members who file timely and valid claims will benefit from the Settlement created by Co-Lead Counsel;

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JUDGE ROBERT W. SWEET

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(b) the Summary Notice was published over the *Primesone Media Network* newswire; and over 4,800 copies of the Notice were disseminated to putative Settlement Class Members indicating that at the December 6, 2006 hearing, Plaintiffs' Counsel intended to seek up to 33 $\frac{1}{3}$ % of the \$8 million Gross Settlement Fund in attorneys' fees and to seek reimbursement of their expenses in an amount not to exceed \$180,000, plus interest, and no objection was filed against either the terms of the proposed Settlement or the fees and expenses to be requested by Plaintiffs' Counsel;

(c) Plaintiffs' Counsel have devoted 3,965 hours, with a lodestar value of \$1,493,003.66, to achieve the Settlement;

(d) Co-Lead Plaintiffs faced complex factual and legal issues in this Action, which they have actively prosecuted for almost three years, and in the absence of a Settlement, would be required to overcome many complex factual and legal issues;

(e) if Co-Lead Counsel had not achieved the Settlement, there was a risk of either nonpayment or of achieving a smaller recovery;

(f) Co-Lead Counsel have conducted this litigation and achieved the Settlement with skill and efficiency;

(g) the amount of attorneys' fees awarded and expenses reimbursed from the Gross Settlement Fund are consistent with the awards in similar cases; and

(h) public policy considerations support encouraging the legal community to continue to undertake similar litigations.

4. Plaintiffs' Counsel are hereby awarded 33 $\frac{1}{3}$ % of the Gross Settlement Fund as and for their attorneys' fees, which sum the Court finds to be fair and reasonable. Plaintiffs' Counsel are also hereby awarded \$ 125,657.45 reimbursement of their reasonable expenses, incurred in the course of prosecuting this action, from the Gross Settlement Fund, together with interest from the date the Settlement Fund was funded to the date of payment at the same net rate that the

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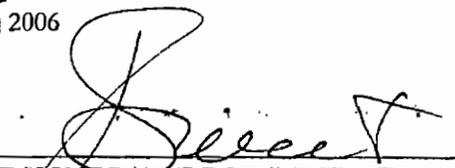
JUDGE ROBERT W. SWEET

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Settlement Fund earns. The above amounts shall be paid to Co-Lead Counsel pursuant to the terms of the Stipulation, from the Gross Settlement Fund. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a fashion which, in the opinion and sole discretion of Co-Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions to the prosecution of the Action.

5. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation or the Settlement Effective Date does not occur, then this Order shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation and the Parties shall be returned to the *status quo ante*.

Dated: New York, New York,  2006

  
THE HONORABLE ROBERT W. SWEET  
UNITED STATES DISTRICT JUDGE

Submitted by:

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*Co-Lead Counsel for Plaintiffs and the Settlement Class*

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JUDGE ROBERT W. SWEET

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**TAB 10**

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 cvillegas@labaton.com

12 *Lead Counsel for Lead Plaintiffs and the Class*

13  
 14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA

16 IN RE VOCERA COMMUNICATIONS, ) MASTER FILE NO. 3:13-cv-03567 EMC  
 17 INC., SECURITIES LITIGATION )  
 ) CLASS ACTION  
 18 This Document Relates to: )  
 ) <sup>g</sup>  
 19 All Actions. ) [PROPOSED] ORDER AWARDING  
 ) ATTORNEYS' FEES, PAYMENT OF  
 ) LITIGATION EXPENSES, AND PAYMENT  
 20 ) OF LEAD PLAINTIFFS' EXPENSES  
 )  
 21 ) Date: June 23, 2016  
 ) Time: 1:30 p.m.  
 22 ) Judge: The Hon. Edward M. Chen  
 ) Dep't: 5, 17th Floor  
 23 )  
 24 )

25 On June 23, 2016, a hearing having been held before this Court to determine, among  
 26 other things, whether and in what amount to award (1) Labaton Sucharow LLP and Robbins  
 27 Geller Rudman & Dowd LLP ("Plaintiffs' Counsel") in the above-captioned consolidated  
 28 securities class action (the "Action") fees and litigation expenses directly relating to their

1 representation of the Settlement Class; and (2) Lead Plaintiffs' their costs and expenses  
2 (including lost wages). The Court having considered all matters submitted to it at the hearing  
3 and otherwise; and it appearing that a notice of the hearing substantially in the form approved by  
4 the Court (the "Notice") was mailed to all reasonably identified persons or entities who  
5 purchased or acquired the publicly traded securities of Vocera Communications, Inc. ("Vocera")  
6 between March 28, 2012 and May 2, 2013, inclusive, and were allegedly damaged thereby; and  
7 that a summary notice of the hearing (the "Summary Notice"), substantially in the form approved  
8 by the Court, was published in *Investor's Business Daily* and transmitted over *PR Newswire*; and  
9 the Court having considered and determined the fairness and reasonableness of the award of  
10 attorneys' fees and expenses requested;

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

12 1. The Court has jurisdiction over the subject matter of this Action and over all  
13 parties to the Action, including all Settlement Class Members, counsel, and the Claims  
14 Administrator.

