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17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**
 19 **SAN JOSE DIVISION**

20 IN RE INTUITIVE SURGICAL
 21 SECURITIES LITIGATION

Case No. 5:13-cv-01920-EJD (HRL)

**DECLARATION OF JONATHAN
 GARDNER IN SUPPORT OF CLASS
 REPRESENTATIVES' MOTION FOR
 FINAL APPROVAL OF CLASS
 ACTION SETTLEMENT AND PLAN
 OF ALLOCATION AND CLASS
 COUNSEL'S MOTION FOR AN
 AWARD OF ATTORNEYS' FEES AND
 PAYMENT OF EXPENSES**

Date: December 20, 2018
 Time: 10:00 a.m.
 Dept.: Courtroom 4, 5th Floor
 Judge: Hon. Edward J. Davila

1 I, JONATHAN GARDNER, 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”),
3 which serves as court-appointed Class Counsel for Class Representatives Employees’ Retirement
4 System of the State of Hawaii (“Hawaii ERS”) and Greater Pennsylvania Carpenters’ Pension
5 Fund (“Greater Pennsylvania”) (collectively, “Plaintiffs” or “Class Representatives”).¹ I have
6 been actively involved throughout the prosecution and resolution of the Action, am familiar with
7 its proceedings, and have personal knowledge of the matters set forth herein based upon my
8 close supervision of the material aspects of the Action.

9 2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, I submit this
10 declaration in support of Class Representatives’ Motion for Final Approval of Class Action
11 Settlement and Plan of Allocation as well as Class Counsel’s Motion for an Award of Attorneys’
12 Fees and Payment of Expenses. Both motions have the full support of the Class Representatives.
13 *See* Declaration of Elmira K.L. Tsang on behalf of Hawaii ERS and Declaration of James R.
14 Klein on behalf of Greater Pennsylvania, attached hereto as Exhibits 1 and 2 respectively.²

15 **I. PRELIMINARY STATEMENT**

16 3. The Class Representatives have succeeded in obtaining a very favorable recovery
17 for the certified Class in the amount of \$42,500,000, in cash. As set forth in the Stipulation, in
18 exchange for this payment, the proposed Settlement resolves all claims asserted by the Class
19 Representatives and the Class, which is the same Class that the Court previously certified in the
20 Action, and all Released Claims against the Released Defendant Parties.

21 4. This hotly contested case has been vigorously litigated for five years - from its
22 commencement in April 2013 through the execution of the Stipulation shortly before oral
23 argument on Defendants’ motion for summary judgment. The Settlement was achieved only
24 after Class Counsel, *inter alia*, as detailed herein: (i) conducted a wide-ranging investigation

25 _____
26 ¹ All capitalized terms not otherwise defined herein have the same meaning as that set forth
27 in the Stipulation and Agreement of Settlement, dated as of September 11, 2018 (the
“Stipulation”, ECF No. 298-1).

28 ² Citations to “Exhibit” or “Ex. ___” herein refer to exhibits to this Declaration. For 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
alphabetical reference is to the exhibit designation within the exhibit itself.

1 concerning the allegedly fraudulent misrepresentations/omissions made by Defendants;
2 (ii) prepared and filed a detailed amended class action complaint; (iii) researched and drafted an
3 opposition to Defendants' comprehensive motion to dismiss the complaint, after which the Court
4 entered an Order that granted in part, and denied in part, Defendants' motion; (iv) defeated
5 Defendants' motion for reconsideration of the decision on the motion to dismiss; (v) filed a
6 second amended class action complaint to conform the pleadings to the evidence and
7 successfully defeated Defendants' motion to dismiss the second amended complaint; (vi)
8 successfully moved for class certification and overcame Defendants' Rule 23(f) petition for
9 review of the certification order; (vii) engaged in extensive and diligent fact discovery, including
10 participating in 18 fact depositions and analyzing approximately 550,000 pages of discovery
11 documents produced by Defendants and third parties, including the FDA; (viii) engaged in
12 extensive expert discovery, including submission of opening and rebuttal reports from three of
13 the Class Representatives' experts, the review and analysis of reports submitted by Defendants'
14 three experts, and taking or defending six expert depositions; (ix) opposed Defendants' motion
15 for summary judgment seeking dismissal of the Action and prepared for oral argument; and (x)
16 engaged in trial preparation, including work with a jury focus group consultant and making
17 arrangements for trial accommodations. At the time the Settlement was reached, Class Counsel
18 had a deep understanding of the strengths and weaknesses of the Parties' positions.

19 5. As discussed below, according to the Class Representatives' damages expert,
20 maximum aggregate damages in the Action are approximately \$580 million, if pre-Class Period
21 gains are excluded and the Class Representatives prevailed on each of their claims and were able
22 to prove that all three of the remaining corrective disclosures were actionable and caused
23 damages. The \$42.5 million Settlement, therefore, represents a recovery of approximately
24 7.34% of the Class Representatives' expert's maximum estimated damages—a favorable
25 recovery that is well within the range of reasonableness, particularly in light of the
26 countervailing legal and factual arguments tenaciously pursued by Defendants and attendant
27 litigation risks. *See* Notice of Motion and Motion for Final Approval of Class Action Settlement
28

1 and Plan of Allocation and Memorandum of Points and Authorities in Support Thereof
2 (“Settlement Brief”), §I.B.2.

3 6. In deciding to settle, the Class Representatives and Class Counsel took into
4 consideration the significant risks associated with advancing the claims alleged in the operative
5 complaint, given the pending summary judgment motion, as well as the duration and complexity
6 of the legal proceedings, including *Daubert* motions directed at experts and trial, which remained
7 ahead. The Settlement was achieved in the face of staunch opposition by Defendants who would
8 have, had the Settlement not been reached, continued to raise serious arguments concerning,
9 among other things, materiality, scienter, loss causation and damages. In the absence of a
10 settlement, there was a very real risk that the Class could have recovered nothing or an amount
11 significantly less than the negotiated Settlement.

12 7. In addition to seeking approval of the Settlement, the Class Representatives seek
13 approval of the proposed Plan of Allocation. As discussed in further detail below and in the
14 Settlement Brief, the proposed Plan was developed by the Class Representatives’ damages
15 expert, and provides for the fair and equitable distribution of the Net Settlement Fund to Class
16 Members who submit Claim Forms that are approved for payment.

17 8. With respect to the Fee and Expense Application, as discussed in Class Counsel’s
18 Memorandum of Law in Support of Motion for an Award of Attorneys’ Fees and Payment of
19 Expenses (“Fee Brief”), the requested fee of 19% of the Settlement Fund is eminently fair to the
20 Class, and warrants the Court’s approval. This fee request is well within the range of fee
21 percentages frequently awarded in this type of action, below the benchmark established by the
22 Ninth Circuit, and well below the lodestar value of Plaintiffs’ counsel’s time dedicated to the
23 case. Class Counsel also seeks litigation expenses totaling \$1,988,789.66, plus the Class
24 Representatives’ reimbursement request, pursuant to the PSLRA, 15 U.S.C. § 78u-4(a)(4), of
25 \$58,854.18 in the aggregate.

26 **II. SUMMARY OF CLASS REPRESENTATIVES’ CLAIMS**

27 9. Intuitive Surgical, Inc. (“Intuitive” or the “Company”) is a market leader in
28 robotic-controlled surgery devices. Second Amended Complaint ¶39. The Company’s flagship

1 product is the da Vinci Surgical System (“da Vinci”), which consists of three or four robotic
2 arms, depending on the model, to perform minimally invasive surgery. *Id.* ¶2. A key component
3 of da Vinci is the Tip Cover of the Monopolar Curved Scissors tool (“MCS”), which the Class
4 Representatives allege was defective and created a risk of serious injury with every use. *Id.* ¶3.

5 10. The operative complaint in the Action, the Second Amended Complaint, asserts
6 violations of Section 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange
7 Act”) and Rule 10b-5 promulgated thereunder by Intuitive, and Gary S. Guthart, Marshall L.
8 Mohr, and Lonnie M. Smith (collectively, the “Individual Defendants,” and, together with
9 Intuitive, the “Defendants”). The Class Representatives allege that Intuitive and the Individual
10 Defendants violated Section 10(b) and 20(a) of the Exchange Act by making materially false and
11 misleading statements regarding the safety and efficacy of da Vinci and Intuitive’s compliance
12 with FDA regulations. The Class Representatives also allege that the Individual Defendants
13 violated Section 20(A) of the Exchange Act by profiting from the sale of Intuitive stock while in
14 possession of material nonpublic information. The Class Representatives further allege that
15 when news of the safety and regulatory issues concerning da Vinci was released to the public,
16 the price of Intuitive common stock declined and Class Members suffered damages as a result.

17 11. More specifically, the Second Amended Complaint alleges that during the Class
18 Period, Defendants failed to disclose defects associated with da Vinci that resulted in injury,
19 death, or heightened risk of injury or death primarily related to da Vinci’s “Tip Cover”
20 accessory. The Tip Cover is an insulating sleeve, inserted at the end of certain da Vinci
21 instruments, designed to prevent electricity from escaping in an unintended manner and burning
22 patients. The defect consisted of a risk of cracks or holes developing in the Tip Cover that
23 prevented it from properly insulating the metal instruments and instead allowed electricity or
24 sparks to escape. Among other things, the Class Representatives allege that Defendants failed to
25 disclose: (i) numerous adverse event reports, which resulted in the underreporting of serious
26 injuries and deaths related to da Vinci, (ii) the number and nature of products liability claims
27 brought against the Company, and (iii) three internal “recalls” that took place in October 2011.

28

1 12. Corrective information was allegedly released to the market on February 28, 2013
2 (toward the close of market hours), March 5, 2013 (prior to market open), and July 18, 2013
3 (after market close), impacting the market price of Intuitive common stock and allegedly
4 removing artificial inflation from the prices of the Company’s common stock on February 28-
5 March 1, 2013, March 5, 2013, and July 19, 2013.³

6 **III. RELEVANT PROCEDURAL HISTORY**

7 **A. Commencement of the Action and Appointment of** 8 **Lead Plaintiff and Lead Counsel**

9 13. The Action was commenced on April 26, 2013, by the filing of an initial
10 complaint in the United States District Court for the Northern District of California, alleging
11 violations of the federal securities laws. ECF No. 1. On June 25, 2013, two movants, including
12 Hawaii ERS, filed motions seeking appointment as lead plaintiff and for approval of their
13 selection of counsel. ECF Nos. 14-24. By Order dated November 18, 2013, and pursuant to the
14 provisions of the Private Securities Litigation Reform Act of 1995 (“PSLRA”), the Court
15 appointed Hawaii ERS as lead plaintiff and approved its selection of Labaton Sucharow to serve
16 as lead counsel for the proposed class. ECF No. 50.

17 **B. The Amended Complaint**

18 14. On October 15, 2013, lead plaintiff Hawaii ERS, along with named plaintiff
19 Greater Pennsylvania, filed the Amended Class Action Complaint (the “Complaint”) alleging
20 violations against Defendants of Sections 10(b) and 20(a) of the Exchange Act and violations of
21 Section 20A against the Individual Defendants. ECF No. 48.

22 15. The Complaint was the result of a significant effort by Class Counsel that
23 included, among other things, the review and analysis of: (i) press releases, news articles,
24 transcripts, and other public statements issued by or concerning the Company and the Individual
25 Defendants; (ii) research reports issued by financial analysts concerning Intuitive’s business;
26 (iii) reports filed publicly by Intuitive with the U.S. Securities and Exchange Commission (the
27

28 ³ Plaintiffs had originally alleged additional corrective disclosures, however, as discussed below, the Court rejected them in connection with the Order deciding the motion for class certification.

1 “SEC”); (iv) news articles, media reports and other publications concerning the minimally
2 invasive robotic surgery industry and markets; (v) certain pleadings filed in other pending
3 litigation naming Intuitive as a defendant; (vi) other publicly available information and data
4 concerning Intuitive, its securities, and the markets therefor; and (vii) information provided by
5 economic experts regarding loss causation and damages. The investigation also included Class
6 Counsel’s in-house investigators locating numerous potential witnesses and interviewing 35
7 former employees of Intuitive, or others with relevant information, on a confidential basis.

8 16. Plaintiffs’ claims alleged in the Complaint centered on Defendants’ allegedly
9 false and misleading statements about the safety of da Vinci. As alleged in the Complaint, these
10 statements spanned the course of 14 months and arose within the Company’s filings with the
11 SEC, press releases, and quarterly earnings calls with investors. ¶¶182-269. According to the
12 Complaint, Defendants allegedly materially and misleadingly misrepresented da Vinci’s safety
13 profile, as well as Intuitive’s profitability, despite known safety risks and thousands of
14 unreported adverse events. The Class Period ended with the Company’s disclosure, on July 18,
15 2013, that it had received a Warning Letter from the FDA, including notice that the FDA would
16 need a follow-up inspection and that the Company’s responses to prior inspections were
17 inadequate. ¶¶38-126.

18 **C. Defendants’ Motion to Dismiss the Complaint**

19 17. Defendants filed a motion to dismiss the Complaint on December 16, 2013. ECF
20 No. 53. Defendants argued, among other things, that, Plaintiffs failed to: (i) allege with the
21 required specificity why any of the statements quoted in the Complaint were false, or identify
22 any legally required statement that was omitted; and (ii) plead the highly particularized
23 allegations of scienter required by Rule 9(b) of the Federal Rules of Civil Procedure. Regarding
24 the falsity of statements, Defendants argued that statements about the Company’s revenue
25 growth and da Vinci’s sales are not actionable, as they were “literally true.” Defendants also
26 argued that while the majority of the allegations in the Complaint focused on the FDA Warning
27 Letter, Plaintiffs did not allege that Intuitive concealed the Warning Letter and there was nothing
28 “secret” about the Warning Letter. Defendants also argued that several statements alleged in the

1 Complaint amounted to nothing more than vague and subjective expressions of corporate
2 optimism. Regarding scienter, Defendants argued that Plaintiffs' scienter allegations failed
3 because Plaintiffs did not demonstrate scienter as to each alleged misrepresentation or omission;
4 and the statements of confidential witnesses were not reliable. Defendants also argued that the
5 allegations regarding stock sales did not support a finding of scienter.

6 18. Plaintiffs filed an opposition to Defendants' motion to dismiss the Complaint on
7 January 30, 2014. ECF No 58. Plaintiffs argued that they had sufficiently alleged that
8 Defendants made materially false and misleading statements and omissions and that having
9 chosen to tout da Vinci's safety, efficacy, and promise, Defendants were obligated to do so
10 truthfully and fully. Plaintiffs also argued that concealing the severity of serious injuries and
11 deaths from the Tip Covers, as well as concealing the number of medical device reports
12 ("MDRs"), was false and misleading under relevant law within the Ninth Circuit. Plaintiffs
13 argued that Defendants' statements reporting Intuitive's financial results were materially
14 misleading because even accurate statements are misleading where they give investors a false
15 impression, as was the case here. Regarding Defendants' puffery arguments, Plaintiffs
16 contended that Defendants failed to establish that any of the statements alleged in the Complaint
17 were so vague that no reasonable investor would rely on them.

18 19. With respect to Defendants' scienter arguments, Plaintiffs argued that the
19 Warning Letter, which stated that Defendant Guthart knew of injuries and defects in 2010 and
20 2011, raised a strong inference of scienter and provided evidence that Defendants knew of the
21 defective Tip Covers. Plaintiffs also argued that Defendants' insider sales during the Class
22 Period were suspicious in terms of amount and percentages, as well as suspicious in terms of
23 their timing.

24 20. On February 28, 2014, Defendants filed a reply brief in further support of their
25 motion to dismiss the Complaint. ECF No. 62.

26 **D. The Court's Order on the Motion to Dismiss**

27 21. On August 21, 2014, the Court issued its Order Granting in Part and Denying in
28 part Defendants' Motion to Dismiss. *In re Intuitive Surgical Sec. Litig.*, 65 F. Supp. 3d 821

1 (N.D. Cal. 2014). The Court found that Plaintiffs sufficiently alleged the material and
2 misleading nature of statements concerning da Vinci's safety and efficacy. *Id.* at 832-35.
3 Specifically, the Court found, among other things, that "it is plausible that the reasonable
4 investor would find the existence of these numerous unreported MDRs to significantly alter the
5 total mix of information available and that Defendants' statements created an impression of da
6 Vinci's safety that materially differed from reality." *Id.* at 834. The Court granted the motion to
7 dismiss with respect to the statements concerning the Company's financial accounting reports,
8 risk factor disclosures, and FDA regulations. *Id.* at 835-37.

9 22. The Court also found that Plaintiffs sufficiently pled a strong inference of
10 scienter. *Id.* at 838. Taking a "holistic view of scienter" the Court held that Lead Plaintiff "has
11 pled facts that, when taken as true, show that Defendants knew that their statements regarding da
12 Vinci's safety benefits were false or misleading when said, and that Defendants had financial
13 motivation to maintain a misleading impressions of da Vinci's safety." *Id.* at 838-39.

14 23. On October 19, 2014, Defendants filed their Answer to the Complaint, denying
15 the Complaint's substantive allegations and raising 21 affirmative defenses. ECF No. 87.

16 **E. Defendants' Motion for Reconsideration**

17 24. On November 5, 2014, Defendants filed a motion for reconsideration of the
18 Court's order denying, in part, the motion to dismiss. ECF No. 93. Defendants argued that two
19 Ninth Circuit cases decided after the Parties' briefing on the motion to dismiss, *In re NVIDIA*
20 *Corp. Securities Litigation*, 768 F.3d 1046 (9th Cir. 2014) ("NVIDIA") and *Police Retirement*
21 *System of St. Louis v. Intuitive Surgical, Inc.*, 759 F.3d 1051 (9th Cir. 2014) ("PRS") rendered
22 both of the Court's conclusions that the statements regarding da Vinci's safety and efficacy were
23 actionable misrepresentations under the PSLRA, and that Plaintiffs had adequately alleged
24 scienter with respect to those statements, untenable. Plaintiffs filed a response to Defendants'
25 reconsideration motion on November 19, 2014 (ECF No. 96) and Defendants filed a reply brief
26 on November 26, 2014 (ECF No. 97). On December 15, 2014, the Court denied Defendants'
27 motion for reconsideration, stating that the decisions in *In re NVIDIA* or *PRS* do not change the
28 Court's evaluation of the issues. ECF No. 98.

1 **F. The Second Amended Complaint**

2 25. On November 2, 2016, Plaintiffs filed a motion for leave to file a second amended
3 complaint, to conform the pleading to the evidence obtained during discovery and to remove
4 certain allegations no longer being relied upon. ECF No. 185. Plaintiffs' motion was granted on
5 January 25, 2017 (ECF No. 212), and on January 26, 2017, Plaintiffs filed the Second Amended
6 Complaint (ECF No. 213).

7 26. The Second Amended Complaint, among other things, added evidence gathered
8 through discovery, including evidence from Intuitive's internal documents and the deposition
9 testimony of the Company's executives and gathered from the public domain since the filing of
10 the Complaint, including evidence from other litigations and the Company's SEC filings. The
11 Second Amended Complaint did not add any new claims, defenses, or theories.

12 **G. Motion to Dismiss the Second Amended Complaint**

13 27. Defendants filed a motion to dismiss the Second Amended Complaint on
14 February 9, 2017 (ECF No. 215), arguing that "both the law, and Plaintiffs' allegations have
15 changed significantly" and that, under *Omnicare, Inc. v. Laborers District Council Construction*
16 *Industry Pension Fund*, 135 S. Ct. 1318 (2015), Plaintiffs had failed to allege actionable
17 misstatements as the alleged misstatements were statements of opinion or belief and because
18 Intuitive had no duty to disclose all material information regarding safety. Defendants also
19 argued that Plaintiffs' scienter allegations were inadequate.

20 28. Plaintiffs filed their opposition to Defendants' motion to dismiss the Second
21 Amended Complaint on February 23, 2017. ECF No. 220. Plaintiffs argued that nothing about
22 the Supreme Court's decision in *Omnicare* undermined the sufficiency of the complaint.
23 Plaintiffs also argued that the complaint sufficiently pleaded falsity of the alleged material
24 misstatements and omissions, and that contrary to Defendants' arguments, Plaintiffs' allegations
25 regarding the safety and efficacy of da Vinci had not changed. Regarding scienter, Plaintiffs
26 argued that Defendants' challenges should fail because the scienter allegations were even
27 stronger than those in the Complaint.

28 29. Defendants filed their reply brief on March 2, 2017. ECF No. 222.

1 30. On September 29, 2017, the Court denied Defendants’ motion to dismiss the
2 Second Amended Complaint and discovery resumed. ECF No. 237. The Court held: “Upon
3 reexamination of the alleged statements with the benefit of the *Omnicare* decisions, the Court
4 reaffirms its prior determination that Plaintiffs’ allegations are sufficient at the pleading stage.”
5 *Id.* at 4. Regarding Defendant’s failure to disclose arguments, the Court held that there is no
6 duty to disclose all material information “as long as the omissions do not make the actual
7 statements misleading.” *Id.* at 5 (citing *In re Rigel Pharm’s., Inc. Sec. Litig.*, 697 F. 3d 869, 880
8 fn. 8 (9th Cir. 2012)). Here, however, “it is plausible that a reasonable investor would find the
9 omitted information regarding MDRs, corrective letters, and product liability suits, rendered the
10 statements of opinion misleading.” ECF No. 237 at 5.

11 31. The Court also found the Second Amended Complaint contains sufficient
12 allegations, when taken collectively, to give rise to a strong inference of scienter. *Id.* at 7. In
13 particular, the Court noted that Plaintiffs allege that Defendants communicated with the FDA
14 regarding injuries resulting from the da Vinci Tip Cover and that all of the Individual Defendants
15 attended internal meetings and received reports apprising them of the problems with the Tip
16 Cover and the rise in MDRs and adverse events. *Id.* The Court also held that the allegations
17 concerning the Individual Defendants’ stock sales, taken collectively with the allegations above,
18 also support a strong inference of scienter. *Id.* at 7-8.

19 **H. Plaintiffs’ Motion for Class Certification**

20 32. On September 1, 2015, Hawaii ERS and Greater Pennsylvania moved for
21 certification of the Class, for appointment as class representatives pursuant to Rules 23(a) and
22 23(b)(3), and for the appointment of Labaton Sucharow LLP as Class Counsel. ECF No. 123. In
23 connection with their motion, Plaintiffs filed an expert report on market efficiency by Chad
24 Coffman, CFA (ECF No. 126-2), who conducted a detailed event study concerning Intuitive’s
25 stock price drops and concluded that the market for Intuitive’s stock was efficient throughout the
26 Class Period.

27 33. Defendants opposed the motion on the basis, among others, that Hawaii ERS and
28 Greater Pennsylvania were not typical of the proposed class since their investment advisors made

1 all decisions regarding the purchase or sale of Intuitive securities during the Class Period; and
2 that Hawaii ERS and Greater Pennsylvania were inadequate representatives given that they faced
3 unique defenses and may become preoccupied and distracted from representing the interests of
4 other unnamed class members.

5 34. Defendants also argued that Plaintiffs could not show that reliance could be
6 proven on a class wide basis. Defendants argued that they can rebut the presumption of reliance
7 because class members had actual knowledge of the allegedly omitted information, making
8 reliance impossible to prove classwide. Defendants argued that October 2011 customer letters
9 were widely publicized and were even posted on the websites of regulatory agencies in some of
10 the largest markets for the da Vinci system. Additionally, Defendants argued that information
11 about product liability lawsuits, unreported MDRs, and general information about the Tip Cover
12 were also publicly available. Defendants also noted that before the start of the Class Period, the
13 U.S. Patent and Trademark Office published a patent application for the redesigned Tip Cover.
14 The patent application described in detail the user-created safety issues associated with the
15 original Tip Cover and explained that problems can arise under certain circumstances. The
16 application was a publicly available government publication, and therefore, any class member
17 who was monitoring the Company's prospects would have learned of this information.

18 35. Defendants also argued that the alleged misrepresentations had no price impact on
19 Intuitive's stock price under *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398 (2014).
20 In connection with their opposition, Defendants submitted an expert report from Professor
21 Kenneth Lehn (ECF No. 135-39), who concluded that there were no statistically significant price
22 increases on six of the seven dates on which the Court found that Defendants may have made
23 false or misleading statements. Defendants also argued that there were no statistically significant
24 price decreases with respect to the first three alleged corrective disclosures – February 28, March
25 5, and April 18, 2013, and that such a lack of price impact rebuts any presumption that investors
26 relied on whatever new information might have been disclosed on those dates. In addition,
27 Defendants argued that Plaintiffs failed to provide any workable methodology for calculating
28 class-wide damages arising from Plaintiffs' liability theories.

1 36. Plaintiffs submitted their reply memorandum in further support of class
2 certification on November 16, 2015. ECF No. 140. Mr. Coffman submitted a rebuttal expert
3 report in connection with Plaintiffs’ reply memorandum. ECF No. 141-13.

4 37. On January 21, 2016, the Court held oral argument on Plaintiffs’ class
5 certification motion and on December 22, 2016, the Court issued an Order Certifying Plaintiff
6 Class. ECF No. 204. However, in its Order, the Court held that several of the corrective
7 disclosures could not be considered corrective of the alleged fraud, because they related to
8 financial results rather than safety issues. *Id.* at 26-27. The Court held that “Defendants have
9 successfully rebutted the presumption [of reliance] as to the release of financial information on
10 July 8, 2013 and July 18, 2013.” *Id.* at 27. The Court also found that the April 18-19, 2013
11 financial results were not corrective and that the price drops were not statistically significant. *Id.*
12 at 26.

13 38. On January 5, 2017, Defendants filed a petition for permission to appeal the
14 Court’s order certifying the Class pursuant to Rule 23(f). On October 30, 2017, after further
15 briefing, the Ninth Circuit denied Defendants’ petition. Defendants’ motion for reconsideration
16 was denied by Order dated November 22, 2017.

17 39. On January 12, 2017, the Class Representatives moved for leave to file a motion
18 for reconsideration of the Court’s order on class certification, asking the Court to reconsider a
19 narrow component of the Order. ECF No. 227. The Court granted the motion for leave to file
20 and on April 3, 2017, the Class Representatives filed their motion for reconsideration. The Class
21 Representatives argued that when analyzing the majority of the alleged corrective disclosures in
22 this case—those on February 28, 2013, March 5, 2013, April 18-19, 2013, and July 18, 2013
23 (relating to the FDA Warning Letter)—the Court correctly based its decisions regarding “price
24 impact” upon the results of the event studies produced by the Parties’ experts showing the impact
25 each corrective disclosure had on the Company’s stock price at set statistical confidence levels,
26 pursuant to *Halliburton*. “However, when ruling on the July 8th and July 18th disclosures, the
27 Court departed from a price impact inquiry and instead held that the July disclosures were not
28 ‘corrective,’” notwithstanding the findings of statistical significant price declines and contrary to

1 *Halliburton*. *Id.* at 1. On April 17, 2017, Defendants filed their opposition to the Class
2 Representatives' motion for reconsideration. ECF No. 229. The Court denied the Class
3 Representatives' motion on September 29, 2017. ECF No. 237.

4 40. On March 9, 2018, the Class Representatives filed a renewed motion for
5 reconsideration, asking the court to reconsider its decision to remove the July 8th and July 18th
6 disclosures in light of recent causation principles articulated by the Ninth Circuit in
7 *Mineworkers' Pension Scheme v. First Solar Inc.*, No. 15-cv-17282, 2018 WL 626948 (9th Cir.
8 Jan. 31, 2018). ECF No. 257. The Class Representatives argued that the Ninth Circuit explicitly
9 endorsed the position this Court rejected in excluding the disclosures on causation grounds and
10 in so doing, the Ninth Circuit in *First Solar* clarified the broad standard of causation at issue in
11 securities cases. As such, the Class Representatives argued that with the benefit of *First Solar*,
12 the Court should reinstate the July disclosures of financial statements as corrective of omissions
13 related to safety. Defendants opposed the renewed motion on March 23, 2018, arguing that *First*
14 *Solar* is not controlling law because, among other reasons, it focuses solely on loss causation,
15 which cannot be considered during the class certification analysis. ECF No. 260. On June 6,
16 2018, the Court denied the Class Representatives' renewed motion. ECF No. 278.

17 **I. Class Notice**

18 41. On December 6, 2017, the Parties filed a joint motion to approve the Class Notice
19 and Summary Notice of Pendency of Class Action. ECF No. 245. Defendants opposed the
20 motion, in part, on December 20, 2017, seeking to modify certain language in the proposed Class
21 Notice. ECF No. 247.

22 42. On March 12, 2018, following oral argument on March 8, 2018, the Court
23 approved the Class Notice with modifications agreed to at the hearing. ECF No. 258.

24 43. Beginning with the initial mailing on April 9, 2018, the Class Notice was mailed
25 to over 171,555 potential Class Members. ECF No. 285 ¶6. The Class Notice notified potential
26 Class Members of, among other things: (i) the pendency of the Action against Defendants; (ii)
27 the Court's certification of the Action to proceed as a class action on behalf of the Court-certified
28

1 Class; and (iii) their right to request to be excluded from the Class by June 8, 2018, the effect of
2 remaining in the Class or requesting exclusion, and the requirements for requesting exclusion.

3 44. Six (6) valid requests for exclusion from the Class were received in connection
4 with the Class Notice. *See* Declaration Regarding (A) Mailing of the Settlement Notice and
5 Proof of Claim Form; (B) Publication of Summary Notice; and (C) Requests for Exclusion in
6 Connection with Settlement Notice (“Mailing Declaration”) (attached as Exhibit 3 hereto), ¶2;
7 ECF No. 285 at Ex. E. No institutional investors or pension funds requested exclusion, and, in
8 the aggregate, the exclusion requests represent 190 shares.

9 **IV. DISCOVERY**

10 45. The Class Representatives propounded detailed discovery requests and ultimately
11 reviewed and analyzed approximately 550,000 pages of documents produced by Defendants and
12 third parties; took or defended 18 depositions of fact witnesses, including four Class
13 Representative depositions; negotiated and resolved myriad discovery disputes (with the
14 assistance of the Court when necessary); took or defended six expert depositions; and exchanged
15 11 expert reports (three of which were exchanged in connection with class certification).

16 **A. Discovery Propounded on Defendants**

17 46. The Class Representatives served their first set of document requests on
18 Defendants on October 14, 2014. Thereafter, the Class Representatives served another three sets
19 of document requests on Defendants. The Class Representatives served their first set of
20 interrogatories on Defendants on March 12, 2015 and on the Individual Defendants on May 8,
21 2015. A second set of interrogatories on all Defendants was served on February 12, 2016. The
22 Class Representatives served their first set of Requests for Admission on Defendants on March
23 19, 2015, a second set of Requests for Admission on Defendants on February 12, 2016, and a
24 third set on August 26, 2016. In total, this discovery included four sets of document requests
25 containing 78 individual requests, two sets of interrogatories containing a total of 13 individual
26 interrogatories for Intuitive and 18 for the Individual Defendants, and three requests to admit
27 containing 104 requests for admission.

28

1 47. Over the span of many months, the Parties engaged in numerous meet-and-confer
2 conferences and exchanged letters, as to the scope and manner of the requested document
3 production, interrogatories, and requests for admission, including issues pertaining to search
4 terms and custodians for electronically stored information (“ESI”), production of documents in
5 related actions, and other disputes related to the requests. Through this effort, the Parties were
6 able to reach an understanding as to the appropriate scope of Defendants’ discovery on many
7 issues, with a few notable exceptions that required the Court’s assistance. *See infra* §IV.E.
8 (Discovery Disputes).

9 48. The Class Representatives conducted an efficient review of documents produced
10 by Defendants. Defendants began a rolling production of documents on or around February 20,
11 2015. To facilitate a cost and time-efficient document review process, all of the documents were
12 placed in an electronic database, using a platform called Relativity to organize the data. A team
13 of experienced attorneys reviewed and analyzed the production. These attorneys were focused
14 on reviewing Defendants’ document production for the purpose of preparing for depositions,
15 with many of them assisting in additional stages of deposition preparation, as well as providing
16 documents to support the Class Representatives’ opposition to Defendants’ summary judgment
17 motion, and trial preparation, including the Class Representatives’ jury focus group
18 presentations.

19 49. To efficiently focus on the most relevant documents, these attorneys used the
20 document platform’s software tools to analyze and search the data. The attorneys culled
21 documents based on legal issues, custodians, and relevant time periods, in order to narrow the
22 scope of the review universe. Once this initial set of documents was identified, the attorneys
23 conducted targeted searching through text, file names, document type (e.g., emails, memoranda,
24 SEC filings), dates, bates numbers, etc. to identify relevant, irrelevant, and hot documents for
25 additional review and to create collections of documents sorted by issue. Through experience
26 and their increasing familiarity with the documents, the review team identified additional swaths
27 of important documents, which were also run through the analytics and search functions to
28 derive the most significant documents for inclusion into deposition, and trial preparation.

1 50. The document review attorneys did not only review documents. They also
2 participated in frequent meetings with more senior attorneys to discuss important documents,
3 deposition preparation efforts, and case strategy. They assisted with the preparation of the Class
4 Representatives' response to Defendants' summary judgment motion. The document review
5 attorneys also had direct responsibility for selecting relevant documents for expert review and in
6 putting together binders of evidence for use at deposition. Two of the document review
7 attorneys also attended certain depositions.

8 **B. The Class Representatives' Depositions of Fact Witnesses**

9 51. Class Counsel conducted numerous fact witness depositions, in addition to the
10 four depositions of the Class Representatives, including depositions of the three Individual
11 Defendants. The depositions Class Counsel conducted included:

12 (a) Max Palumbo (Director of Information Security at Intuitive and 30(b)(6)
13 representative) on May 27, 2015, in San Francisco, California;

14 (b) Dave Rosa (Executive Vice President and Chief Commercial Officer) on
15 June 16, 2015 as a 30(b)(6) representative, in San Francisco, California *and* on August 19, 2016
16 in San Francisco, California;

17 (c) Salvatore Brogna (Executive Vice President of Product Operations at
18 Intuitive and 30(b)(6) representative) on June 19, 2015, in San Francisco, California *and* on July
19 29, 2016 in Palo Alto, California;

20 (d) Marshall Mohr (Senior Vice President and Chief Financial Officer) on
21 July 1, 2015, in San Francisco, California as a 30(b)(6) representative *and* on September 9, 2016
22 in San Francisco, California;

23 (e) Charles Endweiss (former Financial Planning & Analysis Manager at
24 Intuitive) on July 28 2015, in San Francisco, California;

25 (f) Richard Reeves (former Vice President of Regulatory Affairs) on July 13,
26 2016, in San Francisco, California;

27 (g) Noemi C. Esipinosa (former Vice President Legal Operations and
28 Assistant General Counsel at Intuitive) on July 21, 2016, in Palo Alto, California;

1 (h) Jane Clay (former Manager of Field Actions at Intuitive) on August 26,
2 2016, in San Francisco, California;

3 (i) Lonnie Smith (Chairman of the Board of Directors at Intuitive) on August
4 30, 2016, in San Francisco, California;

5 (j) Gary S. Guthart (Chief Executive Officer at Intuitive, Member of the
6 Board of Directors) on August 31, 2016, in San Francisco, California; and

7 (k) Tabitha Reed (Senior Manager Post Market Surveillance at Intuitive) on
8 September 9, 2016, in San Francisco, California.

9 52. Collectively, the depositions provided key evidence and insight into events during
10 the Class Period, however they also provided a preview of the difficulties of proving the Class
11 Representatives' case through adverse witnesses aligned with the Defendants.

12 **C. Discovery Propounded on Class Representatives**

13 53. Defendants also aggressively sought discovery from the Class Representatives.
14 Defendants' discovery requests led to the production of approximately 80,000 of pages of
15 documents, four depositions of Class Representatives' personnel, participation in multiple meet-
16 and-confer sessions, and contentious motion practice. Defendants served seven sets of document
17 requests on Hawaii ERS and Greater Pennsylvania. In all instances, the Class Representatives
18 objected on the basis that Defendants' discovery requests were exceedingly broad and sought
19 documents that were protected by various privileges and protections. As a result of the breadth
20 of Defendants' requests, the Parties engaged in extended meet-and-confer conferences to
21 negotiate the scope of the Class Representatives' production. While the Parties were able to
22 resolve many disputes, some required the assistance of the Court. *See infra* §IV.E. (Discovery
23 Disputes).

24 54. Defendants deposed (i) Brian Aburano, Deputy Attorney General for Hawaii
25 ERS, who testified as a Rule 30(b)(6) witness for Hawaii ERS, on September 15, 2015, in San
26 Francisco, California; (ii) Vijoy Chattergy, Chief Investment Officer at Hawaii ERS, on
27 September 23, 2015, in San Francisco, California; (iii) Wesley Machida, Director of Finance at
28 Hawaii ERS on September 25, 2015, in San Francisco, California; and (iv) James Klein,

1 Administrative Manager at Greater Pennsylvania, who testified as a Rule 30(b)(6) witness for
2 Greater Pennsylvania, on September 29, 2015 in San Francisco, California.

3 **D. Non-Party Discovery**

4 55. In addition to the documents collected from Defendants, Class Counsel also
5 issued 18 subpoenas for the production of documents on third parties that Class Counsel believed
6 had documentary evidence relevant to the claims in the Action. For example, the Class
7 Representatives sought documents from certain medical professors who were alleged to have
8 promoted da Vinci, despite growing safety concerns. Documents requested from these
9 professors included actual and proposed studies, evaluations, testing or review of the da Vinci or
10 any da Vinci accessories. The Class Representatives also sought documents from current and
11 former Tip Cover manufacturers to help the Class Representatives understand the safety
12 enhancements made to the Tip Cover during the Class Period and the reasons for those
13 enhancements. In total, approximately 28,726 pages of documents were produced by various
14 non-parties.

15 **E. Discovery Disputes**

16 56. As described above, discovery in this matter was both intense and voluminous.
17 The Parties held dozens of meet-and-confer sessions throughout discovery and were able to
18 resolve many disputes in the absence of Court intervention. On six occasions, however, the
19 Parties sought the assistance of the Court. All discovery matters were referred to Magistrate
20 Judge Lloyd.

21 57. On October 7, 2015, the Parties submitted Discovery Dispute Joint Report #1,
22 wherein Defendants were seeking investigative memoranda and notes related to the Class
23 Representatives' communications with a confidential witness. The Class Representatives argued
24 that the requested materials were protected by attorney work product privilege. On September
25 19, 2016, the Court denied the motion. ECF No. 173. On December 5, 2016, Defendants
26 renewed their request that the Class Representatives produce these investigative memoranda and
27 notes (ECF No. 199), which was denied by Magistrate Judge Lloyd on April 10, 2017. ECF No.
28 228.

1 58. On February 4, 2016, the Parties submitted Discovery Dispute Joint Report # 2,
2 wherein the Class Representatives were seeking the production of deposition transcripts in two
3 derivative actions, one which was also pending before the Court. ECF No. 153. Among other
4 things, the Class Representatives argued that the facts at issue in the derivative actions were
5 coextensive with and relevant to the instant securities litigation. Defendants argued that the
6 deposition transcripts did not yet exist, and that the Class Representatives' request was
7 overbroad. On September 27, 2016, Magistrate Judge Lloyd Corley granted the motion to
8 compel and ordered Defendants to produce the requested deposition transcripts of current and
9 former Intuitive employees, and directors and officers, who were represented by defense counsel.
10 ECF No. 175.

11 59. On March 4, 2016, the Parties submitted Discovery Dispute Joint Report # 3
12 which concerned the Class Representatives' request that Defendants produce two exemplars of
13 each relevant model of the Endowrist Monopolar Curved Scissors ("MCS") and the Tip Cover
14 accessory. ECF No. 158. Defendants argued that the requested items are not relevant to any of
15 the claims or defenses. On September 27, 2016, the Court denied the motion, noting however,
16 that "defendants shall produce the requested exemplars for use as trial demonstratives at least
17 two months prior to the start of trial." ECF No. 176.

18 60. The Parties submitted Discovery Dispute Joint Report # 4 on May 19, 2016. ECF
19 No. 170. This dispute concerned the Class Representatives' request for the production of certain
20 product quality documents and deposition exhibits used in litigation between Intuitive and its
21 product liability insurers. On October 12, 2016, Magistrate Judge Lloyd granted the motion as to
22 exhibits referenced in portions of transcripts produced by the Class Representatives, and denied
23 the motion as to the Class Representatives' request for certain product quality documents. ECF
24 No. 178.

25 61. Discovery Dispute Joint Report # 5, submitted to the Court on May 19, 2016,
26 concerned the Class Representatives' request to take an additional 16 depositions, in addition to
27 the ten depositions the Class Representatives are entitled to under the Federal Rules of Civil
28 Procedure. ECF No. 171. The Class Representatives argued that given the complexity of the

1 Action, it would be appropriate to allow more than ten depositions. Additionally, the Class
2 Representatives noted that four of the ten depositions would be taken up by the Individual
3 Defendants and the corporate 30(b)(6) representative. The Class Representatives provided the
4 Court with brief descriptions of the proposed additional deponents. Defendants argued that the
5 Class Representatives failed to make a particularized showing regarding the potential relevance
6 of the proposed deponents' testimony. Magistrate Judge Lloyd denied the motion on October 19,
7 2016. ECF No. 180.

8 **F. Expert Discovery**

9 62. In addition to the three expert reports prepared in connection with class
10 certification, in November 2016, the Class Representatives served Defendants with merits expert
11 reports from the following individuals in connection with formal expert discovery:

12 (a) Chad Coffman, CFA (materiality, damages, and loss causation expert);

13 (b) Thomas C. Knott (FDA regulatory expert who provided a report on the
14 Company's compliance with FDA regulations and the effectiveness of Intuitive's procedures for
15 handling adverse events caused by its medical devices); and

16 (c) H. Nejat Seyhun (professor of finance who provided a report on insider
17 trading and executive compensation).

18 63. Mr. Coffman prepared and served a 62-page report, along with exhibits totaling
19 another 43 pages, in which he opined, *inter alia* that: (i) the alleged misstatements and
20 omissions in this case were material; (ii) any news that revealed the concealed safety and
21 efficacy issues or disclosed how the revelation of such information impacted utilization of da
22 Vinci – and thus the financial impact of the misrepresentations and/or omissions – represents
23 corrective information; (iii) there was an economic link between the alleged misrepresentations
24 and omissions and the foreseeable investor losses that occurred on the remaining alleged
25 corrective disclosure events; and (iv) the allegedly corrective information caused the price of
26 Intuitive common stock to decline on each of the remaining alleged corrective disclosures.

27 64. Mr. Knott prepared and served a 78-page report, along with exhibits totaling
28 another 8 pages, in which he opined, *inter alia*, that had Defendants taken reasonable actions to

1 address the risk of harm associated with the use of the Tip Cover accessory, the applicable FDA
2 regulations would have mitigated the risk to health posed by da Vinci, and the safety issues
3 would be disclosed to the FDA and the public earlier; and that Defendants' failure to properly
4 report MDRs was unreasonable in light of FDA regulations.

5 65. Professor Seyhun prepared and served a 27-page report, along with exhibits
6 totaling another 87 pages, in which he opined, *inter alia*, that the Individual Defendants sold
7 large and suspicious amounts of Intuitive stock to benefit from the possession of adverse material
8 non-public information.

9 66. On December 13, 2016, Defendants served expert reports on the Class
10 Representatives from the following individuals:

11 (a) Laura B. Stamm (submitted a report responding to Mr. Coffman's report);

12 (b) Steven B. Boyles (provided his opinion on alleged insider trading by the
13 Individual Defendants, as well as executive compensation, and responded to the report of
14 Professor Seyhun); and

15 (c) Dr. David W. Feigal (provided his opinion on the Food, Drug, and
16 Cosmetics Act and FDA regulations and practices, and responded to the expert report of Mr.
17 Knott).

18 67. On February 8, 2017, the Class Representatives submitted a supplemental expert
19 report from Mr. Coffman on loss causation and damages. On December 1, 2017, Defendants
20 submitted a supplemental rebuttal report from Laura B. Stamm on loss causation and damages.

21 68. Following the exchange of expert reports, the Parties commenced expert
22 depositions in December 2017. The Parties took and defended six expert depositions.

23 69. The Class Representatives deposed Defendants' experts as follows:

24 (a) Mr. Boyes on December 11, 2017, in San Francisco, California;

25 (b) Ms. Stamm on December 14, 2017, in San Francisco, California; and

26 (c) Dr. Feigal on December 14, 2017, in San Francisco, California.

27 70. Defendants deposed the Class Representatives' experts as follows:

28 (a) Mr. Seyhun on December 1, 2017, in San Francisco, California;

- 1 (b) Mr. Coffman on December 12, 2017, in San Francisco, California; and
- 2 (c) Mr. Knott on December 12, 2017, in San Francisco, California.

3 71. The information relied on by the experts was extensive and wide-ranging. The
4 material also highlighted the Parties' dueling points of view and the contradictory information
5 that would be presented to the jury, assuming each of the experts survived likely *Daubert* and *in*
6 *limine* motions before trial.

7 **V. DEFENDANTS' SUMMARY JUDGMENT MOTION**

8 72. On February 9, 2018, Defendants moved for summary judgment, challenging the
9 Class Representatives' evidence of loss causation and materiality, and seeking dismissal of the
10 Action. ECF No. 252. Defendants included a lengthy statement of undisputed facts in support
11 of their motion. ECF No. 252-1.

12 73. In their motion, Defendants argued, principally, that there are no disputed facts
13 that support the Class Representatives' loss causation theory because the undisputed facts show
14 that the remaining three alleged corrective disclosures revealed nothing new about anything the
15 Class Representatives' claim was concealed from investors and, as a result, any drop in stock
16 price corresponding with those disclosures could not, as a matter of law, have been caused by the
17 alleged fraud. For example, Defendants argued that the February 28, 2013 Bloomberg articles,
18 reporting a regulatory investigation of the da Vinci system, did nothing more than announce an
19 FDA survey that led to no regulatory action against the Company. They also argued that the
20 March 5, 2013 Bloomberg article, reporting the number of deaths and lawsuits that had occurred
21 over 14 months, did nothing more than repackage publicly available information. And, that the
22 announcements and comments on July 18, 2013, that the Company had received a Warning
23 Letter from the FDA, including notice that the FDA needed a follow-up inspection, that the
24 Company's responses to prior inspections had been inadequate, and a Class II recall of the Tip
25 Cover, as well as reduction in 2013 sales guidance, revealed no information that Defendants had
26 allegedly concealed.

27
28

1 74. Defendants also argued that the undisputed facts show that investors were aware
2 of the allegedly concealed information before and during the Class Period, thereby negating the
3 allegedly concealed information's materiality.

4 75. On March 23, 2018, the Class Representatives filed their opposition to
5 Defendants' motion for summary judgment. ECF No. 259-4. The Class Representatives also
6 filed a responsive separate statement of facts in opposition to Defendants' summary judgment
7 motion. ECF No. 259-6. In opposing Defendants' summary judgment motion, the Class
8 Representatives argued that the motion should be denied because Defendants cannot show, as a
9 matter of law, that there is no dispute of material facts regarding the cause of the stock drops at
10 issue. The Class Representatives argued, among other things, that each of the three corrective
11 disclosures contained new information relevant to the risk profile of the da Vinci surgical system
12 and that each disclosure is traceable to the very facts allegedly concealed by Defendants'
13 omissions. For example, the Class Representatives argued that the February 28, 2013
14 Bloomberg articles that disclosed the existence of an FDA safety probe were corrective because
15 they related directly to Defendants' omission of material safety information about the
16 Company's product – including the fact that the Tip Cover was defective and that the Company
17 was underreporting MDRs. With respect to the July 18, 2013 Warning Letter, the Class
18 Representatives argued that the Court already had ruled that "Defendants' argument that the
19 Warning Letter revealed nothing new to the market . . . is unpersuasive." ECF No. 204 at 28.

20 76. The Class Representatives also argued that Defendants' truth on the market
21 defense fails because, among other reasons, whether the market understood the full truth prior to
22 the alleged corrective disclosures is a fact question for a jury to determine.

23 77. On April 23, 2018, Defendants submitted a reply brief in further support of their
24 summary judgment motion, expanding on their argument that there is no evidence of loss
25 causation because none of the alleged corrective disclosures actually corrected the alleged
26 misrepresentations, and that there are no triable issues regarding materiality because the
27 allegedly concealed information was previously disclosed to and understood by the public. ECF
28 No. 273.

1 78. The Parties were preparing to argue the summary judgment motion when they
2 agreed to settle the Action.

3 79. Trial was scheduled to begin on October 30, 2018. In connection with the
4 impending trial, the Class Representatives retained and began working with a jury consultant to
5 conduct jury focus exercises.

6 **VI. RISKS FACED BY CLASS REPRESENTATIVES IN THE ACTION**

7 80. Based on publicly available information and documents obtained through
8 counsel's investigation and the extensive fact and expert discovery conducted in the Action,
9 Class Counsel believes that it has adduced substantial evidence to support the Class
10 Representatives' and the Class's claims and was prepared to proceed to trial. However, Class
11 Counsel also realizes that the Class Representatives and Class faced considerable risks and
12 defenses in continuing to litigate. The Class Representatives and their counsel carefully
13 considered these risks during the months leading up to the Settlement and throughout the
14 settlement discussions with Defendants.

15 81. Using a rigorous event study and a well-recognized trading model, Mr. Coffman
16 has estimated maximum aggregate damages for the Class to be approximately \$580 million,
17 assuming pre-Class Period gains are netted and that the Class Representatives were to prevail on
18 *all* of their claims, including *all three* remaining alleged corrective disclosures. Accordingly, the
19 proposed Settlement represents a recovery of approximately 7.34% of that maximum amount.
20 Defendants of course disputed, even if liability were to be proven, the amount that the Class was
21 allegedly damaged, and would have argued that damages were significantly less, if any.
22 Moreover, if Defendants' arguments prevailed at summary judgment or trial (including
23 Defendants' loss causation contentions for any or all of the three remaining alleged disclosures),
24 the Class's damages would be severely or completely diminished. The recovery achieved here
25 falls well within the range of reasonableness that courts regularly approve in similar
26 circumstances, and is significantly greater than the median and average reported settlement
27 amounts in securities class actions in 2017 (\$5 million and \$18.2 million, respectively). *See*
28

1 Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, Securities Class Action Settlements –
2 2017 Review and Analysis, at 3 (Cornerstone Research 2018), Ex. 4.

3 82. In agreeing to settle, Class Representatives and Class Counsel weighed, among
4 other things, this substantial certain cash benefit to Class Members against: (i) the uncertainty of
5 prevailing on some or all of the claims at trial and the difficulties and challenges involved in
6 proving scienter, loss causation, materiality, and damages; (ii) the uncertainties inherent in
7 Defendants’ outstanding summary judgment motion, which could result in the termination of the
8 Action, no recovery for the Class, and a lengthy appellate process; (iii) the fact that, even if the
9 Class Representatives prevailed at summary judgment and trial, any monetary recovery could
10 have been less than the Settlement Amount; and (iv) the delays that would follow even a
11 favorable jury finding, including a contested claims process and appeals to the Ninth Circuit and
12 beyond.

13 **A. Risks in Proving Loss Causation, Materiality, and Damages**

14 83. Here, as evidenced by Defendants’ summary judgment briefing, Defendants
15 tenaciously contested the Class Representatives’ ability to establish loss causation, and thus
16 liability. In this regard, there were significant risks that the Court would find that the Class
17 Representatives failed to establish liability or damages as a matter of law at summary judgment,
18 that Defendants would ultimately succeed in *Daubert* challenges to the Class Representatives’
19 experts’ analyses, or—if the Court were to permit the claims to proceed to trial—that a jury (or
20 appeals court) would rule against the Class Representatives on loss causation and damages
21 grounds. While the Class Representatives and Class Counsel believe they advanced strong
22 arguments on the merits, they nonetheless acknowledge that Defendants’ arguments and counter-
23 evidence posed very credible threats to the Class Representative’s ability to ultimately succeed.
24 If the Court or a jury were to find that any of the alleged corrective disclosures identified in the
25 Second Amended Complaint were not actionable corrective disclosures, the potential recovery
26 for the Class would be significantly diminished.

27 84. Defendants would undoubtedly continue argue, as they did on summary
28 judgment, that the three remaining “corrective” disclosures do not actually correct any of the

1 allegedly false statements. For example, Defendants would argue that nothing in the February
2 28, 2013 Bloomberg article – announcing that the FDA was surveying surgeons at several
3 hospitals regarding da Vinci and any complications they have may have encountered – corrected
4 any alleged omissions regarding a purported defect or supposed internal recalls. Defendants
5 would also argue that the Class Representatives’ argument that news of the FDA survey was a
6 partial corrective disclosure had been rejected by the Ninth Circuit in a line of cases ruling that
7 an announcement of an investigation, standing alone, is insufficient to establish loss causation.

8 85. Defendants would also have continued to argue that the March 5, 2013
9 Bloomberg article, which reported on allegations from two personal injury lawsuits that had been
10 filed against Intuitive as well as other lawsuits filed against the Company, did not reveal
11 anything new to the market, because this information was all publicly available. Accordingly,
12 the accompanying stock drop cannot be evidence of loss causation. The Class Representatives
13 would have continued to counter that the article assisted investors in understanding da Vinci’s
14 safety by aggregating and analyzing public sources such as lawsuits, MDRs, academic literature,
15 and conducting interviews with practitioners in the field, and that, therefore, the article added
16 additional fraud related information, showing that the baseline safety of da Vinci was not what
17 Defendants purported it to be.

18 86. Regarding the July 18, 2013 Warning Letter where the Company announced, on
19 July 18, 2013, that it received a Warning Letter from the FDA, Defendants would have argued
20 that the Warning Letter revealed no information that Defendants had allegedly concealed, and
21 accordingly, the Class Representatives cannot establish loss causation based on the stock price
22 movement on July 18-19, 2013. Defendants would have argued that the only “new” information
23 revealed on July 18, 2013, was the existence of a Warning Letter (the contents of which were not
24 made public until July 31, 2013). Defendants would have noted that since the July 18
25 announcement revealed only the receipt of the letter itself, which the Class Representatives do
26 not allege Defendants concealed, the announcement cannot qualify as a corrective disclosure,
27 and the accompanying stock drop cannot be a basis for proving loss causation.

28

1 87. The elimination of even one of these alleged disclosures would have considerably
2 reduced damages, leaving the Class Representatives to seek significantly less than \$580 million.

3 88. Additionally, as Defendants had in their summary judgment motion, they would
4 have continued to assert the “truth on the market defense,” arguing that each piece of allegedly
5 concealed information was actually publicly available to the market. For example, Defendants
6 would have argued that the Class Representatives’ claim that Defendants failed to disclose that
7 the Company sent letters in October 2011 to all da Vinci customers regarding the proper use of
8 the Tip Cover, was immaterial because the letters were in fact widely publicized before the first
9 allegedly misleading statement was made on February 6, 2012. Additionally, Defendants would
10 have argued that a Citron Research analyst report, published on December 19, 2012, discussed
11 the “gathering storm of legal liability accruing to the company” due to the Company’s alleged
12 failure to disclose the risks associated with da Vinci. Defendants would also argue that another
13 Citron Report, published on January 17, 2013, discussed pending litigation against Intuitive
14 arising from the risks associated with its robot instruments. While the Class Representatives
15 would advance a number of arguments in response, including that the allegedly concealed
16 information did not receive adequate exposure and was essentially impossible for an investor to
17 aggregate and understand, there is no certainty as to how the Court or a jury would come out on
18 this issue.

19 89. Regarding damages, Defendants would also continue to dispute Mr. Coffman’s
20 methodologies, arguing, among other things, that he failed to conduct an adequate analysis to
21 determine which of the challenged statements were material to the market and he did not
22 determine which corrective disclosures corrected any particular prior statements.

23 90. As mentioned, Mr. Coffman estimated maximum aggregate damages to be
24 approximately \$580 million, if the Class Representatives were to prevail on all of their claims.
25 Of course Defendants would argue that damages in the Action are much smaller, or none at all.
26 If Defendants prevailed at summary judgment on their argument that the Class Representatives
27 could not establish loss causation, then the Class would have recovered nothing at all after five
28 years of litigation.

1 91. Moreover, to recover any damages at trial, Class Representatives would have to
2 prevail at many stages in the litigation – namely, Defendants’ pending summary judgment
3 motion, anticipated *Daubert* motions, and then at trial. Even if the Class Representatives
4 prevailed at those stages, appeals would likely follow. At each turn, there would be significant
5 risks attendant to the continued prosecution of the Action, and no guarantee that further litigation
6 would have resulted in a higher recovery, or any recovery at all.

7 **B. Risks in Proving Scienter**

8 92. Even beyond these substantial challenges to loss causation, materiality, and
9 damages, Defendants would hold the Class Representatives to their burden of proof on all other
10 elements of securities fraud, and establishing the Class’s claims would require the jury to make
11 complicated assessments of credibility on several complex and hotly contested factual
12 disagreements, including that Defendants had an intent to deceive or otherwise acted with
13 recklessness nearing such intent. Although scienter was not at issue on summary judgment,
14 Defendants would very well marshal counter evidence at trial.

15 93. Regarding the alleged insider trading of each of the Individual Defendants,
16 Defendants would seek to put forth expert testimony arguing, among other things, that the sales
17 of the Individual Defendants followed 10b5-1 trading plans that were entered into one year
18 before any of the alleged corrective disclosures and were consistent with SEC requirements and
19 Company insider trading policies. Defendants would also argue that Defendants Mohr and
20 Guthart approved a stock repurchase plan prior to the Class Period, which negates any finding of
21 scienter because it tends to show that they believed the share price would rise in the future. With
22 respect to knowledge of the allegedly concealed information, Defendants would likely continue
23 to press that the Class Representatives cannot prove that they knew facts contrary to each alleged
24 misrepresentation or omission. For instance, Defendants maintained that the July 2013 FDA
25 Warning Letter was not known to them ahead of time and was not kept “secret.”

26 94. The Class Representatives would counter with evidence showing that Defendants,
27 among other things, exchanged many detailed communications with the FDA discussing the
28 serious problems with, and injuries resulting from, the Tip Cover, as well as documents and

1 testimony establishing that all of the Individual Defendants regularly attended internal meetings
2 and received specific reports apprising them of the sharp rise in MDRs and adverse events, as
3 well as the Tip Cover issues affecting patients.

4 95. While the Class Representatives would put forth evidence and expert opinion to
5 support their claims, there is no certainty about which side a jury would credit.

6 **C. Risks Attendant at Trial**

7 96. In addition to the specific liability risks discussed above and the typical
8 uncertainties attendant to placing complex securities fraud issues before a jury, a trial of this case
9 presented its own unique hurdles. Given the complex scientific nature of the claims, the Class
10 Representatives intended to rely heavily on their FDA expert. Complex and subtle scientific
11 evidence, presented through multiple dueling experts' testimony, would have been needed to
12 establish falsity, materiality, scienter, and loss causation and there was no certainty that the jury,
13 or the Court at summary judgment, would have credited the Class Representatives' experts'
14 views over those of Defendants.

15 97. Further, at the time the Settlement was reached, the Parties had not yet filed
16 *Daubert* motions, where Defendants would undoubtedly seek to exclude all or most of the
17 testimony that the Class Representatives intended to offer through their experts. Had Defendants
18 prevailed in excluding any of this testimony, the presentation of many aspects of the Class
19 Representatives' case would have been severely hampered.

20 98. Even if the Class Representatives were successful in obtaining a jury verdict on
21 all or part of their claims, it was a foregone certainty that a jury verdict would have been just the
22 beginning of a long and arduous post-trial and appellate process. Given the novelty of the issues
23 concerning materiality, loss causation, damages, and the duties attendant under Section 10(b), an
24 appellate process, with the possibility of reversal, presented a real risk to the Class of obtaining a
25 recovery.

26 **VII. SETTLEMENT NEGOTIATIONS**

27 99. Beginning in the Spring of 2018, the Parties began initial discussions concerning
28 the possibility of a negotiated resolution of the case. Given the Parties' familiarity with the

1 claims and defenses, the approaching trial date, and well-informed views on the value of the
2 claims given their litigation for five years, a third-party mediator was not retained. Counsel
3 engaged in frank discussions about what continued litigation would hold.

4 100. As a result of these arm's-length discussions between counsel, the Parties reached
5 an agreement in principle to settle the Action on June 6, 2018, which was memorialized in a
6 term sheet, after additional negotiations, on August 14, 2018.

7 101. The Parties thereafter memorialized the final terms of the Settlement in the
8 Stipulation, which was executed by the Parties on September 11, 2018, and filed with the Court
9 that same day (ECF No. 298-1), along with the Class Representatives' motion and supporting
10 memorandum of points and authorities seeking preliminary approval of the Settlement (ECF No.
11 297).⁴

12 102. As documented in the Stipulation, in exchange for payment of the Settlement
13 Amount, upon the Effective Date of the Settlement, Class Representatives and the Class, which
14 is the same as the class previously certified by the Court, will forever release all Released Claims
15 against the Released Defendant Parties and the Action will be dismissed with prejudice.
16 Released Claims are essentially all claims that were brought or that could have been brought in
17 the Action or any forum arising out of the allegations and the purchase of Intuitive common
18 stock during the Class Period. *See* Stipulation ¶1(aa), ¶3. The release language was carefully
19 tailored and is very typical of that used in numerous other securities class action settlements. It
20 provides Defendants with "complete peace" from collateral re-litigation of the claims in the
21 Action. Also upon the Effective Date of the Settlement, the Defendants will forever release all
22 Released Defendants' Claims against the Released Plaintiff Parties. Released Defendants'

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25 ⁴ Contemporaneously with executing the Stipulation, as referenced in ¶39(a), the Parties also
26 executed a Confidential Supplemental Agreement Regarding Requests for Exclusion, which
27 governs the circumstances under which Defendants can terminate the Settlement if a certain
28 threshold of exclusion requests are received. It is typical to keep such agreements confidential so
that potential opt outs do not use them to leverage additional recoveries for themselves, at the
expense of the class. If the termination threshold is ultimately reached, notice will be filed with
the Court before the Settlement Hearing. The term sheet, Stipulation, and Supplemental
Agreement are the only agreements between the Parties in connection with the Settlement.

1 Claims are essentially all claims related to the institution, prosecution, or settlement of the
2 claims. *See* Stipulation ¶1(cc), ¶4.

3 **VIII. CLASS REPRESENTATIVES' COMPLIANCE WITH PRELIMINARY**
4 **APPROVAL ORDER AND REACTION OF THE CLASS**

5 103. Pursuant to the Preliminary Approval Order, the Court appointed the notice
6 administrator, Garden City Group LLC, which was recently acquired by Epiq Class Action &
7 Claims Solutions, Inc., ("GCG") as the Claims Administrator and instructed GCG to disseminate
8 copies of the Notice of Proposed Class Action Settlement and Motion for Attorneys' Fees and
9 Expenses and Proof of Claim (collectively the "Claim Packet") by mail and to publish the
10 Summary Notice of Proposed Class Action Settlement and Motion for Attorneys' Fees and
11 Expenses.

12 104. The Settlement Notice, attached as Exhibit B to the Mailing Declaration, provides
13 potential Class Members with information about the terms of the Settlement and, among other
14 things: their right to again opt-out of the Class; their right to opt-back into the Class (for those
15 who previously requested exclusion in connection with the Class Notice); their right to object to
16 any aspect of the Settlement, the Plan of Allocation, or the Fee and Expense Application; and the
17 manner for submitting a Claim Form to be eligible for a payment from the net proceeds of the
18 Settlement. The Settlement Notice also informs Class Members of Class Counsel's intention to
19 apply for an award of attorneys' fees of no more than 19% of the Settlement Fund and for
20 payment of litigation expenses in an amount not to exceed \$2,500,000.

21 105. As detailed in the Mailing Declaration, on October 15, 2018, GCG began mailing
22 Claim Packets to potential Class Members as well as banks, brokerage firms, and other third
23 party nominees whose clients may be Class Members. Ex. 3 ¶¶3-8. To disseminate the
24 Settlement Notice, GCG used the names and addresses of potential Class Members from the
25 mailing file that GCG had compiled in connection with the Class Notice, plus banks, brokers,
26 and other nominees were ordered in the Preliminary Approval Order to provide any additional
27 names and addresses that they had not previously provided. *Id.* ¶¶4-5. In total, to date, GCG has
28

1 mailed 233,036 Claim Packets to potential nominees and Class Members by first-class mail,
2 postage prepaid. *Id.* ¶8.⁵

3 106. On October 22, 2018, GCG caused the Summary Notice to be published in
4 *Investor's Business Daily* and to be transmitted over the *PR Newswire* for dissemination across
5 the internet. *Id.* ¶9 and Exhibits C and D attached thereto.

6 107. GCG also maintains and posts information regarding the Settlement on a
7 dedicated website established for the Action, www.IntuitiveSurgicalSecuritiesLitigation.com, to
8 provide Class Members with information, including downloadable copies of the Claim Packet
9 and the Stipulation. *Id.* ¶10.

10 108. Defendants mailed notice of the Settlement pursuant to the Class Action Fairness
11 Act, 28 U.S.C. §1715.

12 109. Pursuant to the terms of the Preliminary Approval Order, the deadline for Class
13 Members to submit objections to the Settlement, the Plan of Allocation, or the Fee and Expense
14 Application, or to request exclusion from the Class is November 29, 2018. To date, no
15 objections to the Settlement have been received and the Claims Administrator has received one
16 request for exclusion in connection with the Settlement Notice. *Id.* ¶14.

17 110. Class Counsel will respond to any future objections and provide a full report on
18 the exclusion requests in its reply papers, which are due on December 13, 2018.

19 **IX. PLAN OF ALLOCATION**

20 111. Pursuant to the Preliminary Approval Order, and as set forth in the Settlement
21 Notice, all Class Members who wish to participate in a future distribution of the Settlement
22 proceeds must submit a valid Claim Form, including all required information, no later than
23 December 6, 2018. As provided in the Settlement Notice, after the deduction of Court-awarded
24 attorneys' fees and expenses, Notice and Administration Expenses, and applicable Taxes, the
25 balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the
26 plan of allocation approved by the Court (the "Plan of Allocation").

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⁵ As is standard in securities class actions, personal email addresses of potential class
members were not requested (or provided) from the Company's transfer agent or nominees.

1 112. The proposed Plan of Allocation, which was set forth in full in the Settlement
2 Notice (Ex. 3-B at 9-12), is designed to achieve an equitable and rational distribution of the Net
3 Settlement Fund. Class Counsel’s damages expert developed the Plan of Allocation after careful
4 consideration of the Class’s theories of liability and damages, and Class Counsel believes that
5 the plan provides a fair and reasonable method to equitably distribute the Net Settlement Fund
6 among Authorized Claimants.

7 113. The Plan of Allocation provides for distribution of the Net Settlement Fund
8 among Authorized Claimants on a *pro rata* basis based on their “Recognized Losses,” calculated
9 according to the Plan’s formulas, which are consistent with the Class Representatives’ theories of
10 liability and damages under the Exchange Act. These formulas consider the amount of alleged
11 artificial inflation in the prices of Intuitive’s publicly traded common stock, as quantified by Mr.
12 Coffman. Mr. Coffman analyzed the movement in the prices of Intuitive’s common stock and
13 took into account the portion of the price drops allegedly attributable to the alleged fraud.

14 114. Claimants will be eligible for a payment based on when they purchased, held, or
15 sold their Intuitive stock. The Court-approved Claims Administrator, under Class Counsel’s
16 direction, will calculate claimants’ Recognized Losses using the transactional information
17 provided in their Claim Forms. Claims may be submitted to the Claims Administrator through
18 the mail, online using the case website, or for large investors with thousands of transactions
19 through email to GCG’s electronic filing team. (Neither the Parties nor the Claims
20 Administrator independently have claimants’ transactional information.) The Class
21 Representatives’ losses will be calculated in the same manner.

22 115. Once the Claims Administrator has processed all submitted claims and provided
23 claimants with an opportunity to cure deficiencies or challenge rejection determinations,
24 payment distributions will be made to eligible Authorized Claimants using checks and, in some
25 instances, wire transfers. After an initial distribution, if there is any balance remaining in the Net
26 Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least
27 six (6) months from the date of initial distribution, Class Counsel will, if feasible and
28 economical, re-distribute the balance among Authorized Claimants who have cashed their

1 checks. Re-distributions will be repeated until the balance in the Net Settlement Fund is no
2 longer economically feasible to distribute. *See* Ex. 3-B at 11. Any balance that still remains in
3 the Net Settlement Fund after re-distribution(s), which is not economical to reallocate, after
4 payment of any outstanding Notice and Administration Expenses or Taxes, shall be donated in
5 equal amounts to the Bay Area Legal Aid and the Consumer Federation of America, as directed
6 by the Court at the preliminary approval hearing.

7 116. To date, there have been no objections to the proposed Plan of Allocation.

8 117. In sum, the proposed Plan of Allocation, developed by the Class Representatives'
9 damages expert, was designed to fairly and rationally allocate the Net Settlement Fund among
10 Authorized Claimants. Accordingly, Class Counsel respectfully submits that the proposed Plan
11 of Allocation is fair, reasonable, and adequate and should be approved.

12 **X. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES**

13 118. For its significant efforts on behalf of the Class, Class Counsel is applying for
14 compensation from the Settlement Fund on a percentage basis. As explained in Class Counsel's
15 Fee Brief, courts within the Ninth Circuit recognize that the percentage method is the appropriate
16 method of fee recovery and the prevailing method of determining attorneys' fees in the Ninth
17 Circuit.

18 119. Consistent with the Settlement Notice, Class Counsel seeks, on behalf of all
19 Plaintiffs' Counsel, a fee award of 19% of the Settlement Fund.⁶ Class Counsel also requests
20 payment of expenses incurred in connection with the prosecution of the Action from the
21 Settlement Fund in the amount of \$1,988,789.66, plus the Class Representatives' request for
22 \$58,854.18 pursuant to the PSLRA. Class Counsel submits that, for the reasons discussed below
23 and in the accompanying Fee Brief, such awards would be reasonable and appropriate under the
24 circumstances before the Court.

25 _____
26 ⁶ Class Counsel was assisted in this case by Local Counsel, Kerr & Wagstaffe LLP, and
27 attorney Anthony Takitani and The Thornton Law Firm, which provided additional legal
28 assistance to Hawaii ERS (collectively "Plaintiffs' Counsel"). Any attorneys' fees awarded by
the Court to Class Counsel will be allocated by Class Counsel to other Plaintiffs' Counsel. No
other law firms will share in the attorneys' fees awarded by the Court and the payments to Kerr
& Wagstaffe, Mr. Takitani and the Thornton Law Firm will not increase the attorneys' fees
deducted from the Settlement Fund in any way.

1 **A. The Class Representatives Support the Fee and Expense Application**

2 120. Both Hawaii ERS and Greater Pennsylvania, each a sophisticated institutional
3 investor, played a central role in monitoring and participating in the Action, including, among
4 other things, reviewing pleadings, motions and other court filings; participating in the discovery
5 process, including producing documents and being deposed; and participating in frequent
6 conference calls and/or in person meetings with Class Counsel. *See* Ex. 1 ¶5 and Ex. 2 ¶5.
7 Hawaii ERS also attended oral argument on the motion for certification of the Class. *See* Ex. 1
8 ¶5.

9 121. The Class Representatives have evaluated and fully support the Fee and Expense
10 Application. *See* Ex. 1 ¶¶8-9 and Ex 2 ¶¶8-9. In coming to this conclusion, the Class
11 Representatives considered the recovery obtained as well as Class Counsel’s substantial effort in
12 obtaining the recovery. Particularly in light of the considerable risks of litigation, the Class
13 Representatives agreed to allow Class Counsel to apply for 19% of the Settlement Fund. *See id.*
14 The 19% request is based on a pre-settlement retainer agreement with Hawaii ERS, given the
15 stage of the litigation, and is lower than the fee agreement entered into with Greater
16 Pennsylvania. It is also below the Ninth Circuit’s benchmark.

17 **B. The Favorable Settlement Achieved**

18 122. Courts have consistently recognized that the result achieved is a major factor to be
19 considered in making a fee award. *See* Fee Brief, §I.C.1. Here, as described above, the
20 \$42,500,000 settlement is a very favorable result, particularly when considered in view of the
21 substantial risks and obstacles to recovery if the Action was to continue through a decision on
22 summary judgment, to trial, and through likely post-trial motions and appeals.

23 123. As set forth in detail above, the recovery obtained for the Class was the result of
24 thorough and diligent prosecutorial and investigative efforts, and complicated and arduous
25 motion practice. As a result of this Settlement, thousands of Class Members will benefit and
26 receive compensation for their losses and avoid the very substantial risk of no recovery in the
27 absence of a settlement.

28

1 **C. The Risks and Unique Complexities of Contingent Class Action Litigation**

2 124. This Action presented substantial challenges from the outset of the case. The
3 specific complexities and risks the Class Representatives faced in proving Defendants' liability
4 and damages are detailed in paragraphs 80 to 98, above. These case-specific risks are in addition
5 to the more typical risks accompanying securities class action litigation, such as the fact that this
6 Action is governed by stringent PSLRA requirements and case law interpreting the federal
7 securities laws and was undertaken on a contingent basis. Here, there was no restatement,
8 Company admission, or parallel governmental or criminal proceeding, which would have aided
9 the Class or Class Counsel in proving elements of the case, like materiality and scienter.

10 125. From the outset, Class Counsel understood that it was embarking on a complex,
11 expensive, and lengthy litigation with no guarantee of ever being compensated for the substantial
12 investment of time and money the case would require. In undertaking that responsibility, Class
13 Counsel was obligated to ensure that sufficient resources were dedicated to the prosecution of the
14 Action, and that funds were available to compensate staff and to cover the considerable costs that
15 a case such as this requires. With an average lag time of several years for these cases to
16 conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid
17 on an ongoing basis. Indeed, Class Counsel received no compensation during the five year
18 course of the Action but has dedicated 41,749.30 hours of time for a lodestar of \$21,502,439.00
19 and has incurred \$1,988,789.66 in expenses in prosecuting the Action for the benefit of the
20 Class.

21 126. Class Counsel bore the risk that no recovery would be achieved (or that a
22 judgment could not be collected, in whole or in part). Even with the most vigorous and
23 competent of efforts, success in contingent-fee litigation, such as this, is never assured. Class
24 Counsel knows from experience that the commencement of a class action does not guarantee a
25 settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the
26 facts and theories that are needed to sustain a complaint or win at trial, or to convince
27 sophisticated defendants to engage in serious settlement negotiations at meaningful levels. Class
28 Counsel is aware of many hard-fought lawsuits in which, because of the discovery of facts

1 unknown when the case was commenced, or changes in the law during the pendency of the case,
2 or a decision of a judge or jury following a trial on the merits, excellent professional efforts of
3 members of the plaintiffs' bar produced no fee for counsel.

4 127. Federal appellate reports are filled with opinions affirming dismissals with
5 prejudice in securities cases. The many appellate decisions affirming summary judgment and
6 directed verdicts for defendants show that surviving a motion to dismiss is not a guarantee of
7 recovery. *See, e.g., In re Oracle Corp., Sec. Litig.*, 627 F.3d 376 (9th Cir. 2010); *In re Silicon*
8 *Graphics Sec. Litig.*, 183 F.3d 970 (9th Cir. 1999); *Phillips v. Scientific-Atlanta, Inc.*, 489 F.
9 App'x 339 (11th Cir. 2012); *In re Smith & Wesson Holding Corp. Sec. Litig.*, 669 F.3d 68 (1st
10 Cir. 2012); *McCabe v. Ernst & Young, LLP*, 494 F.3d 418 (3d Cir. 2007); *In re Digi Int'l Inc.*
11 *Sec. Litig.*, 14 F. App'x 714 (8th Cir. 2001); *Geffon v. Micrion Corp.*, 249 F.3d 29 (1st Cir.
12 2001).

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

19 129. Even plaintiffs who succeed at trial may find their verdict overturned on appeal.
20 *See, e.g., Glickenhau & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing
21 and remanding jury verdict of \$2.46 billion after 13 years of litigation on loss causation grounds
22 and error in jury instruction under *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S.
23 Ct. 2296 (2011)); *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1998) (reversing
24 plaintiffs' jury verdict for securities fraud); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th
25 Cir. 1997) (reversing \$81 million jury verdict and dismissing case with prejudice); *Anixter v.*
26 *Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained
27 after two decades of litigation). And, the path to maintaining a favorable jury verdict can be
28 arduous and time consuming. *See, e.g., In re Apollo Grp., Inc. Sec. Litig.*, Case No. CV-04-

1 2147-PHX-JAT, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008), *rev'd*, No. 08-16971, 2010 WL
2 5927988 (9th Cir. June 23, 2010) (trial court tossing unanimous verdict for plaintiffs, which was
3 later reinstated by the Ninth Circuit Court of Appeals) and judgment re-entered (*id.*) after denial
4 by the Supreme Court of the United States of defendants' Petition for Writ of Certiorari (*Apollo*
5 *Grp. Inc. v. Police Annuity & Benefit Fund*, 131 S. Ct. 1602 (2011)).

6 130. Losses such as those described above are exceedingly expensive for plaintiff's
7 counsel to bear. The fees that are awarded in successful cases are used to cover enormous
8 overhead expenses incurred during the course of litigations and are taxed by federal, state, and
9 local authorities.

10 131. Courts have repeatedly held that it is in the public interest to have experienced
11 and able counsel enforce the securities laws and regulations pertaining to the duties of officers
12 and directors of public companies. Vigorous private enforcement of the federal securities laws
13 and state corporation laws can only occur if private plaintiffs can obtain some parity in
14 representation with that available to large corporate defendants. If this important public policy is
15 to be carried out, courts should award fees that will adequately compensate private plaintiffs'
16 counsel, taking into account the enormous risks undertaken with a clear view of the economics of
17 a securities class action.

18 132. As discussed in detail above, this case was fraught with significant risk factors
19 concerning liability and damages. Were this Settlement not achieved, and even if the Class
20 Representatives prevailed at trial, the Class Representatives and Class Counsel faced potentially
21 years of costly and risky appellate litigation against Defendants, with ultimate success far from
22 certain and the prospect of no recovery significant. Class Counsel therefore respectfully submits
23 that based upon the considerable risk factors present, this case involved a very substantial
24 contingency risk to counsel.

25 **D. The Work of Plaintiffs' Counsel and the Lodestar Cross-Check**

26 133. The work undertaken by Plaintiffs' Counsel in investigating and prosecuting this
27 case, and arriving at the present Settlement in the face of serious hurdles, has been time-
28 consuming and challenging. As explained above, counsel conducted a comprehensive

1 investigation into the Class’s claims; researched and prepared two amended complaints; briefed
2 two thorough oppositions to Defendants’ motions to dismiss the complaints, including a motion
3 for reconsideration; moved for certification of the Class and overcame Defendants’ Rule 23(f)
4 petition and motion for reconsideration; engaged in extremely thorough discovery efforts that led
5 to obtaining more than approximately 550,000 pages of discovery documents from Defendants
6 and third-parties; took or defended 24 depositions; exchanged 11 expert reports; opposed
7 Defendants’ summary judgment motion seeking dismissal of the Action; and began trial
8 preparations.

9 134. At all times throughout the pendency of the Action, Plaintiffs’ Counsel’s efforts
10 were driven and focused on advancing the litigation to bring about the most successful outcome
11 for the Class, whether through settlement or trial, by the most efficient means possible.

12 135. Attached hereto are declarations from Plaintiffs’ counsel, which are submitted in
13 support of the request for an award of attorneys’ fees and payment of litigation expenses. *See*
14 Declaration of Jonathan Gardner Filed on Behalf of Labaton Sucharow LLP in Support of
15 Application for Award of Attorneys’ Fees and Expenses (attached as Exhibit 5 hereto); and the
16 Declaration of James M. Wagstaffe Filed on Behalf of Kerr & Wagstaffe LLP in Support of
17 Application for Award of Attorneys’ Fees and Expenses (attached as Exhibit 6 hereto).

18 136. Included with these declarations are schedules that summarize the time of each
19 firm (including by category of work conducted), as well as the expenses incurred by category
20 (the “Fee and Expense Schedules”).⁷ The attached declarations and the Fee and Expense
21 Schedules report the amount of time spent by each attorney and professional support staff of
22 Plaintiffs’ counsel and the “lodestar” calculations, *i.e.*, their hours multiplied by their hourly
23 rates. *See* Exs. 5 and 6. As explained in each declaration, they were prepared from
24 contemporaneous time records regularly prepared and maintained by the respective firms. Kerr
25 & Wagstaffe’s legal fees have been partially advanced by Labaton Sucharow. *See* Ex. 6 ¶9.

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27
28 ⁷ Attached hereto as Exhibit 7 is a summary table of the lodestars and expenses of Plaintiffs’
counsel. Kerr & Wagstaffe did not incur any expenses for which it seeks reimbursement. *See*
Ex. 6 ¶8.

1 137. The hourly rates of Plaintiffs' counsel here range from \$700 to \$975 for partners,
2 \$700 per hour for of counsels, \$375 to \$675 for associates, and \$335 to \$435 per hour for the
3 attorneys that assisted with document review and deposition preparation. *See* Exs. 5-A and 6-A.
4 It is respectfully submitted that the hourly rates for attorneys and professional staff included in
5 these schedules are reasonable and customary for this type of complex commercial litigation.
6 Exhibit 8, attached hereto, is a table of hourly rates for defense firms compiled by Labaton
7 Sucharow from fee applications submitted by such firms nationwide in bankruptcy proceedings
8 in 2017. The analysis shows that across all types of attorneys, Plaintiffs' counsel's rates are
9 consistent with, or lower than, the firms surveyed.

10 138. Plaintiffs' counsel have collectively expended 41,813.90 hours in the prosecution
11 and investigation of the Action through September 30, 2018. *See* Ex. 7. The resulting collective
12 lodestar is \$21,548,609.00, which does not include any time that will necessarily be spent from
13 this date forward administering the Settlement, preparing for and attending the Settlement
14 Hearing, and assisting class members. *Id.* Pursuant to a lodestar "cross-check," applied within
15 the Ninth Circuit, the requested fee of 19% of the Settlement Fund (or \$8,075,000) results in a
16 *fractional* "multiplier" of 0.37 on the lodestar. Accordingly, Class Counsel is only seeking
17 approximately 37% of lodestar.

18 **E. The Skill Required and Quality of the Work**

19 139. Class Counsel Labaton Sucharow is among the most experienced and skilled
20 securities litigation law firms in the field. The expertise and experience of its attorneys are
21 described in Exhibit 5-D annexed hereto.

22 140. Since the passage of the PSLRA, Labaton Sucharow has been approved by courts
23 to serve as lead counsel in numerous notable securities class actions throughout the United
24 States, and has taken three of the approximately 21 post PSLRA securities class actions to trial.
25 Here, Labaton Sucharow attorneys have devoted considerable time and effort to this case,
26 thereby bringing to bear many years of collective experience. For example, Labaton Sucharow
27 has served as lead counsel in a number of high profile matters: *In re Am. Int'l Grp., Inc. Sec.*
28 *Litig.*, No. 04-8141 (S.D.N.Y.) (representing the Ohio Public Employees Retirement System,

1 State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension Fund and reaching
2 settlements of \$1 billion); *In re HealthSouth Corp. Sec. Litig.*, No. 03-1501 (N.D. Ala.)
3 (representing the State of Michigan Retirement System, New Mexico State Investment Council,
4 and the New Mexico Educational Retirement Board and securing settlements of more than \$600
5 million); *In re Countrywide Sec. Litig.*, No. 07-5295 (C.D. Cal.) (representing the New York
6 State and New York City Pension Funds and reaching settlements of more than \$600 million); *In*
7 *re Schering-Plough Corp. / ENHANCE Securities Litigation*, Civil Action No. 08-397 (DMC)
8 (JAD) (D.N.J.) (representing Massachusetts Pension Reserves Investment Management Board
9 and reaching a settlement of \$473 million). *See* Ex. 5-D.

10 **XI. CLASS COUNSEL'S REQUEST FOR LITIGATION EXPENSES**

11 141. Class Counsel seeks payment from the Settlement Fund of \$1,988,789.66 in
12 litigation expenses reasonably and necessarily incurred in connection with prosecuting the claims
13 against Defendants. The Settlement Notice informs the Class that Class Counsel will apply for
14 payment of litigation expenses of no more than \$2,500,000. *See* Ex. 3-B at 1, 7. The amounts
15 requested are below this cap. To date, no objection to Class Counsel's request for expenses has
16 been raised.

17 142. As set forth in the Fee and Expense Schedules, Class Counsel has incurred a total
18 of \$1,988,789.66 in litigation expenses in connection with the prosecution of the Action. *See* Ex.
19 5-C. As attested to, these expenses are reflected on the books and records maintained by
20 Labaton Sucharow. These books and records are prepared from expense vouchers, check
21 records, and other source materials and are an accurate record of the expenses incurred. These
22 expenses are set forth in detail in Class Counsel's declaration, which identifies the specific
23 category of expense – e.g., testifying and consulting expert fees, travel costs, online/computer
24 research, litigation support, duplicating, telephone, and postage expenses.

25 143. A significant component of Class Counsel's expenses is the cost of testifying and
26 consulting experts, which totals \$1,188,565.43 or 60% of total expenses. As noted above, Class
27 Counsel retained Mr. Coffman to opine on market efficiency, in connection with the Class
28 Representatives' class certification motion. Mr. Coffman submitted two reports in connection

1 with class certification. Mr. Coffman was also retained, later on in the litigation, to submit a
2 merits expert report on materiality, causation, and the amount of damages suffered by the Class,
3 and to help develop a fair and reasonable Plan of Allocation. Class Counsel also retained
4 Thomas C. Knott, an FDA regulatory expert who provided a report on the Company's
5 compliance with FDA regulations and the effectiveness of Intuitive's procedures for handling
6 adverse events caused by its medical devices, and H. Nejat Seyhun, a professor of finance who
7 provided a report on insider trading and executive compensation. Each of these experts were
8 deposed and assisted with crafting arguments countering the Defendants' four experts. Class
9 Counsel also retained consulting experts in the fields of damages, FDA regulation and medical
10 devices, robotic surgery, and jury analysis. These professionals were essential to the prosecution
11 of the Action.

12 144. Class Counsel was required to work late hours and travel in connection with this
13 Action and incurred costs related to working meals, lodging, trial accommodations, and
14 transportation, which total \$247,805.08 or 12% of aggregate expenses. The travel involved
15 numerous appearances before the Court, attending approximately 24 depositions, and other trips
16 related to meeting with witnesses or the Class Representatives. Any first class airfare was
17 reduced to economy rates.

18 145. Class Counsel also seeks \$174,840.30 (9% of total expenses) relating to litigation
19 support services, such as the costs associated with electronic discovery and independent counsel
20 for confidential witnesses. Expenses totaling \$90,139.18 (5% of total expenses) were also
21 incurred in connection with court-reporting and the 24 depositions taken in the case.

22 146. Computerized research totals \$73,870.71 or 4% of total expenses. These are the
23 charges for computerized factual and legal research services, including LexisNexis, Westlaw,
24 Courtlink, Thompson, and PACER. These services allowed counsel to perform media searches
25 on Intuitive, obtain analysts' reports and financial data for Intuitive, and conduct legal research.

26 147. The other expenses for which Class Counsel seeks payment are the types of
27 expenses that are necessarily incurred in litigation and routinely charged to clients billed by the
28

1 hour. These expenses include, among others, duplicating costs, long distance telephone and
2 conference call charges, filing fees, and postage and delivery expenses.

3 148. All of the litigation expenses incurred, which total \$1,988,789.66, were necessary
4 to the successful prosecution and resolution of the claims against Defendants.

5 149. In view of the complex nature of the Action, the expenses incurred were
6 reasonable and necessary to pursue the interests of the Class. Accordingly, it is respectfully
7 submitted that the expenses incurred by Class Counsel should be paid in full from the Settlement
8 Fund.

9 **XII. CLASS REPRESENTATIVES' REIMBURSEMENT**
10 **PURSUANT TO THE PSLRA**

11 150. Additionally, in accordance with 15 U.S.C. §78u-4(a)(4), the Class
12 Representatives Hawaii ERS and Greater Pennsylvania seek reimbursement of their reasonable
13 costs and expenses (including lost wages) incurred in connection with their work representing
14 the Class in the aggregate amount of \$58,854.18. The amount of time and effort devoted to this
15 Action by each of the Class Representatives is detailed in the accompanying Declaration of
16 Elmira K.L. Tsang on behalf of Hawaii ERS and Declaration of James R. Klein on behalf of
17 Greater Pennsylvania, attached hereto as Exhibits 1 and 2. Hawaii ERS seeks \$49,754.18 in
18 connection with the 339.40 hours it dedicated to the litigation, and Greater Pennsylvania seeks
19 \$9,100 in connection with the 80 hours it dedicated to the litigation. *Id.* Class Counsel
20 respectfully submits that the amounts requested by Class Representatives are consistent with
21 Congress's intent, as expressed in the PSLRA, of encouraging institutional investors to take an
22 active role in commencing and supervising private securities litigation.

23 151. As discussed in the Fee Brief and in the Class Representatives' supporting
24 declarations, the Class Representatives have been committed to pursuing the Class's claims since
25 they became involved in the litigation back in 2013. As large institutional investors, the Class
26 Representatives have actively and effectively fulfilled their obligations as representatives of the
27 Class, complying with all of the many demands placed upon them during the litigation and
28 settlement of the Action, and providing valuable assistance to Class Counsel. For instance, the

1 Class Representatives engaged in time-consuming discovery efforts and searches to locate and
2 produce documents responsive to Defendants' discovery requests. Ex. 1 ¶5; Ex. 2 ¶5. In
3 addition, the Class Representatives prepared for, and testified at, four depositions in connection
4 with the class certification motion. *Id.* These efforts required employees of the Class
5 Representatives to dedicate time and resources to the Action that they would have otherwise
6 devoted to their regular duties.

7 152. The efforts expended by the Class Representatives during the course of the Action
8 are precisely the types of activities courts have found support reimbursement to class
9 representatives, and support the Class Representatives' request for reimbursement.

10 **XIII. THE REACTION OF THE CLASS TO THE FEE AND EXPENSE** 11 **APPLICATION**

12 153. As mentioned above, consistent with the Preliminary Approval Order, a total of
13 233,036 Settlement Notices have been mailed to potential Class Members advising them that
14 Class Counsel would seek an award of attorneys' fees not to exceed 19% of the Settlement Fund,
15 and payment of expenses in an amount not greater than \$2,500,000. *See* Ex. 3 ¶8. Additionally,
16 the Summary Notice was published in *Investor's Business Daily* and disseminated over *PR*
17 *Newswire*. *Id.* ¶9. The Settlement Notice has also been available on the case website maintained
18 by the Claims Administrator (*id.* ¶10) and on Labaton Sucharow's website.⁸

19 154. While the deadline set by the Court for Class Members to object to the requested
20 fees and expenses has not yet passed, to date no one has objected to the fee or expense request.
21 Class Counsel will respond to any objections that may be received in its reply papers, which are
22 due December 13, 2018.

23 **XIV. MISCELLANEOUS EXHIBITS**

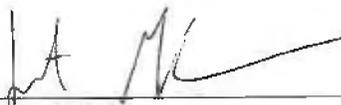
24 155. Attached hereto as Exhibit 9 is a compendium of unreported cases, in alphabetical
25 order, cited in the accompanying Fee Brief.

26
27
28 ⁸ The Class Representatives' motion for approval of the Settlement and Class Counsel's
motion for an award of attorneys' fees and expenses will also be posted on the case website and
Labaton Sucharow's website.

1 **XV. CONCLUSION**

2 156. In view of the significant recovery for the Class and the substantial risks of this
3 litigation, as described above and in the accompanying memorandum of law, the Class
4 Representatives and Class Counsel respectfully submit that the Settlement should be approved as
5 fair, reasonable, and adequate and that the proposed Plan of Allocation should likewise be
6 approved as fair, reasonable, and adequate. In view of the significant recovery in the face of
7 substantial risks, the quality and amount of work performed, the contingent nature of the fee, and
8 the standing and experience of Class Counsel, as described above and in the accompanying
9 memorandum of law, Class Counsel respectfully submits that a fee in the amount of 19% of the
10 Settlement Fund be awarded, that litigation expenses in the amount of \$1,988,789.66 be paid,
11 and that the Class Representatives be reimbursed \$58,854.18 (in the aggregate), pursuant to the
12 PSLRA.

13 I declare under penalty of perjury that the foregoing is true and correct. Executed on
14 November 15, 2018.

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17 JONATHAN GARDNER

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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2018, 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 will mail the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Service List, if any.

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

Executed on November 15, 2018

/s/ Jonathan Gardner
JONATHAN GARDNER

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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
17 (who therefore require manual noticing). You may wish to use your mouse to select and copy
18 this list into your word processing program in order to create notices or labels for these
19 recipients.

- 20 • **(No manual recipients)**
- 21
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- 23
- 24
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Exhibit 1

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15 acoquin@labaton.com

16 *Lead Counsel for Plaintiffs and the Class*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN JOSE DIVISION**

20 IN RE INTUITIVE SURGICAL
21 SECURITIES LITIGATION

Case No. 5:13-cv-01920-EJD (HRL)

**DECLARATION ON BEHALF OF
EMPLOYEES' RETIREMENT SYSTEM
OF THE STATE OF HAWAII IN
SUPPORT OF (I) FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
(II) CLASS COUNSEL'S MOTION FOR
ATTORNEYS' FEES AND EXPENSES**

Date: December 20, 2018
Time: 9:00 a.m.
Dept.: Courtroom 4, 5th Floor
Judge: Hon. Edward J. Davila

1 I, Elmira K.L. Tsang, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746:

2 1. I am a Deputy Attorney General at the Department of the Attorney General for the
3 State of Hawaii. I represent the Employees' Retirement System of the State of Hawaii ("Hawaii
4 ERS"), one of two Court-appointed Class Representatives in the above-captioned class action
5 (the "Action"). I respectfully submit this declaration in support of (i) Class Representative
6 Greater Pennsylvania Carpenters' Pension Fund ("Greater Pennsylvania") and Hawaii ERS's
7 (collectively, "Plaintiffs" or "Class Representatives") motion for final approval of the proposed
8 class action Settlement and approval of the proposed Plan of Allocation; and (ii) Class Counsel's
9 motion for an award of attorneys' fees and payment of expenses, including approval of Hawaii
10 ERS's request to recover the reasonable costs it incurred in connection with its representation of
11 the Class in the prosecution of this litigation, pursuant to the Private Securities Litigation Reform
12 Act of 1995 ("PSLRA").
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15 2. I am aware of and understand the requirements and responsibilities of a
16 representative plaintiff in a securities class action, including those set forth in the PSLRA. I have
17 knowledge of the matters set forth in this Declaration, as I have been directly involved in
18 monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to
19 the Settlement, and I could and would testify competently to these matters. Prior to his
20 retirement on or about July 31, 2017, former Deputy Attorney General Brian Aburano was
21 primarily responsible for overseeing this Action and I regularly met with him to receive updates
22 regarding the prosecution of this Action. After Mr. Aburano retired, I became responsible for
23 overseeing this Action.
24

25 3. On November 18, 2013, the Court issued an order appointing Hawaii ERS as lead
26 plaintiff and approving its selection of Labaton Sucharow LLP as Lead Counsel for the proposed
27 class. ECF No. 50. On October 15, 2013, Plaintiffs filed the Amended Class Action Complaint,
28

1 which added Greater Pennsylvania as a named plaintiff in the litigation. ECF No. 48.

2 4. By order dated December 22, 2016, the Court certified the Action as a class action
3 and appointed Greater Pennsylvania and Hawaii ERS as Class Representatives. ECF No. 204.

4 **I. HAWAII ERS'S OVERSIGHT OF THE LITIGATION**

5 5. Throughout the litigation, Hawaii ERS received periodic status reports from Class
6 Counsel on case developments; participated in discovery; reviewed significant court filings; and
7 participated in frequent discussions with counsel concerning the prosecution of the Action, the
8 strengths and weaknesses to the claims, and the negotiations leading to the potential settlement.

9 In particular, during the course of the Action, Hawaii ERS: (a) regularly communicated and met
10 with counsel regarding the posture and progress of the case; (b) communicated with Greater
11 Pennsylvania; (c) reviewed and/or discussed all significant pleadings, motions, and briefs filed in
12 the Action; (d) reviewed and/or discussed all significant decisions in the Action; (e) coordinated
13 Hawaii ERS's document production and other discovery responses; (f) communicated with
14 Hawaii ERS's investment managers responsible for its investments in Intuitive stock; (g)
15 travelled from Hawaii to San Jose, California for the class certification motion hearing; (h)
16 traveled to San Francisco for three depositions; (i) consulted with counsel regarding settlement
17 negotiations; and (j) evaluated and approved the proposed Settlement.

18 **II. APPROVAL OF THE SETTLEMENT**

19 6. Through staff members' active participation in the Action, Hawaii ERS was kept
20 informed of the progress of the settlement negotiations in this litigation, and conferred with Class
21 Counsel regarding the parties' respective positions.

22 7. Based on staff members' involvement throughout the prosecution and resolution
23 of the claims asserted in the Action, Hawaii ERS believes that the Settlement provides a very
24 favorable recovery for the Class, particularly in light of the risks of continued litigation. Hawaii
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1 ERS believes that the proposed Settlement is fair, reasonable, and adequate to the Class and
2 strongly endorses approval of the Settlement by the Court.

3 **III. CLASS COUNSEL'S MOTION FOR AN AWARD OF**
4 **ATTORNEYS' FEES AND PAYMENT OF EXPENSES**

5 8. Hawaii ERS believes that Class Counsel's request for an award of attorneys' fees
6 of 19% of the Settlement Fund (\$8,075,000) is fair and reasonable in light of the substantial work
7 Class Counsel performed on behalf of the Class. Hawaii ERS has evaluated Class Counsel's
8 request by considering the amount and quality of the work performed, the recovery obtained for
9 the Class, and the risks of the Action.

10 9. Hawaii ERS further believes that the litigation expenses being requested by Class
11 Counsel are reasonable and represent expenses necessary for the prosecution and resolution of
12 the claims in the Action.

13 10. Hawaii ERS understands that reimbursement of a class representative's
14 reasonable costs and expenses is authorized under the PSLRA, 15 U.S.C. § 78u-4(a)(4). For this
15 reason, in connection with Class Counsel's request for payment of litigation expenses, Hawaii
16 ERS is seeking reimbursement for the costs that it incurred directly related to its representation
17 of the Class in the Action.

18 11. I am a Deputy Attorney General at the Department of the Attorney General for the
19 State of Hawaii and personally worked 62.5 hours during the pendency of the Action during
20 which I reviewed and discussed pleadings and briefs; discussed the Action with staff members
21 and counsel; oversaw discovery responses; obtained approval of the Board of the Hawaii Public
22 Employment Retirement System for the proposed Settlement; and attended oral argument in
23 connection with class certification. In my capacity as Deputy Attorney General, I provide legal
24 support to Hawaii ERS and advised them on this Action. My federally approved billing rate, as
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1 a Deputy Attorney General for the State of Hawaii, is \$147.36 per hour. Therefore, the value of
2 the time I spent on this case is \$9,210.00.

3 12. Brian Aburano, a former Deputy Attorney General at the Department of the
4 Attorney General for the State of Hawaii, personally worked 235.7 hours in connection with this
5 litigation, during which he reviewed and discussed pleadings and briefs; discussed the Action
6 with staff members, counsel and Greater Pennsylvania; oversaw discovery responses; flew to
7 San Francisco, California and provided deposition testimony on behalf of Hawaii ERS. As a
8 former Deputy Attorney General, Mr. Aburano's duties were the same as mine, as stated above.
9 Mr. Aburano's federally approved billing rate, as a Deputy Attorney General for the State of
10 Hawaii, is \$147.36 per hour. Therefore, the value of the time Mr. Aburano spent on this case is
11 \$34,732.75.
12

13 13. Diane Kishimoto, Deputy Attorney General at the Department of the Attorney
14 General for the State of Hawaii, dedicated at least 1.2 hours to the Action. This was time she did
15 not spend conducting Hawaii ERS's usual business. Her federally approved billing rate is
16 \$147.36 and the total cost of her time is \$176.83.
17

18 14. Additionally, other representatives of Hawaii ERS outside of the Attorney
19 General's office performed work in connection with the Action. They primarily helped to
20 respond to discovery requests and assisted in Hawaii ERS's efforts to compile and provide
21 responsive information.
22

- 23 a. Vijoy Chattergy, Chief Investment Officer of Hawaii ERS, dedicated at least 20
24 hours to the Action, primarily in connection with appearing for a deposition in
25 San Francisco, California. His effective hourly rate is \$172.68, based on his
26 annual salary and benefits, and the total cost of his time is \$3,453.60.
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Exhibit 2

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16 *Lead Counsel for Plaintiffs and the Class*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN JOSE DIVISION**

20 IN RE INTUITIVE SURGICAL
21 SECURITIES LITIGATION

Case No. 5:13-cv-01920-EJD (HRL)

**DECLARATION ON BEHALF OF
GREATER PENNSYLVANIA
CARPENTERS' PENSION FUND IN
SUPPORT OF (I) FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
(II) CLASS COUNSEL'S MOTION FOR
ATTORNEYS' FEES AND EXPENSES**

Date: December 20, 2018
Time: 9:00 a.m.
Dept.: Courtroom 4, 5th Floor
Judge: Hon. Edward J. Davila

1 I, James R. Klein, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746:

2 1. I am the Administrator of Greater Pennsylvania Carpenters' Pension Fund
3 ("Greater Pennsylvania" or the "Fund"). As Administrator, I participate in and oversee decisions
4 regarding the administration of the Fund, which is one of two Court-appointed Class
5 Representatives in the above-captioned class action (the "Action"). I respectfully submit this
6 declaration in support of (i) the motion of Class Representative Employees' Retirement System
7 of the State of Hawaii ("Hawaii ERS") and Greater Pennsylvania (collectively, "Plaintiffs" or
8 "Class Representatives") for final approval of the proposed class action Settlement and approval
9 of the proposed Plan of Allocation; and (ii) Class Counsel's motion for an award of attorneys'
10 fees and payment of expenses, including approval of Greater Pennsylvania's request to recover
11 the reasonable costs it incurred in connection with its representation of the Class in the
12 prosecution of this litigation, pursuant to the Private Securities Litigation Reform Act of 1995
13 ("PSLRA").
14
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16 2. I am aware of and understand the requirements and responsibilities of a
17 representative plaintiff in a securities class action, including those set forth in the PSLRA. I have
18 knowledge of the matters set forth in this Declaration, as I have been directly involved in
19 monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to
20 the Settlement, and I could and would testify competently to these matters.
21

22 3. On November 18, 2013, the Court issued an order appointing Hawaii ERS as lead
23 plaintiff and approving its selection of Labaton Sucharow LLP as Lead Counsel for the proposed
24 class. ECF No. 50. On October 15, 2013, Plaintiffs filed the Amended Class Action Complaint,
25 which added Greater Pennsylvania as a named plaintiff in the litigation. ECF No. 48.

26 4. By order dated December 22, 2016, the Court certified the Action as a class action
27 and appointed Greater Pennsylvania and Hawaii ERS as Class Representatives. ECF No. 204.
28

1 **I. GREATER PENNSYLVANIA’S OVERSIGHT OF THE LITIGATION**

2 5. Throughout the litigation, Greater Pennsylvania received periodic status reports
3 from Class Counsel on case developments; participated in discovery; reviewed significant court
4 filings; and participated in discussions with counsel concerning the prosecution of the Action, the
5 strengths and weaknesses to the claims, and the negotiations leading to the potential settlement.
6 In particular, during the course of the Action, Greater Pennsylvania: (a) regularly communicated
7 with counsel regarding the posture and progress of the case; (b) communicated with Hawaii
8 ERS; (c) reviewed and/or discussed all significant pleadings, motions, and briefs filed in the
9 Action; (d) reviewed and/or discussed all significant decisions in the Action; (e) coordinated
10 Greater Pennsylvania’s document production and other discovery responses; (f) communicated
11 with Greater Pennsylvania’s investment managers responsible for its investments in Intuitive
12 stock; (g) traveled to San Francisco for a deposition; (i) consulted with counsel regarding
13 settlement negotiations; and (j) evaluated and approved the proposed Settlement.
14
15

16 **II. APPROVAL OF THE SETTLEMENT**

17 6. Through my active participation in the Action, Greater Pennsylvania was kept
18 informed of the progress of the settlement negotiations in this litigation, and conferred with Class
19 Counsel regarding the parties’ respective positions.