15 2. All capitalized terms used herein have the meanings set forth and defined in the  
16 Stipulation and Agreement of Settlement, dated as of January 14, 2016 (the "Stipulation").

17 3. Notice of Lead Counsel's application for attorneys' fees and payment of litigation  
18 expenses was given to all Settlement Class Members who could be identified with reasonable  
19 effort. The form and method of notifying the Settlement Class of the application for attorneys'  
20 fees and expenses met the requirements of Rules 23 and 54 of the Federal Rules of Civil  
21 Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7),  
22 as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), due  
23 process, and any other applicable law, constituted the best notice practicable under the  
24 circumstances, and constituted due and sufficient notice to all persons and entities entitled  
25 thereto.

26 4. The Court hereby awards Lead Counsel attorneys' fees in the amount of  
27 \$ 2.25 million, plus interest at the same rate earned by the Settlement Fund, and payment of  
28

1 litigation expenses in the amount of \$ 382,010.86, plus interest at the same rate  
2 earned by the Settlement Fund, which sums the Court finds to be fair and reasonable.

3 5. The award of attorneys' fees and litigation expenses may be paid to Lead Counsel  
4 from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions,  
5 and obligations of the Stipulation, which terms, conditions, and obligations are incorporated  
6 herein.

7 6. In making this award of attorneys' fees and payment of litigation expenses to be  
8 paid from the Settlement Fund, the Court has analyzed the factors considered within the Ninth  
9 Circuit and found that:

10 (a) The Settlement has created a common fund of \$9 million in cash and that  
11 numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the  
12 Settlement created by the efforts of Plaintiffs' Counsel;

13 (b) The requested attorneys' fees and payment of litigation expenses have  
14 been reviewed and approved as fair and reasonable by Lead Plaintiffs, sophisticated institutional  
15 investors that were directly involved in the prosecution and resolution of the Action and who  
16 have a substantial interest in ensuring that any fees paid to Plaintiffs' Counsel are duly earned  
17 and not excessive;

18 (c) Plaintiffs' Counsel undertook the Action on a contingent basis, and have  
19 borne all the ensuing risk, including the risk of no recovery, given, among other things, the risks  
20 of litigation including Defendants' defenses on the falsity of their statements, scienter, loss  
21 causation, and damages.

22 (d) The Action involves complex factual and legal issues and, in the absence  
23 of settlement, would involve lengthy proceedings whose resolution would be uncertain;

24 (e) Lead Counsel conducted the Action and achieved the Settlement with  
25 skillful and diligent advocacy;

26 (f) Plaintiffs' Counsel have devoted more than 9,695 hours, with a lodestar  
27 value of \$5,145,192.25 to achieve the Settlement;

1 (g) The amount of attorneys' fees awarded are fair and reasonable and  
2 consistent with fee awards approved in cases within the Ninth Circuit with similar recoveries;

3 (h) Notice was disseminated to putative Settlement Class Members stating  
4 that Lead Counsel would be submitting an application for attorneys' fees in an amount not to  
5 exceed 25% of the Settlement Fund, plus interest, and payment of litigation expenses incurred in  
6 connection with the prosecution of this Action in an amount not to exceed \$450,000, plus  
7 interest, and that such application also might include a request that Lead Plaintiffs be reimbursed  
8 their reasonable costs and expenses (including lost wages) directly related to their representation  
9 of the Settlement Class in an amount not to exceed \$40,000. [No Settlement Class Members  
10 have filed an objection to the application for fees and expenses submitted by Lead Counsel];

11 7. In accordance with the PSLRA, the Court hereby awards Lead Plaintiff Arkansas  
12 Teacher Retirement System \$ 3,747.15 for its costs and expenses (which includes lost  
13 wages) directly related to its representation of the Settlement Class, and Baltimore County  
14 Employees' Retirement System \$ 11,911.05 for its costs and expenses (which includes  
15 lost wages) directly related to its representation of the Settlement Class.

16 8. Any appeal or challenge affecting this Court's approval of any attorneys' fee,  
17 expense application, or award of costs and expenses (including lost wages) to Lead Plaintiffs in  
18 the Action shall in no way disturb or affect the finality of the Judgment entered with respect to  
19 the Settlement.

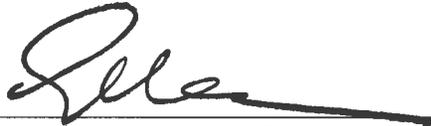
20 9. Exclusive jurisdiction is retained over the subject matter of this Action and over  
21 all parties to the Action, including the administration and distribution of the Net Settlement Fund  
22 to Settlement Class Members.

23 10. In the event that the Settlement is terminated or does not become Final or the  
24 Effective Date does not occur in accordance with the terms of the Stipulation, this order shall be  
25 rendered null and void to the extent provided by the Stipulation and shall be vacated in  
26 accordance with the Stipulation.

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Dated: 7/29, 2016



Honorable Edward M. Chen  
UNITED STATES DISTRICT JUDGE