20 7. Based on my involvement throughout the prosecution and resolution of the claims
21 asserted in the Action, Greater Pennsylvania believes that the Settlement provides a very
22 favorable recovery for the Class, particularly in light of the risks of continued litigation. Greater
23 Pennsylvania believes that the proposed Settlement is fair, reasonable, and adequate to the Class
24 and strongly endorses approval of the Settlement by the Court.
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1 **III. CLASS COUNSEL’S MOTION FOR AN AWARD OF**
2 **ATTORNEYS’ FEES AND PAYMENT OF EXPENSES**

3 8. Greater Pennsylvania believes that Class Counsel’s request for an award of
4 attorneys’ fees of 19% of the Settlement Fund (\$8,075,000) is fair and reasonable in light of the
5 substantial work Class Counsel performed on behalf of the Class. Greater Pennsylvania has
6 evaluated Class Counsel’s request by considering the amount and quality of the work performed,
7 the recovery obtained for the Class, and the risks of the Action.

8 9. Greater Pennsylvania further believes that the litigation expenses being requested
9 by Class Counsel are reasonable and represent expenses necessary for the prosecution and
10 resolution of the claims in the Action.

11 10. Greater Pennsylvania understands that reimbursement of a class representative’s
12 reasonable costs and expenses is authorized under the PSLRA, 15 U.S.C. § 78u-4(a)(4). For this
13 reason, in connection with Class Counsel’s request for payment of litigation expenses, Greater
14 Pennsylvania is seeking reimbursement for the costs that it incurred directly related to its
15 representation of the Class in the Action.

16 11. The time that my colleagues and I devoted to the representation of the Class in
17 this Action was time that we otherwise would have spent on other work for Greater
18 Pennsylvania, and thus, represented a cost to the Fund. Accordingly, Greater Pennsylvania seeks
19 reimbursement in the amount of \$9,100.00.

20 12. I personally dedicated approximately 70 hours to the prosecution of the Action
21 during which I reviewed and discussed pleadings and briefs; discussed the Action with staff
22 members, counsel and Hawaii ERS; oversaw discovery responses; evaluated and approved the
23 proposed Settlement; and was deposed in San Francisco, California. This was time that I did not
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1 spend conducting the Fund's usual business. My effective hourly rate is \$120.00 per hour.¹
2 Therefore, the value of the time I spent on this case is \$8,400.00.

3 13. Additionally, Michael Swiderski, the Fund's Controller, performed work in
4 connection with the Action at my direction. He helped respond to discovery requests and
5 assisted in the Fund's efforts to compile and provide responsive information and performed other
6 necessary tasks at my direction. In total, Mr. Swiderski dedicated at least 10 hours to this Action
7 on behalf of the Fund. This was time that he did not spend conducting the Fund's usual business.
8 Mr. Swiderski's effective hourly rate is \$70.00 per hour.² The total cost of his time is \$700.00.

9
10 14. Consequently, Greater Pennsylvania seeks reimbursement in the amount of
11 \$9,100.00, which represents the cost of the 80 hours that its representatives devoted to
12 supervising and participating in the litigation.

13
14 **IV. CONCLUSION**

15 15. In conclusion, Greater Pennsylvania was closely involved throughout the
16 prosecution and settlement of the claims in this Action, strongly endorses the Settlement as fair,
17 reasonable and adequate, and believes that the Settlement represents a significant recovery for
18 the Class. Greater Pennsylvania respectfully requests that the Court approve (i) Class
19 Representatives' motion for final approval of the proposed Settlement and Plan of Allocation;
20 and (ii) Class Counsel's motion for an award of attorneys' fees and payment of expenses,
21 including Greater Pennsylvania's request for reimbursement of the reasonable costs it incurred in
22 prosecuting the Action on behalf of the Class.
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27 _____
¹ This hourly rate is based upon salary, benefits, and related taxes.

28 ² This hourly rate is based upon salary, benefits, and related taxes.

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I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Executed this 2nd day of November, 2018.



JAMES R. KLEIN

EXHIBIT 3

1 **KERR & WAGSTAFFE LLP**
 JAMES M. WAGSTAFFE (95535)
 2 IVO LABAR (203492)
 101 Mission Street, 18th Floor
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7 **LABATON SUCHAROW LLP**
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 MICHAEL P. CANTY (*pro hac vice*)
 9 CHRISTINE M. FOX (*pro hac vice*)
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 15 acoquin@labaton.com

16 *Lead Counsel for Plaintiffs and the Class*

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19 SAN JOSE DIVISION

20
21 IN RE INTUITIVE SURGICAL
22 SECURITIES LITIGATION

Case No. 5:13-cv-01920-EJD (HRL)

**DECLARATION REGARDING (A)
 MAILING OF THE SETTLEMENT
 NOTICE AND PROOF OF CLAIM
 FORM; (B) PUBLICATION OF
 SUMMARY NOTICE; AND (C)
 REQUESTS FOR EXCLUSION IN
 CONNECTION WITH SETTLEMENT
 NOTICE**

Dept.: Courtroom 4
 Judge: Hon. Edward J. Davila

1 I, Brian Stone, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746:

2 1. I am a Senior Project Manager for Epiq Class Action and Claims Solutions, Inc.
3 (“Epiq”), and formerly Assistant Director of Operations at Garden City Group, LLC (“GCG”),¹
4 located at 1985 Marcus Avenue, Suite 200, Lake Success, New York 11042. Pursuant to this
5 Court’s October 4, 2018 Order Granting Preliminary Approval of Class Action Settlement,
6 Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of
7 Settlement (the “Preliminary Approval Order”) (ECF No. 304), GCG was authorized to act as the
8 Claims Administrator in connection with the Settlement of the above-captioned action (the
9 “Action”).² (GCG was also previously appointed² by the Court to act as the Administrator in
10 connection with notice of the pendency of the Action). The following statements are based on
11 my personal knowledge of the facts set forth herein and, if called on to do so, I could and would
12 testify competently thereto.
13
14

15 2. As more fully described in the Affidavit Regarding Mailing of Notice of
16 Pendency of Class Action and Receipt of Requests for Exclusion Submitted Pursuant to Court
17 Order Dated March 12, 2018 (ECF No. 285) (the “Class Notice Affidavit”), GCG previously
18 conducted a mailing campaign in which it mailed the Notice of Pendency of Class Action (the
19 “Class Notice”) to potential Class Members (the “Class Notice Mailing”). The Class Notice
20 notified potential Class Members that the Action was pending and provided them with the
21 opportunity to request exclusion from the Class. Six valid requests for exclusion were received
22 in connection with the Class Notice, five of which were noted in the Class Notice Affidavit. The
23 sixth exclusion request was originally marked deficient, but has since been cured. *See* Exhibit A
24 hereto.
25
26

27 ¹ GCG was acquired by Epiq on June 15, 2018 and is now continuing operations as part of Epiq.

28 ² All capitalized terms not otherwise defined in this document shall have the meaning ascribed to them in the Stipulation and Agreement of Settlement, dated September 11, 2018 (the “Stipulation”).

1 **MAILING OF THE SETTLEMENT NOTICE AND PROOF OF CLAIM FORM**

2 3. Pursuant to the Preliminary Approval Order, GCG (now as part of Epiq)
3 disseminated the Notice of Proposed Class Action Settlement and Motion for Attorneys’ Fees
4 and Expenses (the “Settlement Notice”) and the Proof of Claim and Release (the “Proof of
5 Claim”) and, collectively with the Settlement Notice, the “Claim Packet”) to potential Class
6 Members. A copy of the Claim Packet is attached hereto as Exhibit B.
7

8 4. GCG created a mailing file consisting of 123,556 names and addresses compiled
9 as a result of the Class Notice Mailing. On October 15, 2018, Claim Packets were disseminated
10 to those 123,556 potential Class Members by first-class mail. In addition, 45,779 Claim Packets
11 were sent to three nominees (banks, brokers, and other institutions that hold securities in “street
12 name” on behalf of beneficial owners and referred to herein as “Nominees”) that had requested
13 Class Notices be sent to them in bulk for forwarding to their beneficial owner clients.
14

15 5. On October 15, 2018, Claim Packets were also mailed to 1,755 Nominees listed in
16 GCG’s proprietary nominee database. As in most class actions of this nature, the majority of
17 potential Class Members are beneficial purchasers whose securities are held in “street name” -
18 *i.e.*, the securities are purchased by brokerage firms, banks, institutions and other third-party
19 nominees in the name of the nominee, on behalf of the beneficial purchasers. GCG maintains a
20 proprietary database with names and addresses of the largest and most common U.S. banks,
21 brokerage firms, and nominees, including national and regional offices of certain nominees (the
22 “Nominee Database”).³ The Settlement Notice included a statement, consistent with the Court’s
23 Preliminary Approval Order, explaining that if the Nominees had previously submitted names
24 and addresses in connection with the Class Notice Mailing, they need not provide that
25 information again unless they have additional names and addresses of potential Class Members
26
27

28 ³ While this Nominee Database was substantially the same as the database used for the Class Notice Mailing, GCG continuously updates its Nominee Database with new addresses when they are received, and eliminates duplicate or obsolete addresses when identified (as brokers merge or go out of business).

1 to provide to GCG. The statement also explained that Nominees who previously elected to mail
2 the Class Notice directly to Class Members now had to mail Claim Packets provided by GCG to
3 those Class Members. The Nominees were further instructed that if they had additional names
4 and addresses, or required additional bulk mailings, they were to provide that information to
5 GCG within seven calendar days of receipt of the Claim Packet.
6

7 6. Since October 15, 2018, GCG has received an additional 21,775 names and
8 addresses of potential Class Members from individuals or Nominees. GCG promptly sent a
9 Claim Packet to each such name and address. In addition, during this same time period, GCG
10 received requests from Nominees for 39,861 Claim Packets to be forwarded directly by the
11 Nominees to potential Class Members. GCG promptly provided the requested Claim Packets to
12 the Nominees.
13

14 7. In total, 6,213 Claim Packets have been returned to GCG as undeliverable.

15 8. In the aggregate, to date, GCG has mailed 233,036 Claim Packets to Nominees
16 and potential Class Members. This includes 310 Claim Packets that were returned as
17 undeliverable and then re-mailed to updated addresses provided by the U.S. Postal Service.
18

19 **PUBLICATION OF SUMMARY NOTICE**

20 9. Pursuant to the Court's Preliminary Approval Order, GCG's Notice & Media
21 Team caused the Summary Notice of Proposed Class Action Settlement and Motion for
22 Attorneys' Fees and Expenses (the "Summary Notice") to be published on October 22, 2018, in
23 *Investor's Business Daily* ("IBD"). Attached hereto as Exhibit C is the affidavit of Rodney
24 Taylor, attesting to publication of the Summary Notice in IBD. On October 22, 2018, the
25 Summary Notice was also transmitted over the internet using *PR Newswire*. Attached hereto as
26 Exhibit D is a Confirmation Report for the PR Newswire, attesting to that issuance.
27
28

1 **WEBSITE AND TELEPHONE HELPLINE**

2 10. On October 15, 2018, GCG, in coordination with Class Counsel, updated the
3 website designated for the Action (www.IntuitiveSurgicalSecuritiesLitigation.com), with
4 information regarding the Settlement, including important dates and deadlines (the “Settlement
5 Website”). The homepage of the Settlement Website contains a general overview of the Action.
6 Visitors to the Settlement Website can download a copy of the Settlement Notice, Proof of
7 Claim, Stipulation and other court documents. Visitors to the Settlement Website can also
8 complete and submit a Proof of Claim through the Settlement Website. The Settlement Website
9 became accessible on April 9, 2018 (in connection with the Class Notice), and as noted above,
10 was updated with information regarding the Settlement on October 15, 2018. The Settlement
11 Website is accessible 24 hours a day, seven days a week.
12

13 11. GCG established a toll-free Interactive Voice Response (“IVR”) system to
14 accommodate potential Class Members. This system became operational on April 9, 2018 (in
15 connection with the Class Notice), and was updated on October 15, 2018, with information about
16 the Settlement. As of November 13, 2018, GCG has received a total of 335 calls.
17

18 12. GCG also established an email address,
19 info@intuitivesurgicalsecuritieslitigation.com, to allow potential Class Members to obtain
20 information about the Action and/or request a Claim Packet.
21

22 13. The website, toll-free telephone helpline, and email address were set forth in the
23 Claim Packet and the Summary Notice.

24 **REPORT ON REQUESTS TO OPT BACK INTO THE CLASS**
25 **OR FOR EXCLUSION**

26 14. As described in the Settlement Notice, potential Class Members were again
27 notified that they could elect to exclude themselves from the Class (under certain circumstances
28 described in Question 10 of the Settlement Notice) or request to opt-back into the Class (if they

1 previously submitted a request for exclusion in connection with the Class Notice, as described in
2 Question 12 of the Settlement Notice). Written requests must be received by November 29,
3 2018, and be submitted to *In re Intuitive Surgical Securities Litigation*, c/o GCG, P.O. Box
4 10359, Dublin, OH 43017-0359. From the mailing of the Settlement Notice through November
5 13, 2018, GCG has received one request for exclusion, attached as Exhibit E, and has not
6 received any requests to opt-back into the Class from potential Class Members who had
7 previously submitted a request for exclusion.
8

9
10 I declare under penalty of perjury, under the laws of the United States, that the foregoing
11 is true and correct.

12 Executed on November 13, 2018, in Lake Success, New York.

13
14 

15 BRIAN STONE
16
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18
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27
28

EXHIBIT A

Please exclude me from the class in re
Intuitive Surgical Securities Litigation, No.
5:13-cv-01920-EJD.



DOREN LICHTMAN



ORCHARD LAKE, MI. 48324



Thanks,

Doren Lichtman

In re Intuitive Surgical Securities Litigation
c/o GCG
P.O. Box 10359
Dublin, OH 43017-0359

IMPORTANT COURT PAPERS ENCLOSED
Forwarding Service Requested

REGISTERED MAIL PERM
POSTAGE WILL BE PAID BY ADDRESSEE



In re Intuitive Surgical Securities Litigation

c/o GCG

P.O. Box 10359

Dublin, OH 43017-0359

43017-0359



In re Intuitive Surgical Securities Litigation
c/o GCG
P.O. Box 10359
Dublin, OH 43017-0359



June 29, 2018

Doreen Lichtman
[Redacted]
Orchard Lake, MI 48324

NOTICE OF DEFICIENT REQUEST FOR EXCLUSION

Dear Ms. Lichtman:

We are the Administrator in the certified securities class action, *In re Intuitive Surgical Securities Litigation*, Case No. 5:13-cv-01920-EJD (N.D. Cal). We have received your correspondence requesting exclusion from the Class in connection with the Notice of Pendency of Class Action ("Class Notice") in the referenced action. We are writing to inform you that your request is deficient because it does not comply with the instructions in the Class Notice approved by the Court. Those instructions require that you **state the number of shares of Intuitive Surgical, Inc. common stock that you purchased and sold during the Class Period from February 6, 2012 through July 18, 2013, inclusive, as well as the dates and prices of each such purchase, acquisition, and sale.** If you no longer have documents with your transactional information, you can request them from your broker. We do not have information about your transactions.

This information is needed in order to determine that you are a Class Member. If you **DID NOT purchase** Intuitive common stock during the period from **February 6, 2012 through July 18, 2013**, YOU ARE NOT A CLASS MEMBER AND DO NOT NEED TO REQUEST EXCLUSION. This case will not impact you.

If you are a Class Member, in order to be excluded from the Class, you must provide us with your transactional information. **If you do not correct your request, and you did purchase stock during the Class Period, you will remain a member of the Class and will be bound by all orders and judgments in the case.**

The missing information is needed by July 19, 2018. You may provide us with the information by mail, addressed to *In re Intuitive Surgical Securities Litigation*, c/o GCG, P.O. Box 10359 Dublin, OH 43017-0359 or by e-mail to info@IntuitiveSurgicalSecuritiesLitigation

If you have questions, please call (844) 850-7746.

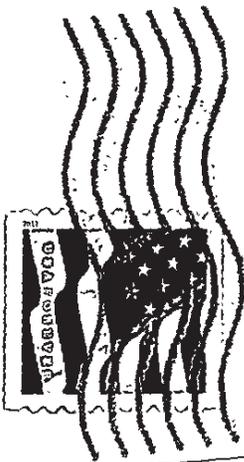
Sincerely, I bought 10 shares for \$4,984.00 on 7-20-2012
I sold 10 shares for 4,689.90 on 7-23-2012

Please fulfill my request for exclusion.
Thanks,
Doreen Lichtman
Administrator
Intuitive Surgical Securities Litigation

Trvne Lichtman
Orchard Lake, MI 48324-2351

*See Antitrust Surgical Devices litigation
c/o E.C.E., P.O. Box 10359
Dublin, OH 43017-0359*

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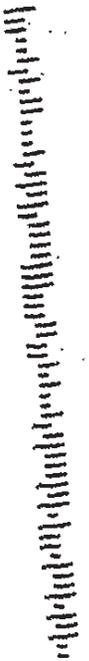


EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE INTUITIVE SURGICAL
SECURITIES LITIGATION

Case No. 5:13-cv-01920-EJD (HRL)

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

If you purchased or acquired the publicly traded common stock of Intuitive Surgical, Inc. during the period from February 6, 2012 through July 18, 2013, inclusive (the "Class Period"), you may be entitled to receive money from a class action settlement.

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

This Settlement Notice describes important rights you may have and what steps you must take if you wish to participate in the Settlement or wish to be excluded from the Class. ***This notice is different from the Notice of Pendency of Class Action ("Class Notice"), which you might have received in the Spring of 2018 alerting you to the fact that the Class had been certified.***

- The Settlement, if approved by the Court, will provide **\$42,500,000** (on average approximately \$1.78 per allegedly damaged share before the deduction of Court-approved fees and expenses) in cash for the benefit of the Class (described below).¹
- The Settlement resolves claims by the Employees' Retirement System of the State of Hawaii ("Hawaii ERS") and Greater Pennsylvania Carpenters' Pension Fund ("Greater Pennsylvania") (collectively, "Class Representatives" or "Plaintiffs"), in a class action against Intuitive Surgical, Inc. ("Intuitive" or the "Company"), and Gary S. Guthart, Marshall L. Mohr, and Lonnie M. Smith (collectively, the "Individual Defendants," and, together with Intuitive, the "Defendants").
- Class Representatives claim that Defendants made materially false and misleading statements and omissions concerning the safety and efficacy of the da Vinci Surgical System and the Company's growth, revenues, income and products liability. The complaint in the Action further alleged that the price of Intuitive publicly traded common stock was artificially inflated as a result of the allegedly false and misleading statements, and declined when the truth was allegedly revealed. Defendants deny all of the Class Representatives' allegations and further deny that they did anything wrong. Defendants also deny that the Class Representatives or the Class suffered damages or that the price of Intuitive common stock was artificially inflated by reasons of alleged misrepresentations, nondisclosures or otherwise. The Court did not decide in favor of either the Class or Defendants.
- Class Counsel, on behalf of Plaintiffs' counsel, will ask the Court for no more than \$8,075,000 in attorneys' fees (19% of the Settlement Fund) and up to \$2,500,000 in litigation expenses, which will include a reimbursement request for the Class Representatives pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). If approved by the Court, these amounts (totaling on average approximately \$0.44 per allegedly damaged share) will be deducted from the \$42,500,000 Settlement.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and after any appeals are resolved. Please be patient.
- **If you are a Class Member, your legal rights will be affected by this Settlement whether you act or do not act. Please read this Settlement Notice carefully.**

¹ All capitalized terms not defined in this Settlement Notice have the meanings provided in the Stipulation and Agreement of Settlement, dated as of September 11, 2018 (the "Stipulation"), which can be viewed at www.intuitivesurgicalsecuritieslitigation.com.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A PROOF OF CLAIM FORM BY DECEMBER 6, 2018	The <u>only</u> way to get a payment. (See Question 8 below.)
OPT-BACK INTO THE CLASS BY SUBMITTING A REQUEST BY NOVEMBER 29, 2018	If you previously submitted a request for exclusion from the Class in connection with the previously mailed Class Notice and now want to be part of the Class in order to receive a payment, you must follow the steps for "Opting-Back Into the Class." (See Question 12 below.)
EXCLUDE YOURSELF BY NOVEMBER 29, 2018	You will get no payment. This is the only option that, assuming your claim is timely brought, might allow you ever to bring or be part of any other lawsuit against the Defendants and the other Released Defendant Parties concerning the Released Claims. (See Question 10 below.)
OBJECT BY NOVEMBER 29, 2018	Write to the Court about why you do not like the Settlement, the Fee and Expense Application, or the proposed Plan of Allocation. (See Question 15 below.)
GO TO A HEARING ON DECEMBER 20, 2018	Ask to speak in Court about the Settlement. (See Question 18 below.)
DO NOTHING	Get no payment AND give up your rights to bring your own individual action.

Identification of Attorneys' Representatives

Class Representatives and the Class are being represented by Labaton Sucharow LLP, Court-appointed Class Counsel. Any questions regarding the Settlement should be directed to Jonathan Gardner, Labaton Sucharow LLP, 140 Broadway, New York, NY 10005, (888) 219-6877, www.labaton.com, settlementquestions@labaton.com. **Please do not contact the Court regarding this notice.**

BASIC INFORMATION

1. Why did I get this Settlement Notice?

The Court authorized that this Settlement Notice be sent to you because you or someone in your family may have purchased or acquired the publicly traded common stock of Intuitive from February 6, 2012 through July 18, 2013, inclusive.

If this description applies to you or someone in your family, you have a right to know about the proposed Settlement of this class action lawsuit, and about all of your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, an administrator appointed by the Court will make the payments that the Settlement allows.

This Settlement Notice explains the lawsuit, the Settlement, Class Members' legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of this Action is the United States District Court for the Northern District of California (the "Court"), and the case is known as *In re Intuitive Surgical Securities Litigation*, Civil Action No. 5:13-cv-01920-EJD (N.D. Cal.) (the "Action"). The Action is assigned to the Honorable Edward J. Davila, United States District Judge.

The Court did not decide in favor of either Class Representatives or Defendants. Instead, they have agreed to a settlement. For Class Representatives, the principal reason for the Settlement is the certain benefit of a substantial cash recovery for the Class, in contrast to the risk that the Court may grant, in whole or in part, some or all of Defendants' pending motion for summary judgment, the uncertainty of being able to prove the allegations at a jury trial, and the difficulties and delays inherent in such litigation (including any appeals).

For Defendants, who deny all allegations of wrongdoing or liability whatsoever and deny that any Class Members were damaged, the principal reason for entering into the Settlement is to bring to an end the substantial burden, expense, uncertainty, and risk of further litigation.

2. What is this lawsuit about? What has happened so far?

Class Representatives allege that Intuitive and certain of its executives violated Sections 10(b) and 20(a) of the Securities and Exchange Act of 1934 (the “Exchange Act”) by making materially false and misleading statements regarding the safety and efficacy of the da Vinci Surgical System and Intuitive’s compliance with FDA regulations. Class Representatives also allege that Defendants violated Section 20(A) of the Exchange Act by profiting from the sale of Intuitive stock while in possession of material nonpublic information. Among other things, Class Representatives allege that Defendants failed to disclose information about the safety and efficacy of the da Vinci Surgical System. Class Representatives further allege that when news of the safety and regulatory issues was released to the public, the price of Intuitive common stock declined and Class Members suffered damages as a result.

Defendants deny all of Class Representatives allegations and further deny that they did anything wrong. Defendants also deny that Class Representatives or the Class suffered damages or that the price of Intuitive common stock was artificially inflated by reasons of alleged misrepresentations, nondisclosures or otherwise.

The Action was commenced on April 26, 2013. On November 18, 2013, the Court issued an Order appointing Hawaii ERS as lead plaintiff pursuant to the PSLRA. In the same Order, the Court approved lead plaintiff’s selection of Labaton Sucharow LLP as lead counsel.

On October 15, 2013, Hawaii ERS and named-plaintiff Greater Pennsylvania filed the Amended Class Action Complaint (the “Complaint”). On December 16, 2013, Defendants filed their motion to dismiss the Complaint, which triggered a stay of discovery under the PSLRA. On January 30, 2014, Plaintiffs filed their memorandum of law in opposition to the motion to dismiss and, on February 28, 2014, Defendants filed their reply papers. On August 21, 2014, the Court entered an Order that granted in part, and denied in part, Defendants’ motion to dismiss. On October 14, 2014, Defendants filed a motion for leave to file a motion for reconsideration. On October 22, 2014, the Court granted the motion and on November 5, 2014, Defendants filed their motion for reconsideration. Plaintiffs opposed the motion on November 19, 2014, and Defendants filed a reply on November 26, 2014. The Court denied the motion for reconsideration on December 15, 2014, and lifted the PSLRA discovery stay.

On September 1, 2015, Plaintiffs filed a motion for class certification. On December 23, 2016, following briefing on the motion and oral argument, the Court entered an Order granting the class certification motion, certifying the Class as defined below, appointing Plaintiffs as “Class Representatives,” and appointing lead counsel as “Class Counsel.” On January 5, 2017, Defendants filed, in the United States Court of Appeals for the Ninth Circuit, a Petition Pursuant to F.R.C.P. 23(f) for Permission to Appeal the District Court’s Order Granting Class Certification. On October 30, 2017, the Ninth Circuit denied the petition. Defendants’ motion for reconsideration was denied by Order dated November 22, 2017.

On January 26, 2017, Class Representatives filed a Second Amended Class Action Complaint (“Second Amended Complaint”) to conform the pleadings to the evidence. On February 9, 2017, Defendants moved to dismiss the Second Amended Complaint and discovery was stayed pursuant to the PSLRA. Class Representatives opposed Defendants’ motion on February 23, 2017, and Defendants filed reply papers on March 2, 2017. The Court denied the motion to dismiss the Second Amended Complaint on September 29, 2017, and discovery resumed.

By Order entered March 12, 2018, the Court granted Class Representatives’ motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for approval of the proposed form and content of notices of pendency to be disseminated to the Class. Beginning on April 9, 2018, the Class Notice was mailed to potential Class Members, and on April 23, 2018, the Summary Notice of Pendency of Class Action was published in *Investor’s Business Daily* and transmitted over *PR Newswire*. The Class Notice informed investors of the class action, their right to be excluded from the Class, the requirements for requesting exclusion, and of a June 8, 2018 deadline for seeking exclusion.

On February 9, 2018, Defendants moved for summary judgment. Class Representatives filed their opposition papers on March 23, 2018, and, on April 23, 2018, Defendants filed their reply papers. The motion was pending when the Parties agreed to a settlement in principle. Trial of the Action was scheduled by the Court to begin on October 30, 2018.

Class Representatives, through Class Counsel, have conducted a thorough investigation of the claims, defenses, and underlying events and transactions that are the subjects of the Action. This process included reviewing and analyzing: (i) documents filed publicly by the Company with the U.S. Securities and Exchange Commission; (ii) publicly available information, including press releases, news articles, and other public statements issued by or concerning the Company and the Defendants; (iii) research reports issued by financial analysts concerning the Company; (iv) other publicly available information and data concerning the Company; (v) approximately 525,651 pages of documents produced by Defendants during discovery and approximately 28,726 pages of documents produced by third-parties; and (vi) the applicable law governing the claims and potential defenses.

Counsel for Class Representatives and Defendants have also completed voluminous class, fact, and expert discovery that included: taking or defending approximately 24 depositions, including the depositions of Class Representatives, the Individual Defendants, and 6 experts; and exchanging 13 expert reports directed at Intuitive’s compliance with FDA regulations, Defendants’ insider trading, loss causation, and damages.

On June 6, 2018, following extensive arm’s-length negotiations, the Parties reached an agreement in principle to settle the Action for \$42,500,000, subject to the execution of formal settlement documents.

3. Why is this a class action?

In a class action, one or more persons or entities (in this case, Class Representatives), 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 Court to resolve many similar claims of persons and entities that might be economically too small to bring as individual actions. One court resolves the issues for all class members at the same time, except for those who exclude themselves, or “opt-out,” from the class.

WHO IS IN THE SETTLEMENT**4. How do I know if I am part of the Class?**

The Court has certified the following Class, subject to certain exceptions identified below:

All persons or entities who purchased or acquired the publicly traded common stock of Intuitive Surgical, Inc. during the period from February 6, 2012 through July 18, 2013, inclusive, and who were damaged thereby.

Check your investment records or contact your broker to see if you purchased or acquired the publicly traded common stock of Intuitive during the period from February 6, 2012 through July 18, 2013, inclusive.

5. Are there exceptions to being included?

Yes. Some people are excluded from the Class by definition. Excluded from the Class are: (i) all Defendants; (ii) members of the immediate families of Individual Defendants Guthart, Mohr, and Smith; (iii) any subsidiaries and affiliates of Defendants; (iv) any person who is or was an officer or director of Intuitive or any of Intuitive’s subsidiaries or affiliates; (v) Defendants’ directors’ and officers’ liability insurance carriers, and any affiliates or subsidiaries thereof; (vi) Intuitive’s employee retirement and benefit plan(s); and (vii) the legal representatives, heirs, successors, and assigns of any such excluded person or entity.

Also excluded from the Class are Class Members who submitted timely and valid requests for exclusion in connection with the previously mailed Class Notice and Class Members who submit timely and valid requests for exclusion from the Class in accordance with the procedures set forth in Question 10 below.

6. What if I am still not sure if I am included?

If you are still not sure whether you are included in the Class, you can ask for free help. You can call the Claims Administrator toll-free at (844) 850-7746, send an e-mail to the Claims Administrator at info@intuitivesurgicalsecuritieslitigation.com, or write to the Claims Administrator, *In re Intuitive Surgical Securities Litigation*, c/o GCG, P.O. Box 10359, Dublin, OH 43017-0359. Or you can fill out and return the Claim Form described in Question 8 to see if you qualify.

THE SETTLEMENT BENEFITS — WHAT YOU GET**7. How much will my payment be?**

In exchange for the Settlement and the release of the Released Claims against the Released Defendant Parties, Defendants have agreed to fund a \$42,500,000 settlement fund, which will earn interest and will be distributed, after the deduction of Court-approved fees and expenses, among all Class Members who submit valid Claim Forms that are found to be entitled to a distribution from the Net Settlement Fund (“Authorized Claimants”).

If you are an Authorized Claimant entitled to a payment, your share of the Net Settlement Fund will depend on several things, including: how many Class Members timely send in valid Claim Forms; the total amount of recognized losses of other Class Members; how many shares of Intuitive common stock you purchased; the prices and dates of those purchases; and the prices and dates of any sales.

You can calculate your recognized loss in accordance with the formulas shown below in the Plan of Allocation. It is unlikely that you will receive a payment for all of your recognized loss. See the Plan of Allocation of Net Settlement Fund on pages 9-12 for more information on your recognized loss.

**HOW YOU RECEIVE A PAYMENT:
SUBMITTING A PROOF OF CLAIM FORM****8. How can I receive a payment?**

To qualify for a payment, you must submit a timely and valid Claim Form. A Claim Form is included with this Settlement Notice. If you did not receive a Claim Form, you can obtain one on the internet at the website:

www.intuitivesurgicalsecuritieslitigation.com. You can also ask for a Claim Form by calling the Claims Administrator toll-free at (844) 850-7746.

Please read the instructions 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 electronically submitted no later than December 6, 2018.**

9. What am I giving up to receive a payment or stay in the Class?

Unless you exclude yourself, or previously excluded yourself, you are staying in the Class, and that means that upon the “Effective Date,” you will release all “Released Claims,” including “Unknown Claims,” as defined below, against the “Released Defendant Parties.”

“**Released Claims**” means all actions, suits, claims, demands, rights, liabilities, damages, costs, restitution, rescission, interest, attorneys’ fees, expert or consulting fees, expenses, matters and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, whether concealed or hidden, and causes of action of every nature and description, including both known claims and Unknown Claims, whether based on federal, state, local, foreign, statutory or common law or any other law, rule or regulation, including claims under the Securities Act of 1933 or the Securities Exchange Act of 1934 or the securities laws of any state or territory, that have been or that might have been asserted by any Releasing Plaintiff Party against any of the Released Defendant Parties, arising out of, relating to, based upon, or in connection with: (a) any purchase, acquisition, sale, or holding of Intuitive publicly traded common stock during the Class Period and (b) any facts, claims, matters, allegations, activities, transactions, events, disclosures, representations, statements, acts, or omissions or failures to act that were alleged, set forth, referred to, or that could have been alleged in the Action, in the Second Amended Complaint, or in any complaint, against the Released Defendant Parties. Released Claims does not include claims relating to the enforcement of the Settlement.

“**Released Defendant Party**” or “**Released Defendant Parties**” means Defendants, and each of their respective past or present parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, employees, agents, attorneys, general or limited partners, partnerships, limited liability companies, predecessors, successors, assigns, heirs, trustees, administrators, and any of their legal representatives (and the predecessors, heirs, executors, administrators, trustees, successors, immediate family members, purchasers, and assigns of each of the foregoing), in their capacities as such.

“**Unknown Claims**” means any and all Released Claims that Class Representatives or any other 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 Class. With respect to any and all Released Claims and Released Defendants’ Claims, the Parties stipulate and agree that, upon the Effective Date, Class Representatives and Defendants shall expressly, and each other 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 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.

Class Representatives, other 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 Class Representatives and Defendants shall expressly, fully, finally, and forever waive, compromise, settle, discharge, extinguish, and release, and each Class Member shall be deemed to have waived, compromised, settled, discharged, extinguished, and released, and upon the Effective Date and by operation of the Judgment or Alternative Judgment shall have waived, compromised, settled, discharged, extinguished, and released, fully, finally, and forever, any and all Released Claims and Released Defendants’ Claims as applicable, known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which now exist, or heretofore existed, or may hereafter exist, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. Class Representatives and Defendants acknowledge, and other 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.

Please consult the Stipulation, filed with the Court and posted at www.intuitivesurgicalsecuritieslitigation.com, for additional defined terms.

The “Effective Date” will occur when an Order entered by the Court approving the Settlement becomes final and not subject to appeal. If you remain a member of the Class, all of the Court’s orders will apply to you and legally bind you.

EXCLUDING YOURSELF FROM THE CLASS

If you already submitted a valid and timely request for exclusion in connection with the Class Notice, you do not need to do so again.²

If you **did not** previously submit a request for exclusion and **do not** want a payment from this Settlement, but you want to keep any right you may have to sue or continue to sue Defendants and the other Released Defendant Parties on your own concerning the Released Claims, then you must take steps to remove yourself from the Class. This is called excluding yourself or “opting out.” **Please note: if you decide to exclude yourself because you want to bring your own lawsuit to pursue claims alleged in the Action, you should consult with an attorney to discuss whether your individual claim would be time-barred by the applicable statutes of limitations or repose.** Also, Defendants may terminate the Settlement if Class Members who purchased in excess of a certain amount of shares of Intuitive common stock seek exclusion from the Class.

10. How do I exclude myself from the Class?

To exclude yourself from the Class, you must mail a signed letter stating that you request to be “excluded from the Class in *In re Intuitive Surgical Securities Litigation*, No. 13-cv-01920 (N.D. Cal.)” You cannot exclude yourself by telephone or e-mail. Your letter must state the date(s), price(s), and number(s) of shares of all purchases, acquisitions, and sales of Intuitive common stock during the period from February 6, 2012 through July 18, 2013. Your letter must include your name, mailing address, telephone number, e-mail address, and signature. You must submit your exclusion request so that it is **received no later than November 29, 2018** to:

In re Intuitive Surgical Securities Litigation
c/o GCG
P.O. Box 10359
Dublin, OH 43017-0359

Your exclusion request must comply with these requirements in order to be valid. If you ask to be excluded, you will not receive any payment from the Net Settlement Fund, and you cannot object to the Settlement.

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

No. Unless you properly exclude yourself, you remain in the Class and you give up any rights to sue Defendants and the other Released Defendant Parties for any and all Released Claims. If you have a pending lawsuit, **speak to your lawyer in that case immediately.** You must exclude yourself from this Class to continue your own lawsuit. Remember, the exclusion deadline is **November 29, 2018**.

OPTING-BACK INTO THE CLASS

12. What if I previously requested exclusion in connection with the Class Notice and now want to be eligible to receive a payment from the Settlement? How do I opt-back into the Class?

If you previously submitted a request for exclusion from the Class in connection with the Class Notice, you may opt-back into the Class and be eligible to receive a payment from the Settlement. If you are not certain whether you previously submitted a request for exclusion, please contact the Claims Administrator at (844) 850-7746 for assistance.

In order to opt-back into the Class, you, individually or through counsel, must submit a written “Request to Opt-Back into the Class” to the Claims Administrator, addressed as follows: *In re Intuitive Surgical Securities Litigation*, c/o GCG, P.O. Box 10359, Dublin, OH 43017-0359. This request must be **received no later than November 29, 2018**. Your Request to Opt-Back into the Class must (i) state the name, address, and telephone number of the person or entity requesting to opt-back into the Class; (ii) state that such person or entity “requests to opt-back into the Class in *In re Intuitive Surgical Securities Litigation*, No. 13-cv-01920 (N.D. Cal.)”; and (iii) be signed by the person or entity requesting to opt-back into the Class or an authorized representative.

² If you are not sure whether you did, please call the Claims Administrator at (844) 850-7746.

Please note: Opting-back into the Class **does not mean** that you will automatically be entitled to receive proceeds from the Settlement. If you wish to be eligible to participate in the distribution of proceeds from the Settlement, you are also required to submit the Claim Form that is being distributed with this Settlement Notice. See Question 8, above.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court ordered the law firm of Labaton Sucharow LLP to represent all Class Members. These lawyers are called Class Counsel. You will not be separately charged for these lawyers. The Court will determine the amount of Class 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.

14. How will the lawyers be paid?

Class Counsel has been prosecuting the Action on a contingent basis and has not been paid for any of its work. Class Counsel, on behalf of itself and other Plaintiffs' counsel, will seek an attorneys' fee award of no more than 19% of the Settlement Fund, which will include accrued interest. Class Counsel was assisted in this case by Local Counsel, Kerr & Wagstaffe LLP; and attorney Anthony Takitani and The Thornton Law Firm, which provided additional legal assistance to Hawaii ERS (collectively "Plaintiffs' Counsel"). Any attorneys' fees awarded by the Court to Class Counsel will be allocated by Class Counsel to other Plaintiffs' Counsel. Class Counsel will also seek payment of litigation expenses incurred by Plaintiffs' Counsel in the prosecution of this Action of no more than \$2,500,000, plus accrued interest, which will include an application in accordance with the PSLRA for the reasonable costs and expenses (including lost wages) of the Class Representatives directly related to their representation of the Class. Any attorneys' fees and expenses awarded by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or any part of it.

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

If you are a 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 may write to the Court about your objection. You can ask the Court not to approve the Settlement, however you cannot ask the Court to order a larger settlement; the Court can only approve or deny this Settlement. If the Court denies approval, the Settlement payments will not be sent out and the Parties will return to the posture they were in before the Settlement was agreed to. If you would like the Court to consider your views, you must file a proper objection within the deadline, and according to the following procedures.

To object, you must send a signed letter stating that you object to the proposed Settlement in *In re Intuitive Surgical Securities Litigation*, No. 13-cv-01920 (N.D. Cal.). You must (i) include your name, address, telephone number, e-mail address, and signature; (ii) identify the date(s), price(s), and number(s) of shares of Intuitive common stock purchased, acquired, and sold; (iii) state the reasons why you object to the Settlement and which part(s) of the Settlement you object to; and (iv) include any legal support and/or evidence, to support your objection. Unless otherwise ordered by the Court, any Class Member who does not object in the manner described in this Settlement Notice will be deemed to have waived any objection and shall be forever foreclosed from making any future objection. Your objection must be submitted to the Court either by mailing the objection to the Clerk of the Court at the address below or by filing the objection in person at the location below, and mailed to Class Counsel and Defendants' Counsel, so that it is **received on or before November 29, 2018**:

<u>The Court</u>	<u>Class Counsel</u>	<u>Defendants' Counsel Representative</u>
<p>Clerk of the Court 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</p>	<p>LABATON SUCHAROW LLP Jonathan Gardner, Esq. 140 Broadway New York, NY 10005</p>	<p>GIBSON DUNN & CRUTCHER LLP Michael D. Celio, Esq. 1881 Page Mill Road Palo Alto, CA 94304</p>

You do not need to attend the Settlement Hearing to have your written objection considered by the Court. However, any Class Member who has complied with the procedures set out in this Question 15 and below in Question 18 may appear at the Settlement Hearing and be heard, to the extent allowed by the Court, either in person or through an attorney, arranged at his, her, or its own expense.

16. What is the difference between objecting and excluding?

Objecting is telling the Court that you do not like something about the proposed Settlement, Plan of Allocation, or Fee and Expense Application. You can still recover from the Settlement, and you will still be bound by the Settlement and any Court order in this Action. **You can object *only* if you stay in the Class.**

Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

THE SETTLEMENT HEARING

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

The Court will hold the Settlement Hearing on **December 20, 2018 at 10:00 a.m.**, in Courtroom 4, 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 (i) whether the Settlement is fair, reasonable, and adequate, and should be finally approved; (ii) whether the proposed Plan of Allocation is fair, reasonable, and adequate; and (iii) the application of Class Counsel for an award of attorneys' fees and payment of litigation expenses. The Court will take into consideration any written objections filed in accordance with the instructions in Question 15. We do not know how long it will take the Court to make these decisions.

You should be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent to Class Members. If you want to attend the hearing, you should check with Class Counsel beforehand to be sure that the date and/or time has not changed, periodically check the Court's website at www.cand.uscourts.gov, or periodically check the case-specific website at www.intuitivesurgicalsecuritieslitigation.com to see if the Settlement Hearing stays as calendared or is changed.

18. May I speak at the Settlement Hearing?

You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must submit a statement that it is your intention to appear in "*In re Intuitive Surgical Securities Litigation*, No. 13-cv-01920 (N.D. Cal.)." Persons who intend to object to the Settlement, the Plan of Allocation, or Class Counsel's Fee and Expense Application, and desire to present evidence at the Settlement Hearing, must also include in their objections (prepared and submitted in accordance with the answer to Question 15 above) the identity of any witness they may wish to call to testify and any exhibits they intend to introduce into evidence at the Settlement Hearing. You may not speak at the Settlement Hearing if you excluded yourself from the Class or if you have not provided written notice of your objection and/or intention to speak at the Settlement Hearing in accordance with the procedures described in Questions 10, 15, and 18.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you do nothing and you are a member of the 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). To start, continue, or be a part of any other lawsuit against Defendants and the other Released Defendant Parties concerning the Released Claims in this case, you must exclude yourself from the Class (see Question 10).

GETTING MORE INFORMATION

20. Are there more details about the proposed Settlement?

This Settlement Notice summarizes the proposed Settlement. More details are in the Stipulation. Class 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 November 15, 2018 and available from Class Counsel, the Claims Administrator, or the Court, pursuant to the instructions below.

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, a fee-based service, can also view the papers filed publicly in the Action through the Court's on-line Case Management/Electronic Case Files System at <https://www.pacer.gov>.

You can also get a copy of the Stipulation and other case documents by calling the Claims Administrator toll free at (844) 850-7746; writing to the Claims Administrator at *In re Intuitive Surgical Securities Litigation*, c/o GCG, P.O. Box 10359, Dublin, OH 43017-0359; or visiting the websites: www.intuitivesurgicalsecuritieslitigation.com or www.labaton.com where you will find answers to common questions about the Settlement, can download copies of the Stipulation or Claim Form, and locate other information.

Please do not Call the Court with Questions about the Settlement.

PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

A. Preliminary Matters

The Settlement Amount and the interest it earns is the "Settlement Fund." The Settlement Fund, after deduction of Court-approved attorneys' fees and expenses, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court is the "Net Settlement Fund." The Net Settlement Fund will be distributed to members of the Class who timely submit valid Claim Forms that show a Recognized Claim according to the Plan of Allocation (the "Plan of Allocation" or "Plan") approved by the Court. The Plan of Allocation set forth below is the Plan that is being proposed by Class Representatives and Class Counsel to the Court for approval. The Court may approve this Plan of Allocation or modify it without additional notice to the Class. Any order modifying the Plan will be posted on the case website at: www.intuitivesurgicalsecuritieslitigation.com and at www.labaton.com.

The objective of this Plan of Allocation is to equitably distribute the Net Settlement Fund among Authorized Claimants who suffered economic losses as a result of the alleged violations of the federal securities laws during the Class Period (February 6, 2012 through July 18, 2013) that the Court found viable. To design this Plan, Class Counsel has conferred with their damages expert. This Plan is intended to be generally consistent with an assessment of, among other things, the damages that Class Counsel and Class Representatives believe were recoverable in the Action. The Plan of Allocation, however, is not a formal damages analysis and the calculations made pursuant to the Plan are not intended to be estimates of, nor indicative of, the amounts that Class Members might have been able to recover after a trial. An individual Class Member's recovery will depend on, for example (i) the total number and value of claims submitted; (ii) when the Class Member purchased or acquired Intuitive publicly traded common stock; and (iii) whether and when the Class Member sold his, her, or its shares of Intuitive common stock.

This Plan of Allocation generally measures the amount of loss that a Class Member can claim for purposes of making *pro rata* allocations of the Net Settlement Fund to Authorized Claimants. For losses to be compensable damages under the federal securities laws, the disclosure of the allegedly misrepresented information must be the cause of the decline in the price of Intuitive common stock. In this case, Class Representatives allege that Defendants issued false statements and omitted material facts from February 6, 2012 through July 18, 2013, inclusive (the Class Period), which artificially inflated the price of Intuitive common stock. It is alleged that the corrective information released to the market on February 28, 2013 (toward the close of market hours), March 5, 2013 (prior to market open), and July 18, 2013 (after market close) impacted the market price of Intuitive common stock in a statistically significant manner and removed the alleged artificial inflation from the prices of the common stock on February 28-March 1, 2013, March 5, 2013, and July 19, 2013. Accordingly, in order to have a compensable loss, Intuitive common stock must have been purchased or otherwise acquired during the Class Period and held through at least one of the alleged corrective disclosures listed above.

Because the Net Settlement Fund is less than the total losses alleged to be suffered by Class Members, the formulas described below for calculating Recognized Losses are not intended to estimate the amount that will actually be paid to Authorized Claimants. Rather, these formulas provide the basis on which the Net Settlement Fund will be distributed among Authorized Claimants on a *pro rata* basis. An Authorized Claimant's "Recognized Claim" shall be the amount used to calculate the Authorized Claimant's *pro rata* share of the Net Settlement Fund. The *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of the Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

Defendants, their respective counsel, and all other Released Defendant Parties will have no responsibility or liability for the investment of the Settlement Fund, the distribution of the Net Settlement Fund, the Plan of Allocation, or the payment of any claim. Class Representatives, Class Counsel, and anyone acting on their behalf likewise will have no liability for their reasonable efforts to execute, administer, and distribute the Settlement.

B. Calculation of Recognized Loss Amounts

For purposes of determining whether a claimant has a "Recognized Claim," purchases, acquisitions, and sales of Intuitive common stock will first be matched on a First In/First Out ("FIFO") basis as set forth below.

The Claims Administrator will calculate a "Recognized Loss Amount" as set forth below for each purchase or acquisition of Intuitive publicly traded common stock during the Class Period from February 6, 2012 through July 18, 2013, inclusive, that is listed in the Claim Form and for which adequate documentation is provided. To the extent that the calculation of a claimant's Recognized Loss Amount results in a negative number, that number shall be set to zero.

For each share of Intuitive common stock purchased or otherwise acquired during the Class Period and sold before the close of trading on July 18, 2013, 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.

The sum of a claimant’s Recognized Loss Amounts will be the claimant’s “Recognized Claim.”

For each share of Intuitive common stock purchased or acquired from February 6, 2012 through and including July 18, 2013 and:

1. Sold before the release of corrective information on February 28, 2013 (at 3:54 PM EST),³ the Recognized Loss Amount for each such share shall be zero.
2. Sold after the release of corrective information on February 28, 2013 (at 3:54 PM EST), and before the close of trading on July 18, 2013, the Recognized Loss Amount for each such share shall be **the lesser of:**
 - a. 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
 - b. the Out of Pocket Loss.
3. Sold after the close of trading on July 18, 2013, and before the close of trading on October 17, 2013, the Recognized Loss Amount for each such share shall be **the least of:**
 - a. the dollar artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 1** below; or
 - b. the actual purchase/acquisition price of each such share minus the average closing price from July 19, 2013, up to the date of sale as set forth in **Table 2** below; or
 - c. the Out of Pocket Loss.
4. Held as of the close of trading on October 17, 2013, the Recognized Loss Amount for each such share shall be **the lesser of:**
 - a. the dollar artificial inflation applicable to each such share on the date of purchase/acquisition as set forth in **Table 1** below; or
 - b. the actual purchase/acquisition price of each such share minus \$ 383.30.⁴

C. Additional Provisions

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

If a Class Member has more than one purchase/acquisition or sale of Intuitive common stock during the Class Period, all purchases/acquisitions and sales shall be matched on a FIFO basis. Class Period sales will be matched first against any holdings at the beginning of the Class Period and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

Purchases or acquisitions and sales of Intuitive shares 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 shares during the Class Period shall not be deemed a purchase, acquisition, or sale of shares for the calculation of a

³ In the event that documentation does not exist setting forth the exact time of purchase and/or sale, the price at which the purchase and/or sale took place shall serve as a proxy for determining whether the transaction occurred before or after the release of the allegedly corrective information. Shares purchased or sold on February 28, 2013 at any price less than \$569.23 shall be deemed to have occurred after 3:54 PM EST for purposes of this Plan of Allocation.

⁴ 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 the requirements of the Exchange Act, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of Intuitive common stock during the “90-day look-back period,” July 19, 2013 through October 17, 2013. The mean (average) closing price for Intuitive common stock during this 90-day look-back period was \$383.30.

Recognized Claim, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such shares unless (i) the donor or decedent purchased or otherwise acquired such shares during the Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such shares; and (iii) it is specifically so provided in the instrument of gift or assignment.

In accordance with the Plan of Allocation, 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 Intuitive 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 purchases 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.

The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is \$10.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

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

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, Class Counsel shall, if feasible and economical, redistribute such balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses. These redistributions shall be repeated until the balance in the Net Settlement Fund is no longer feasible to distribute to Authorized Claimants. Any balance that still remains in the Net Settlement Fund after re-distribution(s), which is not feasible or economical to reallocate, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, shall be donated in equal amounts to Bay Area Legal Aid and Consumer Federation of America.

Payment pursuant to the Plan of Allocation or such other plan as may be approved by the Court shall be conclusive against all Authorized Claimants. No person shall have any claim against Class Representatives, Class Counsel, their damages expert, Claims Administrator, or other agent designated by Class Counsel, arising from determinations or distributions to claimants made substantially in accordance with the Stipulation, the Plan of Allocation approved by the Court, or further orders of the Court. Class Representatives, Defendants, their respective counsel, and all other Released Parties shall have no responsibility for or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment of any Claim Form or non-performance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

Each claimant is deemed to have submitted to the jurisdiction of the United States District Court for the Northern District of California with respect to his, her, or its claim.

TABLE 1

**Intuitive Common Stock Artificial Inflation
for Purposes of Calculating Purchase and Sale Inflation**

Transaction Date	Artificial Inflation Per Share
February 6, 2012 – February 28, 2013 until 3:54 PM EST	\$56.69
February 28, 2013 after 3:54 PM EST – March 4, 2013	\$35.39
March 5, 2013 – July 18, 2013	\$13.58

TABLE 2

**Intuitive Common Stock Closing Price and Average Closing Price
July 19, 2013 – October 17, 2013**

Date	Closing Price	Average Closing Price between July 19, 2013 and Date Shown	Date	Closing Price	Average Closing Price between July 19, 2013 and Date Shown
7/19/2013	\$392.67	\$392.67	9/4/2013	\$387.32	\$388.10
7/22/2013	\$395.91	\$394.29	9/5/2013	\$384.44	\$387.99
7/23/2013	\$394.62	\$394.40	9/6/2013	\$384.69	\$387.90
7/24/2013	\$383.96	\$391.79	9/9/2013	\$384.90	\$387.82
7/25/2013	\$375.33	\$388.50	9/10/2013	\$376.97	\$387.52
7/26/2013	\$382.29	\$387.46	9/11/2013	\$376.50	\$387.23
7/29/2013	\$391.00	\$387.97	9/12/2013	\$372.68	\$386.86
7/30/2013	\$385.82	\$387.70	9/13/2013	\$375.00	\$386.56
7/31/2013	\$388.00	\$387.73	9/16/2013	\$375.07	\$386.28
8/1/2013	\$392.46	\$388.21	9/17/2013	\$373.96	\$385.99
8/2/2013	\$393.65	\$388.70	9/18/2013	\$372.50	\$385.68
8/5/2013	\$393.63	\$389.11	9/19/2013	\$369.98	\$385.32
8/6/2013	\$392.93	\$389.41	9/20/2013	\$374.69	\$385.08
8/7/2013	\$389.94	\$389.44	9/23/2013	\$370.83	\$384.77
8/8/2013	\$394.62	\$389.79	9/24/2013	\$363.89	\$384.33
8/9/2013	\$391.87	\$389.92	9/25/2013	\$367.31	\$383.97
8/12/2013	\$388.58	\$389.84	9/26/2013	\$368.39	\$383.66
8/13/2013	\$385.60	\$389.60	9/27/2013	\$367.46	\$383.33
8/14/2013	\$385.94	\$389.41	9/30/2013	\$376.27	\$383.19
8/15/2013	\$383.73	\$389.13	10/1/2013	\$372.40	\$382.99
8/16/2013	\$378.33	\$388.61	10/2/2013	\$369.60	\$382.73
8/19/2013	\$384.95	\$388.45	10/3/2013	\$360.94	\$382.33
8/20/2013	\$385.45	\$388.32	10/4/2013	\$364.28	\$382.00
8/21/2013	\$386.90	\$388.26	10/7/2013	\$380.99	\$381.98
8/22/2013	\$390.14	\$388.33	10/8/2013	\$381.23	\$381.97
8/23/2013	\$390.09	\$388.40	10/9/2013	\$389.16	\$382.09
8/26/2013	\$391.69	\$388.52	10/10/2013	\$387.21	\$382.18
8/27/2013	\$386.22	\$388.44	10/11/2013	\$390.18	\$382.31
8/28/2013	\$387.44	\$388.41	10/14/2013	\$401.68	\$382.63
8/29/2013	\$384.60	\$388.28	10/15/2013	\$390.21	\$382.75
8/30/2013	\$386.52	\$388.22	10/16/2013	\$401.33	\$383.05
9/3/2013	\$385.17	\$388.13	10/17/2013	\$399.13	\$383.30

SPECIAL NOTICE TO SECURITIES BROKERS AND NOMINEES

In the previously mailed Class Notice, you were advised that if, for the beneficial interest of any person or entity other than yourself, you purchased Intuitive common stock during the period from February 6, 2012 through July 18, 2013, inclusive, you must either: (1) request from the Claims Administrator sufficient copies of the Class Notice to forward to all such beneficial owners, and forward them to all such beneficial owners; or (2) provide a list of the names and addresses of all such beneficial owners to the Claims Administrator.

If you chose the first option, *i.e.*, you elected to mail the Class Notice directly to beneficial owners, you were advised that you must retain the mailing records for use in connection with any further notices that may be provided in the Action. If you elected this option, the Claims Administrator will forward the same number of Settlement Notices and Proof of Claim and Release forms (together, the "Claim Packet") to you to send to the beneficial owners **WITHIN SEVEN (7) CALENDAR DAYS** of receipt of the Claim Packets. If you require more copies than you previously requested, please contact the Claims Administrator at (844) 850-7746 and let them know how many additional Claim Packets you require. You must mail the Claim Packets to the beneficial owners **WITHIN SEVEN (7) CALENDAR DAYS** of your receipt of the packets.

If you chose the second option, the Claims Administrator will send a copy of the Claim Packet to the beneficial owners whose names and addresses you previously supplied. Unless you have identified additional beneficial owners whose names you did not previously provide, **you need do nothing further at this time**. If you believe that you have identified additional beneficial owners **whose names you did not previously provide** to the Claims Administrator, you must either (a) **WITHIN SEVEN (7) CALENDAR DAYS** of receipt of this Claim Packet, provide a list of the names and addresses of all such beneficial owners to the Claims Administrator at *In re Intuitive Surgical Securities Litigation*, c/o GCG, P.O. Box 10359, Dublin, OH 43017-0359 or (b) **WITHIN SEVEN (7) CALENDAR DAYS** of receipt of this Claim Packet, request from the Claims Administrator sufficient copies of the Claim Packet to forward to all such beneficial owners which you shall, **WITHIN SEVEN (7) CALENDAR DAYS** of receipt of the Claim Packet from the Claims Administrator, mail to the beneficial owners. If you elect to send the Claim Packet to beneficial owners you shall also send a statement to the Claims Administrator confirming that the mailing was made and shall retain your mailing records for use in connection with any further notices that may be provided in the Action.

Upon full and timely compliance with these directions, you may seek reimbursement of your reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Settlement Notice and the Claim Form may also be obtained from the website for this Action, www.intuitivesurgicalsecuritieslitigation.com, or by calling the Claims Administrator at (844) 850-7746.

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

In re Intuitive Surgical Securities Litigation
c/o GCG
P.O. Box 10359
Dublin, OH 43017-0359
Phone: (844) 850-7746
info@intuitivesurgicalsecuritieslitigation.com
www.intuitivesurgicalsecuritieslitigation.com

Dated: October 15, 2018

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

**Must be
Postmarked or
Submitted Online
No Later Than
December 6, 2018**

In re Intuitive Surgical Securities Litigation
c/o GCG
P.O. Box 10359
Dublin, OH 43017-0359
(844) 850-7746
info@intuitivesurgicalsecuritieslitigation.com
www.intuitivesurgicalsecuritieslitigation.com

ISG



Claim Number:

Control Number:

PROOF OF CLAIM AND RELEASE

TABLE OF CONTENTS

PAGE NO.

PART I - CLAIMANT IDENTIFICATION	2
PART II - INSTRUCTIONS	3
PART III - SCHEDULE OF TRANSACTIONS IN INTUITIVE PUBLICLY TRADED COMMON STOCK	4
PART IV - SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGEMENTS	5

Important - This form should be completed *IN CAPITAL LETTERS* using *BLACK* or *DARK BLUE* ballpoint/fountain pen. Characters and marks used should be similar in the style to the following:

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z 1 2 3 4 5 6 7 0



PART II - INSTRUCTIONS

I. GENERAL INSTRUCTIONS

1. To recover as a Class Member based on your claims in the action entitled *In re Intuitive Surgical Securities Litigation*, Civil Action No. 5:13-cv-01920-EJD (the "Action"), YOU MUST MAIL OR SUBMIT ONLINE A COMPLETED PROOF OF CLAIM AND RELEASE FORM ("CLAIM FORM"), ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN, **ON OR BEFORE DECEMBER 6, 2018, ADDRESSED AS FOLLOWS:**

In re Intuitive Surgical Securities Litigation
c/o GCG
P.O. Box 10359
Dublin, OH 43017-0359
(844) 850-7746

info@intuitivesurgicalsecuritieslitigation.com
www.intuitivesurgicalsecuritieslitigation.com

2. Submission of this Claim Form, however, does not assure that you will share in the proceeds of the Settlement of the Action.

3. If you are a Class Member and have not timely and validly requested exclusion from the Class, **you are bound by the terms of any judgment entered in the Action, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A CLAIM FORM.**

II. CLAIMANT IDENTIFICATION

If you purchased or acquired the publicly traded common stock of Intuitive Surgical, Inc. ("Intuitive") during the period from February 6, 2012 through July 18, 2013, inclusive (the "Class Period"), use Part I of this form entitled "Claimant Identification" to list the claimant name, mailing address, and account information if relevant (such as for a claim submitted on behalf of an IRA, Trust, or estate account). Please list the most current claimant or account name as you would like the information to appear on a check, if eligible for payment. Please also provide a telephone number and/or e-mail address, as the Claims Administrator may need to contact you with questions about the claim submitted. **If your Claimant Identification information changes, please notify the Claims Administrator in writing at the address above.**

All joint purchasers must sign this Claim Form. If you are acting in a representative capacity on behalf of a Class Member (for example, as an executor, administrator, trustee, or other representative), you must submit evidence of your current authority to act on behalf of that Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents or other documents which provide you with the authority to submit the claim. Please also indicate your representative capacity under your signature on page 5 of this Claim Form.

III. IDENTIFICATION OF TRANSACTIONS

Use Part III of this form entitled "Schedule of Transactions in Intuitive Publicly Traded Common Stock" to supply all required details of your transaction(s). Neither the Claims Administrator, the Defendants, nor the Class Representatives have access to your transactional information. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

On the schedules, provide all of the requested information with respect to **all of your** purchases or acquisitions of Intuitive publicly traded common stock, and **all of your sales** of Intuitive publicly traded common stock, whether such transactions resulted in a profit or a loss. You must also provide the amount of Intuitive publicly traded common stock you held at the close of trading on October 17, 2013. Failure to report all such transactions may result in the rejection of your claim.

List each transaction separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day, and year of each transaction you list.

The date of covering a "short sale" is deemed to be the date of purchase of Intuitive common stock. The date of a "short sale" is deemed to be the date of sale of Intuitive common stock.

COPIES OF BROKER CONFIRMATIONS OR OTHER DOCUMENTATION OF YOUR TRANSACTIONS SHOULD BE ATTACHED TO YOUR CLAIM. **FAILURE TO PROVIDE THIS DOCUMENTATION COULD DELAY VERIFICATION OF YOUR CLAIM OR RESULT IN REJECTION OF YOUR CLAIM.**



PART III - SCHEDULE OF TRANSACTIONS IN INTUITIVE PUBLICLY TRADED COMMON STOCK

A. BEGINNING HOLDINGS: State the number of shares of Intuitive publicly traded common stock held at the beginning of trading on **February 6, 2012**.

<input type="text"/>							
Shares							

B. PURCHASES/ACQUISITIONS: Separately list each and every purchase or acquisition of Intuitive publicly traded common stock from the opening of trading on **February 6, 2012** through and including the close of trading **July 18, 2013**. (Must be documented.)

Date(s) of Purchase or Acquisition List Chronologically (Month/Day/Year)	Number of Shares Purchased/Acquired	Purchase Price Per Share	Total Purchase Price (Excluding fees, taxes, and commissions)
<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"/>

C. PURCHASES/ACQUISITIONS DURING "90-DAY LOOKBACK PERIOD": State the total number of shares of Intuitive publicly traded common stock you purchased/acquired from **July 19, 2013** through and including the close of trading on **October 17, 2013**.²

<input type="text"/>							
Shares							

D. SALES: Separately list each and every sale/disposition of Intuitive publicly traded common stock from after the opening of trading on **February 6, 2012** through and including the close of trading on **October 17, 2013**. (Must be documented.)

Date(s) of Sale List Chronologically (Month/Day/Year)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (Excluding fees, taxes, and commissions)
<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"/>

E. ENDING HOLDINGS: State the total number of shares of Intuitive publicly traded common stock you held as of the close of trading on **October 17, 2013**. (Must be documented.)

<input type="text"/>							
Shares							

² **Please note:** Information requested with respect to your purchases/acquisitions of Intuitive publicly traded common stock from July 19, 2013 through and including the close of trading on October 17, 2013 is needed in order for the Claims Administrator to balance your claim; purchases during this period, however, are not eligible under the Settlement and will not be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation.

IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS
YOU **MUST** PHOTOCOPY THIS PAGE AND CHECK THIS BOX
IF YOU DO NOT CHECK THIS BOX THESE ADDITIONAL PAGES WILL **NOT** BE REVIEWED



PART IV - SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS

1. I (We) submit this Claim Form under the terms of the Stipulation and Agreement of Settlement described in the Settlement Notice and available at www.intuitivesurgicalsecuritieslitigation.com. I (We) also submit to the jurisdiction of the United States District Court, Northern District of California, with respect to my (our) claim as a Class Member.

2. I (We) further acknowledge that, upon the Effective Date of the Settlement, I will (we will) be bound by and subject to the terms of any judgment that may be entered in the Action, including the release of the Released Claims as against the Released Defendant Parties. I (We) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other claim covering the same purchases or sales of Intuitive publicly traded common stock during the relevant periods and know of no other person having done so on my (our) behalf.

3. I (We) hereby warrant and represent that I (we) have included information about all of my (our) purchases of Intuitive publicly traded common stock which took place from February 6, 2012 through October 17, 2013, and all of my (our) sales of common stock during this period, as well as the number of shares held by me (us) at the close of trading on October 17, 2013.

4. I (We) declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____ in _____, _____.
(Month/Year) (City) (State/Country)

Signature of Claimant

Print Name of Claimant

Date

Signature of Joint Claimant, if any

Print Name of Joint Claimant, if any

Date

If claimant is other than an individual, or is not the person completing this form, the following also must be provided:

Signature of Person Completing Form

Print Name of Person Completing Form

Date

Capacity of person(s) signing, e.g., Beneficial Purchaser,
Executor or Administrator

REMINDER CHECKLIST

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.
THANK YOU FOR YOUR PATIENCE.**

1. Please sign above.
2. Remember to attach copies of supporting documentation.
3. **Do not send** originals of certificates or other documentation as they will not be returned.
4. Keep a copy of your Claim Form and all supporting documentation for your records.
5. If you desire an acknowledgment of receipt of your Claim Form, please send it Certified Mail, Return Receipt Requested.
6. If you move, please send your new address to the address below.
7. **Do not use red pen or highlighter** on the Claim Form or supporting documentation.

**THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR, IF MAILED, POSTMARKED NO LATER THAN
DECEMBER 6, 2018, ADDRESSED AS FOLLOWS:**

In re Intuitive Surgical Securities Litigation
c/o GCG
P.O. Box 10359
Dublin, OH 43017-0359
(844) 850-7746
info@intuitivesurgicalsecuritieslitigation.com
www.intuitivesurgicalsecuritieslitigation.com

EXHIBIT C

INVESTOR'S BUSINESS DAILY®

Affidavit of Publication

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Name of Publication: IBD Weekly
 Address: 12655 Beatrice Street
 City, State, Zip: Los Angeles, CA 90066
 Phone #: 310.448.6700
 State of: California
 County of: Los Angeles

I, Rodney Taylor for the publisher of IBD Weekly, published in the city of Los Angeles, state of California, county of Los Angeles hereby certify that the attached notice(s) for Intuitive Surgical Securities was printed in said publication on the following date(s):

OCTOBER 22, 2018

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 22nd day of October, 2018, by

R Taylor, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature *Richard C. Brand II* (Seal)



SMALL-CAP GROWTH FUNDS VS. BIG-CAP GROWTH FUNDS				GROWTH FUNDS VS. VALUE FUNDS			
Small-Cap Growth Funds	Big-Cap Growth Funds	Small-Cap Growth Funds	Big-Cap Growth Funds	Growth Funds	Value Funds	Growth Funds	Value Funds
Small-Cap Growth Funds	Big-Cap Growth Funds	Small-Cap Growth Funds	Big-Cap Growth Funds	Growth Funds	Value Funds	Growth Funds	Value Funds



Top Growth Funds

Last 3 Months (All Total Returns)

Metals Fund	% Change	Performance Rating	\$ Net Assets
Fidelity 100Index	+ 3 A	3.531 bl	
BlackRock BIKR Exchange	+ 2 B	171 ml	
BridgeWay BiCap2018	+ 1 A-	610 ml	
AMG Funds Yacktman	+ 0 B	8.825 bl	
Fidelity ExptMnt	+ 0 B-	1.794 bl	
State Firm Asc Growth	+ 0 B	4.279 bl	
Jensen Inv Management QualGrow	+ 0 A+		

Top Growth Funds

Last 26 Months (All Total Returns)

Metals Fund	% Change	Performance Rating	\$ Net Assets
Wasatch UltraGrowth	+ 21 A	136 ml	
Morgan Stan 1 MntCpGr	+ 19 A	786 ml	
Wasatch MicroCap	+ 17 A	372 ml	
Brown Captl Mgmt SmallCo	+ 12 A	3.8 bl	
JP Morgan Instl SmallGrowth	+ 7 A+	1.632 bl	
William Blair 1 SmCapGr	+ 5 A	732 ml	
Virium Funds 1 SmCapCore	+ 5 A	18.5 bl	
Fidelity OTC	+ 4 A	11.1 bl	

U.S. Stock Fund Cash Position

High (100%) 6.2% Low (0%) 2.5%

Month	2.5%	6.2%	100%	2.5%	6.2%	100%
Mar 17	2.5%	6.2%	100%	2.5%	6.2%	100%
Apr 17	2.5%	6.2%	100%	2.5%	6.2%	100%
May 17	2.5%	6.2%	100%	2.5%	6.2%	100%
Jun 17	2.5%	6.2%	100%	2.5%	6.2%	100%
Jul 17	2.5%	6.2%	100%	2.5%	6.2%	100%
Aug 17	2.5%	6.2%	100%	2.5%	6.2%	100%

Metals Fund	% Change	Performance Rating	\$ Net Assets
AMG Funds Yacktman	+ 1 A	8.825 bl	
Fidelity ExptMnt	+ 0 B-	1.794 bl	
State Firm Asc Growth	+ 0 B	4.279 bl	
Jensen Inv Management QualGrow	+ 0 A+		

U.S. Stock Fund Cash Position

High (100%) 6.2% Low (0%) 2.5%

Month	2.5%	6.2%	100%	2.5%	6.2%	100%
Mar 17	2.5%	6.2%	100%	2.5%	6.2%	100%
Apr 17	2.5%	6.2%	100%	2.5%	6.2%	100%
May 17	2.5%	6.2%	100%	2.5%	6.2%	100%
Jun 17	2.5%	6.2%	100%	2.5%	6.2%	100%
Jul 17	2.5%	6.2%	100%	2.5%	6.2%	100%
Aug 17	2.5%	6.2%	100%	2.5%	6.2%	100%

Metals Fund	% Change	Performance Rating	\$ Net Assets
AMG Funds Yacktman	+ 1 A	8.825 bl	
Fidelity ExptMnt	+ 0 B-	1.794 bl	
State Firm Asc Growth	+ 0 B	4.279 bl	
Jensen Inv Management QualGrow	+ 0 A+		

Metals Fund	% Change	Performance Rating	\$ Net Assets
AMG Funds Yacktman	+ 1 A	8.825 bl	
Fidelity ExptMnt	+ 0 B-	1.794 bl	
State Firm Asc Growth	+ 0 B	4.279 bl	
Jensen Inv Management QualGrow	+ 0 A+		

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE INTUITIVE SURGICAL SECURITIES LITIGATION

Case No. 5:13-cv-01920-EJD (HRL)

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

TO ALL PERSONS AND ENTITIES THAT, DURING THE PERIOD FROM FEBRUARY 6, 2012 THROUGH JULY 18, 2013, INCLUSIVE, PURCHASED OR ACQUIRED SHARES OF THE PUBLICLY TRADED COMMON STOCK OF INTUITIVE SURGICAL, INC.

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Northern District of California, that Class Representatives Employees' Retirement System of the State of Hawaii and Greater Pennsylvania Carpenters' Pension Fund, on behalf of themselves and the certified Class, and Intuitive Surgical, Inc., Gary S. Gifford, Marshall L. Moke, and Louise M. Smith (collectively, the "Defendants"), have reached a settlement in the above-captioned action (the "Action") in the amount of \$42,000,000 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 Edward J. Davila of the United States District Court for the Northern District of California in Courtroom 4, 5th Floor, Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, San Jose, CA 95113 at 10:00 a.m. on December 20, 2018, 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, costs, and Administrative 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 Class Counsel for an award of attorneys' fees of no more than 18% of the Settlement Fund (or up to \$8,075,000 and payment of expenses not more than \$2,500,000 from the Settlement Fund, which will include the expenses of Class Representatives 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 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 Proposed Class Action Settlement and Motion for Attorneys' Fees and Expenses (the "Settlement 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:

In re Intuitive Surgical Securities Litigation
Claims Administrator
c/o OCCO
PO Box 10359
Dublin, OH 43017-0359
Phone: (844) 850-7746
info@intuitivesurgicalsecuritieslitigation.com
www.intuitivesurgicalsecuritieslitigation.com

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

Dated: October 22, 2018
BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

The complete terms of the Settlement are in the Stipulation and Agreement of Settlement, dated as of September 11, 2018, which can be viewed at www.intuitivesurgicalsecuritieslitigation.com

EQUITIES LEADERS SUMMIT

The Biggest Gathering Of Buy Side Heads of Equity Trading In The US

December 05 - 07, 2018 | National Doral Golf Resort, Miami

Frank Loughlin
Global Co-Head of Equity Trading
AllianceBernstein

Clive Williams
Head of Americas Equity Trading
T Rowe Price

Eden Simmer
Senior Vice President, Head of Americas Equity Trading
PIMCO

Ernesto Ramos
Managing Director, Head of Equities
BMO Global Asset Management

300+
Equity Trading Leaders

150+
Buy Side Heads of Equity Trading

50+
Thought Leading Speakers

17+
Hours of Networking

Confirmed Sponsors Include

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citi
CODA
DASH
Fidessa
INSTINET
IPREO
Jane Street
LUMINEX
pragma
THOMSON REUTERS
tradeinformatics
Tradeweb
UBS

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Book online: equitiesleaders.wbresearch.com

EXHIBIT D

PR Newswire: Press Release Distribution Confirmation for Labaton Sucharow LLP. ID#2271187-1-1

sfhubs@prnewswire.com

Mon 10/22/2018 6:00 AM

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Release headline: Labaton Sucharow LLP Announces Proposed Class Action Settlement in the In re Intuitive Surgical Securities Litigation
Word Count: 899
Product Selections:
US1
Visibility Reports Email
Complimentary Press Release Optimization
PR Newswire ID: 2271187-1-1

View your release:* http://www.prnewswire.com/news-releases/labaton-sucharow-llp-announces-proposed-class-action-settlement-in-the-in-re-intuitive-surgical-securities-litigation-300733049.html?tc=eml_cleartime

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Labaton Sucharow LLP Announces Proposed Class Action Settlement in the In re Intuitive Surgical Securities Litigation

NEWS PROVIDED BY
Labaton Sucharow LLP --
09:00 ET



NEW YORK, Oct. 22, 2018 /PRNewswire/ -- The following statement is being issued by Labaton Sucharow LLP regarding the class action *In re Intuitive Surgical Securities Litigation*, Case No. 5:13-cv-01929-EJD (HRL) (N.D. Cal.).

TO: ALL PERSONS AND ENTITIES THAT, DURING THE PERIOD FROM FEBRUARY 6, 2012 THROUGH JULY 18, 2013, INCLUSIVE, PURCHASED OR ACQUIRED SHARES OF THE PUBLICLY TRADED COMMON STOCK OF INTUITIVE SURGICAL, INC.

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Northern District of California, that Class Representatives Employees' Retirement System of the State of Hawaii and Greater Pennsylvania Carpenters' Pension Fund, on behalf of themselves and the certified Class, and Intuitive Surgical, Inc., Gary S. Guthart, Marshall L. Mohr, and Lonnie M. Smith (collectively, the "Defendants"), have reached a settlement in the above-captioned action (the "Action") in the amount of \$42,500,000 in cash (the "Settlement Amount") that, if approved by the Court, will resolve all claims in the Action.¹

A hearing will be held before the Honorable Edward J. Davila of the United States District Court for the Northern District of California in Courtroom 4, 5th Floor, Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, San Jose, CA 95113 at 10:00 a.m. on December 20, 2018 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 Class Counsel for an award of attorneys' fees of no more than 19% of the Settlement Fund (or up to \$8,075,000) and payment of expenses of no more than \$2,500,000 from the Settlement Fund, which will include the expenses of Class Representatives 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 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 Proposed Class Action Settlement and Motion for Attorneys' Fees and Expenses (the "Settlement 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:

In re Intuitive Surgical Securities Litigation
Claims Administrator
c/o CCC
P.O. Box 10359
Dublin, OH 43017-0359
Phone: (844) 850-7746
info@intuitivesurgicalsecuritieslitigation.com
www.intuitivesurgicalsecuritieslitigation.com

Inquiries may also be made to Class Counsel:

Labaton Sucharow LLP
Jonathan Gardner, Esq.
140 Broadway
New York, NY 10005
Tel: (888) 219-6877
www.labaton.com
settlementquestions@labaton.com

If you are a Class Member, to be eligible to share in the distribution of the Net Settlement Fund, you must submit a Claim Form postmarked or electronically submitted **no later than December 6, 2018**. If you are a 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 previously submitted a valid and timely request for exclusion from the Class in connection with the Notice of Pendency of Class Action ("Class Notice") and you wish to remain excluded, no further action is required. However if you did not, to exclude yourself from the Class now, you must submit a written request for exclusion in accordance with the instructions set forth in the Settlement Notice such that it is **received no later than November 29, 2018**. If you are a Class Member and do not exclude yourself from the Class, you will be bound by any judgments or orders entered by the Court in the Action.

If you previously submitted a request for exclusion from the Class in connection with the Class Notice but you want to opt-back into the Class now for the purpose of being eligible to receive a payment from the Net Settlement Fund, you may do so. In order to opt-back into the Class, you must submit a request in writing such that it is **received no later than November 29, 2018**, in accordance with the instructions set forth in the Settlement Notice.

Any objections to the Settlement, Plan of Allocation, and/or application for attorneys' fees and payment of expenses must be filed with the Court and mailed to counsel in accordance with the instructions set forth in the Settlement Notice such that they are **received no later than November 29, 2018**.

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

Dated: October 22, 2018

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

¹ The complete terms of the Settlement are in the Stipulation and Agreement of Settlement, dated as of September 11, 2018, which can be viewed at www.intuitivesurgicalsecuritieslitigation.com.

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EXHIBIT E

William B. Van Alstyne

San Carlos, CA 94070



October 23, 2018

In re Intuitive Surgical Securities Litigation
c/o GCG
P.O. Box 10359
Dublin, OH 43017-0359

Re: Intuitive Surgical Securities Litigation Case No. 5:13-cv-01920-EJD (HRL),
Claim Number 01113792, Control Number 5884718642

I wish to be **excluded** from the Class in *In re Intuitive Surgical Securities Litigation*,
No. 13-cv-01920 (N.D. Cal).

Per the enclosed confirmation, on 07/18/2013 I purchased 4 shares of ISRG (Intuitive
Surgical) stock at a price of 415.58, plus \$8.95 commission, for a total purchase cost of
\$1,671.27.

Sincerely,

A handwritten signature in black ink that reads "William Van Alstyne". The signature is written in a cursive, flowing style.

William Barrett Van Alstyne

WVA:bcv
Enclosure

Charles SCHWAB
INSTITUTIONAL

Individual Retirement Account of
WILLIAM BARRETT VAN ALSTYNE
CHARLES SCHWAB & CO INC CUST
ROTH CONTRIBUTORY IRA

Account Number

Trade Confirmation

BOUGHT INTUITIVE SURGICAL NEW Dividends reinvested (Symbol: ISRG)

Security No./CUSIP: 46120E-60-2

Type: Cash

Trade: 07/18/13

Settle: 07/23/13

Quantity	Price (\$)	Principal (\$)	Charges and/or Interest (\$)	Commission	Total Amount (\$)
4	415.58	1,662.32		8.95	1,671.27

For this security:

- Unless you have already instructed us differently, we will hold this security in your account.
- Unsolicited trade
- Schwab acted as your agent.

Internal Use Only 2

William Barrett Van Alstyne

Please see "Terms and Conditions" for more information.

ANTONIO CA 94070

WILLIAM VAN ALSTINE

In re: Innuvive Surgical Securities Litigation
c/o GCG
P.O. Box 10359
Dublin, OH 43017-0359

SAN FRANCISCO CA 94111
24 OCT 2018 PM 5 L



43017-0359ES



Exhibit 4

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Securities Class Action Settlements

2017 Review and Analysis

Table of Contents

Highlights	1
Author Commentary	2
Total Settlement Dollars	3
Mega Settlements	4
Settlement Size	5
Damages Estimates	6
Rule 10b-5 Claims: “Simplified Tiered Damages”	6
’33 Act Claims: “Simplified Statutory Damages”	9
Analysis of Settlement Characteristics	11
Accounting Allegations	11
Institutional Investors	12
Derivative Actions	13
Corresponding SEC Actions	14
Time to Settlement and Case Complexity	15
Cornerstone Research’s Settlement Prediction Analysis	16
Research Sample	17
Data Sources	17
Endnotes	18
Appendices	19
About the Authors	23

The views expressed in this report are solely those of the authors, who are responsible for the content, and do not necessarily represent the views of Cornerstone Research.

Table of Figures and Appendices

Figure 1: Settlement Statistics	1
Figure 2: Total Settlement Dollars	3
Figure 3: Mega Settlements	4
Figure 4: Distribution of Post–Reform Act Settlements	5
Figure 5: “Simplified Tiered Damages” and “Estimated Damages”	6
Figure 6: Median and Average “Simplified Tiered Damages”	7
Figure 7: Median Settlements as a Percentage of “Simplified Tiered Damages” by Damages Ranges	8
Figure 8: Settlements by Nature of Claims	9
Figure 9: Median Settlements as a Percentage of “Simplified Statutory Damages” by Damages Ranges	10
Figure 10: Median Settlements as a Percentage of “Simplified Tiered Damages” and Accounting Allegations	11
Figure 11: Median Settlement Amounts and Public Pension Plans	12
Figure 12: Frequency of Derivative Actions	13
Figure 13: Frequency of SEC Actions	14
Figure 14: Median Settlement by Duration from Filing Date to Settlement Hearing Date	15
Appendix 1: Settlement Percentiles	19
Appendix 2: Select Industry Sectors	19
Appendix 3: Settlements by Federal Circuit Court	20
Appendix 4: Median and Average Settlements as a Percentage of “Simplified Tiered Damages”	20
Appendix 5: Median and Average Maximum Dollar Loss (MDL)	21
Appendix 6: Median and Average Disclosure Dollar Loss (DDL)	21
Appendix 7: Median Docket Entries by “Simplified Tiered Damages” Range	22

Analyses in this report are based on 1,697 securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2017. See page 17 for a detailed description of the research sample. For purposes of this report and related research, a settlement refers to a negotiated agreement between the parties to a securities class action that is publicly announced to potential class members by means of a settlement notice.

Highlights

While the number of settlements in 2017 remained at relatively high levels, total settlement dollars dipped dramatically to \$1.5 billion from \$6.1 billion in 2016. This decline can be attributed to a large percentage of settlements under \$5 million combined with the absence of any settlements over \$250 million.

- There were 81 securities class action settlements approved in 2017, a slight decrease from the number of cases settled in 2016 but the second-highest level since 2010. (page 3)
- The total value of settlements approved by courts in 2017 was \$1.5 billion, the second-lowest level in the past 10 years. (page 3)
- There were four mega settlements—settlements of \$100 million or more—in 2017 (compared to 10 in 2016), accounting for 43 percent of total settlement dollars (compared to 81 percent in 2016). (page 4)
- The median settlement amount in 2017 was \$5.0 million, over 40 percent lower than both the 2016 median (\$8.7 million) and the median for all prior post-Reform Act settlements (\$8.5 million). (page 5)
- The average settlement amount in 2017 also declined, to \$18.2 million. This was 75 percent lower than in 2016 and nearly 70 percent lower than the average for all prior post-Reform Act settlements. (page 5)
- For the first time in more than five years, there were no settlements exceeding \$250 million. (page 5)
- Settlements in 2017 involved smaller cases compared to previous years. In particular, median and average “simplified tiered damages” in 2017 were the lowest over the last 10 years. (page 7)
- For 2017 cases with Rule 10b-5 claims, the average settlement amount as a percentage of “simplified tiered damages” was the highest in the last five years, driven by a sharply higher percentage for smaller cases. (page 8)
- Cases with companion derivative actions typically settle for higher amounts. In 2017, however, the median settlement for cases with companion derivative actions was lower than for cases without accompanying derivative actions. (page 13)
- Higher percentages of cases settling within two years of the filing date continued in 2017, reaching over 23 percent of all settlements. (page 15)

Figure 1: Settlement Statistics

(Dollars in Millions)

	1996–2016	2016	2017
Number of Settlements	1,616	85	81
Total Amount	\$93,193.2	\$6,118.0	\$1,473.6
Minimum	\$0.1	\$0.9	\$0.5
Median	\$8.5	\$8.7	\$5.0
Average	\$57.7	\$72.0	\$18.2
Maximum	\$8,794.7	\$1,608.6	\$210.0

Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used.

Author Commentary

As projected in our 2016 report, the relatively high volume of settlements continued in 2017 but the number of very large settlements declined, contributing to the substantial drop in the size of settlements overall.

2017 Findings

The decline in settlement sizes can largely be attributed to the smaller size of these cases, reflected in the lower estimates of our proxy for plaintiff-style damages. A combination of low stock market volatility in the years in which the cases were filed, as well as substantially shorter class periods, contributed to the reduction in the damages proxy for cases settled in 2017. In addition, 2017 settlements were associated with considerably smaller issuer defendants.

The decline in case size leads to other trends. For example, consistent with what we would expect for smaller cases, the time from case filing to settlement was shorter in 2017.

However, not all developments in 2017 were driven by case size. For example, institutional investors appeared less frequently as lead plaintiffs, even in large cases. Recent literature has discussed the lack of economic incentives for institutions to serve as lead plaintiffs, other than the potential benefit to public pension plans from political contributions by plaintiff attorneys, and has called for reform to improve the lead plaintiff selection process.¹

In addition, the proportion of settled securities class actions accompanied by corresponding derivative actions was among the highest we have observed in more than 15 years. Nearly half of all cases—and more than half of all settlements for \$5 million or less—involved an accompanying derivative action.

These results are unexpected since, historically, accompanying derivative actions have been associated with larger class actions and larger settlement amounts. Moreover, they are interesting in light of arguments considering whether derivative litigation is an effective mechanism to monitor corporate governance and whether eliminating derivative litigation altogether may be a viable option.²

“Simplified Tiered Damages”

In this report we focus on a “simplified tiered damages” proxy for estimating plaintiff-style damages in cases with Rule 10b-5 claims (see page 6). This replaces the measure traditionally used in settlement research. We view this proxy as an enhancement to settlement research, as this estimate

of per-share inflation is conceptually more closely aligned with the typical plaintiff approach. This measure is more fully described in *Estimating Damages in Settlement Outcome Modeling*.

What stands out in 2017 is the drop in mid-range to large settlements, due largely to a reduction in the proxy for damages, as well as the size of the issuer defendant firms involved.

*Dr. Laura E. Simmons
Senior Advisor
Cornerstone Research*

Looking Ahead

Recent data on case filings can provide insights into potential settlement trends. See Cornerstone Research’s *Securities Class Action Filings—2017 Year in Review*.

The record numbers of cases filed in the previous two years might suggest that the high volume of settlements will continue. However, these data also show higher rates of dismissals, which could offset the increase in filings in terms of settlement activity.

The latest data also suggest that smaller firms have become more common targets of securities class actions, but there is no evidence that indicates the unusually low levels of “simplified tiered damages” observed in 2017 will necessarily continue in upcoming years.

On the other hand, recent filings data support the potential continuation of a reduced level of institutional investors serving as lead plaintiffs, whose presence is typically associated with higher settlement amounts. In addition, we expect the rate of settlements for issuers in healthcare and related industry sectors, such as biotech and pharmaceuticals, to persist given the prevalence of these industries among newly filed cases.

—Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons

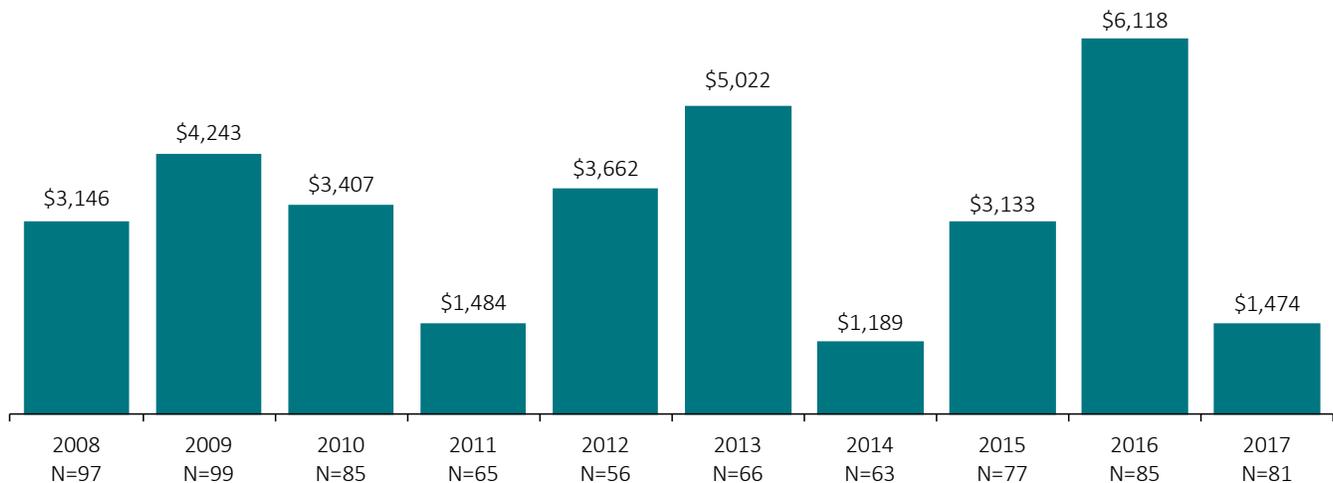
Total Settlement Dollars

- The total value of settlements approved by courts in 2017 declined substantially to \$1.5 billion, less than a quarter of the total amount approved in 2016.
- The median settlement in 2017 was \$5.0 million, over 40 percent lower than in 2016.
- While there were only four fewer cases settled in 2017 compared to 2016, the absence of very large settlements (exceeding \$250 million) and the decline in the median settlement amount contributed to the decline in 2017 total settlement dollars.
- The decline in the median settlement amount was primarily driven by a reduction in “simplified tiered damages” for cases settled in 2017. (See page 6 for a discussion of this measure.)

The total value of settlements was the second lowest in the last 10 years.

**Figure 2: Total Settlement Dollars
2008–2017**

(Dollars in Millions)



Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used.

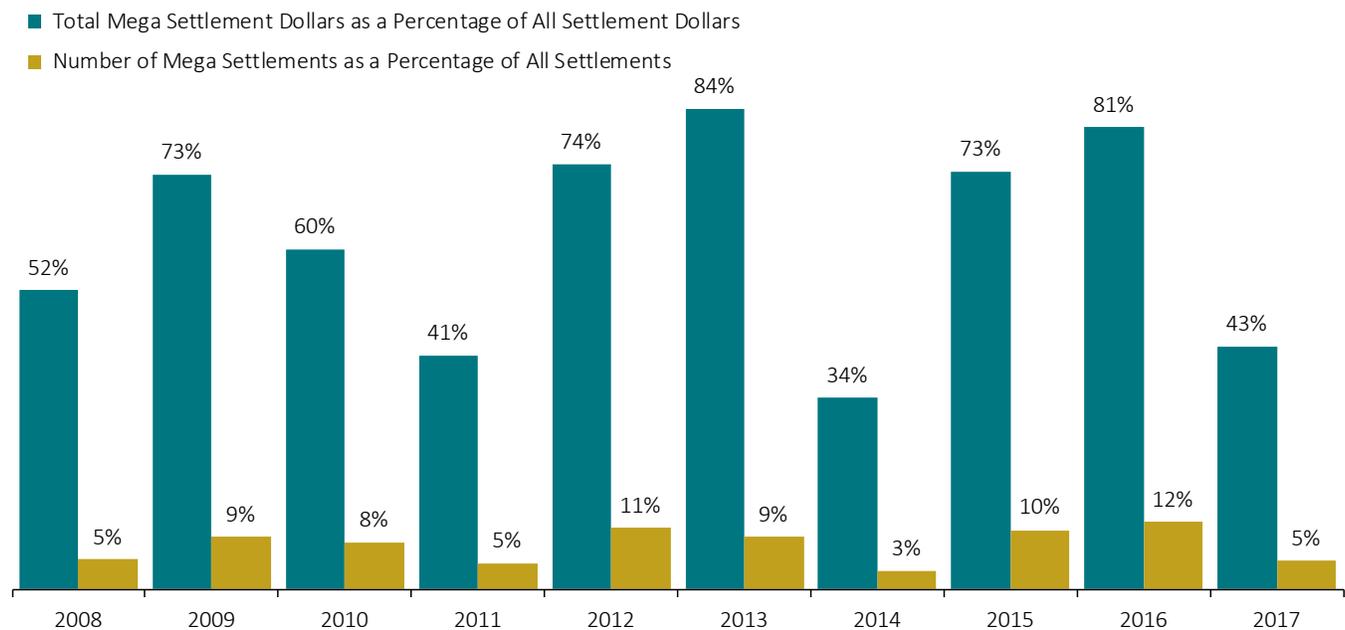
Mega Settlements

- There were four mega settlements (settlements equal to or greater than \$100 million) in 2017, with the largest settlement amounting to \$210 million.
- Total mega settlement dollars in 2017 were \$630 million compared to \$5 billion (adjusted for inflation) in 2016.
- Mega settlements have accounted for 70 percent of all settlement dollars from 2008 through 2016, but this percentage varies substantially from year to year.

The total value of mega settlements in 2017 was nearly 90 percent lower than in 2016.

- While mega settlements typically comprise the majority of the total value of settled cases, only 43 percent of 2017 settlement dollars came from mega settlements.

**Figure 3: Mega Settlements
2008–2017**



Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used.

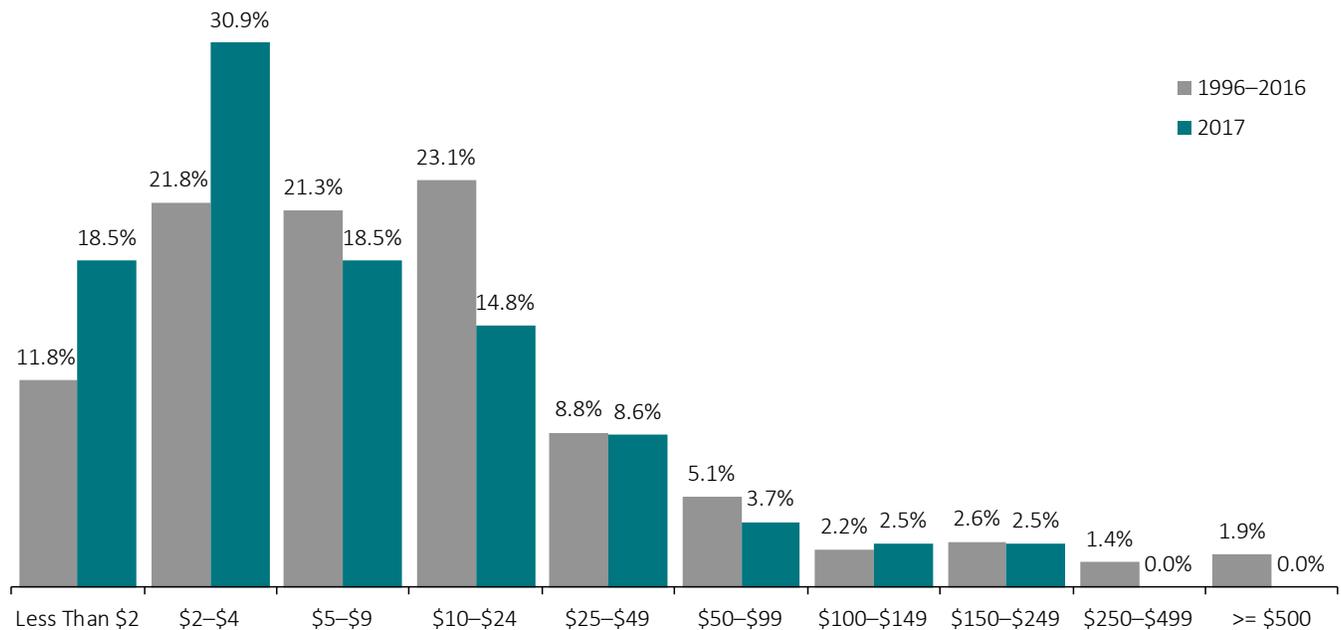
Settlement Size

- In 2017, both the number and proportion of settlements less than or equal to \$5 million were the highest in the last 10 years.
- Fifteen cases settled for \$2 million or less (historically referred to as “nuisance suits”) in 2017.
- As reported in Cornerstone Research’s *Securities Class Action Filings—2017 Year in Review*, three plaintiff law firms (The Rosen Law Firm, Pomerantz LLP, and Glancy Prongay & Murray) have increasingly been appointed as counsel in smaller-than-average cases.³ In 60 percent of cases settling for \$2 million or less, the lead or co-lead plaintiff counsel included at least one of these plaintiff law firms.
- The respective median and average settlement amounts in 2017 were approximately 40 percent and 70 percent lower than the median and average for all prior post–Reform Act settlements.
- Of the cases settled in 2017, 33 percent were between \$5 million and \$25 million, compared to 42 percent among all prior post–Reform Act settlements, indicating a decline in mid-range settlements.

In 2017, 51 percent of settlements were for \$5 million or less.

Figure 4: Distribution of Post–Reform Act Settlements 1996–2017

(Dollars in Millions)



Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used.

Damages Estimates

Rule 10b-5 Claims: “Simplified Tiered Damages”

A key factor in a meaningful analysis of settlement outcomes is a proxy for damages claimed by plaintiffs. *Estimating Damages in Settlement Outcome Modeling* introduced a new method for estimating that proxy that is conceptually more closely aligned with the approach typically followed by plaintiffs in current securities class action litigation matters.⁴ This report concentrates on analysis of “simplified tiered damages” instead of the simplified “estimated damages” proxy used in previous reports.

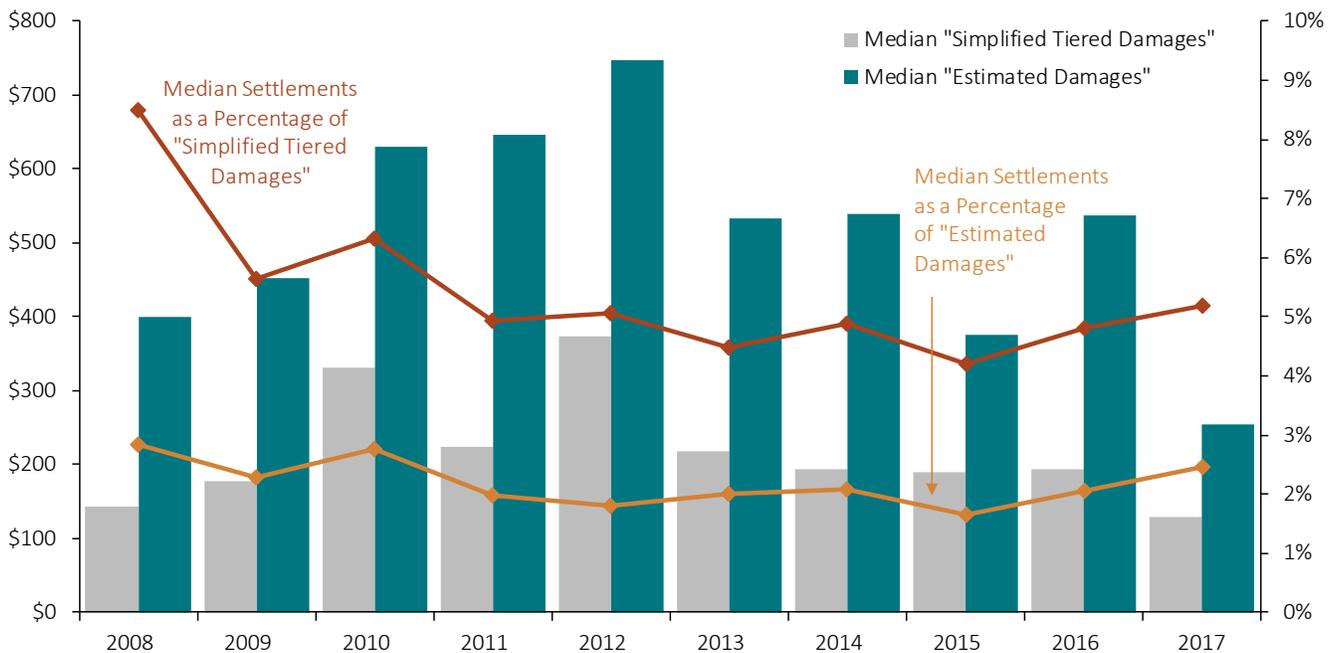
“Simplified tiered damages” bases per-share inflation estimates on the dollar value of a defendant’s stock price movements on the specific dates detailed in the plan of allocation in the settlement notice. When there is a single alleged corrective disclosure date, the measure is calculated using a constant dollar value line that reflects the price change at the end of the class period. When there are multiple dates identified in the settlement notice, the measure is calculated using a tiered dollar value line that reflects the cumulative price changes associated with those dates.^{5,6}

Like “estimated damages,” “simplified tiered damages” is highly correlated with settlement amounts and has comparable explanatory power in regression analyses of settlement amount determinants.

Generally, “simplified tiered damages” is smaller than the corresponding “estimated damages” upon which our historical reports have concentrated, due to differences in the methods used to estimate per-share inflation.⁷ As a result, settlements as a percentage of “simplified tiered damages” is larger than settlements as a percentage of “estimated damages.”

Figure 5: “Simplified Tiered Damages” and “Estimated Damages” 2008–2017

(Dollars in Millions)



Note: Damages figures are adjusted for inflation based on class period end dates. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

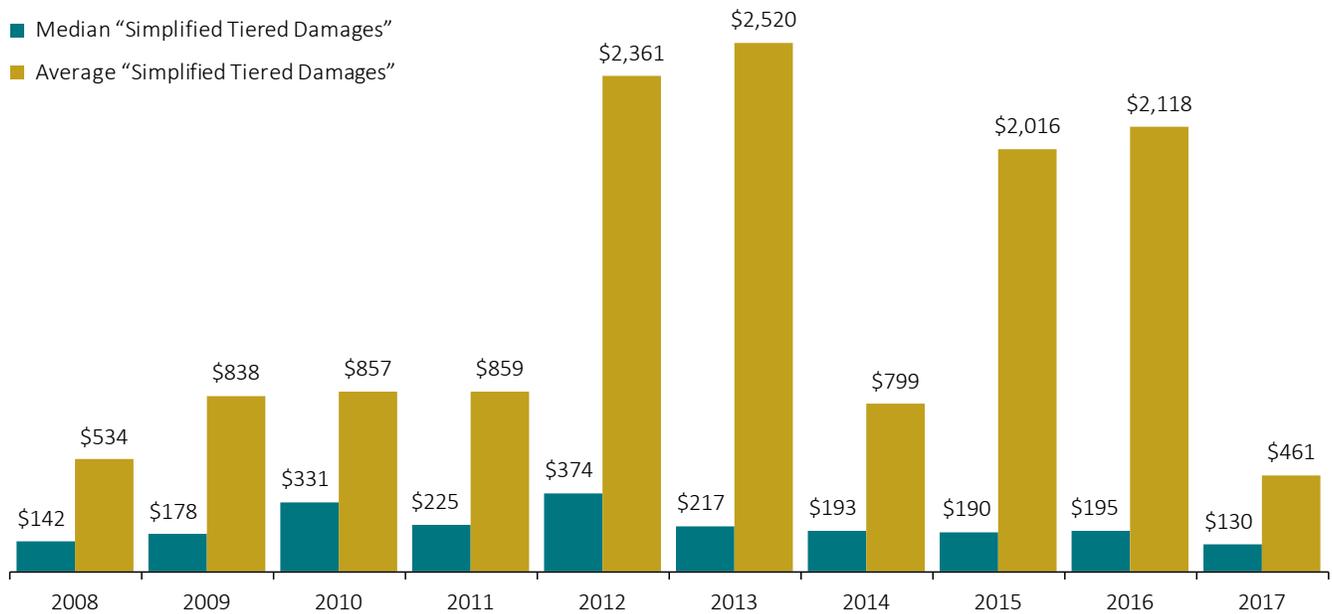
“Simplified tiered damages” uses simplifying assumptions to estimate per-share damages and trading behavior. It provides a measure of potential shareholder losses that allows for consistency across a large volume of cases, thus enabling the identification and analysis of potential trends. Our prediction models find this measure to be the most important factor in predicting settlement amounts. However, it is not intended to represent actual economic losses borne by shareholders. Determining any such losses for a given case requires more in-depth economic analysis.

Median and average “simplified tiered damages” were at a 10-year low.

- “Simplified tiered damages” is correlated with stock market volatility at the time of a case filing. The decline in median and average “simplified tiered damages” in 2017 is consistent with low stock market volatility in 2014 and 2015, when the majority of cases settled in 2017 were filed.
- Simplified tiered damages” is also correlated with the length of the class period. In 2017, the median class period for settled cases was 32 percent lower than the median in 2016.
- Higher “simplified tiered damages” are generally associated with larger issuer defendants (measured by total assets or market capitalization of the issuer). In 2017, the median issuer defendant total assets of \$547 million was 37 percent smaller than for cases settled over the prior nine years.

Figure 6: Median and Average “Simplified Tiered Damages” 2008–2017

(Dollars in Millions)



Note: “Simplified tiered damages” are adjusted for inflation based on class period end dates. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

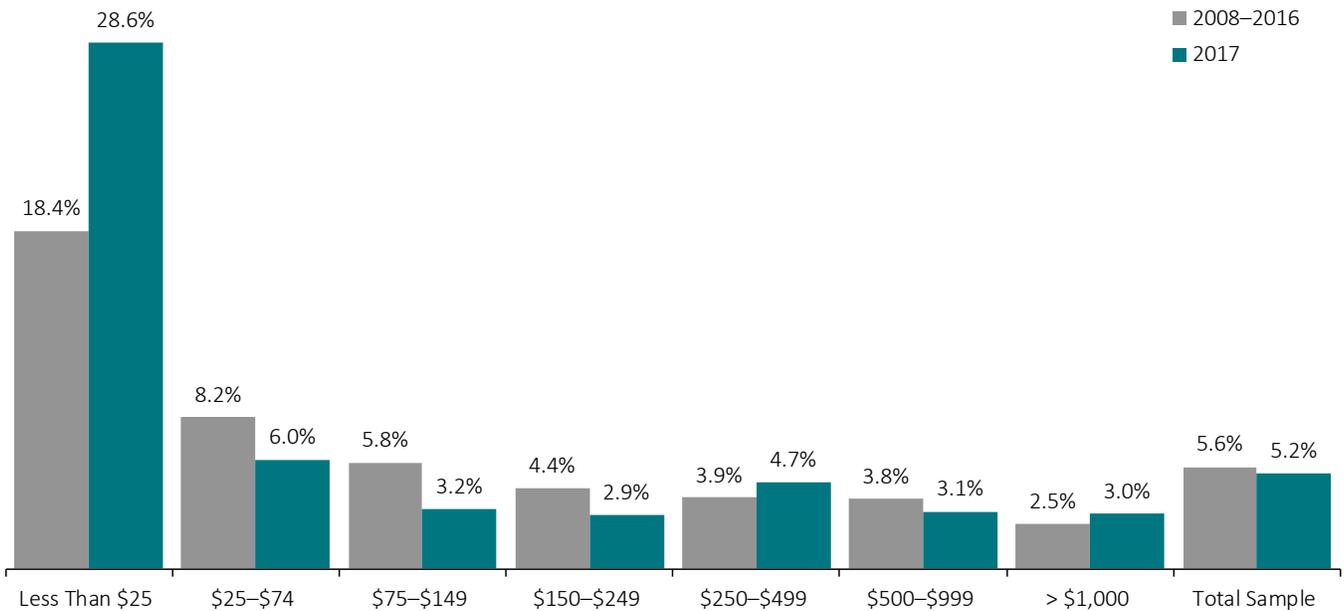
- Larger cases typically settle for a smaller percentage of “simplified tiered damages.”
- The median settlement as a percentage of “simplified tiered damages” increased for the second consecutive year, reaching 5.2 percent in 2017—a level in line with the 10-year median.
- For the smallest cases, the median settlement as a percentage of “simplified tiered damages” in 2017 increased by more than 120 percent compared to the prior year.

The average settlement as a percentage of “simplified tiered damages” was the highest in the last five years due, in part, to a spike in small cases.

- As observed over the last decade, smaller cases settle more quickly. Cases with less than \$25 million in “simplified tiered damages” settled within 2.4 years on average, compared to more than 3.8 years for cases with “simplified tiered damages” of greater than \$25 million.

Figure 7: Median Settlements as a Percentage of “Simplified Tiered Damages” by Damages Ranges 2008–2017

(Dollars in Millions)



Note: “Simplified tiered damages” are adjusted for inflation based on class period end dates. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

'33 Act Claims: "Simplified Statutory Damages"

- For cases involving Section 11 and/or Section 12(a)(2) claims ('33 Act claims) only, shareholder losses are estimated using a model where alleged inflation per share is the difference between the statutory purchase price and the statutory sales price, referred to here as "simplified statutory damages."⁸ Only the offered shares are assumed to be eligible for damages.
- "Simplified statutory damages" is typically smaller than "simplified tiered damages," reflecting differences in the methodology used to estimate alleged inflation per share, as well as differences in the shares eligible to be damaged (i.e., only offered shares are included).
- In the last decade, cases involving combined claims (Rule 10b-5 and Section 11 and/or Section 12(a)(2) claims) had, on average, nearly 50 percent more docket entries than cases involving only Rule 10b-5 claims—indicating the more complex nature of these matters.
- Among cases settled in 2017, 75 percent of those involving only Section 11 and/or Section 12(a)(2) claims settled within three years from the filing date, while only 53 percent of cases involving Rule 10b-5 claims settled as quickly.

Median settlement amounts are substantially higher for cases involving '33 Act claims and Rule 10b-5 allegations than for those with only Rule 10b-5 claims.

**Figure 8: Settlements by Nature of Claims
2008–2017**

(Dollars in Millions)

	Number of Settlements	Median Settlement	Median "Simplified Statutory Damages"	Median Settlement as a Percentage of "Simplified Statutory Damages"
Section 11 and/or Section 12(a)(2) Only	70	\$4.5	\$83.3	7.5%

	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Both Rule 10b-5 and Section 11 and/or Section 12(a)(2)	135	\$12.8	\$315.5	5.8%
Rule 10b-5 Only	552	\$7.8	\$188.3	5.0%

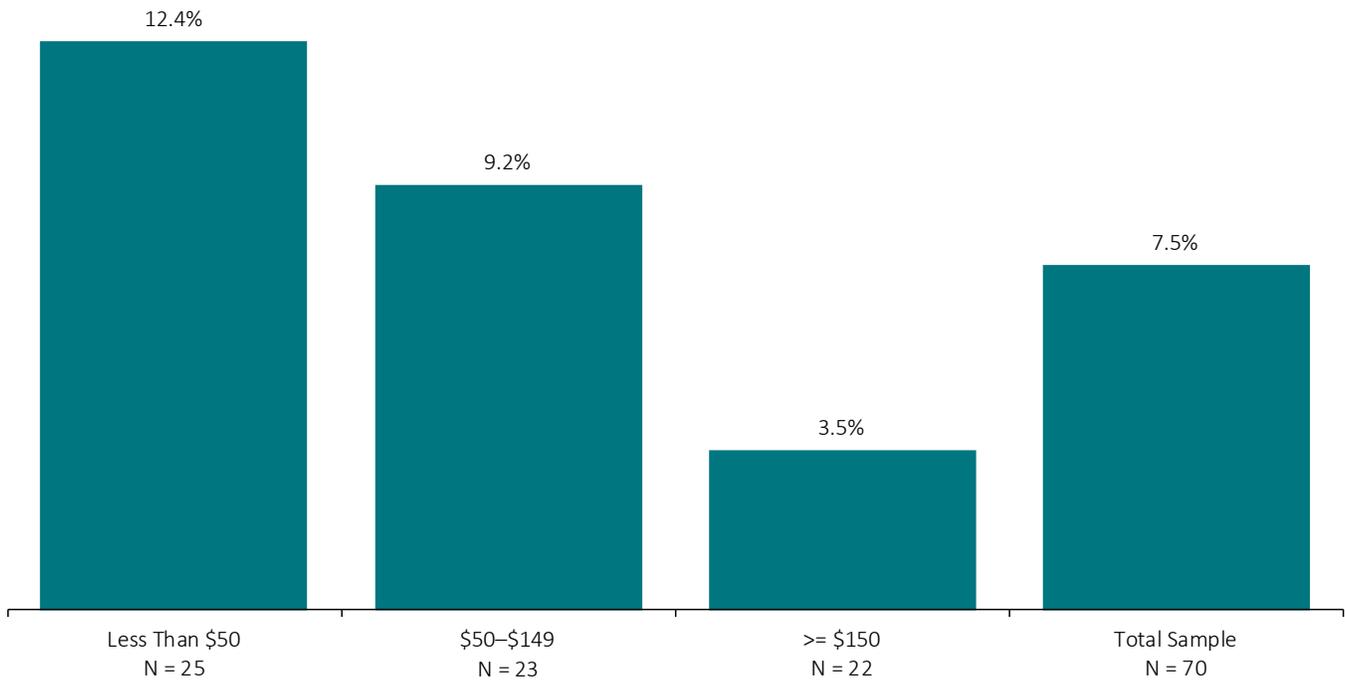
Note: Settlement dollars and damages are adjusted for inflation; 2017 dollar equivalent figures are used. Damages are adjusted for inflation based on class period end dates.

- Similar to cases with Rule 10b-5 claims, settlements as a percentage of “simplified statutory damages” for cases with only ‘33 Act claims are smaller for cases that have larger damages.
- Over the period 2008–2017, the average settlement as a percentage of “simplified statutory damages” with a named underwriter defendant was 12.8 percent, compared to 7.4 percent without a named underwriter defendant.

Since 2008, 84 percent of settled cases with only ‘33 Act claims had a named underwriter defendant.

Figure 9: Median Settlements as a Percentage of “Simplified Statutory Damages” by Damages Ranges 2008-2017

(Dollars in Millions)



Note: “Simplified statutory damages” are adjusted for inflation based on class period end dates; 2017 dollar equivalent figures are used.

Analysis of Settlement Characteristics

Accounting Allegations

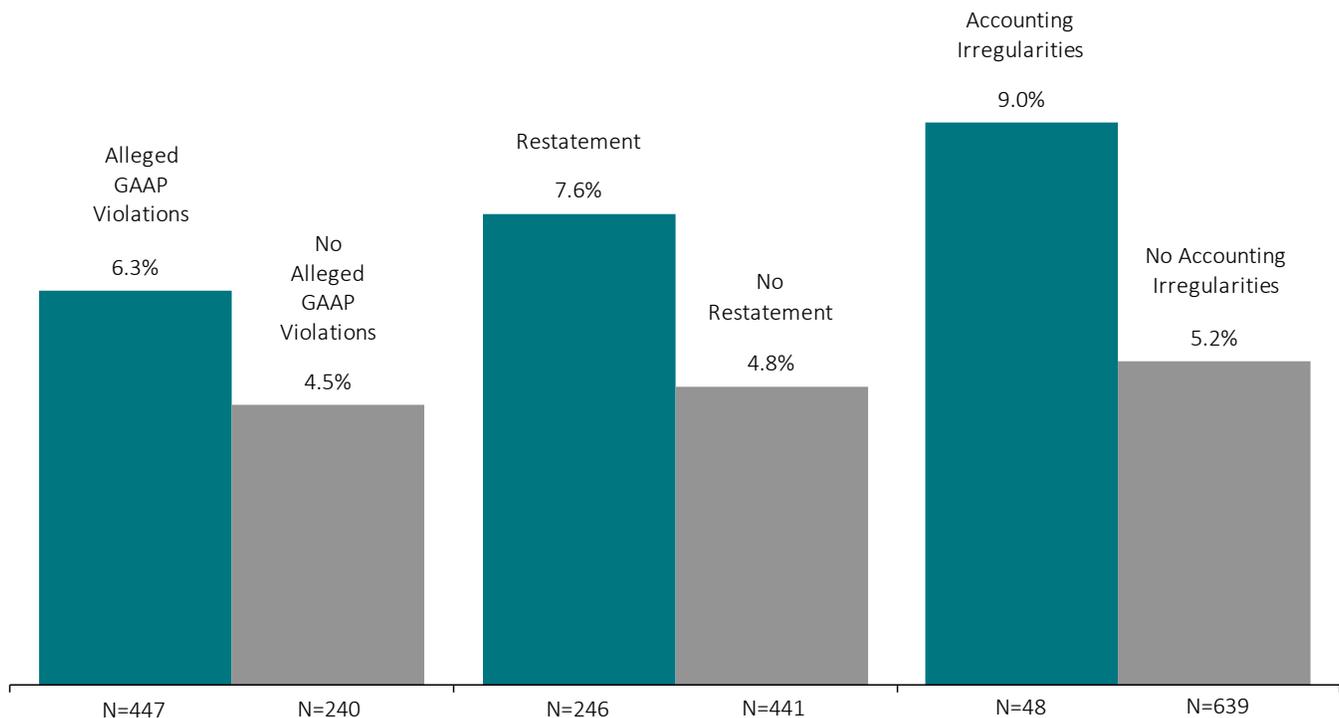
This analysis examines three types of accounting issues among settled cases involving Rule 10b-5 claims: (1) alleged GAAP violations, (2) restatements, and (3) reported accounting irregularities.⁹ For further details regarding settlements of accounting cases, see Cornerstone Research’s annual report on *Accounting Class Action Filings and Settlements*.

- The proportion of settled cases alleging GAAP violations in 2017 was 53 percent, continuing a three-year decline from a high of 67 percent in 2014.
- Settled cases with restatements are generally associated with higher settlements as a percentage of “simplified tiered damages” compared to cases without restatements.

- Of cases settled in the prior nine years with accounting-related allegations, 23 percent involved a named auditor codefendant. In 2017, this dropped to 13 percent.

The infrequency of reported accounting irregularities among settled cases continued for the third straight year.

Figure 10: Median Settlements as a Percentage of “Simplified Tiered Damages” and Accounting Allegations 2008–2017



Institutional Investors

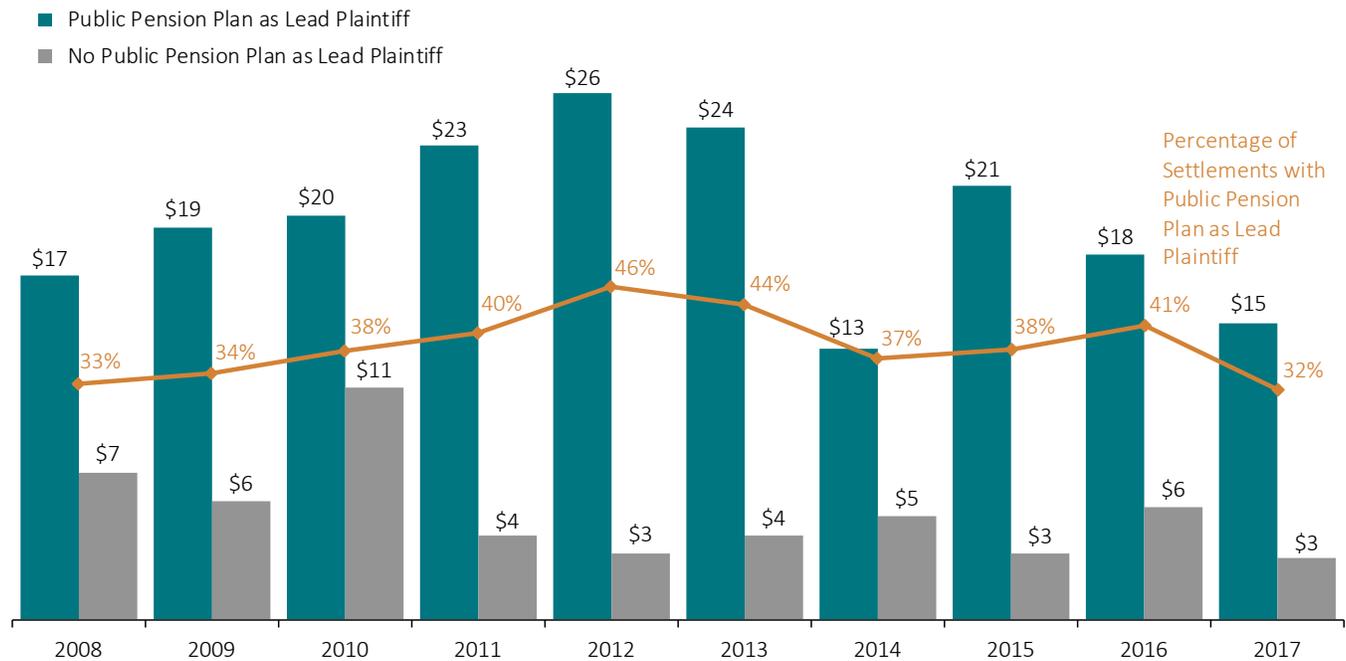
- Institutions, including public pension plans (a subset of institutional investors) tend to be involved in cases with higher “simplified tiered damages.”
- The decline in public pension plan involvement in 2017 settlements in part reflects the smaller cases involved. However, even within larger cases (e.g., cases with “simplified tiered damages” greater than \$50 million), public pension plans were less frequently involved in 2017 than in prior years.
- In 2017, 39 percent of settlements with “simplified tiered damages” greater than \$50 million involved a public pension plan as lead plaintiff, compared to 48.6 percent for 2008–2016.

The proportion of settlements with a public pension plan as lead plaintiff declined to the lowest level over the past 10 years.

- Cases in which public pension plans serve as lead or co-lead plaintiff are typically associated with larger issuer defendants, longer class periods, securities in addition to common stock, accounting allegations, and other indicators of more serious cases, such as criminal charges. These cases are also associated with longer intervals from filing to settlement. (See page 15 for additional details regarding length of time from filing to settlement.)

Figure 11: Median Settlement Amounts and Public Pension Plans 2008–2017

(Dollars in Millions)



Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used.

Derivative Actions

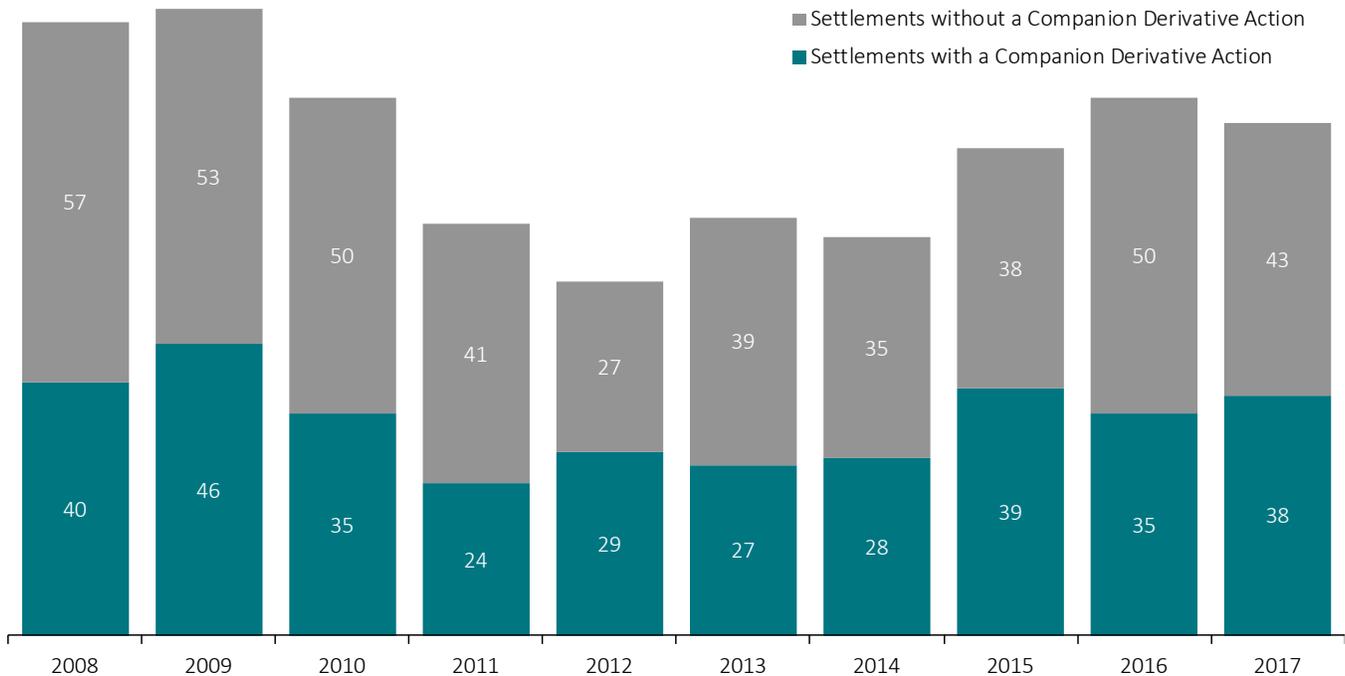
Derivative cases accompanying securities class actions, as described in previous annual reports, are more frequently filed when corresponding securities class actions involve a financial statement restatement or public pension plan lead plaintiff.

As discussed in *Piling On? An Empirical Study of Parallel Derivative Suits*,¹⁰ there is substantial overlap between plaintiff attorneys that tend to file accompanying derivative actions and attorneys that are frequent players in securities class actions. Since most derivative actions are filed as “piggyback suits” to class actions, the latter finding is consistent with plaintiff counsel who are not selected for lead counsel representation in certain securities class actions choosing to follow up with derivative actions.

- The increase in the proportion of settled cases involving an accompanying derivative action was driven by a surge in derivative cases corresponding to relatively small settlements. Of cases settling for \$5 million or less in 2017, 51 percent were accompanied by derivative actions, compared to 37 percent for the prior nine years.
- Historically, cases involving accompanying derivative actions have tended to settle for higher amounts. In 2017, however, the median settlement for cases with companion derivative actions was \$4.3 million, compared to \$6.2 million for cases without accompanying derivative actions.

The percentage of settled cases involving an accompanying derivative action was one of the highest in the last 10 years.

Figure 12: Frequency of Derivative Actions 2008–2017



Corresponding SEC Actions

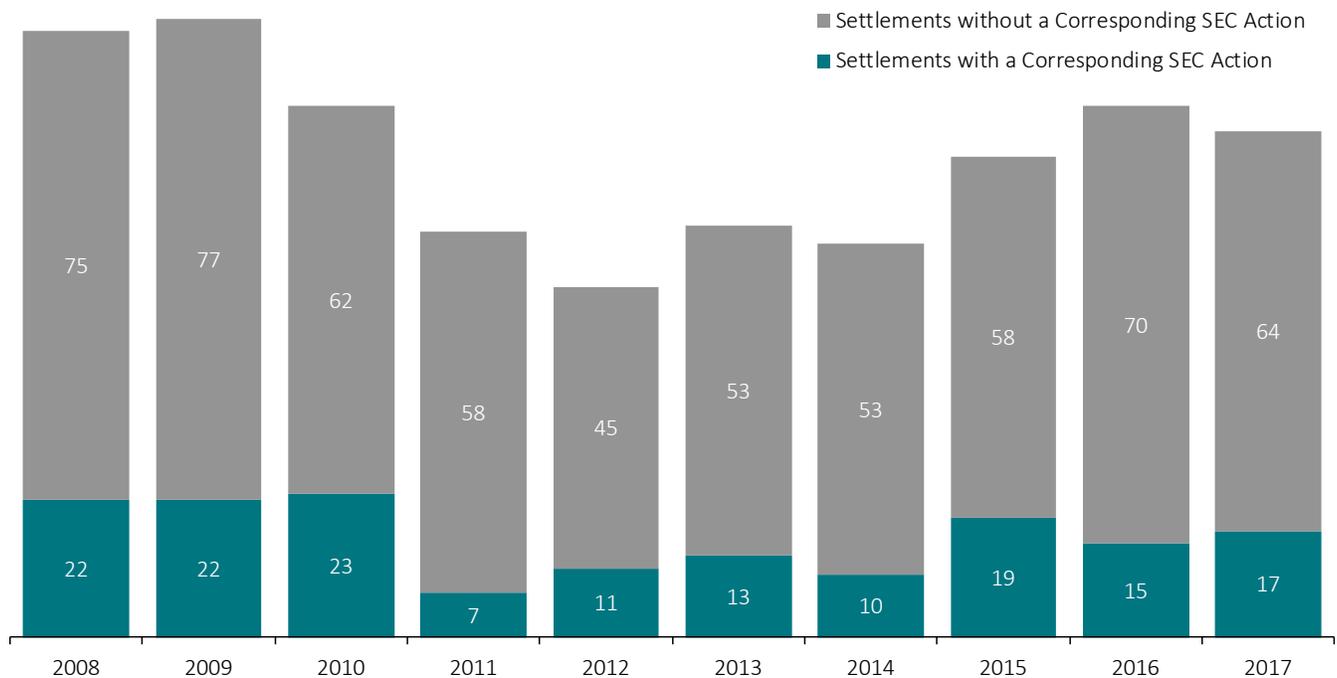
Cases with a corresponding SEC action related to the allegations are typically associated with significantly higher settlement amounts and higher settlements as a percentage of “simplified tiered damages.”¹¹

- Compared to 2011–2014, the relatively high level of class actions settled over the last three years with corresponding SEC actions is consistent with the SEC’s stated focus on financial reporting and disclosure matters during this period.¹²
- Cases with corresponding SEC actions tend to involve larger issuer defendants. For cases settled during 2008–2017, average assets for issuer defendant firms were \$135 billion for cases with corresponding SEC actions, compared to only \$31 billion for cases without a corresponding SEC action.

- Corresponding SEC actions are also frequently associated with delisted firms. Out of the total 159 settlements during 2008–2017 involving cases with corresponding SEC actions, 63 cases (40 percent) involved issuer defendants that had been delisted.

Over 20 percent of settled cases involved a corresponding SEC action.

Figure 13: Frequency of SEC Actions 2008–2017



Time to Settlement and Case Complexity

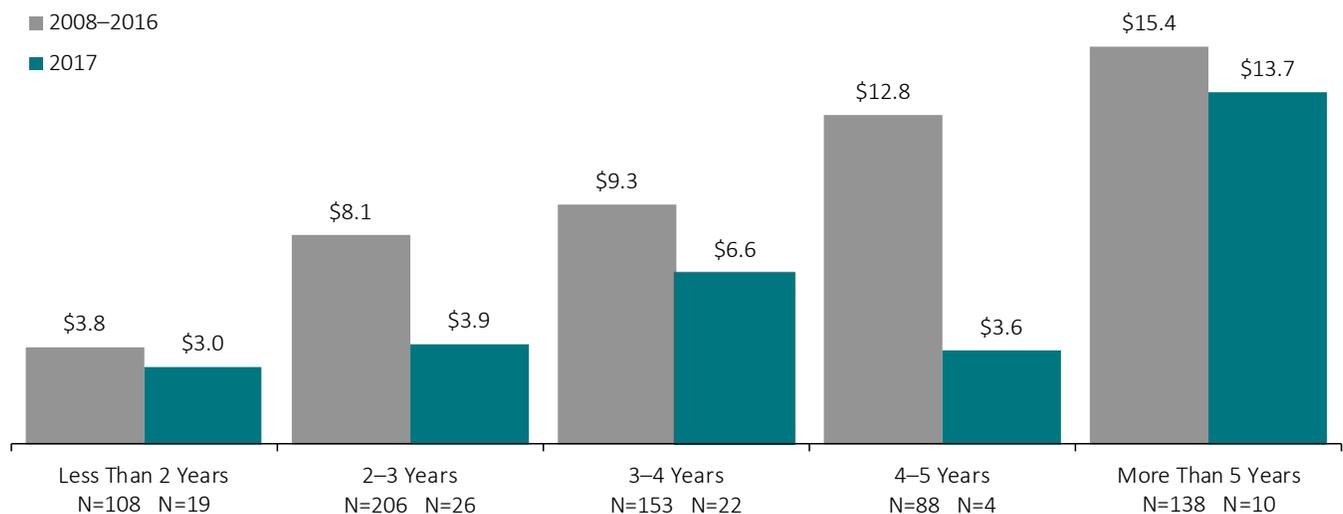
- In 2017, more than 23 percent of cases settled within two years of the filing date, compared to less than 16 percent during 2008–2016.
- Rule 10b-5 cases settling in less than two years in 2017 had median “simplified tiered damages” of only \$85 million, compared to a median of \$130 million for all settlements in 2017.
- Historically, cases that have taken longer to settle have been associated with higher settlements.
- The median settlement amount for cases taking more than two years to settle was two times the median settlement amount for cases that settled within two years.
- Consistent with the decline in settlement size in 2017, a smaller proportion (17 percent) of cases settled at least four years after filing, compared to 33 percent during 2008–2016.

The average time from filing to settlement was the lowest in the past decade.

- The number of docket entries associated with a case at the time of settlement (see Appendix 7) is highly correlated with the time to settlement, as well as factors that add to case complexity, such as third-party defendants. Accordingly, this variable has been used in prior research as a proxy for the effort incurred by plaintiff counsel in litigating the securities class actions.¹³ The number of docket entries at the time of settlement is a statistically significant explanatory variable in regression analyses of settlement outcome determinants (see page 16).

Figure 14: Median Settlement by Duration from Filing Date to Settlement Hearing Date 2008–2017

(Dollars in Millions)



Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used.

Cornerstone Research's Settlement Prediction Analysis

This research applies regression analysis to examine the relationships between settlement outcomes and certain security case characteristics. Regression analysis is employed to better understand and predict the total settlement amount, given the characteristics of a particular securities case. Regression analysis can also be applied to estimate the probabilities associated with reaching alternative settlement levels. It is also helpful in exploring hypothetical scenarios, including how the presence or absence of particular factors affect predicted settlement amounts.

Determinants of Settlement Outcomes

Based on the research sample of post-Reform Act cases that settled through December 2017, the factors that were important determinants of settlement amounts included the following:

- “Simplified tiered damages”
- Maximum Dollar Loss (MDL)
- Most recently reported total assets of the issuer defendant firm
- Number of entries on the lead case docket
- The year in which the settlement occurred
- Whether a restatement of financials related to the alleged class period was announced
- Whether there was a corresponding SEC action against the issuer, other defendants, or related parties
- Whether Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims
- Whether the issuer defendant was distressed
- Whether a public pension was a lead plaintiff
- Whether the plaintiffs alleged that securities other than common stock were damaged

Regression analyses shows that settlements were higher when “simplified tiered damages,” MDL, issuer defendant asset size, or the number of docket entries were larger, or when Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims.

Settlements were also higher in cases involving financial restatements, a corresponding SEC action, a public pension involved as lead plaintiff, or securities other than common stock alleged to be damaged.

Settlements were lower if the settlement occurred in 2010 or later, or if the issuer was distressed.

Almost 75 percent of the variation in settlement amounts can be explained by the factors discussed above.

Research Sample

- The database used in this report focuses on cases alleging fraudulent inflation in the price of a corporation's common stock (i.e., excluding cases with alleged classes of only bondholders, preferred stockholders, etc., and excluding cases alleging fraudulent depression in price and M&A cases).
- The sample is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes 1,697 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2017. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).¹⁴
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.¹⁵ Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.¹⁶

Data Sources

In addition to SCAS, data sources include Dow Jones Factiva, Bloomberg, the Center for Research in Security Prices (CRSP) at University of Chicago Booth School of Business, Standard & Poor's Compustat, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, and public press.

Endnotes

- ¹ See Adam C. Pritchard and Stephen J. Choi, “Lead Plaintiffs and Their Lawyers: Mission Accomplished, or More to Be Done?,” Harvard Law School Forum on Corporate Governance and Financial Regulation, May 25, 2017. See also Charles Silver and Sam Dinkin, “Incentivizing Institutional Investors to Serve as Lead Plaintiffs in Securities Fraud Class Actions,” *DePaul Law Review* 57, no. 2 (2008).
- ² See Kevin LaCroix, “Should Shareholder Derivative Litigation Be Eliminated?,” *The D&O Diary*, October 4, 2017; and Stephen Bainbridge, “Is There a Case for Abolishing Derivative Litigation?,” *ProfessorBainbridge.com*, October 3, 2017.
- ³ See *Securities Class Action Filings—2017 Year in Review*, Cornerstone Research (2018), page 35. Among 2017 settlements, The Rosen Law Firm and Pomerantz LLP have identifiable lead or co-lead roles.
- ⁴ See *Estimating Damages in Settlement Outcome Modeling*, Cornerstone Research (2017). Note that “simplified tiered damages” referenced in the current report is identical to the measure referred to as “tiered damages” in *Estimating Damages in Settlement Outcome Modeling*.
- ⁵ “Simplified tiered damages” is calculated for cases that settled after 2005. Importantly, the “simplified tiered damages” approach used for purposes of settlement research does not examine the mix of information associated with the specific dates listed in the plan of allocation, but simply applies the stock price movements on those dates to an estimate of the “true value” of the stock during the alleged class period (or “value line”). The dates used to identify the applicable value line may be supplemented with information from the operative complaint at the time of settlement.
- ⁶ Damages calculations have two components, an estimate of the inflation per share and an estimate of the number of shares damaged. Both “simplified tiered damages” and “estimated damages,” as well as the proxy discussed in this report for plaintiff-style damages in ‘33 Act cases, use a similar methodology to estimate the number of shares damaged. In particular, these damages proxies utilize an estimate of the number of shares damaged based on reported trading volume and the number of shares outstanding. Specifically, reported trading volume is adjusted using volume reduction assumptions based on the exchange on which the issuer defendant’s common stock is listed. No adjustments are made to the underlying float for institutions, insiders, or short-selling activity. Because of these and other simplifying assumptions, the damages measures used in settlement outcome modeling are overstated relative to damages estimates developed in conjunction with case-specific economic analysis.
- ⁷ As described in prior reports, per-share inflation for “estimated damages” for cases involving Rule 10b-5 claims is calculated using a market-adjusted, backward-pegged value line.
- ⁸ The statutory purchase price is the lesser of the security offering price or the security purchase price. Prior to the first complaint filing date, the statutory sales price is the price at which the security was sold. After the first complaint filing date, the statutory sales price is the greater of the security sales price or the security price on the first complaint filing date. Similar to “simplified tiered damages,” the estimation of “simplified statutory damages” makes no adjustments to the underlying float for institutions, insiders, or short-selling activity.
- ⁹ The three categories of accounting issues analyzed in this report are: (1) GAAP violations—cases with allegations involving Generally Accepted Accounting Principles (GAAP); (2) restatements—cases involving a restatement (or announcement of a restatement) of financial statements; and (3) accounting irregularities—cases in which the defendant has reported the occurrence of accounting irregularities (intentional misstatements or omissions) in its financial statements.
- ¹⁰ Stephen J. Choi, Jessica Erickson, and Adam C. Pritchard, “Piling On? An Empirical Study of Parallel Derivative Suits,” *Journal of Empirical Legal Studies* 14, no. 4 (2007): 653–682.
- ¹¹ It could be that the merits in such cases are stronger, or simply that the presence of an accompanying SEC action provides plaintiffs with increased leverage when negotiating a settlement. For purposes of this research, an SEC action is evidenced by the presence of a litigation release or an administrative proceeding posted on www.sec.gov.
- ¹² For example, see Andrew Ceresney, Director, Division of Enforcement, U.S. Securities and Exchange Commission, “Directors Forum 2016 Keynote Address” (San Diego, CA, January 25, 2016).
- ¹³ See Laura Simmons, “The Importance of Merit-Based Factors in the Resolution of 10b-5 Litigation,” University of North Carolina at Chapel Hill Doctoral Dissertation (1996); and Michael A. Perino, “Institutional Activism through Litigation: An Empirical Analysis of Public Pension Fund Participation in Securities Class Actions,” St. John’s Legal Studies Research Paper No. 06-0055 (2006).
- ¹⁴ Available on a subscription basis.
- ¹⁵ Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.
- ¹⁶ This categorization is based on the timing of the settlement approval. If a new partial settlement equals or exceeds 50 percent of the then-current settlement fund amount, the entirety of the settlement amount is re-categorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50 percent of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

Appendices

Appendix 1: Settlement Percentiles

(Dollars in Millions)

	Average	10th	25th	Median	75th	90th
2017	\$18.2	\$1.5	\$2.5	\$5.0	\$15.0	\$34.5
2016	\$72.0	\$1.9	\$4.3	\$8.7	\$33.7	\$149.1
2015	\$40.7	\$1.4	\$2.2	\$6.7	\$16.8	\$97.2
2014	\$18.9	\$1.7	\$3.0	\$6.2	\$13.6	\$51.8
2013	\$76.1	\$2.0	\$3.2	\$6.8	\$23.3	\$86.8
2012	\$65.4	\$1.3	\$2.9	\$10.1	\$37.9	\$122.8
2011	\$22.8	\$2.0	\$2.7	\$6.3	\$19.6	\$45.5
2010	\$40.1	\$2.2	\$4.8	\$12.6	\$28.1	\$89.5
2009	\$42.9	\$2.7	\$4.4	\$9.1	\$22.9	\$75.9
2008	\$32.4	\$2.3	\$4.3	\$9.1	\$21.6	\$57.4
1996–2017	\$43.5	\$1.7	\$3.5	\$8.3	\$21.3	\$74.1

Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used.

Appendix 2: Select Industry Sectors

2008–2017

(Dollars in Millions)

Industry	Number of Settlements	Median Settlement	Median “Simplified Tiered Damages”	Median Settlement as a Percentage of “Simplified Tiered Damages”
Technology	109	\$9.8	\$199.8	2.2%
Financial	113	\$21.2	\$459.1	2.0%
Telecommunications	49	\$8.0	\$160.1	2.1%
Retail	44	\$6.6	\$140.8	2.3%
Pharmaceuticals	88	\$8.6	\$339.6	2.5%
Healthcare	19	\$8.0	\$127.3	3.0%

Note: Settlement dollars and “simplified tiered damages” are adjusted for inflation; 2017 dollar equivalent figures are used. “Simplified tiered damages” are calculated only for cases involving Rule 10b-5 claims.

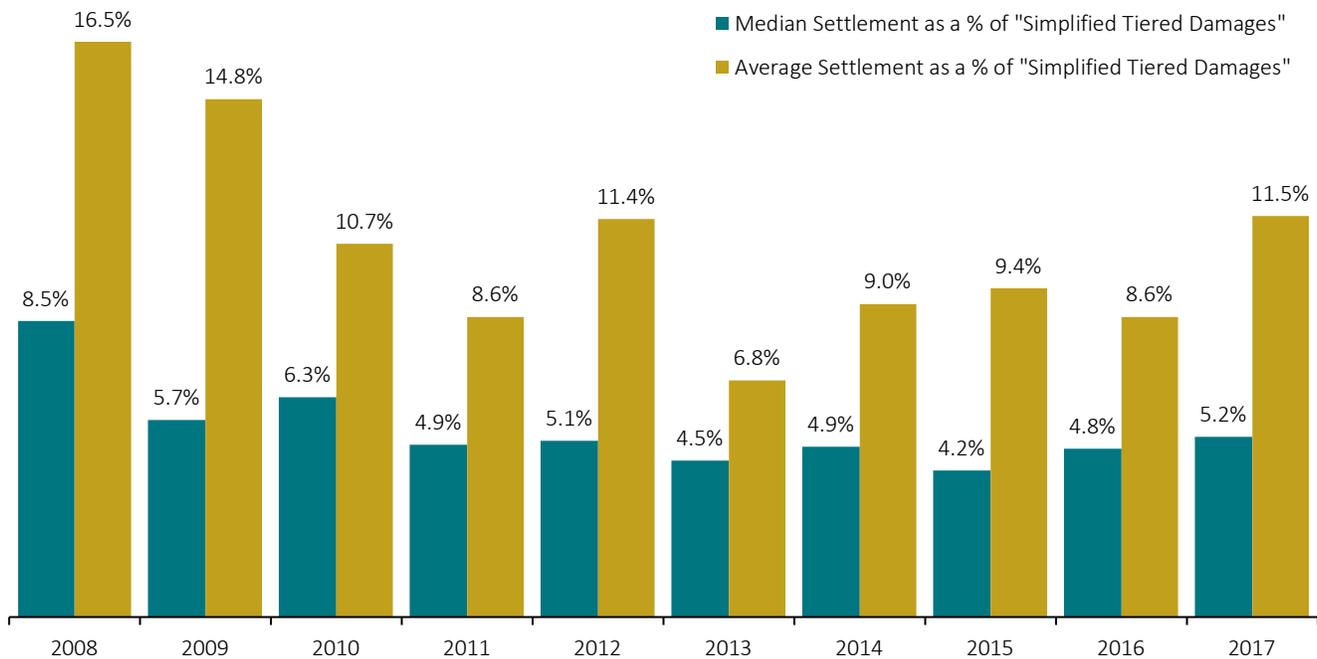
**Appendix 3: Settlements by Federal Circuit Court
2008–2017**

(Dollars in Millions)

Circuit	Number of Settlements	Median Settlement	Median Settlement as a Percentage of “Simplified Tiered Damages”
First	24	\$7.3	2.0%
Second	185	\$12.0	2.0%
Third	63	\$8.7	2.4%
Fourth	27	\$8.4	1.8%
Fifth	40	\$7.6	2.4%
Sixth	33	\$12.9	3.3%
Seventh	38	\$9.7	1.7%
Eighth	19	\$8.5	3.2%
Ninth	191	\$8.0	2.3%
Tenth	19	\$8.6	2.3%
Eleventh	47	\$6.0	2.3%
DC	4	\$38.7	3.7%

Note: Settlement dollars are adjusted for inflation; 2017 dollar equivalent figures are used. Settlements as a percentage of “simplified tiered damages” calculated only for cases alleging Rule 10b-5 claims.

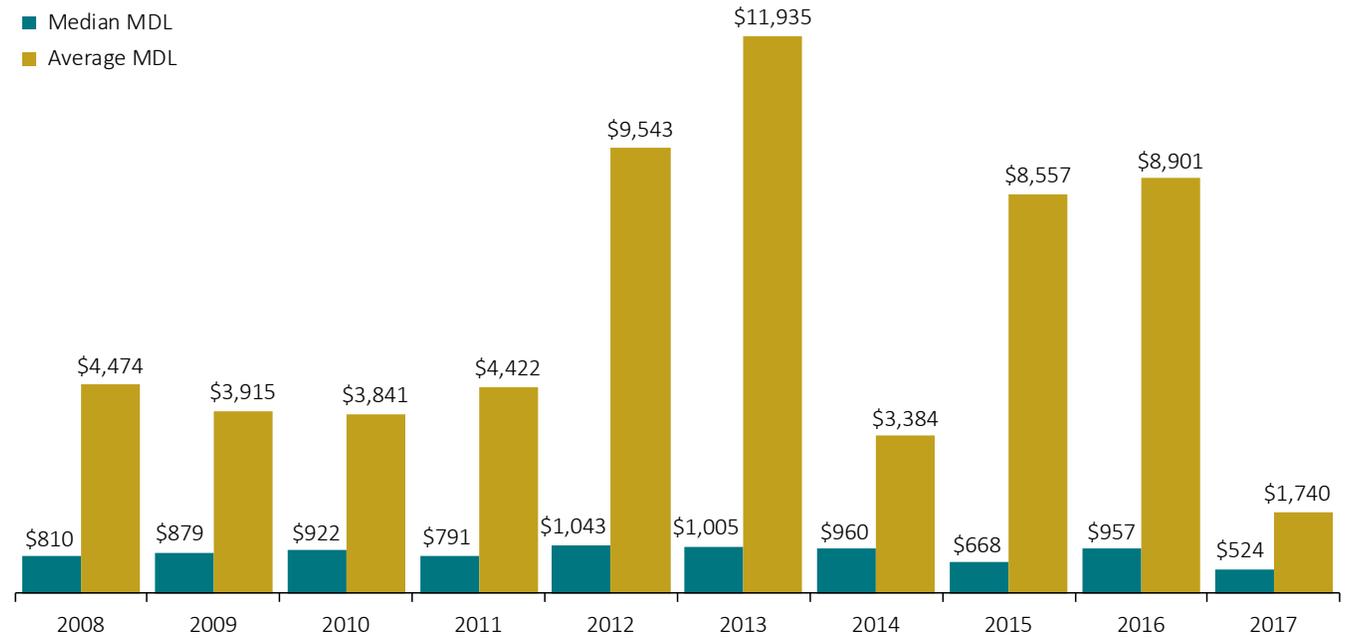
**Appendix 4: Median and Average Settlements as a Percentage of “Simplified Tiered Damages”
2008–2017**



Note: “Simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims.

**Appendix 5: Median and Average Maximum Dollar Loss (MDL)
2008–2017**

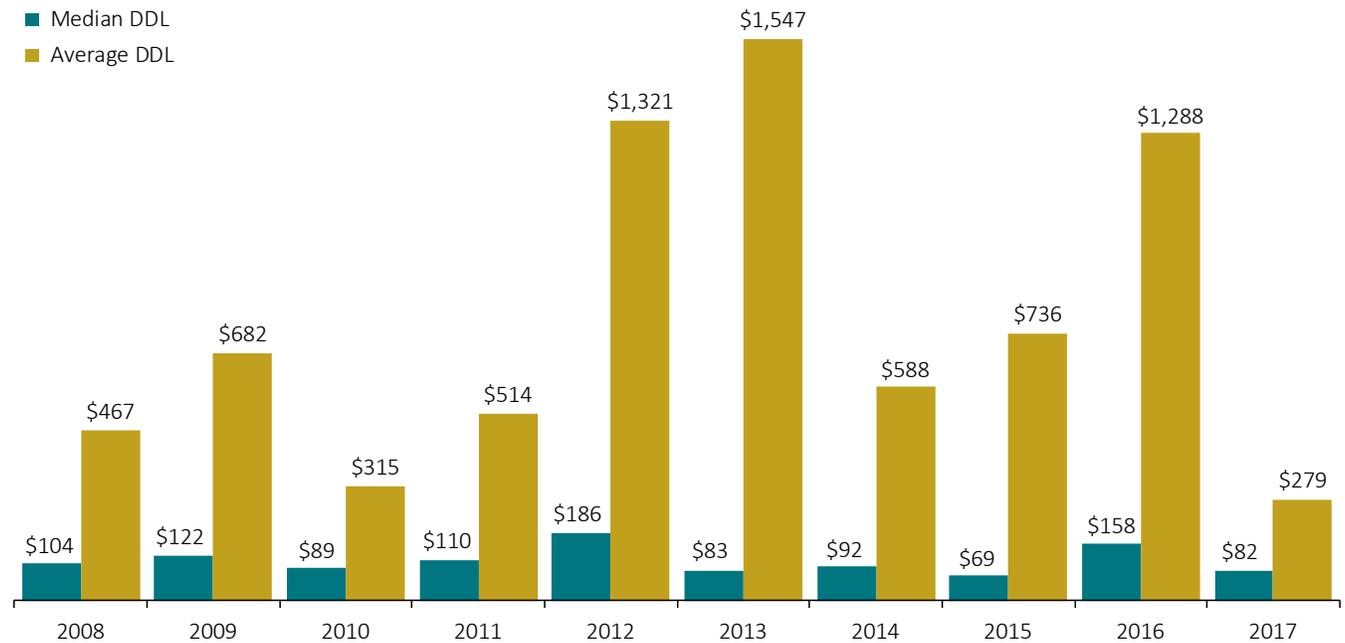
(Dollars in Millions)



Note: MDL is adjusted for inflation based on class period end dates. MDL is the dollar value change in the defendant firm’s market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period.

**Appendix 6: Median and Average Disclosure Dollar Loss (DDL)
2008–2017**

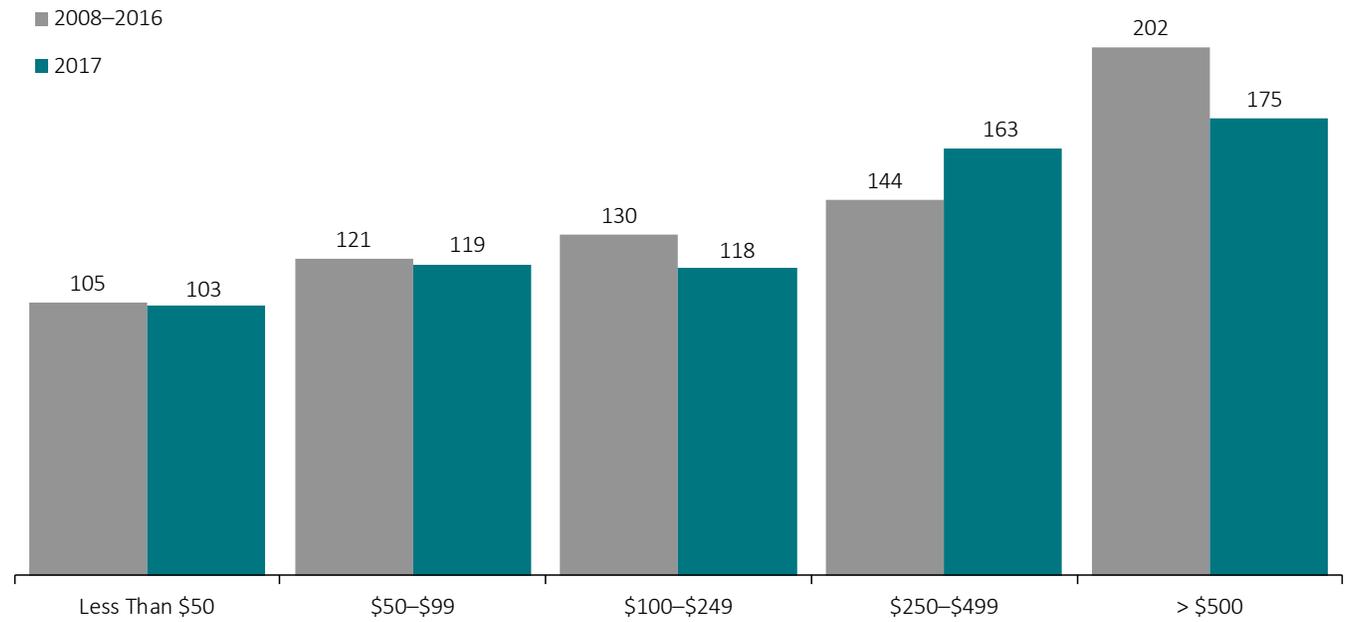
(Dollars in Millions)



Note: DDL is adjusted for inflation based on class period end dates. DDL is the dollar value change in the defendant firm’s market capitalization between the trading day immediately preceding the end of the class period and the trading day immediately following the end of the class period.

**Appendix 7: Median Docket Entries by “Simplified Tiered Damages” Range
2008–2017**

(Dollars in Millions)



Note: “Simplified tiered damages” are adjusted for inflation; 2017 dollar equivalent figures are used. “Simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims.

About the Authors

Laarni T. Bulan

Ph.D., Columbia University; M.Phil., Columbia University; B.S., University of the Philippines

Laarni Bulan is a principal in Cornerstone Research's Boston office, where she specializes in finance. Her work has focused on securities damages and class certification issues, insider trading, merger valuation, risk management, market manipulation and trading behavior, and real estate markets. She has also consulted on cases related to financial institutions and the credit crisis, municipal bond mutual funds, asset-backed commercial paper conduits, credit default swaps, foreign exchange, and securities clearing and settlement. Dr. Bulan has published several academic articles in peer-reviewed journals. Her research covers topics in dividend policy, capital structure, executive compensation, corporate governance, and real options. Prior to joining Cornerstone Research, Dr. Bulan had a joint appointment at Brandeis University as an assistant professor of finance in its International Business School and in the economics department.

Ellen M. Ryan

M.B.A., American Graduate School of International Management; B.A., Saint Mary's College

Ellen Ryan is a director in Cornerstone Research's Boston office, where she works in the securities practice. Ms. Ryan has consulted on economic and financial issues in a variety of cases, including securities class actions, financial institution breach of contract matters, and antitrust litigation. She also has worked with testifying witnesses in corporate governance and breach of fiduciary duty matters. Prior to joining Cornerstone Research, Ms. Ryan worked for Salomon Brothers in New York and Tokyo. Currently she focuses on post-Reform Act settlement research as well as general practice area business and research.

Laura E. Simmons

Ph.D., University of North Carolina at Chapel Hill; M.B.A., University of Houston; B.B.A., University of Texas at Austin

Laura Simmons is a senior advisor with Cornerstone Research. She is a certified public accountant and has more than 25 years of experience in accounting practice and economic and financial consulting. Dr. Simmons has focused on damages and liability issues in securities litigation, as well as on accounting issues arising in a variety of complex commercial litigation matters. She has served as a testifying expert in cases involving accounting analyses, securities case damages, research on securities lawsuits, and other issues involving empirical analyses.

Dr. Simmons's research on pre- and post-Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. She has also published in academic journals, with recent research focusing on the intersection of accounting and litigation. Dr. Simmons was previously an accounting faculty member at the Mason School of Business at the College of William & Mary. From 1986 to 1991, she was an accountant with Price Waterhouse.

The authors acknowledge the research efforts and significant contributions of their colleagues at Cornerstone Research. Please direct any questions and requests for additional information to the settlement database administrator at settlement.database@cornerstone.com.

Many publications quote, cite, or reproduce data, charts, or tables from Cornerstone Research reports. The authors request that you reference Cornerstone Research in any reprint, quotation, or citation of the charts, tables, or data reported in this study.

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Exhibit 5

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4 Fax: (415) 371-0500
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5 labar@kerrwagstaffe.com

6 *Local Counsel for Plaintiffs and the Class*

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16 *Lead Counsel for Plaintiffs and the Class*

17 **UNITED STATES DISTRICT COURT**
18
19 **NORTHERN DISTRICT OF CALIFORNIA**
20
21 **SAN JOSE DIVISION**

22 IN RE INTUITIVE SURGICAL
SECURITIES LITIGATION

Case No. 5:13-cv-01920-EJD (HRL)

**DECLARATION OF JONATHAN
GARDNER FILED ON BEHALF OF
LABATON SUCHAROW LLP IN
SUPPORT OF APPLICATION FOR
AWARD OF ATTORNEYS' FEES AND
EXPENSES**

Date: December 20, 2018
Time: 9:00 a.m.
Dept.: Courtroom 4, 5th Floor
Judge: Hon. Edward J. Davila

1 I, JONATHAN GARDNER, declare as follows under penalty of perjury, pursuant to 28
2 U.S.C. § 1746:

3 1. I am a member of the law firm of Labaton Sucharow LLP. I submit this
4 declaration in support of Class Counsel’s motion for an award of attorneys’ fees and payment of
5 litigation expenses, on behalf of all Plaintiffs’ Counsel who contributed to the prosecution of the
6 claims in the above-captioned action (the “Action”), from inception through September 30, 2018
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 Court-appointed Class Counsel in the Action, was
10 involved in all aspects of the litigation and settlement as set forth in the Declaration of Jonathan
11 Gardner in Support of Class Representatives’ Motion for Final Approval of Class Action
12 Settlement and Plan of Allocation and Class Counsel’s Motion for Award of Attorneys’ Fees and
13 Payment of Litigation Expenses, submitted herewith.

14 3. The information in this declaration regarding the 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 (and backup documentation where
17 necessary) were reviewed by others at my firm, under my direction, in connection with the
18 preparation of this declaration. As a result of this review, reductions were made to both time
19 and expenses in the exercise of billing judgment. As a result of this review and the adjustments
20 made, I believe that the time reflected in the firm’s lodestar calculation and the expenses for
21 which payment is sought as set forth in this declaration are reasonable in amount and were
22 necessary for the effective and efficient prosecution and resolution of the litigation. In addition,
23 I believe that the expenses are all of a type that would normally be charged to a fee-paying client
24 in the private legal marketplace.

25 4. After the reductions referred to above, the schedule attached hereto as Exhibit A
26 is a summary indicating the amount of time spent by the attorneys and professional support staff
27 members of my firm who were involved in the prosecution of the Action and the lodestar
28

1 calculation based on my firm's current rates. For personnel who are no longer employed by my
2 firm, the lodestar calculation is based upon the rates for such personnel in his or her final year of
3 employment by my firm. The schedule was prepared from contemporaneous time records
4 regularly prepared and maintained by my firm, which are available at the request of the Court.
5 Time expended in preparing this application for fees and payment of expenses has not been
6 included in this request.

7 5. The hourly rates for the attorneys and professional support staff of my firm
8 included in Exhibit A are their usual and customary rates, which have been approved by Courts
9 in other securities class action litigations.

10 6. The total number of hours expended on this litigation by my firm during the Time
11 Period is 41,749.3 hours. The total lodestar for my firm for those hours is \$21,502,439.00.

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

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

17 9. My firm seeks payment of \$1,988,789.66 in expenses and charges in connection
18 with the prosecution of the litigation. These expenses and charges are summarized by category
19 in Exhibit C.

20 10. The following is additional information regarding certain of Labaton Sucharow's
21 expenses:

22 (a) Filing, Witness and Other Court Fees: \$12,278.42. These expenses have
23 been paid to courts and process services in connection with, among other things, certificates of
24 good standing, *pro hac vice* motions and serving court papers.

25 (b) Work-Related Transportation, Hotels & Meals: \$216,720.25. In
26 connection with the prosecution of this case, the firm has paid for work-related transportation
27 expenses, meals, and travel expenses related to, among other things, attending court conferences
28

1 and hearings, meeting with witnesses, and taking or defending depositions. (Any first-class
2 airfare has been reduced to be comparable to economy rates.)

3 (c) Trial Accommodations: \$31,084.83. In connection with the trial
4 scheduled in the Action, my firm rented living and work space for the trial team.

5 (d) Court Hearing and Deposition Reporting: \$90,139.18. These expenses
6 have been paid to court reporters in connection with transcripts of court hearings or to court
7 reporting services, such as US Legal Service, Veritext, and Litivate Court Reporting in
8 connection with the depositions taken in the Action.

9 (e) Experts/Consultants: \$1,188,565.43. The Class Representatives retained
10 testifying and consulting experts in the fields of market efficiency/loss causation/damages; FDA
11 regulation; insider trading; robotic surgery; and jury focus groups. These are the fees and costs
12 of these experts.

13 (f) Online Legal and Factual Research: \$73,870.71. The firm conducted
14 research using databases maintained by vendors such as PACER, Bloomberg BNA, Thomson
15 Reuters Markets, Westlaw, LexisNexis and LexisNexis Risk Solution. These databases were
16 used to obtain access to financial information, factual information, and to conduct legal research.
17 This expense represents the expense incurred by Labaton Sucharow for use of these services in
18 connection with this litigation. The charges for these vendors vary depending upon the type of
19 services requested.

20 (g) Litigation Support: \$174,840.30. The majority of the expenses in this
21 category were paid to an electronic discovery vendor for fees and expenses in connection with
22 hosting electronic documents produced in the Action. This category also includes the fees of
23 counsel for certain confidential witnesses, which were paid by my firm.

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

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

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of November, 2018, at New York, NY



JONATHAN GARDNER

Exhibit A

EXHIBIT A

IN RE INTUITIVE SURGICAL SEC. LITIG.

Labaton Sucharow LLP

Inception through September 30, 2018

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Arisohn, M.	P	1,829.0	\$975	\$1,783,275.00
Gardner, J.	P	309.4	\$975	\$301,665.00
Keller, C.	P	92.1	\$975	\$89,797.50
Belfi, E.	P	240.7	\$900	\$216,630.00
Zeiss, N.	P	77.3	\$900	\$69,570.00
Fox, C.	P	2,154.8	\$875	\$1,885,450.00
Hallowell, S.	P	2,602.7	\$850	\$2,212,295.00
Villegas, C.	P	1,120.0	\$850	\$952,000.00
Canty, M.	P	45.8	\$850	\$38,930.00
Bleichmar, J.	P	473.1	\$775	\$366,652.50
Avan, R.	OC	58.7	\$700	\$41,090.00
Wierzbowski, E.	A	57.5	\$675	\$38,812.50
Cividini, D.	A	564.0	\$585	\$329,940.00
Hawkins, T.	A	1,516.4	\$525	\$796,110.00
Hanawalt, C.	A	169.3	\$510	\$86,343.00
Demann, Y.	A	871.6	\$500	\$435,800.00
de Villiers, S.	A	640.5	\$460	\$294,630.00
Stampley, D.	A	493.2	\$460	\$226,872.00
Coquin, A.	A	3,181.1	\$450	\$1,431,495.00
Christie, J.	A	563.6	\$400	\$225,440.00
Menkova, A.	A	155.8	\$375	\$58,425.00
Ladson, E.	SA	1,760.9	\$435	\$765,991.50
George, L.	SA	1,200.2	\$435	\$522,087.00
Flanigan, M.	SA	1,147.9	\$435	\$499,336.50
Gopie, N.	SA	3,957.1	\$410	\$1,622,411.00
Hirsh, J.	SA	1,450.8	\$410	\$594,828.00
Agnant, E.	SA	1,278.6	\$410	\$524,226.00
Allan, A.	SA	1,068.6	\$410	\$438,126.00
Lewis-Bevel, E.	SA	588.0	\$410	\$241,080.00
Davis, O.	SA	4,422.4	\$390	\$1,724,736.00
Herrick, I.	SA	999.7	\$360	\$359,892.00
Markham, C.	SA	1,744.6	\$335	\$584,441.00
Pallone, A.	SA	1,575.2	\$335	\$527,692.00
Ahn, E.	RA	50.3	\$325	\$16,347.50
Pontrelli, J.	I	432.8	\$495	\$214,236.00
Greenbaum, A.	I	333.9	\$455	\$151,924.50
Wroblewski, R.	I	159.9	\$425	\$67,957.50
Weintraub, J.	I	200.7	\$410	\$82,287.00
Malonzo, F.	PL	732.3	\$340	\$248,982.00
Carpio, A.	PL	746.3	\$325	\$242,547.50

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<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Schneider, P.	PL	137.6	\$325	\$44,720.00
Mehringer, L.	PL	125.4	\$325	\$40,755.00
Russo, M.	PL	217.0	\$300	\$65,100.00
Farber, E.	PL	202.5	\$205	\$41,512.50
TOTAL		41,749.3		\$21,502,439.00

Partner (P) Research Analyst (RA)
 Of Counsel (OC) Investigator (I)
 Associate (A) Paralegal (PL)
 Staff Attorney (SA)

Exhibit B

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EXHIBIT B
IN RE INTUITIVE SURGICAL SEC. LITIG.

Labaton Sucharow LLP

Inception through September 30, 2018

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
- (10) Class Certification
- (11) Trial Preparation
- (12) Appeal

Name	Status	1	2	3	4	5	6	7	8	9	10	11	12	Total Hours	Rate	Total Lodestar
Arisohn, M.	P		16.6	504.3	34.3	263.0	214.4	429.8	62.3	86.3	62.8	127.2	28.0	1,829.0	\$975.00	\$1,783,275.00
Gardner, J.	P		1.9	75.6	25.6	18.6		52.0	13.2	83.9	37.6	1.0		309.4	\$975.00	\$301,665.00
Keller, C.	P	62.5			1.0	28.6								92.1	\$975.00	\$89,797.50
Bell, E.	P	76.0		64.5						100.2				240.7	\$900.00	\$216,630.00
Zeiss, N.	P								66.8		10.5			77.3	\$900.00	\$69,570.00
Fox, C.	P	5.7	92.4	1,120.1	17.7	469.9	0.5	299.9	2.9	12.2	29.7	96.4	7.4	2,154.8	\$875.00	\$1,885,450.00
Hallowell, S.	P	148.2	180.5	121.4	147.6	284.1	16.0	179.5	9.1	1,202.4	297.7	15.4	0.8	2,602.7	\$850.00	\$2,212,295.00
Villegas, C.	P		7.1	945.1	2.2	18.0	12.0	69.7	3.5	6.2	56.2			1,120.0	\$850.00	\$952,000.00
Canty, M.	P	1.0	3.0		1.2	8.5		0.8		7.5		23.8		45.8	\$850.00	\$38,930.00
Bleichmar, J.	P	41.8	372.4			24.0			13.0			21.9		473.1	\$775.00	\$366,652.50
Avani, R.	OC	42.6				15.7					0.4			58.7	\$700.00	\$41,090.00
Wierzbowski, E.	A								57.5					57.5	\$675.00	\$38,812.50
Cividini, D.	A		11.2	537.8	6.3					8.7				564.0	\$585.00	\$329,940.00
Hawkins, T.	A	0.7	20.7	11.4	77.5	783.4	10.0	270.1	10.5	175.0	3.6	125.3	28.2	1,516.4	\$525.00	\$796,110.00
Hanawalt, C.	A	10.4	133.5			25.4								169.3	\$510.00	\$86,343.00
Denann, Y.	A			580.4		85.5	0.3	135.4	8.3	45.0	16.7			871.6	\$500.00	\$435,800.00
de Villiers, S.	A			341.3	3.8	59.2		15.0	14.9	41.1	165.2			640.5	\$460.00	\$294,630.00
Stampley, D.	A	50.7	290.7			151.4				0.4				493.2	\$460.00	\$226,872.00
Coquin, A.	A	27.9	47.9	1,526.4	67.5	879.1	3.4	186.9	15.9	51.5	277.1	97.1	0.4	3,181.1	\$450.00	\$1,431,495.00
Christie, J.	A	24.0		291.3	19.5	74.4		73.1		28.3	53.0			563.6	\$400.00	\$225,440.00
Menkova, A.	A	12.7	14.4			5.7				102.0	15.0	6.0		155.8	\$375.00	\$58,425.00

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Name	Status	1	2	3	4	5	6	7	8	9	10	11	12	Total Hours	Rate	Total Lodestar
Ladson, E.	SA			1,760.9										1,760.9	\$435.00	\$765,991.50
George, L.	SA			1,193.7		6.5								1,200.2	\$435.00	\$522,087.00
Flanigan, M.	SA			1,147.9										1,147.9	\$435.00	\$499,336.50
Gopie, N.	SA		11.1	3,581.3								364.7		3,957.1	\$410.00	\$1,622,411.00
Hirsh, J.	SA			1,426.3		9.5	15.0							1,450.8	\$410.00	\$594,828.00
Agnant, E.	SA			1,278.6										1,278.6	\$410.00	\$524,226.00
Allan, A.	SA			1,068.6										1,068.6	\$410.00	\$438,126.00
Lewis-Bevel, E.	SA			588.0										588.0	\$410.00	\$241,080.00
Davis, O.	SA			3,519.0	38.9	367.9	88.2	57.2	0.8			350.4		4,422.4	\$390.00	\$1,724,736.00
Herrick, I.	SA		9.9	989.8										999.7	\$360.00	\$359,892.00
Markham, C.	SA			1,744.6										1,744.6	\$335.00	\$584,441.00
Pallone, A.	SA			1,575.2										1,575.2	\$335.00	\$527,692.00
Alm, E.	RA	15.5	1.3	21.1	0.5	6.3		2.6	3.0					50.3	\$325.00	\$16,347.50
Pontrelli, J.	I	430.8									2.0			432.8	\$495.00	\$214,236.00
Greenbaum, A.	I	333.9												333.9	\$455.00	\$151,924.50
Wroblewski, R.	I	159.9												159.9	\$425.00	\$67,957.50
Weintraub, J.	I	200.7												200.7	\$410.00	\$82,287.00
Malonzo, F.	PL	3.8	71.8	190.5	140.9	138.7	1.2	64.2	11.4	0.8	79.3	23.9	5.8	732.3	\$340.00	\$248,982.00
Carpio, A.	PL			111.0	244.6	312.7		4.0	67.7	0.5	67.7	5.8		746.3	\$325.00	\$242,547.50
Schneider, P.	PL					137.6								137.6	\$325.00	\$44,720.00
Mehninger, L.	PL				103.4						16.3		5.7	125.4	\$325.00	\$40,755.00
Russo, M.	PL	75.8	57.7		51.0	29.5				3.0				217.0	\$300.00	\$65,100.00
Farber, E.	PL	9.5		2.0	118.0	72.5				0.5				202.5	\$205.00	\$41,512.50
TOTAL:		1,742.2	1,339.0	26,321.1	1,105.5	4,280.7	263.8	1,886.6	348.1	1,981.3	1,200.8	1,269.9	88.3	41,749.3		\$21,502,439.00

(P) Partner
 (OC) Of Counsel
 (A) Associate
 (SA) Staff Attorney
 (RA) Research Analyst
 (I) Investigator
 (PL) Paralegal

Exhibit C

EXHIBIT C

IN RE INTUITIVE SURGICAL SEC. LITIG.

Labaton Sucharow LLP

Inception through September 30, 2018

<i>CATEGORY</i>	<i>AMOUNT</i>
Filing, Witness and Other Court Fees	\$12,278.42
Work-Related Transportation, Hotels & Meals*	\$216,720.25
Trial Accommodations	\$31,084.83
Long-Distance Telephone and Conference Calling	\$4,690.70
Overnight Delivery/Postage	\$9,775.80
Court Hearing and Deposition Reporting	\$90,139.18
Experts/Consultants	\$1,188,565.43
FDA Regulation	\$334,846.95
Market Efficiency /Loss Causation/Damages	\$554,253.16
Insider Trading	\$232,474.90
Trial Consultants	\$54,202.59
Robotic Surgery	\$12,787.83
Duplicating	\$176,447.52
Online Legal and Factual Research	\$73,870.71
Litigation Support	\$174,840.30
Electronic Discovery	\$151,404.87
Counsel for Confidential Witnesses	\$23,435.43
Research Materials	\$10,376.52
<i>TOTAL</i>	<i>\$1,988,789.66</i>

*This category includes the costs of travel related to the October 4, 2018 hearing to consider preliminary approval of the Settlement. In addition, \$3,550.00 in estimated travel costs (for airfare, hotel, taxis, meals) has been included for two Labaton attorneys to attend the final approval hearing on December 20, 2018. If less than \$3,550.00 is incurred, the actual amount incurred will be deducted from the Settlement Fund. If more than \$3,550.00 is incurred, \$3,550.00 will be the cap and only \$3,550.00 will be deducted from the Settlement Fund.

Exhibit D

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EXHIBIT D
IN RE INTUITIVE SURGICAL SEC. LITIG.
Labaton Sucharow LLP

FIRM RESUME



Firm Resume

Securities Class Action Litigation

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

www.labaton.com



Table of Contents

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

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 Practice Groups of the Year.

Visit www.labaton.com for more information about our Firm.

Securities Class Action Litigation

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.

- ***In re Tempur Sealy International, Inc. Securities Litigation, No. 17-cv-2169 (S.D.N.Y.)***

Labaton Sucharow represents Oklahoma Police Pension and Retirement System in this securities class action against Tempur Sealy, a mattress and bedding-products company.

- ***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*, 458 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

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

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

Chambers & Partners USA

Leading Plaintiffs Securities Litigation Firm (2009-2018)

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

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.'”

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”

Law360

Most Feared Plaintiffs Firm (2013-2015) and Class Action Practice Group of the Year (2012 and 2014-2017)

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

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

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

Commitment to Diversity

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.

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

Our team of securities class action litigators includes:

Partners

Lawrence A. Sucharow (Co-Chairman)
Christopher J. Keller (Co-Chairman)
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
Irina Vasilchenko
Carol C. Villegas
Ned Weinberger
Mark S. Willis
Nicole M. Zeiss

Of Counsel

Rachel A. Avan
Mark Bogen
Joseph H. Einstein
Derrick Farrell
Mark Goldman
Lara Goldstone
Francis P. McConville
James McGovern
Domenico Minerva
Corban S. Rhodes
David J. Schwartz
Mark R. Winston

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

Lawrence A. Sucharow, Co-Chairman
lsucharow@labaton.com

With more than four decades of experience, Co-Chairman 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 Co-Chairman, 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.

Christopher J. Keller, Co-Chairman
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.

Eric J. Belfi, Partner
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.

Michael P. Canty, Partner
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.

Marisa N. DeMato, Partner
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With more than 13 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, consumer fraud, and qui tam actions. 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.

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.

Thomas A. Dubbs, Partner
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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.

Christine M. Fox, Partner
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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 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.

Jonathan Gardner, Partner
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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 Chair 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 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.

David J. Goldsmith, Partner
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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 federal Courts of Appeals. He is presently litigating appeals in the Second, Third, and Ninth Circuits in significant securities class actions brought against Celladon Corp., Cigna Corp., Eros International, Nimble Storage, and StoneMor Partners. David is also co-counsel for a group of *amici curiae* law professors in the United States Supreme Court in *Cyan, Inc. v. Beaver County Employees Retirement System*, and, in the same Court, represents one of the nation's largest not-for-profit organizations as *amicus* in *China Agritech, Inc. v. Resh*.

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.

Louis Gottlieb, Partner
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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.

Serena P. Hallowell, Partner
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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. Currently she is prosecuting several direct actions against Valeant Pharmaceuticals International, Inc., Perrigo Company, PLC, and AbbVie Inc. alleging a wide variety of state and federal claims. In addition, Serena regularly counsels clients on the merits of pursuing an opt out or direct action strategy as a means of recovery. Serena also 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.

In recent years, Serena has been recommended by *The Legal 500* in securities litigation. In 2016, she was named a *Benchmark Litigation* Rising Star and a Rising Star by *Law360*.

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.

Prior to joining Labaton Sucharow, Serena was an attorney at Ohrenstein & Brown LLP, where she participated in various federal and state commercial litigation matters. During her time there, she also defended financial companies in regulatory proceedings and assisted in high-profile litigation matters in connection with mutual funds trading investigations.

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.

Thomas G. Hoffman, Jr., Partner
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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.

James W. Johnson, Partner
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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 the world's most popular social network, in *In re Facebook, Inc., IPO Securities and Derivative 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.

Edward Labaton, Partner
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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.

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.

Michael H. Rogers, Partner
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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*; *Jyotindra Patel v. Cigna Corp.*; 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.

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.

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 Extreme Networks, Inc. Securities Litigation*, and *In re Eaton Corporation Securities Litigation*. 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.

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., Nimble Storage, Liquidity Services, Inc., Extreme Networks, Inc., and SanDisk. 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.

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 also leads a class and derivative action on behalf of stockholders of Providence Service Corporation—*Haverhill Retirement System v. Kerley*—that challenges an acquisition financing arrangement involving Providence's board chairman and his hedge fund. The case recently settled for \$10 million, and is currently pending court approval.

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.

Mark S. Willis, Partner
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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 Caisse de dépôt et placement du Québec, one of Canada's largest institutional investors, in an ongoing U.S. shareholder class action against Liquidity Services, 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).

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.

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 includes 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 year, Nicole was actively involved in finalizing settlements with Massey Energy Company (\$265 million), Fannie Mae (\$170 million), and Hewlett-Packard Company (\$57 million), among 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.

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.

Mark Bogen, Of Counsel
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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.

Joseph H. Einstein, Of Counsel
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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.

Derrick Farrell, Of Counsel
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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.

Mark Goldman, Of Counsel
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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.

Mark is currently prosecuting securities fraud claims on behalf of institutional and individual investors against the manufacturer of communications systems used by hospitals that allegedly misrepresented the impact of the ACA and budget sequestration of the company's sales, and a multi-layer marketing company that allegedly misled investors about its business structure in China. Mark is also participating in litigation brought against international air cargo carriers charged with conspiring to fix fuel and security surcharges, and domestic manufacturers of various auto parts charged with price-fixing.

Mark successfully litigated a number of consumer fraud cases brought against insurance companies challenging the manner in which they calculated life insurance premiums. He also prosecuted a number of insider trading cases brought against company insiders who, in violation of Section 16(b) of the Securities Exchange Act, engaged in short swing trading. In addition, Mark participated in the prosecution of *In re AOL Time Warner Securities Litigation*, a massive securities fraud case that settled for \$2.5 billion.

He is admitted to practice in the State of Pennsylvania, the Third, Ninth, and Eleventh Circuits of the U.S. Court of Appeals, the Eastern District of Pennsylvania, the District of Colorado, and the Eastern District of Wisconsin.

Lara Goldstone, Of Counsel
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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.

Francis P. McConville, Of Counsel
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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, *Norfolk County Retirement System v. Solazyme, Inc.*; *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.

James McGovern, Of Counsel
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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.

Domenico Minerva, Of Counsel
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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.

Corban S. Rhodes, Of Counsel
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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.

David J. Schwartz, Of Counsel
dschwartz@labaton.com

David J. Schwartz's practice focuses on event driven, special situation, and illiquid asset 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.

Mark R. Winston, Of Counsel
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 6

1 **KERR & WAGSTAFFE LLP**
JAMES M. WAGSTAFFE (95535)
2 IVO LABAR (203492)
101 Mission Street, 18th Floor
3 San Francisco, CA 94105-1727
Telephone: (415) 371-8500
4 Fax: (415) 371-0500
wagstaffe@kerrwagstaffe.com
5 labar@kerrwagstaffe.com

6 *Local Counsel for Plaintiffs and the Class*

7 **LABATON SUCHAROW LLP**
JONATHAN GARDNER (*pro hac vice*)
8 SERENA P. HALLOWELL (*pro hac vice*)
MICHAEL P. CANTY (*pro hac vice*)
9 CHRISTINE M. FOX (*pro hac vice*)
THEODORE J. HAWKINS (*pro hac vice*)
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14 mcanty@labaton.com
cfox@labaton.com
15 thawkins@labaton.com
acoquin@labaton.com

16 *Lead Counsel for Plaintiffs and the Class*

17 **UNITED STATES DISTRICT COURT**
18
19 **NORTHERN DISTRICT OF CALIFORNIA**
20
21 **SAN JOSE DIVISION**

22 IN RE INTUITIVE SURGICAL
SECURITIES LITIGATION

Case No. 5:13-cv-01920-EJD (HRL)

**DECLARATION OF JAMES M.
WAGSTAFFE FILED ON BEHALF OF
KERR & WAGSTAFFE LLP IN
SUPPORT OF APPLICATION FOR
AWARD OF ATTORNEYS' FEES AND
EXPENSES**

Date: December 20, 2018
Time: 9:00 a.m.
Dept.: Courtroom 4, 5th Floor
Judge: Hon. Edward J. Davila

1 I, James M. Wagstaffe, declare as follows under penalty of perjury, pursuant to 28 U.S.C.
2 § 1746:

3 1. I am a partner of the law firm of Kerr & Wagstaffe LLP. I submit this declaration
4 in support of Class Counsel’s motion for an award of attorneys’ fees and payment of litigation
5 expenses, on behalf of all Plaintiffs’ Counsel who contributed to the prosecution of the claims in
6 the above-captioned action (the “Action”), from inception through September 30, 2018 (the
7 “Time Period”). I have personal knowledge of the facts set forth herein and, if called upon,
8 could and would testify thereto.
9

10 2. My firm, which served as Local Counsel in the Action, advised Class Counsel
11 Labaton Sucharow LLP on various matters throughout the litigation, which is described in detail
12 in the Declaration of Jonathan Gardner in Support of Class Representatives’ Motion for Final
13 Approval of Class Action Settlement and Plan of Allocation and Class Counsel’s Motion for an
14 Award of Attorneys’ Fees and Payment of Litigation Expenses, submitted herewith.
15

16 3. The information in this declaration regarding the firm’s time is taken from time
17 reports and supporting documentation prepared and/or maintained by the firm in the ordinary
18 course of business. These reports (and backup documentation where necessary) were reviewed
19 by others at my firm, under my direction, in connection with the preparation of this declaration.
20 As a result of this review, I believe that the time reflected in the firm’s lodestar calculation
21 is reasonable in amount and was necessary for the effective and efficient prosecution and
22 resolution of the litigation.
23

24 4. The schedule attached hereto as Exhibit A is a summary indicating the amount of
25 time spent by the attorneys and professional support staff members of my firm who were
26 involved in the prosecution of the Action and the lodestar calculation based on my firm’s current
27 rates. The schedule was prepared from contemporaneous time records regularly prepared and
28

1 maintained by my firm, which are available at the request of the Court. Time expended in
2 preparing this application for fees has not been included in this request.

3 5. The hourly rates for the attorneys and professional support staff of my firm
4 included in Exhibit A are their usual and customary rates, which have been approved by Courts
5 in other federal litigation.
6

7 6. The total number of hours expended on this litigation by my firm during the Time
8 Period is 64.6 hours. The total lodestar for my firm for those hours is \$46,170.00.

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. My firm did not incur any expenses in this action for
13 which it seeks reimbursement.
14

15 9. My firm's legal fees in this matter have been partially advanced by Labaton
16 Sucharow.

17 10. With respect to the standing of my firm, attached hereto as Exhibit C are
18 biographies of my firm's partners who worked on this matter.
19

20 I declare under penalty of perjury that the foregoing is true and correct. Executed this
21 8th day of November 2018, at San Francisco, CA
22

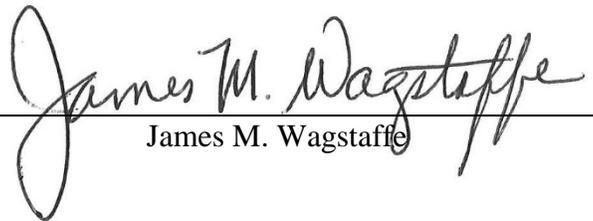
23
24 
25 James M. Wagstaffe
26
27
28

Exhibit A

EXHIBIT A***IN RE INTUITIVE SURGICAL SEC. LITIG.*****Kerr & Wagstaffe LLP****Inception through September 30, 2018**

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
James M. Wagstaffe	P	25.00	800	20,000.00
Ivo Labar	P	30.70	700	21,490.00
Adrian J. Sawyer	P	5.80	700	4,060.00
Garry L. Pallister	PL	3.10	200	620.00
TOTAL		64.60		46,170.00

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

Exhibit B

IN RE INTUITIVE SURGICAL SEC. LITIG.**Firm Name: Kerr & Wagstaffe LLP****Reporting Period: Inception through September 30, 2018**

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

(10) Class Certification

(11) Trial Preparation

(12) Appeal

Name		1	2	3	4	5	6	7	8	9	10	11	12	Total Hours	Rate	Total Lodestar
James M. Wagstaffe	P	-	-	-	-	8.30	5.00	-	-	11.00	0.70	-	-	25.00	800	20,000.00
Ivo Labar	P	-	-	2.50	-	18.60	4.70	-	-	2.90	2.00	-	-	30.70	700	21,490.00
Adrian J. Sawyer	P	-	-	-	-	-	-	-	-	-	-	-	5.80	5.80	700	4,060.00
Garry L. Pallister	PL	-	-	3.10	-	-	-	-	-	-	-	-	-	3.10	200	620.00
		-	-	-	-	-	-	-	-	-	-	-	-	-		-
		-	-	-	-	-	-	-	-	-	-	-	-	-		-
		-	-	-	-	-	-	-	-	-	-	-	-	-		-
		-	-	-	-	-	-	-	-	-	-	-	-	-		-
		-	-	-	-	-	-	-	-	-	-	-	-	-		-
TOTAL:		-	-	5.60	-	26.90	9.70	-	-	13.90	2.70	-	5.80	64.60		46,170.00

(P) Partner

(I) Investigator

(OC) Of Counsel

(PL) Paralegal

(A) Associate

(SA) Staff Attorney

(RA) Research Analyst

Exhibit C



Our Lawyers

Kerr & Wagstaffe LLP emphasizes creativity, problem solving, and trial skills instead of focusing on a narrow practice area. We take a wide variety of cases, representing both plaintiffs and defendants in high-value, high-risk litigation. Our broad experience and mastery of trial and pretrial skills enable us to analyze and present cases in the manner most effective for each case, instead of simply following the routine and often unproductive path of least resistance. We emphasize efficiency, initiative and distilling complicated issues into clear narratives that persuade judges and juries.

A law firm is defined by its attorneys. We select our attorneys from top law schools and major, well-respected law firms. Most of our attorneys have clerked for federal judges at the trial and appellate level. Copies of our attorneys' curricula vitae are attached hereto.

101 Mission Street
18th Floor
San Francisco, California 94105
Tel. 415.371.8500
Fax. 415.371.0500

I v o L a b a r
P a r t n e r

E-Mail: labar@kerrwagstaffe.com

Ivo is a partner at the firm. He has tried numerous cases to verdict on behalf of both plaintiffs and defendants. He specializes in complex business litigation, with an emphasis on class actions, insurance policyholder rights and intellectual property. Ivo is a contributing editor to *Federal Civil Procedure Before Trial*, the preeminent treatise on proper procedures for litigating disputes in federal court.

Areas of Emphasis:

- Complex Commercial Litigation
- Class Actions
- Insurance Policyholder Rights
- Victim's Rights/Wrongful Death
- Business Disputes
- Media and First Amendment Law

Professional Activities

Ivo is a contributing editor to The Rutter Group's best selling Practice Guide *Federal Civil Procedure Before Trial* <http://www.ruttergroup.com>, the preeminent treatise covering litigation in federal courts.

Ivo edits the Firm's news blog on Insurance Policyholder's Rights. Visit the blog here: www.kerrwagstaffeinsurancelaw.com

He is also a member of the National Crime Victim Bar Association and an affiliate member of the National Association of Public Insurance Adjusters ("NAPIA"). He is also a member of the American Inns of Court.

Ivo also regularly lectures at law schools in the Bay Area on new developments in civil procedure and First Amendment law. Ivo was invited to be a presenter at the 2013 Practising Law Institute all day program focusing on California Trial Evidence. Ivo presented a session titled: Evidence in a Facebook World: Social Media and Electronic Documents.

Education

Ivo graduated with honors from the California Maritime Academy with a B.S. in Marine Transportation and a U.S.C.G. Third Mates License.

1 0 1 M i s s i o n S t r e e t , 1 8 t h F l o o r
S a n F r a n c i s c o , C a l i f o r n i a 9 4 1 0 5
T e l e p h o n e 4 1 5 . 3 7 1 . 8 5 0 0
F a c s i m i l e 4 1 5 . 3 7 1 . 0 5 0 0
w w w . k e r r w a g s t a f f e . c o m

After serving as a deck officer aboard merchant ships, he attended University of California, Hastings College of the Law, where he was a member of the Hastings Law Journal. He received his J.D. with honors from Hastings in 1999. Following law school, Ivo served as a law clerk to the Hon. Charles Legge, in the Northern District of California. He is admitted to practice in all state and federal courts in California.

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San Francisco, California 94105
Telephone 415.371.8500
Facsimile 415.371.0500
www.kerrwagstaffe.com

J a m e s M . W a g s t a f f e
P a r t n e r

E-Mail: wagstaffe@kerrwagstaffe.com

James (Jim) M. Wagstaffe, partner and co-founder of the firm, handles a diverse range of litigation matters and also leads the firm's successful Federal Practice Group. His practice focuses on complex litigation, professional and governmental representation, legal ethics and First Amendment matters. In addition, Jim is recognized as an authority and frequently is consulted by other law firms and clients alike on complicated civil procedure, attorneys' fees and trial practice issues.

Cutting Edge Litigator

Jim's reputation as litigator is exemplified by his frequent retention in high stakes cases where his strategic and procedural expertise is particularly invaluable. For instance, this past year Jim represented lawyers and law firms in high level trials, obtaining a \$5 million jury judgment for a law firm partner suing for breach of contract, and also successfully defending at trial a lawyer/Trustee sued for over \$100 million by disgruntled beneficiaries.

Jim's practice includes substantial work on virtual world issues, including electronic discovery, related legal ethics questions, and Wi-Fi technology. He was the successful lead attorney in the seminal e-discovery case, *Qualcomm, Inc. v. Bathchelder et al.*, 327 Fed. Appx. 877 (Fed. Cir. 2008). Several years ago he began representing the Australian government in high profile litigation involving the patent for indoor wireless technology. See *Microsoft Corp. v. Commonwealth Scientific and Indus. Research Organisation*, 297 Fed. Appx. 970 (Fed. Cir. 2008). Jim and the firm continue to represent the Australian government in litigation over its WiFi patents.

The State Bar of California has looked to Jim for over 15 years to handle its most challenging cases, including those raising serious constitutional issues. For example, Jim recently successfully argued the arguing the high-profile in re Garcia case before the California Supreme Court. In *Warden v. State Bar of California*, 21 Cal.4th 628 (1999), Jim also represented the Bar in a lawsuit in which the plaintiffs alleged the exemptions from the MCLE (continuing education) program were unconstitutional. The matter went up to the California Supreme Court, which ruled in favor of the Bar.

Jim is considered one of the most sought after First Amendment/defamation lawyers in the country. He has represented broadcasters, newspapers, magazines, celebrities and public officials, as well as a host of others – both as plaintiff and defendant. He has been the lawyer on many of the leading anti-SLAPP cases in California and has tried more defamation cases to trial than perhaps any attorney in the state. Jim's First Amendment and media experience is exemplified by his successful defense of *The New Yorker*

1 0 1 M i s s i o n S t r e e t , 1 8 t h F l o o r
S a n F r a n c i s c o , C a l i f o r n i a 9 4 1 0 5
T e l e p h o n e 4 1 5 . 3 7 1 . 8 5 0 0
F a c s i m i l e 4 1 5 . 3 7 1 . 0 5 0 0
w w w . k e r r w a g s t a f f e . c o m

Magazine in the libel trial *Masson v. New Yorker*, 832 F. Supp. 1350 (N.D. Cal. 1993), aff'd 85 F.3d 1394 (9th Cir. 1996).

Appellate Lawyer

In addition to his leadership as a trial lawyer, Jim heads up the firm's appellate practice. Jim handles appeals in both state and federal courts, representing clients seeking to affirm a favorable trial court decision as well as those whose goal it is to obtain a reversal. Jim has established an enviable track record on appeal and has led the way in a number of groundbreaking decisions. For example, Jim has numerous recent appellate victories for governmental parties including achieving a total victory in a multimillion dollar takings case for the City of San Rafael *MHC v. San Rafael*, 714 F.3d 1118 (9th Cir. 2013) obtaining an affirmance of a civil rights dismissal, *Douglas v. Town of Portola Valley*, (9th Cir. 2012) 468 Fed. Appx. 728, and a CEQA victory for the City of Redwood City in *Wilson & Wilson v. City Council of Redwood City*, (2011) 191 Cal. App. 4th 1559.

In *Kremen v. Cohen*, 337 F.3d 1024 (9th Cir. 2003), Jim secured a sweeping victory from the Ninth Circuit Court of Appeals in a landmark decision with far reaching implications in all areas of domain name registration and Internet infrastructure. Similarly, in *Theofel v. Farey Jones*, 359 F.3d 1066 (9th Cir. 2003), cert. denied, 543 U.S. 813 (2004), Jim succeeded in obtaining a reversal of the district court's dismissal of his clients' lawsuit in a published decision that established new boundaries on subpoenas aimed at email communications.

Businesses, individual, and government entities and agencies, and notably, other lawyers, are among the many clients who seek out Jim to represent them at trial and on appeal. See, e.g., *Lintz v. Lintz*, 222 Cal.App.4th 1346 (2014) (leading case in state on defamatory capacity); *In re Apple, Device Address Book Litigation* (2014) (appointed lead attorney in nationwide class action); *In re Cathode Ray Tube Antitrust litigation* (2013) (attorneys for Dell Computer in national class action); In his almost three decades of appellate experience, Jim has represented parties and amici on appeal in matters involving constitutional and civil rights claims, defamation cases, environmental/CEQA, probate disputes, securities fraud, and consumer rights, just to name a few. A listing of Jim's appellate cases is set forth below.

Author, Speaker, Professor

In addition to Jim's courtroom experience, Jim has authored and co-authored a number of publications, including the widely-used *Federal Civil Procedure Before Trial* (TRG 2013 – Three Volumes, 3,500 pages, cited in over 1,000 published decisions), the nation's leading practice guide on federal court practice. Jim's other publications include: *California Trial Evidence* (Practising Law Institute; *Litigation and Administrative Practice Course Handbook Series*) (PLI 2013); *Game Changers: New Federal Rule Amendments* (Thomson Reuters 2011); *California Legal Ethics* (TRG 1999); *Commencing and Removing Actions to Federal Court* (TRG 1986); "Much Ado About Doe Defendants," 5 Cal. Lawyer, No. 9; and "Life After Remand" *Federal Litigation*. In

addition to his legal publications, Jim authored *Romancing the Room* (Random House), a spirited step-by-step guide to effective public speaking. He also was a contributing author with Donald Trump, Larry King, and Ira Glass, among others, to *The Expert's Guide to 100 Things Everyone Should Know How to Do* (Clarkson Potter 2004).

Jim is committed to sharing his knowledge and experience with judges, lawyers and students alike. Jim has served as an instructor at the Federal Judicial Center's annual "New Judges Workshop" since 1990, educating newly-appointed federal judges on all aspects of federal procedure. Throughout the year, Jim has been asked to present, moderate and participate in panel discussions and seminars throughout the country with other judges and lawyers on current topics of interest to the legal community. In conjunction with the Practising Law Institute, Jim was the Chair of 2013 California Trial Evidence program in October, 2013. The program was a day long legal educational program focusing on the recent case law and statutory developments in the law of trial evidence.

A listing of a representative sampling of Jim's presentations is set forth below. In addition, Jim is an adjunct professor in constitutional law and civil procedure at Hastings College of the Law and in Media Law at San Francisco State University. He has also taught the Practical Speech Communication course at Stanford University for over 30 years.

Professional Memberships

- American Bar Association
- California Bar Association
- Bar Association of San Francisco
- Federal Bar Association

Education

- Stanford University, B.A. 1977 (with distinction in Communications)
- University of California, Hastings College of the Law, J.D. 1980

Awards and Recognition

This past year, Jim was appointed to serve as a member and Chair of the Federal Judicial Center Foundation Board by the Chief Justice of the United States Supreme Court. In addition to the previously mentioned honors, in 2009 and 2011, Jim was selected by the students at Hastings College of the Law as the Teacher of the Year and was chosen each year to be the graduation speaker at commencement. In 2011, Jim won the Federal

Judicial Center's Judge John R. Brown Award for Judicial Scholarship and Education, recognizing Jim as the top teacher in the country of federal judges.

Jim has also received numerous awards and recognition for his legal work. For example, in 2005, he received a Peabody Award for his legal counsel on the documentary "The DNA Project." In December 1999, California Lawyer named him as one of its Top Twenty Lawyers of the Year, followed by his selection each year as a Super Lawyer, an honor given to the top 5% of attorneys practicing in Northern California. And in 1991, Jim received the prestigious James Madison Freedom of Information Award from The Society of Professional Journalists

Published or Westlaw available cases Mr. Wagstaffe has worked on include:

- Radware Ltd. v. A10 Networks, Inc., __f.Supp.2d__ 2014 WL 1572644 (N.D. Cal. April 18, 2014)
- In re White, __Fed. Appx. ____, 2014 WL 1101304 (March 21, 2014)
- Radware, Ltd. v. A10 Networks, Inc., 2014 WL 631537 (N.D. Cal. February 14, 2014)
- Opperman v. Path, Inc., 2014 WL 246972 (N.D. Cal. January 22, 2014)
- Lintz v. Lintz, 222 Cal.App.4th 1346 (Cal. App. 6th Dist. January 14, 2014)
- Radware, Ltd. v. A10 Networks, Inc., __ F.Supp. 2d __, 2014 WL 116428 (N.D. Cal. January 10, 2014)
- In re Garcia, 58 Cal. 4th 440 (Supreme Court of CA 2014)
- Graham-Sult v. Clainos, 738 F.3d 1131 (9th Cir. 2013)
- Sander v. State Bar of Cal, 58 Cal.4th 300
- Pagtakhan v. Doe, __ F.Supp. 2d __, 2013 WL 639639 (N.D. Cal. November 21, 2013)
- Harper v. Lugbauer, __ F.Supp.2d __, 2013 WL 5978321 (N.D. Cal. November 8, 2013)
- Nahat v. Ballet San Jose, Inc., 2013 WL 5934705 (N.D. Cal. November 1, 2013)
- Opperman v. Path, Inc., __ F.Supp. 2d__, 2013 WL 5643334 (N.D. Cal. October 15, 2013)
- Lintz v. Bank of America, N.A., 2013 WL 5432873 (N.D. Cal. September 27, 2013)
- Abbey v. Fortune Drive Associates, LLC, 2013 WL 393462 (Cal App. 1st Dist. July 29, 2013)
- MHC Financing Ltd. Partnership v. City of San Rafael, 714 F.3d 1118 2013 WL 1633067 (9th Cir. 2013)
- Graham-Sult v. Clainos, 2013 WL 1190294 (N.D. Cal. March 21, 2013)
- Bigler v. Harker School, 213 Cal.App.4th 727
- Harper v. Lugbauer, 2012 WL 1499174 (N.D. Cal. April 9, 2012)
- Douglas v. Town of Portola Valley, 468 Fed. Appx. 728 (9th Cir. 2012)
- Doe v. University of Pacific, 467 Fed. Appx. 685 (9th Cir. 2012)
- Ricciardi v. California, 2011 WL 6413766 (S.D. N.Y. December 13, 2011)
- Wilson & Wilson v. City Council of Redwood City, 191 Cal.App.4th 1559 (2011)

- Sander v. State Bar of California, 196 Cal.App.4th 614 (2011)
- Elder v. National Conference of Bar Examiners, 2011 WL 4079623 (N.D. Cal. September 12, 2011)
- Herson v. City of Richmond, 2011 WL 3516162 (N.D. Cal. August 11, 2011)
- Cho v. UCBH Holdings, Inc., 2011 WL 3809903 (N.D. Cal. May 17, 2011)
- Adetuyi v. City and County of San Francisco, 2011 WL 1878853 (Cal App. 1st Dist. May 17, 2011)
- ZL Technologies, Inc. v. Gartner Group, Inc., 2011 WL 1831704 (9th Cir. May 13, 2011)
- Digital Video Systems, Inc. v. Sun, 2011 WL 1134662 (Cal.App. 6th Dist. March 29, 2011)
- In re Mercury Interactive Corp. Securities Litigation, 2011 WL 826797 (N.D. Cal. March 3, 2011)
- Elder v. National Conference of Bar Examiners, 2011 WL 672662 (N.D. Cal. February 16, 2011)
- Roe ex rel. Rodriguez Borrego v. White, 395 Fed.Appx. 470 (9th Cir. 2010)
- In re D.R., 185 Cal.App.4th 852 (2010)
- ZL Technologies, Inc. v. Gartner, Inc., 709 F.Supp.2d 789 (N.D. Cal. 2010)
- In re Estate of Gridley, 2010 WL 4102359 (Cal.App. 1st Dist. October 19, 2010)
- Shingle Springs Band of Miwok Indians v. Sharp Image Gaming, Inc., 2010 WL 4054232 (E.D. Cal. October 15, 2010)
- Sand Hill Advisors, LLC v. Sand Hill Advisors, LLC, 2010 WL 3703029 (N.D. Cal. September 16, 2010)
- Geographic Expeditions Inc. v. Estate of Jason Lhotka, 2010 WL 3516116 (N.D. Cal. September 8, 2010)
- Bay Guardian Co. v. New Times Media LLC, 187 Cal.App.4th 438 (Cal.App. 1st Dist. August 11, 2010)
- Douglas v. Town of Portola Valley, 2010 WL 2898736 (N.D. Cal. July 21, 2010)
- Roe v. White, 2009 WL 4899211 (N.D. Cal. December 11, 2009)
- ZL Technologies, Inc. v. Gartner, Inc., 2009 WL 3706821 (N.D. Cal. November 4, 2009)
- Zurich American Ins. Co. v. Electronics for Imaging, Inc., 2009 WL 2252098 (N.D. Cal. July 28, 2009)
- Konig v. Dal Cerro, 2009 WL 636518 (N.D. Cal. March 11, 2009)
- Commonwealth Scientific and Indust. Research Organisation v. Buffalo Technology (USA), 2009 WL 260953 (E.D. Texas February 3, 2009)
- Kuo v. Sun, 2009 WL 162730 (Cal.App. 6th Dist. January 26, 2009)
- Sutton v. Llewellyn, 288 Fed.Appx. 411 (9th Cir. 2008)
- Commonwealth Scientific & Indus. Research Organisation v. Toshiba America Information Systems, Inc., 297 Fed.Appx. 970 (Fed. Cir. 2008)
- Qualcomm Inc. v. Batchelder, 327 Fed.Appx. 877 (Fed. Cir. 2008)
- Fresenius Medical Care Holdings, Inc. v. Baxter Intern., Inc., 2008 WL 2020533 (N.D. Cal. May 8, 2008)

- Commonwealth Scientific & Indus. Research Organisation v. Toshiba America Information Systems, Inc., 2008 WL 4680559 (Fed Cir. (Tex.) October 23, 2008)
- Konig v. Dal Cerro, 2008 WL 4628038 (N.D.Cal. October 16, 2008)
- Gridley v. Gridley, 166 Cal.App.4th 1562 (2008)
- In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, 43 Cal.4th 1143 (2008)
- Qualcomm Inc. v. Broadcom Corp., 2008 WL 638108 (S.D.Cal. March 5, 2008)
- MHC Financing, Ltd. v. City of San Rafael, 2008 WL 440283 (N.D.Cal. February 12, 2008)
- MHC Financing, Ltd. v. City of San Rafael, 2008 WL 440282 (N.D.Cal. January 29, 2008)
- Arthur J. Gallagher, & Co., Inc. v. Edgewood Partners Ins., 2008 WL 205274 (N.D.Cal. January 23, 2008)
- Levi v. State Bar of California, 2008 WL 53144 (N.D.Cal. January 2, 2008)
- Poon v. Poon, 2007 WL 3360164 (Cal.App. 1st Dist. November 14, 2007)
- O'Lee v. Compuware Corp., 2007 WL 963450 (Cal.App. 1st Dist. April 2, 2007)
- People ex rel. Brown v. Tehama County Bd. of Sup'rs, 148 Cal.App.4th 790 (2007)
- Coffee Lane Alliance v. County of Sonoma, 2007 WL 185478 (Cal.App. 1st Dist. January 25, 2007)
- MHC Financial Ltd. Partnership v. City of San Rafael, 2006 WL 3507937 (N.D.Cal. December 5, 2006)
- Sutton v. Llewellyn, 2006 WL 3371623 (N.D.Cal. November 21, 2006)
- IntelCorp. v. Commonwealth Scientific and Indus. Research Organisation, 455 F.3d 1364 (Fed. Cir. 2006)
- Big-D Const. Corp.-California v. Leprino Foods Co., 188 Fed.Appx. 563 (9th Cir 2006)
- Franklin v. Terr, 174 Fed.Appx. 388 (9th Cir. 2006)
- Miniace v. Pacific Maritime Ass'n, 2006 WL 335389 (N.D.Cal. February 13, 2006)
- In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, 133 Cal.App.4th 154 (2005)
- Schoenfeld v. Grabisch, 2005 WL 697975 (Cal.App. 1st Dist. March 28, 2005);
- Schoenfeld v. Zwakenberg, 2005 WL 697990 (Cal.App. 1st Dist. March 28, 2005);
- Z-Rock Communications Corp. v. William A. Exline, Inc., 2004 WL 2496158 (N.D.Cal. November 5, 2004);
- Atkinson v. McLaughlin, 343 F. Supp.2d 868 (D.N.D. November 4, 2004);
- Radil v. Sanborn Western Camps, Inc., 384 F.3d 1220 (10th Cir. 2004);
- Central Garden & Pet Co., Inc. v. Scotts Co., 85 Fed.Appx. 633 (9th Cir. 2004)
- Rader v. Sutter, 90 Fed.Appx. 268 (9th Cir.2004)
- Boylan v. McGeever, 2004 WL 1794484 (N.D.Ill. August 10, 2004)
- Olagues v. Stafford, 316 F.Supp.2d 393 (E.D. La. 2004)
- Zack v. Marin Emergency Radio Authority, 118Cal. App. 4th 617 (2004)

- Chapman v. Enos, 116 Cal.App.4th 920 (2004)
- Martinez v. Marin Sanitary Service, 349 F. Supp. 2d 1234, (N.D.Cal. 2004)
- Thoefel v. Farey Jones, 359 F.3d 1066 (9th Cir. 2004)
- Hoffman v. State Bar of California, 113Cal. App. 4th 630 (2003)
- Theofel v. Farey Jones, 341 F.3d 978 (9th Cir. 2003)
- Airport Parking Services, Inc. v. City of San Bruno, 2003 WL 21205926 (Cal.App. 1st Dist. May 23, 2003)
- Kremen v. Cohen, 337 F.3d 1024 (9th Cir. 2003)
- Franklin v. Fox, 312 F.3d 423 (9th Cir. 2002)
- Oakland-Alameda County Coliseum Authority v. CC Partners, 101 Cal.App.4th 635 (2002)
- Glenn K. Jackson Inc. v. Roe, 273 F.3d 1192, (9th Cir. 2001)
- Lee v. American Nat. Ins. Co., 260 F.3d 997, (9th Cir. 2001)
- Carnegie Mellon University v. Hoffmann-La Roche, Inc., 148 F.Supp.2d 1004, (N.D.Cal. 2001)
- Fricke-Parks Press, Inc. v. Fang, 149 F.Supp.2d 1175, (N.D.Cal. 2001)
- Franklin v. Fox, 107 F.Supp.2d 1154, (N.D.Cal. 2000)
- U.S. v. Talao, 222 F.3d 1133 (9th Cir. 2000)
- Obrien v. Jones, 23 Cal.4th 40 (2000)
- Kremen v. Cohen, 99 F.Supp.2d 1168, (N.D.Cal. 2000)
- Fox v. Kramer, 22 Cal.4th 531 (2000)
- Bollard v. California Province of the Society of Jesus, 196 F.3d 940 (9th Cir. 1999)
- Warden v. State Bar, 21Cal. 4th 628 (1999)
- Sprewell v. Golden State Warriors, 1999 WL 179682 (N.D. Cal. March 26, 1999)

A d r i a n J . S a w y e r
P a r t n e r

E-Mail: sawyer@kerrwagstaffe.com

Phone: (415) 357-8905

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Adrian Sawyer focuses his practice on complex business and employment litigation. He has represented clients in a variety of business matters and has extensive experience in employee mobility and trade secret matters, defense of wage and hour class and FLSA actions at the California and national level, and shareholder and corporate governance disputes. In addition, Adrian has substantial experience representing clients in securities litigation and SEC enforcement matters. His clients are primarily in the technology and financial services sector, and range from emerging companies to multinational corporations.

Adrian also devotes a portion of his practice to contested high-value trust litigation, bringing business litigation experience to bear in that particular setting.

Adrian is a contributing editor to the Rutter Group California Practice Guide on Employment Litigation. He is also a frequent speaker on trade secrets litigation, unfair competition, and electronic discovery, an area in which he has also been retained as an expert consultant.

He served as a judicial clerk to the Honorable William H. Orrick, Jr., U.S. District Court for the Northern District of California.

Education

- University of California, Hastings College of the Law, J.D. magna cum laude 1999
 - Order of the Coif
 - Thurston Honor Society
 - Hastings Law Journal, Senior Articles Editor
- A.B., Princeton University, 1996

Recognition

- Selected by Super Lawyers (a designation reserved for the top 5% of attorneys in California)

Bar & Court Admissions

- Supreme Court of California / California State Courts
- United States Court of Appeals for the 11th Circuit
- United States Court of Appeals for the 9th Circuit
- U.S. District Court for the Central District of California
- U.S. District Court for the Eastern District of California
- U.S. District Court for the Northern District of California
- U.S. District Court for the Southern District of California
- U.S. District Court for the Eastern District of Texas
- U.S. District Court for the Eastern District of New York

Professional Associations

- Bar Association of San Francisco
- American Bar Association
- Association of Business Trial Lawyers

Representative Work

- Defeated request for temporary restraining order against numerous employees in federal action alleging misappropriation of trade secrets and employee raiding.
- Successfully defended a start-up and its principles in a case alleging employee poaching and unfair competition.
- Successfully defended Board of Directors in a shareholder derivative lawsuit.
- Defeated request for temporary restraining order against numerous employees in federal action alleging misappropriation of trade secrets and employee raiding.
- Successfully defended U.S. subsidiaries of international financial services company in consolidated nationwide wage and hour litigation.

- Obtained permanent injunction against departed employee in trade secrets litigation.
- Successfully defended national real estate company in wage and hour cases brought by putative class plaintiffs and the State of California.
- Obtained recovery for company founders in action involving breach of fiduciary duty by majority shareholders.
- Won trial victories for trustees accused of breach of fiduciary duty and fraud.
- Part of successful trial team in accounting fraud case brought by the SEC, including examining the expert economist whose analysis the Court cited as a linchpin for its decision.

Publications & Speaking

- “The Exchange” for E-Discovery for the Corporate Market for Today’s General Council and Institute regarding New Federal Rules and Cross-border disputes, Houston, TX, Panelist
- California Practice Guide on Employment Litigation (The Rutter Group), Contributing Editor
- Masters Conference, Presenter on internet privacy issues
- Bridgeport Class Action Litigation Conference, Presenter
- “Friese v. Superior Court and Grosset v. Wenaas: The Future of the Internal Affairs Doctrine in California,” Securities Litigation Report (February 2006) (with Jordan Eth)
- “Recent Litigation Victories Against The SEC,” 33rd Annual Securities Regulation Institute (January 2006) (with David B. Bayless)
- “Defending Your Client in The New World of SEC Enforcement,” 33rd Annual Securities Regulation Institute (January 2006) (with David B. Bayless)
- “SEC Investigations: What to Do When Investigators Call,” East Bay Business Times, Legal Issues Guide (March 25, 2005) (with David B. Bayless)

Selected Cases

- *Marcus v. AXA Advisors, LLC*, 2015 WL 1508308
- *Securities and Exchange Commission v. Eadgear, Inc.*, 2014 WL 6900938

- *TransPerfect Global, Inc. v. MotionPoint Corporation*, 2014 WL 4950082
- *Radware, Ltd. v. A10 Networks, Inc.*, 2014 WL 3725255
- *Lintz v. Bank of America. N.A.*, 2013 WL 5423873
- *Cho v. UCBH Holdings, Inc.*, 2011 WL 3809903
- *Bloom v. J.P. Morgan Chase & Co.*, 2010 WL 4590170
- *Zhu v. UCBH Holdings, Inc.*, 682 F. Supp.2d 1049 (N.D. Cal. 2010)
- *Perth v. Davis*, 2009 WL 4908087
- *Schubert v. Laird Technologies, Inc.*, 2009 WL 3429656
- *Bank of America v. Micheletti Family Partnership*, 2009 WL 1110827
- *Glenbrook Capital Ltd. Partnership v. Kuo*, 2009 WL 839289

Exhibit 7

In re Intuitive Surgical Securities Litigation
Case No. 5:13-cv-01920-EJD (HRL)

SUMMARY OF LODESTARS AND EXPENSES

FIRM	HOURS	LODESTAR	EXPENSES
Labaton Sucharow LLP	41,749.30	\$21,502,439.00	\$1,988,789.66
Kerr & Wagstaffe LLP	64.60	\$46,170.00	\$0.00
TOTALS	41,813.90	\$21,548,609.00	\$1,988,789.66

Exhibit 8

	Count	Low Rate (%Diff.)	25th Percentile Rate (%Diff.)	Median Rate (%Diff.)	75th Percentile Rate (%Diff.)	High Rate (%Diff.)
All Partners						
All Firms Sampled	545	\$650 (+24%)	\$995 (+17%)	\$1,100 (+16%)	\$1,325 (+39%)	\$1,525 (+55%)
Labaton Sucharow LLP	29	\$525	\$850	\$950	\$950	\$985
Senior Partners						
All Firms Sampled	460	\$650 (-21%)	\$1,000 (+14%)	\$1,130 (+19%)	\$1,330 (+40%)	\$1,525 (+55%)
Labaton Sucharow LLP	24	\$825	\$875	\$950	\$950	\$985
Mid-Level Partners						
All Firms Sampled	54	\$650 (-21%)	\$900 (+9%)	\$1,015 (+23%)	\$1,075 (+30%)	\$1,295 (+57%)
Labaton Sucharow LLP	3	\$825	\$825	\$825	\$825	\$825
Junior Partners						
All Firms Sampled	28	\$650 (+24%)	\$898 (+60%)	\$980 (+63%)	\$1,035 (+62%)	\$1,095 (+62%)
Labaton Sucharow LLP	2	\$525	\$563	\$600	\$638	\$675
Of Counsel						
All Firms Sampled	227	\$350 (-36%)	\$825 (+29%)	\$950 (+33%)	\$1,015 (+34%)	\$1,295 (+67%)
Labaton Sucharow LLP	8	\$550	\$638	\$713	\$756	\$775

	Count	Low Rate (%Diff.)	25th Percentile Rate (%Diff.)	Median Rate (%Diff.)	75th Percentile Rate (%Diff.)	High Rate (%Diff.)
All Associates						
All Firms Sampled	956	\$290 (-23%)	\$555 (+19%)	\$725 (+45%)	\$835 (+45%)	\$1,015 (+40%)
Labaton Sucharow LLP	29	\$375	\$465	\$500	\$575	\$725
Senior Associates						
All Firms Sampled	230	\$400 (-11%)	\$795 (+51%)	\$885 (+54%)	\$930 (+55%)	\$995 (+37%)
Labaton Sucharow LLP	15	\$450	\$525	\$575	\$600	\$725
Mid-Level Associates						
All Firms Sampled	400	\$325 (-26%)	\$640 (+42%)	\$725 (+56%)	\$810 (+71%)	\$1,015 (+103%)
Labaton Sucharow LLP	12	\$440	\$450	\$465	\$475	\$500
Junior Associates						
All Firms Sampled	301	\$290 (-23%)	\$490 (+31%)	\$525 (+40%)	\$640 (+71%)	\$895 (+139%)
Labaton Sucharow LLP	2	\$375	\$375	\$375	\$375	\$375
Paralegals						
All Firms Sampled	307	\$95 (-71%)	\$230 (-29%)	\$315 (-3%)	\$350 (+8%)	\$450 (+17%)
Labaton Sucharow LLP	13	\$325	\$325	\$325	\$325	\$385

	Count	Low	25th Percentile	Median	75th Percentile	High
Partners						
1) Kirkland & Ellis LLP	83	\$730	\$1,030	\$1,135	\$1,295	\$1,525
2) Skadden, Arps, Slate, Meagher, & Flom LLP	39	\$975	\$1,250	\$1,335	\$1,335	\$1,495
3) Proskauer Rose LLP	36	\$650	\$1,025	\$1,075	\$1,275	\$1,450
4) Willkie Farr & Gallagher LLP	10	\$995	\$1,188	\$1,350	\$1,425	\$1,425
5) Weil, Gotshal & Manges LLP	86	\$950	\$1,090	\$1,230	\$1,360	\$1,400
6) Wilmer Cutler Pickering Hale and Door LLP	2	\$910	\$1,033	\$1,155	\$1,278	\$1,400
7) Milbank, Tweed, Hadley & McCloy LLP	18	\$1,015	\$1,346	\$1,395	\$1,395	\$1,395
8) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	34	\$1,070	\$1,328	\$1,395	\$1,395	\$1,395
9) Davis Polk & Wardwell LLP	3	\$1,292	\$1,299	\$1,305	\$1,328	\$1,350
10) O'Melveny & Myers LLP	23	\$850	\$950	\$1,013	\$1,125	\$1,350
11) Morrison & Foerster LLP	46	\$775	\$950	\$1,005	\$1,054	\$1,340
12) Akin Gump Strauss Hauer & Feld LLP	18	\$735	\$963	\$1,050	\$1,158	\$1,325
13) Sidley Austin LLP	42	\$735	\$894	\$950	\$975	\$1,325
14) Latham & Watkins LLP	20	\$975	\$1,050	\$1,150	\$1,175	\$1,295
15) Paul Hastings LLP	7	\$900	\$995	\$1,050	\$1,050	\$1,150
16) Quinn Emanuel Urquhart & Sullivan, LLP	5	\$1,025	\$1,035	\$1,050	\$1,125	\$1,125
17) Jones Day	55	\$650	\$794	\$850	\$925	\$1,075
18) Kramer Levin Naftalis & Frankel	10	\$900	\$993	\$1,033	\$1,069	\$1,075
19) Kasowitz Benson Torres LLP	4	\$825	\$919	\$975	\$1,013	\$1,050
20) Labaton Sucharow LLP	29	\$625	\$850	\$950	\$950	\$985

Of Counsel

1) Latham & Watkins LLP	7	\$915	\$950	\$1,050	\$1,125	\$1,295
2) Kirkland & Ellis LLP	3	\$795	\$995	\$1,195	\$1,223	\$1,250
3) Sidley Austin LLP	14	\$795	\$795	\$800	\$1,038	\$1,200
4) Morrison & Foerster LLP	16	\$795	\$825	\$875	\$950	\$1,160
5) Weil, Gotshal & Manges LLP	20	\$900	\$940	\$940	\$963	\$1,120
6) Skadden, Arps, Slate, Meagher, & Flom LLP	30	\$350	\$1,015	\$1,090	\$1,090	\$1,090
7) Paul Hastings LLP	2	\$750	\$750	\$1,000	\$1,000	\$1,075
8) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	14	\$945	\$995	\$1,040	\$1,040	\$1,040
9) Davis Polk & Wardwell LLP	3	\$980	\$985	\$990	\$1,004	\$1,017
10) Milbank, Tweed, Hadley & McCloy LLP	7	\$985	\$1,015	\$1,015	\$1,015	\$1,015
11) Willkie Farr & Gallagher LLP	7	\$965	\$965	\$965	\$965	\$965
12) Quinn Emanuel Urquhart & Sullivan, LLP	3	\$775	\$873	\$905	\$919	\$960
13) Kasowitz Benson Torres LLP	2	\$575	\$669	\$763	\$856	\$950
14) Kramer Levin Naftalis & Frankel	4	\$875	\$890	\$895	\$906	\$940
15) Proskauer Rose LLP	1	\$925	\$925	\$925	\$925	\$925
16) O'Melveny & Myers LLP	24	\$715	\$775	\$785	\$825	\$890
17) Akin Gump Strauss Hauer & Feld LLP	12	\$665	\$720	\$785	\$825	\$875
18) Jones Day	7	\$625	\$719	\$750	\$813	\$850

	Count	Low	25th Percentile	Median	75th Percentile	High
19) Labaton Sucharow LLP	8	\$550	\$638	\$713	\$756	\$775

Associates

1) Morrison & Foerster LLP	66	\$795	\$825	\$875	\$950	\$1,160
2) Kirkland & Ellis LLP	99	\$405	\$645	\$735	\$850	\$1,015
3) Weil, Gotshal & Manges LLP	20	\$490	\$640	\$785	\$870	\$990
4) Latham & Watkins LLP	29	\$395	\$639	\$795	\$895	\$980
5) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	85	\$540	\$650	\$820	\$910	\$970
6) Skadden, Arps, Slate, Meagher, & Flom LLP	14	\$350	\$595	\$710	\$860	\$965
7) Milbank, Tweed, Hadley & McCloy LLP	31	\$540	\$665	\$750	\$835	\$950
8) Willkie Farr & Gallagher LLP	7	\$380	\$625	\$800	\$800	\$950
9) Davis Polk & Wardwell LLP	10	\$390	\$731	\$870	\$912	\$935
10) Proskauer Rose LLP	1	\$495	\$550	\$735	\$845	\$900
11) Jones Day	65	\$325	\$400	\$450	\$525	\$825
12) Kramer Levin Naftalis & Frankel	16	\$550	\$575	\$718	\$826	\$850
13) Paul Hastings LLP	2	\$495	\$615	\$675	\$735	\$825
14) Quinn Emanuel Urquhart & Sullivan, LLP	3	\$550	\$603	\$680	\$700	\$820
15) Sidley Austin LLP	14	\$315	\$450	\$598	\$765	\$795
16) O'Melveny & Myers LLP	24	\$450	\$535	\$610	\$700	\$765
17) Labaton Sucharow LLP	8	\$375	\$465	\$500	\$575	\$725
18) Akin Gump Strauss Hauer & Feld LLP	21	\$295	\$460	\$525	\$580	\$695
19) Kasowitz Benson Torres LLP	7	\$290	\$333	\$360	\$443	\$550

Paralegals

1) Skadden, Arps, Slate, Meagher, & Flom LLP	29	\$210	\$315	\$365	\$385	\$450
2) Latham & Watkins LLP	6	\$260	\$271	\$318	\$405	\$435
3) Kirkland & Ellis LLP	33	\$215	\$240	\$345	\$388	\$420
4) Proskauer Rose LLP	22	\$205	\$250	\$330	\$370	\$415
5) Davis Polk & Wardwell LLP	6	\$310	\$325	\$340	\$387	\$405
6) Labaton Sucharow LLP	13	\$325	\$325	\$325	\$325	\$385
7) Morrison & Foerster LLP	11	\$225	\$256	\$325	\$340	\$385
8) Sidley Austin LLP	21	\$125	\$310	\$320	\$350	\$385
9) Kramer Levin Naftalis & Frankel	3	\$340	\$355	\$365	\$365	\$380
10) Willkie Farr & Gallagher LLP	16	\$230	\$230	\$263	\$330	\$380
11) Weil, Gotshal & Manges LLP	63	\$140	\$220	\$295	\$350	\$375
12) Paul Hastings LLP	2	\$350	\$350	\$360	\$370	\$370
13) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	52	\$210	\$285	\$315	\$315	\$365
14) O'Melveny & Myers LLP	9	\$95	\$275	\$313	\$355	\$355
15) Akin Gump Strauss Hauer & Feld LLP	4	\$225	\$300	\$350	\$350	\$350
16) Jones Day	7	\$225	\$250	\$300	\$300	\$325
17) Quinn Emanuel Urquhart & Sullivan, LLP	9	\$175	\$175	\$175	\$305	\$310
18) Kasowitz Benson Torres LLP	12	\$230	\$234	\$245	\$276	\$285

Exhibit 9

Compendium of Unreported Cases

<i>In re BP Prudhoe Bay Royalty Trust Sec. Litig.</i> , No. C06-1505 MJP, slip op. (W.D. Wash. June 30, 2009)	1
<i>In re Broadcom Corp. Class Action Litig.</i> , No. CV-06-5036-R (CWx) slip op. (C.D. Cal. Dec. 4, 2012)	2
<i>In re Celestica Inc. Sec. Litig.</i> , No. 07-cv-00312-GBD, slip op. (S.D.N.Y. July 28, 2015)	3
<i>Central Laborers’ Pension Fund v. Sirva</i> , No. 04 C-7644, slip op. (N.D. Ill. Oct. 31, 2007)	4
<i>Hatamian v. Advanced Micro Devices, Inc.</i> Case No. 14-cv-00226-YGR, slip op. (N.D. Cal. Mar. 2, 2018)	5
<i>In re Hewlett-Packard Co. Sec. Litig.</i> , Case No. SACV 11-1404-AG (RNBx), slip op. (C.D. Cal. Sept. 15, 2014)	6
<i>In re NII Holdings Inc. Sec. Litig.</i> , Civ. No. 1:14-cv-00227-LMB-JFA, slip op. (E.D. Va. Sept. 16, 2016).....	7
<i>In re Regions Morgan Keegan Closed-End Fund Litig.</i> , No. 07-cv-02830 SHM dkv, slip op. (W.D. Tenn. Aug. 5, 2013)	8
<i>In re Satyam Comput. Servs. Ltd. Sec. Litig.</i> , No. 09-MD-2027-BSJ, slip op. (S.D.N.Y. Sept. 13, 2011)	9
<i>South Ferry LP #2 v. Killinger</i> , No. C04-1599-JCC, slip op. (W.D. Wash. June 5, 2012).....	10
<i>Stanley v. Safeskin Corp.</i> , No. 99CV454 BTM (LSP), slip op. (S.D. Cal. Apr. 2, 2003)	11
<i>In re Titan, Inc. Sec. Litig.</i> , No. 04-cv-0676-LAB(NLS), slip op. (S.D. Cal. Dec. 20, 2005)	12
<i>In re Verisign, Inc. Sec. Litig.</i> , No. C-02-2270-JWC (PVT), slip op. (N.D. Cal. Apr. 24, 2007).....	13
<i>Weston v. RCS Capital Corp. et al.</i> , No. 1:14-CV-10136-GBD, slip op. (S.D.N.Y. Sept. 28, 2017)	14

TAB 1

THE HONORABLE MARSHA J. PECHMAN

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE BP PRUDHOE BAY ROYALTY
TRUST SECURITIES LITIGATION

) Case No. C06-1505 MJP
)
) **ORDER GRANTING AWARD OF**
) **ATTORNEYS' FEES AND**
) **REIMBURSEMENT OF EXPENSES AND**
) **AWARD FOR LEAD PLAINTIFF'S TIME**
) **AND EXPENSES**
)
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ORDER GRANTING AWARD OF ATTORNEYS' FEES
AND REIMBURSEMENT OF EXPENSES AND AWARD
FOR LEAD PLAINTIFF'S TIME AND EXPENSES

No. C06-1505 MJP

1 This matter came before the Court on June 30, 2009, by motion of Lead Counsel for an
2 award of attorneys' fees and reimbursement of expenses and an award for Lead Plaintiff's time
3 and expenses. The Court, having considered all papers filed and proceedings conducted herein,
4 and having reviewed the entire record in the Litigation, and good cause appearing, hereby enters
5 the following order.
6

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

8 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
9 Stipulation of Settlement, dated March 13, 2009, attached as Exhibit 1 to the Declaration of Dan
10 Drachler in Support of Lead Plaintiff the Teramura Family Trust Group's Unopposed Motion for
11 Entry of the Order Preliminarily Approving Settlement, Approving Notice, and Scheduling
12 Settlement Hearing.
13

14 2. The Court has jurisdiction over the subject matter of Lead Counsel's motion and
15 all matters relating thereto, including all Class Members who have not timely and validly
16 requested exclusion.
17

18 3. Lead Counsel is entitled to a fee paid out of the common fund created for the
19 benefit of the Class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). The Ninth Circuit
20 recognizes the propriety of the percentage of the fund method when awarding fees. *Vizcaino v.*
21 *Microsoft Corp.*, 290 F. 3d 1043 (9th Cir. 2002).
22

23 4. The Court adopts the percentage of the fund method of awarding fees in this case,
24 and concludes that the percentage of the fund is the proper method for awarding attorneys' fees in
25 this case.
26

ORDER GRANTING AWARD OF ATTORNEYS' FEES
AND REIMBURSEMENT OF EXPENSES AND AWARD
FOR LEAD PLAINTIFF'S TIME AND EXPENSES

1 5. The Court hereby awards attorneys' fees of 27% of the Settlement Fund, to be
2 paid from the Settlement Fund, as set forth in § VI of the Stipulation, and to include any interest
3 on such attorneys' fees at the same rate and for the same period as earned by the Settlement Fund
4 (until paid).
5

6 6. The attorneys' fee awarded is fair and reasonable based upon the Court's
7 consideration of the vigorous prosecution of the Litigation by Lead Counsel and certain other
8 factors, including: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the
9 quality of work; (4) the contingent nature of the fee and the financial burden carried by the
10 plaintiffs; and (5) awards made in similar cases.
11

12 7. The objection to the Fee and Expense Application filed by John J. Auld, Jr. and
13 Nancy S. Auld is hereby overruled.

14 8. The Court hereby awards Lead Counsel expenses in the aggregate amount of
15 **\$280,099.79** to be paid as set forth in § VI of the Stipulation, and to include any interest on such
16 expenses at the same rate and for the same period as earned by the Settlement Fund (until paid).
17

18 9. The Court hereby awards to George Allen, the representative of Lead Plaintiff,
19 **\$20,037.50** for time and expenses. This award is consistent with the provision in the Private
20 Securities Litigation Reform Act that allows "the award of reasonable costs and expenses
21 (including lost wages) directly relating to the representation of the Class to any representative
22 party serving on behalf of the class," 15 U.S.C. § 78u-4(a)(4), and is further supported by case
23 law.
24

25 10. The awarded attorneys' fees and expenses, and interest earned thereon, shall be
26 paid to Lead Counsel from the Settlement Fund subject to the terms, conditions, and obligations

1 of the Stipulation and in particular § VI thereof, which terms, conditions, and obligations are
2 incorporated herein.

3 IT IS SO ORDERED.

4 Dated this 30th day of _June_, 2009

5
6
7 

8 Marsha J. Pechman
9 United States District Judge

10
11 Presented by: s/Dan Drachler
12 Dan Drachler, WSBA #27728

TAB 2

1 JOSEPH J. TABACCO, JR. #75484
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2 NICOLE LAVALLEE #165755
Email: nlavallee@bermandevalerio.com
3 **BERMAN DeVALERIO**
One California Street, Suite 900
4 San Francisco, CA 94111
Telephone: (415) 433-3200
5 Facsimile: (415) 433-6382

6 *Liaison Counsel for Class Representative*
New Mexico State Investment Council and the Class

7 THOMAS A. DUBBS (admitted *pro hac vice*)
Email: tdubbs@labaton.com
8 JOSEPH A. FONTI (admitted *pro hac vice*)
Email: jfonti@labaton.com
9 STEPHEN W. TOUNTAS (admitted *pro hac vice*)
Email: stountas@labaton.com
10 **LABATON SUCHAROW LLP**
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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 **THIS MATTER** having come before the Court on Class Counsel’s
2 Unopposed Motion for Attorneys’ Fees and Reimbursement of Litigation Expenses
3 and Memorandum of Points and Authorities in Support Thereof; the Court having
4 considered all papers filed and proceedings had therein, having found the
5 settlement of this action to be fair, reasonable, and adequate and otherwise being
6 fully informed;

7 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

8 1. All of the capitalized terms used herein shall have the same meanings
9 as set forth in the Stipulation and Agreement of Settlement with Ernst & Young
10 LLP, dated as of September 27, 2012 (the “Stipulation”), and filed with the Court.

11 2. This Court has jurisdiction over the subject matter of this application
12 and all matters relating thereto, including all Members of the Class who have not
13 timely and validly requested exclusion.

14 3. The Court hereby awards Class Counsel attorneys’ fees of 18.5% of
15 the Settlement Fund, plus reimbursement of litigation expenses in the amount of
16 \$_____, together with the interest earned thereon for the same
17 time period and at the same rate as that earned on the Settlement Fund until paid.
18 The Court finds that the amount of fees awarded is appropriate and is fair and
19 reasonable under the “percentage-of-the-recovery” method, given the results
20 obtained for the Class, the substantial risks of non-recovery, the time and effort
21 involved, and the quality of Class Counsel’s work. *See Vizcaino v. Microsoft*
22 *Corp.*, 290 F.3d 1043 (9th Cir. 2002).

23 4. The fees shall be allocated among counsel for the Class
24 Representatives by Class Counsel in a manner that reflects each such counsel’s
25 contribution to the institution, prosecution, and resolution of the captioned action.

26 5. The awarded attorneys’ fees and expenses, and interest earned
27 thereon, shall be paid to Class Counsel subject to the terms, conditions, and
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.

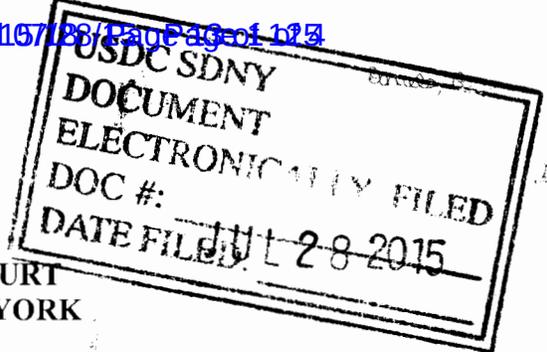
9 **IT IS SO ORDERED.**

10 DATED: Dec. 4, 2012, 2012



11
12 THE HONORABLE MANUEL L. REAL
13 UNITED STATES DISTRICT JUDGE
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TAB 3



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	X	
	:	Civil Action No.: 07-CV-00312-GBD
	:	
IN RE CELESTICA INC. SEC. LITIG.	:	(ECF CASE)
	:	
	:	Hon. George B. Daniels
	:	
	X	

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

THIS MATTER having come before the Court on July 28, 2015 for a hearing to determine, among other things, whether and in what amount to award Class Counsel in the above-captioned consolidated securities class action (the "Action") attorneys' fees and litigation expenses and Class Representative New Orleans Employees' Retirement System ("New Orleans") expenses relating to its representation of the Class. All capitalized terms used herein have the meanings as set forth and defined in the Stipulation and Agreement of Settlement, dated as of April 17, 2015 (the "Stipulation"). 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 (the "Notice"), was mailed to all reasonably identified Class Members; and that a summary notice of the hearing (the "Summary Notice"), substantially in the form approved by the Court, was published in *The Wall Street Journal* 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.

2. Notice of Class 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.

3. Class Counsel is hereby awarded attorneys' fees in the amount of \$9,000,000 plus interest at the same rate earned by the Settlement Fund (or 30% of the Settlement Fund, which includes interest earned thereon) and payment of litigation expenses in the amount of \$1,392,450.33, plus interest at the same rate earned by the Settlement Fund, which sums the Court finds to be fair and reasonable.

4. In accordance with 15 U.S.C. §78u-4(a)(4), for its representation of the Class, the Court hereby awards New Orleans reimbursement of its reasonable lost wages and expenses directly related to its representation of the Class in the amount of \$3,645.18.

5. The award of attorneys' fees and expenses may be paid to Class 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 Class 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 \$30 million in cash and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the

Settlement created by the efforts of plaintiffs' counsel;

(b) The requested attorneys' fees and payment of litigation expenses have been reviewed and approved as fair and reasonable by Class Representatives, sophisticated institutional investors that have been directly involved in the prosecution and resolution of the Action and which have a substantial interest in ensuring that any fees paid to Class Counsel are duly earned and not excessive;

(c) Notice was disseminated to putative Class Members stating that Class Counsel would be moving for attorneys' fees in an amount not to exceed 30% of the Settlement Fund, plus accrued interest, and payment of litigation expenses, and the expenses of Class Representatives for reimbursement of their reasonable lost wages and costs directly related to their representation of the Class, in an amount not to exceed \$2 million, plus accrued interest;

(d) There were no objections to the requested litigation expenses or to the expense request by New Orleans. The Court has received one objection to the fee request, which was submitted by Jeff M. Brown. The Court finds and concludes that Mr. Brown has not established that he is a Class Member with standing to bring the objection and it is overruled on that basis. The Court has also considered the issues raised in the objection and finds that, even if Mr. Brown were to have standing to object, the objection is without merit. The objection is therefore overruled in its entirety;

(e) Plaintiffs' counsel have expended substantial time and effort pursuing the Action on behalf of the Class;

(f) The Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(g) Plaintiffs' counsel pursued the Action on a contingent basis, having

received no compensation during the Action, and any fee award has been contingent on the result achieved;

(h) Plaintiffs' counsel conducted the Action and achieved the Settlement with skillful and diligent advocacy;

(i) Public policy concerns favor the award of reasonable attorneys' fees in securities class action litigation;

(j) The amount of attorneys' fees awarded are fair and reasonable and consistent with awards in similar cases; and

(k) Plaintiffs' counsel have devoted more than 28,130.35 hours, with a lodestar value of \$14,324,709.25 to achieve the Settlement.

7. Any appeal or any challenge affecting this Court's approval of any attorneys' fee and expense application shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

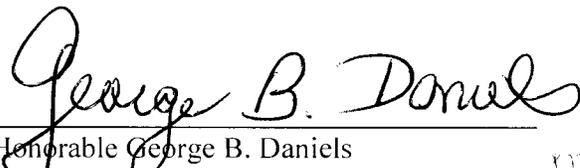
8. Exclusive jurisdiction is hereby retained over the subject matter of this Action and over all parties to the Action, including the administration and distribution of the Net Settlement Fund to Class Members.

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.

JUL 28 2015

Dated: _____, 2015


Honorable George B. Daniels
UNITED STATES DISTRICT JUDGE r.m.c.

TAB 4

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CENTRAL LABORERS' PENSION FUND,

Plaintiff,

v.

SIRVA, INC., BRIAN P. KELLEY, JOAN E. RYAN,
JAMES W. ROGERS, RICHARD J. SCHNALL,
CARL T. STOCKER, CREDIT SUISSE FIRST
BOSTON LLC, GOLDMAN, SACHS & CO.,
DEUTSCHE BANK SECURITIES INC., CITIGROUP
GLOBAL MARKETS INC., J.P. MORGAN
SECURITIES INC., BANC OF AMERICA
SECURITIES LLC, MORGAN STANLEY & CO.
INCORPORATED, PRICEWATERHOUSECOOPERS
LLP, and CLAYTON DUBILIER & RICE, INC.

Defendants.

No. 04 C-7644

Judge Ronald A. Guzmán

ORDER AND FINAL JUDGMENT

On the 2nd day of October, 2007, a hearing having been held before Magistrate Judge Denlow to determine: whether the terms and conditions of the Settlement Agreement filed on June 20, 2007 are fair, reasonable and adequate for the settlement of all claims asserted by Plaintiff on behalf of the Settlement Class against Defendants in the Action now pending in this Court under the above caption, including the release of Defendants and the Releasees, and should be approved; whether judgment should be entered dismissing the Action on the merits and with prejudice in favor of Defendants and as against all persons or entities who are members of the Settlement Class who have not requested exclusion therefrom; whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the members of the Settlement Class; and whether and in what amount to award Lead Counsel fees and reimbursement of expenses. The Court having heard from Magistrate Judge Denlow, having

reviewed his Report and Recommendation, and considered all matters submitted 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 persons or entities reasonably identifiable, who purchased or otherwise acquired the common stock of SIRVA, Inc. ("SIRVA") through any public offering or on the open market between November 25, 2003 and January 31, 2005, inclusive ("Settlement Class Period"), as shown by the records of SIRVA's transfer agent, at the respective addresses set forth in such records, and that a summary notice of the hearing substantially in the form approved by the Court was published in *Businesswire* 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; and all capitalized terms used herein having the meanings as set forth and defined in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Action, the Class Representative, all Settlement Class Members, and Defendants.
2. The Court finds that the prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and (b)(3) have been satisfied in that: i) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; ii) there are questions of law and fact common to the Settlement Class; iii) the claims of the Class Representative are typical of the claims of the Settlement Class it seeks to represent; iv) the Class Representative has represented, and will represent, fairly and adequately the interests of the Settlement Class; v) the questions of law and fact common to the members of the Settlement

Class predominate over any questions affecting only individual members of the Settlement Class; and vi) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally certifies this Action as a class action on behalf of a Settlement Class consisting of all persons or entities who purchased or otherwise acquired the common stock of SIRVA through any public offering or on the open market between November 25, 2003 and January 31, 2005, inclusive. Excluded from the Class are: (a) such persons or entities who have submitted valid and timely requests for exclusion from the Settlement Class in accordance with the procedures set out in Section VI of the Settlement Agreement and described in the Notice (as listed on Exhibit 1 annexed hereto); (b) such persons or entities who are Defendants, Family Members of the Individual Defendants, or the legal representatives, heirs, executors, successors, assigns or majority-owned affiliates (including without limitation Clayton, Dubilier & Rice Fund V Limited Partnership ("CD&R Fund V") and Clayton, Dubilier & Rice Fund VI Limited Partnership ("CD&R Fund VI")) of any such excluded person or entity; or (c) any directors or officers of any such excluded person or entity during the Settlement Class Period.

4. Notice of the pendency of this Action as a class action and of the terms and conditions of the Settlement was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of such notice to the Settlement Class: (a) met the requirements of Rule 23 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—due process, and any other applicable law; (b) constituted the best notice practicable under the circumstances; and (c) constituted due and sufficient notice to all persons and entities entitled thereto.

5. The Settlement is approved as fair, reasonable and adequate, and the Settlement Class Members and the parties are directed to consummate the Settlement in accordance with the terms and provisions of the Settlement Agreement.

6. The Complaint, which the Court finds was filed in good faith in accordance with the Private Securities Litigation Reform Act and Rule 11 of the Federal Rules of Civil Procedure based upon all publicly available information, is hereby dismissed with prejudice with each party paying his, her or its own costs of court, except as provided in the Settlement Agreement.

7. “Releases” means all of the following: (a) SIRVA, CD&R, PwC, the Underwriter Defendants, the Insurers (as defined in the Settlement Agreement) and all of their predecessors and present and former parents, subsidiaries and Affiliates, and each and all of their respective past and present directors, managing directors, officers, employees, members, partners, principals, agents, attorneys, advisors, insurers, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors (including Ernst & Young LLP); and (b) all investment funds sponsored by CD&R, including, without limitation, CD&R Fund V and CD&R Fund VI; and (c) the Individual Defendants and each of their heirs, executors, trusts, trustees, administrators and assigns.

8. Class Representative and members of the Settlement Class are hereby permanently barred and enjoined from instituting, commencing or prosecuting any Claim or Unknown Claim, whether arising under any federal, state, or foreign statutory or common law or rule—including, without limitation, any Claim or Unknown Claim for negligence, gross negligence, negligent misrepresentation, indemnification, breach of contract, breach of any duty, or fraud—that has been, could have been, or could be asserted against any of the Releasees at any time by or on behalf of Lead Plaintiff or any Settlement Class Member, in any capacity, in the Action or in any court, tribunal, or other forum of competent jurisdiction, arising out of or related, directly or indirectly, to the purchase, acquisition, exchange, retention, transfer or sale of, or Investment Decision involving, SIRVA common stock during the Settlement Class Period, or to other matters and facts at issue in the Action. (“Released Claims”) Without limiting the generality of the foregoing, the term Released Claims includes, without limitation, any Claims or Unknown Claims arising out of or relating to: (i) any or all of the acts, failures to act, omissions, facts, events, matters, transactions, occurrences, statements, or representations that have been, could have been or could be directly or indirectly alleged, complained of, asserted, described, or otherwise referred to in this Action; (ii) the contents of any prospectus or SEC Filing relating to SIRVA common stock or SIRVA, including the Registration Statements dated November 24, 2003 and June 10, 2004, during or relating to the Settlement Class Period; (iii) any forward-looking statement made by any of the Releasees during or relating to the Settlement Class Period that have been, could have been or could be directly or indirectly alleged, embraced, complained of, asserted, described, set forth or otherwise referred to in this Action; (iv) any adjustments of financial information of SIRVA during or relating to the Settlement Class Period; (v) any

statements or disclosures of any sort made by any of the Releasees during, or relating in any way to, the Settlement Class Period to any person or entity, or to the public at large, regarding, without limitation, SIRVA's business, its financial condition, its operational results and/or its financial or operational prospects, including, without limitation, any prospectus, press releases and/or press reports, earnings calls, memoranda (whether internally or externally circulated), and presentations to analysts, rating agencies, creditors, banks or other lenders, investment bankers, broker/dealers, investment advisors, investment companies, SIRVA employees, potential investors and/or shareholders; (vi) any internal and/or external accounting and/or actuarial memoranda, reports or opinions relating to SIRVA prepared by or for any of the Releasees during, or relating in any way to, the Settlement Class Period; (vii) SIRVA's accounting practices and procedures, internal accounting controls and recordkeeping practices during or relating in any way to the Settlement Class Period; (viii) any financial statement, audited or unaudited, and any report or opinion on any financial statement relating to SIRVA that was prepared or issued by or for any of the Releasees during, or relating in any way to, the Settlement Class Period, or on which any Settlement Class Member allegedly relied (directly or indirectly) during the Settlement Class Period in purchasing, acquiring, exchanging, retaining, transferring, selling or making an Investment Decision with respect to SIRVA common stock; (ix) any statements or omissions by any of the Releasees as to quarterly or annual results of SIRVA during or relating in any way to the Settlement Class Period; (x) any internal accounting controls or internal audits of SIRVA during or relating in any way to the Settlement Class Period; (xi) any purchases, acquisitions, exchanges, sales, transfers or other trading of SIRVA common stock during or relating in any way to the Settlement Class Period by any of the

Releasees, or any acts taken by Releasees to finance or pay for such trades, including, but not limited to, any profits made or losses avoided in connection with such transactions; and (xii) any or all Claims against an individual Releasee that are based upon or arise out of the Releasee's (a) status as a director, officer or employee of, or investor in, SIRVA; (b) acts or omissions in his or her capacity as a director, officer or employee of, or investor in, SIRVA; (c) acts or omissions in his or her or its capacity as a private equity sponsor of SIRVA; (d) acts or omissions in his or her or its capacity as an underwriter of SIRVA common stock; or (e) acts or omissions in his or her or its capacity as SIRVA's outside auditor or provider of actuarial services. The Released Claims are hereby compromised, settled, released, discharged and dismissed as against the Releasees on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

9. The Releasees are hereby permanently barred and enjoined from instituting, commencing or prosecuting any and all claims, rights, causes of action or liabilities, of every nature and description whatsoever, whether based in law or equity, on federal, state, local, statutory or common law or any other law, rule or regulation, including both known Claims and Unknown Claims, that have been or could have been asserted in the Action or any forum by the Releasees or any of them against any of the Plaintiff, Settlement Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action, except for claims to enforce the Settlement. All the claims and Unknown Claims of all the Releasees are hereby compromised, settled, released, discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

10. Defendants, all the Releasees, their heirs, executors, administrators, predecessors, successors, Affiliates, attorneys, and assigns, and any person or entity claiming by or through any of them, are hereby permanently barred and enjoined from commencing or prosecuting (and by operation of law and of this Order & Final Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged each other from) any and all Claims and Unknown Claims that they could have asserted against each other relating directly or indirectly to the matters alleged in the Action, including but not limited to (i) any claims for indemnification or contribution arising out of the Action, (ii) any claims for breach of fiduciary duty, (iii) any derivative claims, and (iv) any claims for reimbursement of legal fees or costs incurred in defense of the Action (other than the claims for reimbursement of Joan Ryan referred to in this paragraph); provided that nothing in this paragraph shall act to modify, amend, supersede, discharge, or release the terms of the Underwriting Agreements previously entered into by and between SIRVA and the Underwriter Defendants in connection with SIRVA's IPO and SPO, including provisions therein relating to indemnification. Nothing in this paragraph shall act to release or modify any indemnification obligations owed by SIRVA to CD&R or any of the Individual Defendants (including but not limited to, with respect to the Individual Defendants, any indemnification obligations arising under Delaware law or under SIRVA's Charter or By-laws from and after the Final Settlement Date, and, with respect to CD&R, any indemnification obligations arising under the Indemnification Agreement and the Consulting Agreement both dated March 30, 1998 and the Amended and Restated Consulting Agreement dated January 1, 2001, including any amendments thereto or restatements thereof), except that CD&R shall be deemed to have released and settled any and all Claims and Unknown Claims for

indemnification with respect to their obligations pursuant to this Settlement Agreement and with respect to their attorneys' fees and costs in connection with the Action (including such fees and costs incurred in connection with this Settlement Agreement) and except that Joan Ryan shall be reimbursed for reasonable attorneys' fees and expenses related to the Action through the Final Settlement Date.

11. Neither this Order and Final Judgment nor the Settlement Agreement, any of its terms and provisions, the negotiations or proceedings in connection therewith or the documents or statements referred to therein shall be:

(a) offered or received against Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by Plaintiff or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of Defendants;

(b) offered or received against Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant;

(c) offered or received against Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Defendants, in any other civil, criminal

or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Settlement Agreement; provided, however, that Defendants may refer to it to effectuate the liability protection granted them hereunder;

(d) construed against Defendants as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or

(e) construed as or received in evidence as an admission, concession or presumption against Plaintiff or any of the Settlement Class Members that any of their claims are without merit, or that any defenses asserted by Defendants have any merit, or that damages recoverable under the Complaint would not have exceeded the Cash Settlement Fund.

12. The Plan of Allocation is approved as fair and reasonable, and Lead Counsel and the Administrator are directed to administer the Settlement in accordance with the terms and provisions of the Settlement Agreement.

13. The Court finds that all parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

14. Lead Counsel are hereby awarded 29.85% of the Cash Settlement Fund in fees, which sum the Court finds to be fair and reasonable, and \$898,103.22 in reimbursement of expenses, which expenses shall be paid to Lead Counsel from the Cash Settlement Fund with interest from the date such Cash Settlement Fund was funded to the date of payment at the same net rate that the Cash Settlement Fund earns. The award of attorneys' fees may be allocated

among all of Plaintiffs' Counsel in a fashion which, in the opinion of Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution of the Action.

15. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Cash Settlement Fund, the Court has considered and found that:

(a) the Settlement has created a fund of \$53,300,000.00 in cash that is already on deposit, plus interest thereon, and that numerous Settlement Class Members who submit acceptable Proofs of Claim will benefit from the Settlement achieved by Lead Counsel;

(b) Over 22,907 copies of the Notice were disseminated to putative Settlement Class Members indicating that Lead Counsel was moving for attorneys' fees in an amount not to exceed 33⅓ percent of the Cash Settlement Fund and for reimbursement of expenses in an amount of approximately \$950,000 and only a single objection (which was later withdrawn) was filed against the ceiling on the fees and expenses to be requested by Lead Counsel as disclosed in the Notice;

(c) Lead Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(d) The Action involves complex factual and legal issues and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(c) Had Lead Counsel not achieved the Settlement, there would remain a significant risk that Plaintiff and the Settlement Class may have recovered less or nothing from Defendants;

(f) The amount of attorneys' fees awarded and expenses reimbursed from the Cash Settlement Fund are fair and reasonable and consistent with awards in similar cases.

16. Exclusive jurisdiction is hereby retained over the parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Settlement Agreement 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 members of the Settlement Class.

17. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

SO ORDERED.

ENTERED: *October 31*, 2007


HON. RONALD A. GUZMAN
United States District Judge

TAB 5

**LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**

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Co-Lead Counsel for the Class

MOTLEY RICE LLC

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Max N. Gruetzmacher (*pro hac vice*)
Michael J. Pendell (*pro hac vice*)
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Mt. Pleasant, SC 29464
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Facsimile: (843) 216-9450

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 On February 27, 2018, a hearing having been held before this Court to determine, among
2 other things, whether and in what amount to award (1) plaintiffs’ counsel in the above-captioned
3 consolidated securities class action (the “Action”) fees and litigation expenses directly relating to
4 their representation of the Class; and (2) Class Representatives their costs and expenses
5 (including lost wages), pursuant to the Private Securities Litigation Reform Act of 1995 (the
6 “PSLRA”). The Court having considered all matters submitted to it at the hearing and otherwise;
7 and it appearing that a notice of the hearing substantially in the form approved by the Court (the
8 “Settlement Notice”) was mailed to all reasonably identified Class Members; and that a summary
9 notice of the hearing (the “Summary Notice”), substantially in the form approved by the Court,
10 was published in *Investor’s Business Daily* and transmitted over *PR Newswire*; and the Court
11 having considered and determined the fairness and reasonableness of the award of attorneys’ fees
12 and expenses requested;

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

- 16 1. The Court has jurisdiction over the subject matter of this Action and over all
17 parties to the Action, including all Class Members who have not timely and validly requested
18 exclusion, Class Counsel, and the Claims Administrator.
- 19 2. All capitalized terms used herein have the meanings set forth and defined in the
20 Stipulation and Agreement of Settlement, dated as of October 9, 2017 (the “Stipulation”).
- 21 3. Notice of Class Counsel’s application for attorneys’ fees and payment of litigation
22 expenses was given to all Class Members who could be identified with reasonable effort. The
23 form and method of notifying the Class of the application for attorneys’ fees and expenses met
24 the requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, Section 21D(a)(7)
25 of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the PSLRA, due
26 process, and other applicable law, constituted the best notice practicable under the

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.

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10. 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.

Dated: March 2, 2018


HONORABLE YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE

TAB 6

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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
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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 7

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN RE NII HOLDINGS, INC.
SECURITIES LITIGATION

Civ. No. 1:14-cv-00227-LMB-JFA

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter having come before the Court for hearing on September 16, 2016 (the "Settlement Hearing") on Class Counsel's motion for an award of attorneys' fees, payment of litigation expenses incurred by Plaintiffs' counsel, and reimbursement of costs and expenses to Class Representatives in connection with their representation of the Class in the above-captioned class action ("Action"); the Court having considered all matters submitted to it at the Settlement Hearing and otherwise; it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Class Members who or which could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in the *Wall Street Journal* and was transmitted over PR Newswire in accordance with 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 incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated April 18, 2016 (the "Stipulation"), and all capitalized terms not otherwise defined in this Order have the same meanings as defined in the Stipulation.

2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Class Members.

3. Notice of Class Counsel's motion for an award of attorneys' fees, payment of litigation expenses incurred by Plaintiffs' counsel, and reimbursement of costs and expenses to Class Representatives in connection with their representation of the Class 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 an award of attorneys' fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and 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; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled to notice.

4. Class Counsel are awarded attorneys' fees in the amount of 25% of the Settlement Fund (which amount includes accrued interest) and payment of litigation expenses in the amount of \$1,467,617.60, plus interest earned on this amount at the same rate earned by the Settlement Fund, which sums the Court finds to be fair and reasonable. Class Counsel will allocate the attorneys' fees awarded amongst Plaintiffs' counsel.

5. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of \$41,500,000 in cash that has been funded into escrow under the Stipulation, and numerous Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' counsel;

(b) The fee sought by Class Counsel has been reviewed and approved as reasonable by Class Representatives, institutional investors that oversaw the prosecution and resolution of the Action;

(c) Copies of the Notice were mailed to over 188,000 potential Class Members and nominees stating that Class Counsel, on behalf of Plaintiffs' Counsel, would 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 and payment of litigation expenses incurred in prosecuting the Action in an amount not to exceed \$1.75 million, plus interest. The Notice advised Class Members of their right to object to Class Counsel's motion for attorneys' fees and expenses, and a full and fair opportunity was accorded to Persons who are Class Members to be heard with respect to the motion. No objections to the fees and expenses requested by Class Counsel have been received;

(d) Plaintiffs' counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

(e) The Action involves complex factual and legal issues, and, in the absence of settlement, would involve further lengthy proceedings with uncertain resolution if the case were to proceed to trial;

(f) Class Counsel pursued the Action on a contingent basis, having received no compensation during the Action, and any fee award has been contingent on the result achieved;

(g) Plaintiffs' counsel have devoted more than 39,000 hours to this Action, with a lodestar value of \$19,191,280.25, to achieve the Settlement;

(h) The amount of attorneys' fees is consistent with awards in similar cases and supported by public policy; and

(i) The amount of expenses awarded is fair and reasonable and was necessarily incurred in the prosecution and settlement of the Action.

6. The Court awards the following amounts from the Settlement Fund to Class Representatives as reimbursement for their reasonable costs and expenses directly related to their representation of the Class: \$15,150.00 to Danica Pension, Livsforsikringsaktieselskab; \$6,795.00 to Industriens Pensionsforsikring A/S; \$8,720.00 to IBEW Local No. 58 / SMC NECA Funds; and \$6,696.00 to Jacksonville Police & Fire Pension Fund.

7. Any appeal or any challenge affecting this Court's approval of any attorneys' fees and expense application will in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

8. The Court retains exclusive jurisdiction over the parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation, or enforcement of the Stipulation and this Order.

9. If the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order will be rendered null and void to the extent provided by the Stipulation.

10. 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.

IT IS SO ORDERED.

Dated: September 16, 2016



Leonie M. Brinkema
United States District Judge

TAB 8

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re REGIONS MORGAN KEEGAN)
SECURITIES, DERIVATIVE and)
ERISA LITIGATION)
))
This Document Relates to:)
))
In re Regions Morgan Keegan) No. 2:09-2009 SMH V
Closed-End Fund Litigation,)
))
No. 2:07-cv-02830-SHM-dkv)

**ORDER APPROVING PROPOSED SETTLEMENT AND AWARD OF ATTORNEY'S FEES
AND EXPENSES**

On behalf of the Class and the Subclass, Plaintiffs the Lion Fund L.P., Dr. Samir J. Sulieman, and Larry Lattimore (collectively, "Lead Plaintiffs"), and C. Fred Daniels in his capacity as Trustee Ad Litem for the Leroy S. McAbee, Sr. Family Foundation Trust (the "TAL") (collectively with the Lead Plaintiffs, "Plaintiffs"), filed a Motion on March 8, 2013, for Final Approval of the Proposed Settlement and Plan of Allocation entered into with Defendants Morgan Keegan & Co., Inc. ("Morgan Keegan"), MK Holding, Inc., Morgan Asset Management, Inc., Regions Financial Corporation ("RFC"), the Closed-End Funds, Allen B. Morgan, Jr., J. Kenneth Alderman, Brian B. Sullivan, Joseph Thompson Weller, James C. Kelsoe, Jr., and Carter Anthony (collectively, "Defendants"). (Mot. for Final App., ECF No.

The conditions of Rule 23(a) have been satisfied. There is no dispute that the Class satisfies the numerosity, commonality, and typicality requirements. At the time of the Final Approval Hearing, the claims administrator had distributed nearly 100,000 class action notices to potential Class Members and more than 7,000 proofs of claim had been filed. All potential Class Members had purchased or acquired shares of the Closed-End Funds between 2003 and 2009.

After considering numerous motions for appointment, the Court decided that the Lead Plaintiffs were best qualified to represent the Class. (Order Appt. Counsel, ECF No. 179.) There is no dispute about the adequacy of the Class representatives. No party or Class Member has given the Court good cause to believe that the Lead Plaintiffs have not fairly and adequately protected the interests of the Class.

The conditions of Rule 23(b)(3) have been satisfied. The injuries of the Class Members are the same in kind if not in degree. The questions of law and fact common to the Class predominate over any questions affecting only individual members. Because there are so many potential Class Members, a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

The Class is CERTIFIED as described in the Preliminary Approval Order:

subsequently dismissed to allow the Person to specifically participate as a Class Member; any Person who has filed a state court action that has not been removed to federal court, against one or more of the Defendants concerning the purchase of shares in one or more of the Closed-End Funds during the Class Period and whose claims in that action have been dismissed with prejudice, released, or fully adjudicated absent a specific agreement with such Defendant(s) to allow the Person to participate as a Class Member (and such exclusion shall apply to the legal representatives, heirs, successors and assigns of any such excluded Person, entity or Fiduciary Account). With respect to Closed-End Fund shares for which the TAL Orders authorize the Trustee Ad Litem to prosecute the claims or causes of action pleaded in the Complaint in the Action ("TAL Represented Closed-End Fund Shares"), "Class" and "Class Member" also excludes Persons who are, or were during the Class Period, trust and custodial account beneficiaries, principals, settlors, co-trustees, and others owning beneficial or other interests in the TAL Represented Closed-End Fund Shares ("Such Persons"), but this exclusion applies only to any claims or causes of action of Such Persons that the Trustee Ad Litem is not authorized by the TAL Orders to prosecute. With respect to Closed-End Fund Shares that are not TAL Represented Closed-End Fund Shares and in which Such Persons have a beneficial or other interest, the foregoing partial exclusion of Such Persons does not apply. Also excluded from the Class and as Class Members are those Persons who submit valid and timely requests for exclusion from the Class in accordance with the requirements set forth in the Notice.

(Prelim. Order, ECF No. 276.)

Persons and entities who have been deemed excluded from Class Membership are identified in the Court's May 17, 2013 and July 26, 2013 Orders, (ECF No. 330; ECF No. 344), and in the Plaintiffs' May 24, 2013 exhibit, (ECF No. 331-2).

B. Sufficiency of Notice

Due process requires that notice to a class be "reasonably calculated, under all the circumstances, to apprise interested

parties of the pendency of the action and afford them an opportunity to present their objections." Vassalle v. Midland Funding LLC, 708 F.3d 747, 759 (6th Cir. 2013) (internal quotation marks and citations omitted). "[A]ll that the notice must do is fairly apprise the prospective members of the class of the terms of the proposed settlement so that class members may come to their own conclusions about whether the settlement serves their interests." Id. (internal quotation marks and citations omitted).

The Court approved the Notice submitted by Plaintiffs at the Preliminary Approval Hearing. (Prelim. Order.) The Notice describes the nature of the class action, the proposed settlement terms, the proposed Plan of Allocation, and the requested attorney's fees and expenses in detail. (Notice, ECF No. 260-2.) The Notice is written to be understood by non-attorneys. (Id.) The Court approved the proposed methods of disseminating the Notice. At the time of the Final Approval Hearing, the claims administrator had sent nearly 100,000 Notices by mail and had received more than 7,000 proofs of claim in response. The Defendants had received more than 10,000 requests for share purchase and sale information in response to the Notice. The Court received four timely and valid objections, one untimely objection, and one invalid objection from a non-class member.

The Notice was sufficient. The due process requirements have been met.

C. Settlement Approval

In compliance with Rule 23(e), the Court required the Plaintiffs to send Notices of Class Action, Proofs of Claim, and information about Requests for Exclusion to all Class Members by means reasonably calculated to give them actual notice of the pendency of the class action and the terms of the proposed Settlement. (Prelim. Order); Fed. R. Civ. P. 23(e)(1). The parties filed a Stipulation and Agreement of Settlement identifying all agreements made in connection with the proposed Settlement. (ECF No. 260); Fed. R. Civ. P. 23(e)(3). The Court allowed all Class Members to file written objections to the proposed Settlement and held a Final Approval Hearing at which proper objectors were entitled to appear. (Prelim. Order; Final Hearing); Fed. R. Civ. P. 23(e)(2), 23(e)(5).

The procedural requirements of Rule 23(a), (b), and (e) have been satisfied. Final approval of the proposed Settlement is warranted if the Court finds that the terms of the Settlement are fair, reasonable, and adequate.

"A district court looks to seven factors in determining whether a class action settlement is fair, reasonable, and adequate: '(1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3)

the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.'" Vassalle, 708 F.3d at 754-755 (quoting UAW v. GMC, 497 F.3d 615, 631 (6th Cir. 2007)). The Court has "'wide discretion in assessing the weight and applicability' of the relevant factors." Id. (quoting Granada Invest., Inc. v. DWG Corp., 962 F.2d 1203, 1205-06 (6th Cir. 1992)). Although the Court need not decide the merits of the case or resolve unsettled legal questions, the Court cannot "'judge the fairness of a proposed compromise' without 'weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the settlement.'" Id. (quoting UAW, 497 F.3d at 631) (internal citations omitted).

The parties seek approval of a monetary Settlement in the amount of \$62,000,000.00. All of the UAW factors support the fairness, reasonableness, and adequacy of the proposed Settlement. The parties protected against the risk of fraud or collusion by using a highly qualified and experienced independent mediator during settlement negotiations. The parties engaged in arms-length negotiations. The complexity and expense of the litigation are evident. The litigation has been pending for more than five-and-a-half years. The matter before the Court represents a consolidation of seven cases; tens of

thousands of claims could be made on the settlement fund.

If the case were to proceed to trial, the Plaintiffs would face a daunting task in establishing loss causation and liability because there is evidence of both management failures and market decline. The parties have stated that they will proceed to trial if the proposed Settlement is rejected. Although the case has not reached the summary judgment stage, the Plaintiffs have completed a substantial amount of discovery to support their loss valuation theory and their mediation position. Because of the complexity of the case, discovery costs would be much higher before the case could proceed to trial.

The opinions of Class counsel and the reactions of Class Members also support approval of the Settlement. Class counsel have represented to the Court that, given the circumstances of the case and the anticipated litigation risk, they believe they have achieved the best possible result. From the tens of thousands of potential Class Members, the Court has received four valid and timely objections, one untimely objection, and one invalid objection raised by a non-class member. (ECF No. 309.) The Court has considered all of the objections and heard from two of the objectors at the Final Approval Hearing. None of the objections has caused the Court to conclude that the proposed Settlement is unfair, unreasonable, or inadequate.

Settlement is also in the public interest. It will conserve judicial resources and permit monetary recovery for potentially tens of thousands of individuals and entities. The Release is narrow and does not implicate individuals or entities with claims outside the Class.

“The most important of the factors to be considered in reviewing a settlement is the probability of success on the merits. The likelihood of success, in turn, provides a gauge from which the benefits of settlement must be measured.”

Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C., 636 F.3d 235, 245 (6th Cir. 2011) (quoting In re Gen. Tire & Rubber Co. Sec. Litig., 726 F.2d 1075, 1086 (6th Cir. 1984)). The Plaintiffs’ likelihood of success on the merits is questionable for several reasons. First, the Defendants argue that they have strong defenses but have chosen to settle because of the projected costs of discovery, the uncertainty and disruption to the Defendants’ ongoing businesses, and the risk of higher damages. Second, the Defendants argue, and the Plaintiffs admit, that the Plaintiffs did not have to show loss causation to obtain the proposed Settlement. The Defendants contend that loss causation would be difficult to prove under the circumstances of this case. They argue that, if the Plaintiffs were required to prove the portion of the loss attributable to the Defendants, recovery would be significantly reduced. The

Defendants also argue that it would be difficult at trial for the Plaintiffs to prove material fraudulent misrepresentations and to establish that Morgan Keegan and RFC were controlling persons of the Funds.

Finally, the Plaintiffs' novel damages valuation methodology could be excluded at trial for failure to satisfy the expert testimony standard in Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993). "Before an expert may testify at trial, the district 'court must make a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.'" United States v. Watkins, 450 F. App'x 511, 515 (6th Cir. 2011) (quoting United States v. Smithers, 212 F.3d 306, 313 (6th Cir. 2000) (internal quotations and citations omitted)). At the Final Approval Hearing, the Plaintiffs' expert described substantial differences between the methodology he employed and generally accepted methodologies. Plaintiffs' expert admitted that his method was otherwise untested and that it used daily net asset values as a novel proxy for the potentially fraudulent or misleading statements of Fund managers. It is possible that the expert's method would be found invalid. If the Plaintiffs' damages valuations were excluded at trial, their likelihood of success on the merits and the amount of any recovery would be

greatly reduced.

The proposed Settlement offers the Class Members a monetary recovery for their monetary loss. Based on the information presented by the parties and the objectors, counsel for the Plaintiffs were able to negotiate a multi-million dollar recovery for the Class based on a novel theory. The Plaintiffs' expert testified that, under generally accepted damages valuation models, the total loss to the Class attributable to the Defendants would have been between one sixth and one third of the proposed Settlement amount.

Although the proposed Settlement allows the Class Members to recover, at best, 18% of their losses as alleged by the Plaintiffs, monetary relief is guaranteed. The Plaintiffs could succeed on the merits, but the likelihood is problematic and their theory of recovery introduces unusual litigation risks. Based on these considerations, the proposed Settlement confers a substantial benefit on the Class Members.

The Sixth Circuit looks beyond the UAW factors when evaluating the fairness of a settlement to determine whether the proposed settlement "'gives preferential treatment to the named plaintiffs while only perfunctory relief to unnamed class members.'" Vassalle, 708 F.3d at 755 (quoting Williams v. Vukovich, 720 F.2d 909, 925 n.11 (6th Cir. 1983)). Under the proposed Settlement, each Class Member receives a pro rata share

of the settlement fund based on the number of shares the Class Member purchased. The parties have represented to the Court that there is no side agreement promising a bonus or a different type of relief to the named Plaintiffs.

The form and amount of recovery in the proposed Settlement appropriately balance the risks of litigation. All of the UAW factors weigh in favor of concluding that the proposed Settlement is fair, reasonable, and adequate. Plaintiffs' Motion for Final Approval is GRANTED. The Stipulation and Agreement of Settlement and the Plan of Allocation are ADOPTED and APPROVED.

E. Attorney's Fees and Expenses

In compliance with Rule 23(h), the Plaintiffs have filed a Motion for Award of Attorney's Fees and Expenses that conforms to the requirements of Rule 54(d)(2). (Mot. for Atty. Fees.) Notice of the Motion was served on all parties through the Court's Electronic Filing Docket and on Class Members by mail. (See ECF No. 301.) The Class Members and the Defendants were given an opportunity to object to the Motion. (Prelim. Order.) The Court heard argument from the Lead Plaintiffs, TAL Counsel, Defendants, and several objectors at the Final Approval Hearing.

All of the procedural prerequisites to an award of attorney's fees and expenses have been satisfied. The question is whether the attorney's fees and expenses requested are

reasonable. In general, "there are two methods for calculating attorney's fees: the lodestar and the percentage-of-the-fund." Van Horn v. Nationwide Prop. & Cas. Ins. Co., 436 F. App'x 496, 498 (6th Cir 2011). "District courts have discretion 'to select the more appropriate method for calculating attorney's fees in light of the unique characteristics of class actions in general, and of the unique circumstances of the actual cases before them.'" Id. (quoting Rawlings v. Prudential-Bache Props., Inc., 9 F.3d 513, 516 (6th Cir. 1993)). "The lodestar method better accounts for the amount of work done, while the percentage of the fund method more accurately reflects the results achieved." Rawlings, 9 F.3d at 516. A district court "generally must explain its 'reasons for adopting a particular methodology and the factors considered in arriving at the fee.'" Id. (quoting Moulton v. U.S. Steel Corp., 581 F.3d 344, 352 (6th Cir. 2009)).

Plaintiffs move the Court to approve a percentage-of-the-fund, or common fund, award of attorney's fees in the amount of \$18,600,000.00, or 30% of the total common fund. (Mem. in Supp. of Mot. for Atty. Fees, ECF No. 86.) The Plaintiffs contend that the reasonableness of their request is supported by a "lodestar cross-check," a method by which the party requesting an award works backward from the requested amount to determine the multiplier that would be necessary to reach that amount if the party had instead used the lodestar method to determine the

requested fee. (Id.) If the resulting multiplier is within the accepted range, it supports the party's contention that its fee request is reasonable. (Id.)

To recover attorney's fees under the common fund doctrine, "(1) the class of people benefitted by the lawsuit must be small in number and easily identifiable; (2) the benefits must be traceable with some accuracy; and (3) there must be reason for confidence that the costs can in fact be shifted with some exactitude to those benefitting." Geier v. Sundquist, 372 F.3d 784, 790 (6th Cir. 2004). These factors are not satisfied "where litigants simply vindicate a general social grievance," but are satisfied "when each member of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-sum judgment recovered on his behalf." Id. (quoting Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980)). For that reason, "the common fund method is often used to determine attorney's fees in class action securities cases." Id.

The instant class action is a securities case. Each Class Member who submits a proper proof of claim will receive a pro rata share of the settlement fund based on the number of shares the Member purchased during the Class Period. Although the Class is large, each Class Member is easily identifiable and the benefit to each Member is easily traceable to the work of Plaintiffs' counsel. Because recovery is pro rata, if the

common fund method is applied, each Class Member will in effect pay a portion of the attorney's fees and expenses based on the size of the Class Member's recovery.

The common fund method is the more appropriate method for calculating attorney's fees in this case. "In common fund cases, the award of attorney's fees need only 'be reasonable under the circumstances.'" Id. (quoting Rawlings, 9 F.3d at 516). "The 'majority of common fund fee awards fall between 20% and 30% of the fund.'" Gooch v. Life Investors Ins. Co. of Am., 672 F.3d 402, 426 (quoting Waters v. Int'l Precious Metals Corp., 190 F.3d 1291, 1294 (11th Cir. 1999)). Although the Court may award fees in its discretion, it should consider:

(1) the value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides.

Moulton, 581 F.3d at 352 (quoting Bowling v. Pfizer, Inc., 102 F.3d 777, 780 (6th Cir. 1996)).

In this case, there is no dispute that the litigation is complex, that counsel for all parties are highly skilled and nationally well-regarded, and that counsel for the Plaintiffs undertook a substantial risk and bore considerable costs by accepting this case on a contingent fee basis. The requested

fee is within the typical range for awards in common fund cases, and society has a clear stake in rewarding attorneys as an incentive to take on complicated, risky, contingent fee cases.

The value of Plaintiffs' legal services on an hourly basis is established by their lodestar cross-check. See Johnson v. Midwest Log. Sys., No. 2:11-CV-1061, 2013 U.S. Dist. LEXIS 74201, at *16 (S.D. Ohio May 25, 2013). "In contrast to employing the lodestar method in full, when using a lodestar cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." Id. at *17 (internal quotations and citations omitted). Plaintiffs spent approximately 13,000 hours in preparation for this case, producing a cumulative lodestar value of \$5,980,680.50. (ECF No. 287-1.) Each firm comprising Plaintiffs' counsel submitted an accounting of the hourly rate and hours spent for each attorney who worked on the case. (ECF No. 287-6; ECF No. 287-7; ECF No. 287-8.) The hours spent and the rates applied are reasonable. The resulting lodestar multiplier is approximately 3.1. "Most courts agree that the typical lodestar multiplier in a large post-PSLRA securities class action[] ranges from 1.3 to 4.5." In re Cardinal Health Inc. Sec. Litigs., 528 F. Supp. 2d 752, 767 (S.D. Ohio 2007) (collecting cases). The lodestar cross-check multiplier is within the reasonable range.

The most important factor in determining the reasonableness

of the requested attorney's fees in this case is the value of the benefit conferred on the Class. This is a complex case, and the Plaintiffs' likelihood of success on the merits is in question. Nevertheless, Plaintiffs' counsel was able to negotiate a multimillion-dollar settlement on a novel theory of recovery to be distributed pro rata to all Class Members. Plaintiffs' counsel created substantial value for the Class Members. Had the litigation proceeded on an accepted damages valuation theory, the total recovery was projected to be from one third to as little as one sixth of the proposed settlement fund. If the case had proceeded to trial, the Class Members faced a substantial risk of no recovery at all.

The Plaintiffs also seek payment of expenses from the common fund totaling \$380,744.14. (ECF No. 287.) The Plaintiffs state that approximately \$277,000.00 represents payments to experts, approximately \$17,000.00 represents the costs of mediation, and the remainder includes photocopying, travel, and lodging. (Id.) The Plaintiffs have submitted itemized lists of all expenses. (ECF No. 287-6; ECF No. 287-7; ECF No. 287-8.) No objections have been raised to the Plaintiffs' expenses. After review of the Plaintiffs' submissions, the Court finds that the requested expenses are reasonable and should be paid from the common fund.

The Plaintiffs' requested attorney's fees and expenses are

reasonable under the unique circumstances of this case. The common fund method is the more appropriate method of addressing attorney's fees. All of the Bowling factors weigh in favor of the requested fee of 30% of the fund, \$18,600,000.00.

Plaintiffs' Motion for Attorney's Fees and Expenses is GRANTED.

III. Dismissal of Claims and Release

Except as to any individual claim of those persons who have been excluded from the Class, this action, together with all claims asserted in it, is dismissed with prejudice by the Plaintiffs and the other members of the Class against each and all of the Defendants. The Parties shall bear their own costs, except as otherwise provided above or in the joint Stipulation and Agreement of Settlement and the Plan of Allocation.

After review of the record, including the Complaint and the dispositive motions, the Court concludes that, during the course of this action, the parties and their respective counsel have complied at all times with the requirements of Rule 11.

The Release submitted by the parties as part of Exhibit B to the joint Stipulation and Agreement of Settlement, (ECF No. 260-5), is APPROVED and ADOPTED by the Court.

IV. Continuing Jurisdiction

The Court retains jurisdiction for purposes of effecting the Settlement, including all matters relating to the administration, consummation, enforcement, and interpretation of

the joint Stipulation and Agreement of Settlement and the Plan of Allocation.

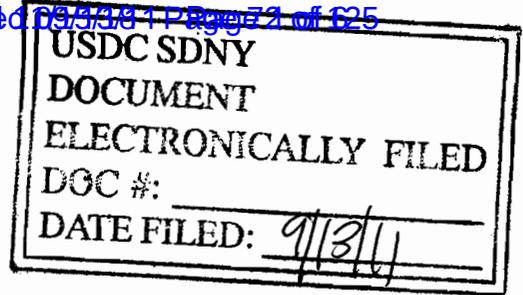
V. Conclusion

For the foregoing reasons, Plaintiffs' proposed Class is CERTIFIED. Plaintiffs' Motion for Final Approval is GRANTED. Plaintiffs' Motion for Attorney's Fees and Expenses is GRANTED. The parties' Stipulation and Agreement of Settlement and their Plan of Allocation are APPROVED. The Class settlement fund is approved in the amount of \$62,000,000.00. Attorney's fees are approved in the amount of \$18,600,000.00. Expenses are approved in the amount of \$380,744.14. All claims in this matter are DISMISSED except as provided above.

So ordered this 5th day of August, 2013.

s/ Samuel H. Mays, Jr.
SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE

TAB 9



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.¹

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

¹ 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 10

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOUTH FERRY LP #2, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

KERRY K. KILLINGER, et al.,

Defendants.

CASE NO. C04-1599-JCC

FINAL ORDER APPROVING
CLASS ACTION SETTLEMENT
AND AWARING ATTORNEYS'
FEES AND EXPENSES

This matter comes before the Court on Lead Plaintiffs' motion for final approval of class action settlement and plan of allocation of settlement proceeds (Dkt. No. 269) and Lead Counsel's motion for award of attorneys' fees and reimbursement of expenses (Dkt. No. 270).

On June 5, 2012, this Court conducted a hearing to determine: (1) whether the terms and conditions of the Class Action Settlement Agreement dated October 5, 2011 (the "Settlement Agreement") are fair, reasonable, and adequate for the settlement of the Action now pending in this Court under the above caption, including the release of all Released Claims against Defendants and the other Released Parties, and should be approved; (2) whether judgment should be entered dismissing the Complaint on the merits and with prejudice in favor of Defendants and as against all persons or entities who are members of the Class herein who have not requested exclusion therefrom; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the members of the Class; and (4) whether and

1 in what amount to award Plaintiffs' Counsel fees and reimbursement of expenses. The Court,
2 having considered all matters submitted to it at the hearing and otherwise; and it appearing that a
3 notice of the hearing substantially in the form approved by the Court was mailed to all persons or
4 entities reasonably identifiable, who purchased the common stock of Washington Mutual, Inc.
5 ("WMI") between April 15, 2003 and June 28, 2004, inclusive (the "Class Period"), as shown by
6 the records of WMI's transfer agent, at the respective addresses set forth in such records, and that
7 a summary notice of the hearing substantially in the form approved by the Court was published
8 in the global edition of *The Wall Street Journal* and transmitted over the Global Media Circuit of
9 *Business Wire* pursuant to the specifications of the Court; and the Court having considered and
10 determined the fairness and reasonableness of the award of attorneys' fees and expenses
11 requested; and all capitalized terms used but not otherwise defined herein having the meanings as
12 set forth and defined in the Settlement Agreement.

13 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

14 1. The Court has jurisdiction over the subject matter of the Action, the Lead
15 Plaintiffs, all Class Members, and the Defendants.

16 2. The Court finds that the prerequisites for a class action under Federal Rules of
17 Civil Procedure 23 (a) and (b)(3) have been satisfied in that: (a) the number of Class Members is
18 so numerous that joinder of all members thereof is impracticable; (b) there are questions of law
19 and fact common to the Class; (c) the claims of the Class Representative are typical of the claims
20 of the Class it seeks to represent; (d) the Class Representative and Plaintiffs' Co-Lead Counsel
21 have and will fairly and adequately represent the interests of the Class; (e) the questions of law
22 and fact common to the members of the Class predominate over any questions affecting only
23 individual members of the Class; and (f) a class action is superior to other available methods for
24 the fair and efficient adjudication of the controversy.
25
26

1 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby
2 finally certifies this action as a class action on behalf of all persons who purchased the common
3 stock of Washington Mutual, Inc. between April 15, 2003 and June 28, 2004, inclusive, and who
4 were damaged thereby. Excluded from the Class are Washington Mutual, Inc. and the Individual
5 Defendants; former defendants William W. Longbrake, Craig J. Chapman, James G. Vanasek
6 and Michelle McCarthy; any other officers and directors of WMI during the Class Period;
7 members of their immediate families and their legal representatives, heirs, successors or assigns;
8 and any entity in which any of the Defendants or former defendants have or had a controlling
9 interest. Also excluded from the Class are the persons and/or entities who requested exclusion
10 from the Class as listed on Exhibit 1 annexed hereto.

11 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby
12 finally certifies Walden Management Co. Pension Plan as Class Representative.

13
14 5. Notice of the pendency of this Action as a class action and of the proposed
15 Settlement was given to all Class Members who could be identified with reasonable effort. The
16 form and method of notifying the Class of the pendency of the Action as a class action and of the
17 terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal
18 Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §
19 78u-4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995, due process,
20 and any other applicable law, constituted the best notice practicable under the circumstances, and
21 constituted due and sufficient notice to all persons and entities entitled thereto. Plaintiffs' Co-
22 Lead Counsel has filed with the Court proof of mailing of the Notice and Proof of Claim and
23 proof of publication of the Publication Notice.

1 6. The Settlement is approved as fair, reasonable, and adequate, and the Class
2 Members and the parties are directed to consummate the Settlement in accordance with the terms
3 and provisions of the Settlement Agreement.

4 7. The Complaint, which the Court finds was filed on a good faith basis in
5 accordance with the Private Securities Litigation Reform Act and Rule 11 of the Federal Rules of
6 Civil Procedure based upon all publicly available information, is hereby dismissed with
7 prejudice and without costs, as against the Defendants.
8

9 8. Lead Plaintiffs and members of the Class, on behalf of themselves, their heirs,
10 executors, administrators, predecessors, successors and assigns, are hereby permanently barred
11 and enjoined from instituting, commencing or prosecuting any and all claims, debts, demands,
12 rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for
13 damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or
14 liabilities whatsoever), whether known claims or Unknown Claims, whether based on federal,
15 state, local, statutory or common law or any other law, rule or regulation, whether fixed or
16 contingent, accrued or un-accrued, liquidated or un-liquidated, whether at law or in equity,
17 matured or un-matured, whether class or individual in nature (i) that have been asserted in this
18 Action or in the Chapter 11 Cases against any of the Released Parties relating to the purchase or
19 sale of WMI common stock during the Class Period, including, without limitation, the
20 Bankruptcy Claims, or (ii) that could have been asserted in the Action or the Chapter 11 Cases or
21 in any forum against any of the Released Parties arising out of or based upon the allegations,
22 transactions, facts, matters or occurrences, representations or omissions involved, set forth, or
23 referred to in the Complaint and which relate to the purchase or sale of WMI common stock
24 during the Class Period (the "Released Claims") against WMI, the Individual Defendants,
25 Chapman, Longbrake, Vanasek, McCarthy and any and all of their past or present subsidiaries,
26 parents, successors and predecessors, officers, directors, agents, employees, attorneys, advisors,

1 investment advisors, auditors, accountants, insurers, and any person, firm, trust, corporation,
2 officer, director or other individual or entity in which WMI, the Individual Defendants or
3 Longbrake, Chapman, McCarthy and Vanasek has or has had a controlling interest or which was
4 or is related to or affiliated with WMI or any of the Individual Defendants, and the legal
5 representatives, marital communities, heirs, successors in interest or assigns of any of the
6 foregoing (the “Released Parties”). The Released Claims are hereby compromised, settled,
7 released, discharged and dismissed as against the Released Parties on the merits and with
8 prejudice by virtue of the proceedings herein and this Final Judgment and Order of Dismissal
9 with Prejudice. For the avoidance of doubt, nothing contained herein shall be deemed to release,
10 bar, waive, impair or otherwise impact: (1) any claims to enforce the Settlement and the
11 transactions required pursuant to the Settlement; (2) any claims belonging to the Debtors, their
12 current affiliates or their successors in interest or otherwise asserted by the Debtors, their current
13 affiliates or their successors in interest against any other Released Party, or any Released Party’s
14 defenses, counterclaims or claims for indemnification, if any—other than claims for
15 indemnification with respect to payments made to defend or settle the Action—with respect
16 thereto; (3) claims by any Released Party against the Debtors in the Chapter 11 Cases, including
17 indemnification claims—other than claims for indemnification with respect to payments made to
18 defend or settle the Action—or the Debtors’ defenses and counterclaims with respect thereto;
19 provided, however, that, to the extent that any Contributing Carriers claim subrogation rights
20 against the Debtors on the basis of the Released Parties’ indemnification claims, all such claims
21 and the Debtors’ defenses with respect thereto are expressly preserved; (4) except to the extent
22 released pursuant to the settlement agreement in the class action styled *In re Washington Mutual,*
23 *Inc. ERISA Litigation*, Lead Case No. 07-cv-1874 (W.D. Wash.), claims, if any, by any Class
24 Member against the Released Parties arising under the Employee Retirement Income Security
25 Act of 1974, 29 U.S.C. § 1001, *et seq.* (“ERISA”) that are separate and do not arise from or
26 relate to the claims asserted in the Action; (5) claims by any Class Member individually in the

1 Chapter 11 Cases based solely upon such Class Member’s status as a holder or beneficial owner
2 (as opposed to a purchaser) of any WMI debt or equity security with respect to their right to
3 participate in the distribution of funds in the Chapter 11 Cases upon confirmation of a chapter 11
4 plan or otherwise solely to the extent that such distribution is being made on account of such
5 security and not in any way arising from or related to being a Class Member; or (6) any Class
6 Member’s right to participate in the distribution of any funds recovered from any of Defendants
7 by any governmental or regulatory agency. For the avoidance of doubt, notwithstanding the
8 designation of a party as a “Released Party,” the Settlement Agreement only operates to release
9 the Released Party from a claim, counterclaim or defense that is a Released Claim.

10 9. Defendants and their heirs, executors, administrators, predecessors, successors
11 and assigns of any of them and the other Released Parties, are hereby permanently barred and
12 enjoined from instituting, commencing or prosecuting any and all claims, rights or causes of
13 action or liabilities whatsoever, whether based on federal, state, local, statutory or common law
14 or any other law, rule or regulation, including both known claims and Unknown Claims, that
15 have been or could have been asserted in the Action or any forum by the Defendants or any of
16 them or the successors and assigns of any of them against any of the Lead Plaintiffs, other Class
17 Members or their attorneys, which arise out of or relate in any way to the institution, prosecution,
18 or settlement of the Action (except for claims to enforce the Settlement or the transactions
19 required pursuant to the Settlement) (the “Released Defendants’ Claims”). The Released
20 Defendants’ Claims of all the Released Parties are hereby compromised, settled, released,
21 discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein
22 and this Final Judgment and Order of Dismissal with Prejudice.

23
24 10. With respect to any and all Released Claims and Released Defendants’ Claims,
25 the parties stipulate and agree that upon the Effective Date, the Lead Plaintiffs and the
26 Defendants shall expressly waive, and each Class Member shall be deemed to have waived, and

1 by operation of the Judgment shall have expressly waived, any and all provisions, rights and
2 benefits conferred by any law of any state or territory of the United States, or principle of
3 common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which
4 provides:

5 A general release does not extend to claims which the creditor does
6 not know or suspect to exist in his or her favor at the time of
7 executing the release, which if known by him or her must have
8 materially affected his or her settlement with the debtor.

9 Lead Plaintiffs and Defendants acknowledge, and all other Class Members by operation of law
10 shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition
11 of Released Claims and Released Defendants’ Claims was separately bargained for and was a
12 key element of the Settlement.

13 11. Notwithstanding the provisions of ¶¶ 8, 9 and 10 hereof, (i) in the event that any
14 of the Released Parties asserts against the Lead Plaintiffs, any other Class Member or Plaintiffs’
15 Counsel, any claim that is a Released Defendants’ Claim, then Lead Plaintiffs, such Class
16 Member or Plaintiffs’ Counsel shall be entitled to use and assert such factual matters included
17 within the Released Claims against such Released Party only in defense of such claim but not for
18 the purposes of affirmatively asserting any claim against any Released Party; and (ii) in the event
19 that any of the Lead Plaintiffs, any other Class Member or Plaintiffs’ Counsel asserts against any
20 Released Parties any Released Claims, such Released Parties or their respective counsel shall be
21 entitled to use and assert such factual matters included within the Released Defendants’ Claims
22 against such claimant only in defense of such claim but not for the purposes of affirmatively
23 asserting any claim against any such claimant.

24 12. Neither this Final Judgment and Order of Dismissal with Prejudice, the Settlement
25 Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings
26 connected with it, shall be:

1 (a) offered or received against any Defendant as evidence of or construed as
2 or deemed to be evidence of any presumption, concession, or admission by any Defendant with
3 respect to the truth of any fact alleged by any of the plaintiffs or the validity of any claim that has
4 been or could have been asserted in the Action or in any litigation, or the deficiency of any
5 defense that has been or could have been asserted in the Action or in any litigation, or of any
6 liability, negligence, fault, or wrongdoing of any Defendant;

7 (b) offered or received against any Defendant as evidence of a presumption,
8 concession or admission of any fault, misrepresentation or omission with respect to any
9 statement or written document approved or made by any Defendant;

10 (c) offered or received against any Defendant as evidence of a presumption,
11 concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any
12 way referred to for any other reason as against any Defendant, in any other civil, criminal or
13 administrative action or proceeding, other than such proceedings as may be necessary to
14 effectuate the provisions of the Settlement Agreement; provided, however, that Defendants may
15 refer to it to effectuate the liability protection granted them hereunder;

16 (d) construed against Lead Plaintiffs or any of the other Class Members or
17 against any Defendant as an admission or concession that the consideration to be given
18 hereunder represents the amount which could be or would have been recovered after trial; or

19 (e) construed as or received in evidence as an admission, concession or
20 presumption against Lead Plaintiffs or any of the other Class Members that any of their claims
21 are without merit, or that any defenses asserted by any Defendant have any merit, or that
22 damages recoverable under the Complaint would not have exceeded the Gross Settlement Fund.
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1 13. The Plan of Allocation is approved as fair and reasonable, and Plaintiffs' Counsel
2 and the Claims Administrator are directed to administer the Settlement Agreement in accordance
3 with its terms and provisions.

4 14. The Court finds that all parties and their counsel have complied with each
5 requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.
6

7 15. Plaintiffs' Counsel are hereby awarded 29% of the Gross Settlement Fund in fees,
8 which sum the Court finds to be fair and reasonable, and \$879,674.77 in reimbursement of
9 expenses, which amounts shall be paid to Plaintiffs' Co-Lead Counsel from the Settlement Fund
10 with interest from the date such Settlement Fund was funded to the date of payment at the same
11 net rate that the Settlement Fund earns. The award of attorneys' fees shall be allocated among
12 Plaintiffs' Counsel in a fashion which, in the opinion of Plaintiffs' Co-Lead Counsel, fairly
13 compensates Plaintiffs' Counsel for their respective contributions in the prosecution of the
14 Action.

15 16. In making this award of attorneys' fees and reimbursement of expenses to be paid
16 from the Gross Settlement Fund, the Court has considered and found that:

17 (a) the Settlement has created a fund of \$41.5 million in cash that is already
18 on deposit, plus interest thereon, and that numerous Class Members who submit acceptable
19 Proofs of Claim will benefit from the Settlement;
20

21 (b) Over 490,000 copies of the Notice were disseminated to putative Class
22 Members indicating that Plaintiffs' Counsel were moving for attorneys' fees in an amount not to
23 exceed one-third (33 $\frac{1}{3}$ %) of the Gross Settlement Fund and for reimbursement of their expenses
24 in the approximate amount of \$1,000,000 and only three (3) objections were filed against the
25
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1 terms of the proposed Settlement or the ceiling on the fees and expenses requested by Plaintiffs’
2 Counsel contained in the Notice;

3 (c) Plaintiffs’ Counsel have conducted the litigation and achieved the
4 Settlement with skill, perseverance and diligent advocacy;

5 (d) The Action involves complex factual and legal issues and was actively
6 prosecuted over nearly seven years and, in the absence of a settlement, would involve further
7 lengthy proceedings with uncertain resolution of the complex factual and legal issues;

8 (e) Had Plaintiffs’ Counsel not achieved the Settlement there would remain a
9 significant risk that the Class may have recovered less or nothing from Defendants;

10 (f) Plaintiffs’ Counsel have devoted over 18,000 hours, with a lodestar value
11 of \$8,900,000 to achieve the Settlement; and

12 (g) The amount of attorneys’ fees awarded and expenses reimbursed from the
13 Settlement Fund are fair and reasonable and consistent with awards in similar cases.

14
15 17. Exclusive jurisdiction is hereby retained over the parties and the Class Members
16 for all matters relating to this Action, including the administration, interpretation, effectuation or
17 enforcement of the Settlement Agreement and this Final Judgment and Order of Dismissal with
18 Prejudice, and including any application for fees and expenses incurred in connection with
19 administering and distributing the settlement proceeds to the members of the Class; provided,
20 however, that the Bankruptcy Court shall retain exclusive jurisdiction over the interpretation and
21 enforcement of the Bankruptcy Court Approval Order.

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23 18. Without further order of the Court, the parties may agree to reasonable extensions
24 of time to carry out any of the provisions of the Settlement Agreement.

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FOR THE FOREGOING REASONS, the Court GRANTS Lead Plaintiffs' motion for final approval of class action settlement and plan of allocation of settlement proceeds (Dkt. No. 269) and GRANTS Lead Counsel's motion for award of attorneys' fees and reimbursement of expenses (Dkt. No. 270). This action is DISMISSED WITH PREJUDICE.

DATED this 5th day of June 2012.



John C. Coughenour
UNITED STATES DISTRICT JUDGE

EXHIBIT 1

List of Persons and Entities Requesting Exclusion from the Class in *South Ferry LP #2 v. Kerry K. Killinger, et al.*, Case No. C04-1599 JCC

The following persons and entities have properly requested exclusion from the Class in *South Ferry LP #2 v. Kerry K. Killinger, et al.*, Case No. C04-1599 JCC, and are not members of the Class bound by this Final Judgment and Order of Dismissal with Prejudice:

No.	Name	Address
1	Katherine Walker Childs	12510 NE 94th Street Kirkland, WA 98033-5875
2	Ruth E. Bridges	1827 Thornhill Rd. #107 Wesley Chapel, FL 33544
3	Charlie Rivera	12143 Maple Ridge Dr. Parrish, FL 34219
4	Denny Sue Johnson	Box 1714 Gold Beach, OR 97444
5	Lillian N. Mosley R.E. Mosley	275 County Road 4247 DeKalb, TX 75559
6	Ernest A. Dahl	2226 Vista Hogar Newport Beach, CA 92660
7	Donald W. Dearment	500 E. Pitt St. Bedford, PA 15522
8	Arthur Nelson	P.O. Box 129 Seekonk, MA 02771
9	Mary Nake Bond	7923 Colonel Glenn Rd. Little Rock, AR 72204
10	Charles W. Hadley Ethel S. Hadley	3907 NE 110th St. Seattle, WA 98125
11	Earl F. O'Connor	7343 S. Sherman Dr. Indianapolis, IN 46237
12	Abe Price	158 Lollypop Lane #3 Naples, FL 34112-5109
13	Jane K. Whitney	6609 Markstown Drive Apt. B Tampa, FL 33617-9365
14	Mark Paper	700 Twelve Oaks Center Dr. Ste. 711 Wayzata, MN 55391

1	15	Edward T. Flotz	127 Franconian Dr. S. Frankenmuth, MI 48734
2	16	Bradley Keding	15545 Meyer Ave. Allen Park, MI 48101
3	17	Debra A. Langford	1480 North Meadow Rd. Merrick, NY 11566
4	18	Josephine R Burns	P.O. Box 546 El Granada, CA 94108-0546
5	19	Moira L. L. Nichols	33 Linda Ave. Apt. 2003 Oakland, CA 94611
6	20	Richard J. Imbra	3312 Grandada Ave. San Diego, CA 92104
7	21	Bruce MacLeod	556 Mill Street Ext. Lancaster, MA 01523
8	22	John Mitchell Campbell Jr.	16 East Fox Chase Rd. Chester, NJ 07930
9	23	Janet Schultz	846 Newport Bay Dr. Edwardsville, IL 62025
10	24	Susan Iorns	16 Ocean Parade Pukerua Bay Porirua 5026 New Zealand
11	25	Cordelia F Biddle H. Stephen Zettler	514 Pine Street Philadelphia, PA 19106
12	26	Lawrence Papola Marie Papola	191 Atlantic Pl. Hauppauge, NY 11788
13	27	Carl Hunter	4030 30th Ave. West Seattle, WA 98199-1709
14	28	Steven W. Loring	91-1040-Puamaeole St. #S Ewa Beach, HI 96706
15	29	Margaret P. Jones	737 Pinebrook Dr. Virginia Beach, VA 23462
16	30	Bruce Alexander	10464 SW 118 St. Miami, FL 33176
17	31	Paul Putnam Mona Putnam	1140 Portola Ave. Escondido, CA 92026-1732
18	32	Douglas Duncan	679 Flamenco Pl. Davis, CA 95616
19	33	Robert Born Ophelia Born	8800 Glacier Ave. Apt. 302 Texas City, TX 77591-3052

1	34	John G. Clapp	12 Sunset Drive Apt. 2 Alexandria, VA 22301-2640
2	35	Jacquelyn Clarke	10465 Dunlop Rd. Delta, BC V4C 2L1, Canada
3	36	Bonnie J. Orr Rufus D. Orr	7536 32nd Ave. NW Seattle, WA 98117-4646
4	37	Charles GaGaig	P.O. Box 7666 Northridge, CA 91327
5	38	Don Thorsteinson	5775 Hampton Place #1006 Vancouver, B.C. V6T 2G6
6	39	David P. Yaffe	10416 Wyton Dr. Los Angeles, CA 90024
7	40	Michelle Jurczak	325 Kennedy Ave. Toronto, Ontario M6P 3C4
8	41	John G. Hudson	P.O. Box 283 Fort Smith, AR 72902
9	42	Carl P. Irwin	10 White Oak Dr. Apt# 218 Exeter, NH 03833-5314
10	43	Margaret K. Oliver Kay Collins	1002-5614 Balsam St. Vancouver BC V6M 4B7
11	44	John G. Hudson Living Trust	P.O. Box 283 Fort Smith, AR 72902
12	45	Rosemary Pacheco	338 Orchard St. Raynham, MA 02767-9385
13	46	Kathleen Guilfoyle	214 Northline Rd. Ballston Spa, NY 12020

TAB 11



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3:99-CV-00454 STANLEY V. SAFESKIN CORPORATION

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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
Situatd,

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

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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

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16 Copies to:
17 All Parties and Counsel of Record

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TAB 12



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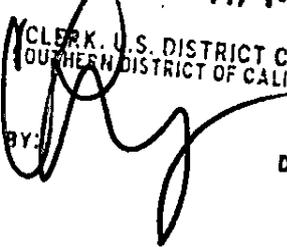
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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY:  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re TITAN, INC. SECURITIES)
LITIGATION)
_____)
This Document Relates To:)
ALL ACTIONS.)
_____)

Master File No. 04-CV-0676-LAB(NLS)
(Consolidated with 04-CV-0701-K(NLS))
CLASS ACTION
~~PROPOSED~~ ORDER AWARDING
ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES,
INCLUDING LEAD PLAINTIFF'S
EXPENSES

DATE: December 19, 2005
TIME: 10:30 a.m.
COURTROOM: The Honorable
Larry Alan Burns

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1 THIS MATTER having come before the Court on December 19, 2005, on the application of
2 Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of expenses incurred in the
3 Litigation; the Court, having considered all papers filed and proceedings conducted herein, having
4 found the settlement of this Litigation to be fair, reasonable and adequate and otherwise being fully
5 informed in the premises and good cause ^{as fully recited on the record,} appearing therefor;

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 July 22, 2005 (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 Settlement Class who have not timely and validly
11 requested exclusion.

12 3. The Court finds that the percentage fee negotiated with the Lead Plaintiff at the outset
13 of the case enjoys a presumption of reasonableness. The Court further finds that the presumption
14 that a 25% fee award is reasonable has not been rebutted.

15 4. The Court finds that the amount of fees awarded is fair and reasonable under the
16 "percentage-of-recovery" method.

17 5. The Court finds that a fee award of 25% is consistent with awards made in similar
18 cases.

19 6. The Court has considered the objections received from Steven W. Suflas and New
20 York State Teachers' Retirement System. The Court finds these objections to be without merit and
21 hereby overrules all objections concerning payment of attorneys' fees and expenses.

22 7. The Court hereby awards Plaintiffs' Counsel attorneys' fees of 25% of the Settlement
23 Fund and reimbursement of expenses in an aggregate amount of \$247,549.25 together with the
24 interest earned thereon for the same time period and at the same rate as that earned on the Settlement
25 Fund until paid. Said fees shall be allocated by Plaintiffs' Co-Lead Counsel in a manner which, in
26 their good-faith judgment, reflects each counsel's contribution to the institution, prosecution and
27 resolution of the Litigation.

1 8. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid
2 to Plaintiffs' Co-Lead Counsel from the Settlement Fund immediately after the date this Order is
3 executed subject to the terms, conditions, and obligations of the Stipulation and in particular ¶6.2
4 thereof, which terms, conditions, and obligations are incorporated herein.

5 9. Pursuant to 15 U.S.C. §78u-4(a)(4), Lead Plaintiff Israel Shurkin is awarded the
6 amount of \$2,050 for reimbursement of time and expenses incurred in representing the Securities
7 Class.

8 IT IS SO ORDERED.

9 DATED: 12-19-05

Larry A. Burns

10 THE HONORABLE LARRY ALAN BURNS
11 UNITED STATES DISTRICT JUDGE

12 Submitted by:

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Counsel for the Holder Class

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TAB 13

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re VERISIGN, INC. SECURITIES) Master File No. C-02-2270-JW(PVT)
LITIGATION)

_____) CLASS ACTION

This Document Relates To:) [Proposed] ORDER AWARDING
ALL ACTIONS.) PLAINTIFFS' COUNSEL'S ATTORNEYS
FEES AND REIMBURSEMENT OF
EXPENSES

DATE: March 12, 2007
TIME: 9:00 a.m.
COURTROOM: The Honorable James Ware

1 This matter having come before the Court on March 12, 2007, on the application of counsel
2 for the Lead Plaintiffs for an award of attorneys' fees and reimbursement of expenses incurred in the
3 captioned action, the Court, having considered all papers filed and proceedings conducted herein,
4 having found the settlement of this action to be fair, reasonable, and adequate and otherwise being
5 fully informed in the premises and good cause appearing therefor;

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 and Release dated as of December 12, 2006 (the "Stipulation"), and
9 filed with the Court.

10 2. This Court has jurisdiction over the subject matter of this application and all matters
11 relating thereto, including all Members of the Class who have not timely and validly requested
12 exclusion.

13 3. The Court has reviewed and considered the objections submitted by the
14 Commonwealth of Pennsylvania Public School Employees' Retirement System, the New York State
15 Teachers' Retirement System and George and Maribeth Lebus. The Court finds the above
16 objections to be without merit and hereby overrules each of the objections.

17 4. The Court hereby awards counsel for Lead Plaintiffs attorneys' fees of 25% of the
18 Settlement Fund, plus reimbursement of litigation expenses in the amount of \$4,200,000 together
19 with the interest earned thereon for the same time period and at the same rate as that earned on the
20 Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that
21 the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method given
22 the substantial risks of non-recovery, the time and effort involved, and the result obtained for the
23 Class.

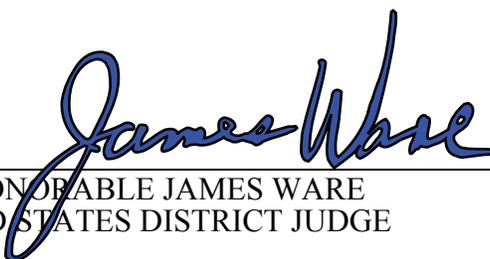
24 5. The fees shall be allocated among counsel for the Lead Plaintiffs by Lead Counsel
25 Lerach Coughlin Stoia Geller Rudman & Robbins LLP in a manner which reflects each such
26 counsel's contribution to the institution, prosecution and resolution of the captioned action.

27 6. The awarded attorneys' fees and expenses and interest earned thereon shall
28 immediately be paid to Lead Counsel subject to the terms, conditions and obligations of the
[PROPOSED] ORDER AWARDING PLAINTIFFS' COUNSEL'S ATTORNEYS FEES AND
REIMBURSEMENT OF EXPENSES - C-02-2270-JW(PVT)

1 Stipulation, and in particular ¶9.3 thereof which terms, conditions and obligations are incorporated
2 herein.

3 IT IS SO ORDERED.

4 DATED: April 23 2007


THE HONORABLE JAMES WARE
UNITED STATES DISTRICT JUDGE

6 Submitted by:

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Additional Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2007, I electronically filed 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 have 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.lerachlaw.com/>.

s/ Joy Ann Bull
JOY ANN BULL

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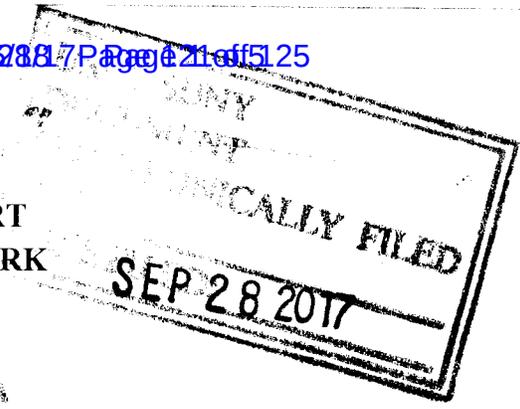
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TAB 14

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



GRADY SCOTT WESTON, Individually and
On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

RCS CAPITAL CORPORATION, RCAP
HOLDINGS, LLC, RCAP EQUITY, LLC,
NICHOLAS S. SCHORSCH, BRIAN S.
BLOCK, EDWARD MICHAEL WEIL,
WILLIAM M. KAHANE, BRIAN D. JONES,
PETER M. BUDKO, MARK AUERBACH,
JEFFREY BROWN, C. THOMAS
MCMILLEN, and HOWELL WOOD,

Defendants.

Civ. No. 1:14-CV-10136-GBD

[REDACTED] ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

THIS MATTER came before the Court on September 28, 2017, for a hearing to determine, among other things, whether and in what amount to award Lead Counsel in the above-captioned consolidated securities class action (the "Action") attorneys' fees and litigation expenses and Lead Plaintiffs Oklahoma Police Pension Fund and Retirement System ("Oklahoma Police") and City of Providence, Rhode Island ("Providence") expenses relating to their representation of the Settlement Class. All capitalized terms used herein have the meanings as set forth and defined in the Stipulation and Agreement of Settlement, dated as of June 2, 2017 (the "Stipulation"). 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 (the "Notice"), was mailed to all reasonably identified Settlement Class Members; and that

a summary notice of the hearing (the “Summary Notice”), substantially in the form approved by the Court, was published in *The Wall Street Journal* 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 Settlement Class Members and the Claims Administrator.

2. Notice of Lead Counsel’s motion for attorneys’ fees and payment of expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement 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, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

3. Lead Counsel is hereby awarded attorneys’ fees in the amount of \$9,300,000, plus interest at the same rate earned by the Settlement Fund, and payment of litigation expenses in the amount of \$174,333.68, plus interest at the same rate earned by the Settlement Fund, which sums the Court finds to be fair and reasonable.

4. In accordance with 15 U.S.C. §78u-4(a)(4), for their representation of the Settlement Class, the Court hereby awards Oklahoma Police reimbursement of its reasonable lost wages and expenses directly related to its representation of the Settlement Class in the amount of \$5,000, and hereby awards Providence reimbursement of its reasonable lost wages and expenses

directly related to its representation of the Settlement Class in the amount of \$5,000.

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 \$31 million in cash and that numerous Settlement Class Members who submit acceptable Proofs of Claim will benefit from the Settlement created by the efforts of Plaintiffs' Counsel;

(b) The requested attorneys' fees and payment of litigation expenses have been reviewed and approved as fair and reasonable by the Lead Plaintiffs, who are sophisticated institutional investors that have been directly involved in the prosecution and resolution of the Action and which 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 Settlement Class Members stating that Lead Counsel, on behalf of all Plaintiffs' Counsel, would be moving for attorneys' fees in an amount not to exceed 30% of the Settlement Fund, plus accrued interest, and payment of litigation expenses not to exceed \$425,000, plus accrued interest, and the expenses of Lead Plaintiffs for reimbursement of their reasonable lost wages and costs directly related to their representation of the Settlement Class;

(d) There were no objections to the Settlement, Plan of Allocation or the Fee and Expense Application;

(e) Plaintiffs' Counsel have expended substantial time and effort pursuing the

Action on behalf of the Settlement Class;

(f) The Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(g) Plaintiffs' Counsel pursued the Action on a contingent basis, having received no compensation during the Action, and any fee award has been contingent on the result achieved;

(h) Plaintiffs' Counsel conducted the Action and achieved the Settlement with skillful and diligent advocacy;

(i) Public policy concerns favor the award of reasonable attorneys' fees in securities class action litigation;

(j) The amount of attorneys' fees awarded are fair and reasonable and consistent with awards in similar cases; and

(k) Plaintiffs' Counsel have devoted more than 5,700 hours, with a lodestar value of \$4,149,852.50 to achieve the Settlement.

7. Any appeal or any challenge affecting this Court's approval of any attorneys' fee and expense application shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

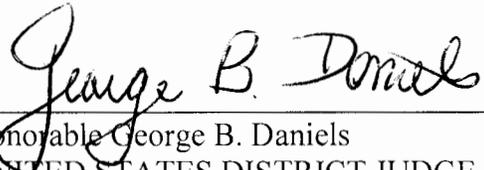
8. Exclusive jurisdiction is hereby retained over the subject matter of this Action and over all parties to the Action, including the administration and distribution of the Net Settlement Fund to Settlement Class Members.

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: SEP 28 2017, 2017



Honorable George B. Daniels
UNITED STATES DISTRICT JUDGE