EXHIBIT 9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE THE ESTÉE LAUDER CO., INC. SECURITIES LITIGATION	Civil Action No. 1:23-cv-10669-AS Hon. Arun Subramanian

DECLARATION OF MICHAEL P. CANTY ON BEHALF OF LABATON KELLER SUCHAROW LLP IN SUPPORT OF APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

I, MICHAEL P. CANTY, declare as follows, pursuant to 28 U.S.C. §1746:

1. I am a member of the law firm of Labaton Keller Sucharow LLP ("Labaton"). I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in the above-entitled action (the "Action") from inception to date.

2. My firm, which served as Court-appointed Lead Counsel in the Action, was involved throughout the course of the litigation, which is described in the accompanying Declaration of Michael P. Canty in Support of (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses.

3. The information in this declaration regarding my firm's time and expenses is taken from time and expense records prepared and maintained by the firm in the ordinary course of business. These records (and backup documentation where necessary) were reviewed by me and others at my firm, under my direction, to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses committed to the Action. As a result of

this review and adjustments made, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the Action. In addition, I believe that the expenses are all of a type that would normally be paid by a fee-paying client in the non-contingent private legal marketplace.

4. After the adjustments referred to above, the number of hours spent on the litigation by my firm is 47,772.3. The lodestar amount for attorney/professional support staff time based on the firm's current hourly rates is $25,145,630.00. A summary of the lodestar is provided in Exhibit A. The hourly rates shown in Exhibit A are the same as the hourly rates submitted by the firm in other contingent securities class actions. The firm's rates are set based on periodic analysis of rates used by firms performing comparable work both on the plaintiff and defense side. For personnel who are no longer employed by the firm, the "current rate" used for the lodestar calculation is the rate for that person in his or her final year of employment with the firm. Time expended in preparing this application for fees and payment of expenses has not been included.

5. As detailed in Exhibit B, my firm has incurred a total of $759,672.80 in expenses in connection with the prosecution of the Action. The expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

6. The following is additional information regarding certain of these expenses:

(a) **Court, Witness & Service Fees:** $2,197.50. These expenses were paid to the court in connection with case filings, and to attorney service firms in connection with issuing subpoenas.

(b) **Experts/Consultants:** $347,700.00.

(i) Damages/Market Efficiency/Plan of Allocation - $347,700.00. These are the fees of Lead Plaintiffs' economics experts. Lead Counsel consulted with experts on damages and loss causation issues in connection with assessing the claims and defenses, drafting the consolidated complaint, and the mediation process. In addition, Lead Plaintiffs' primary expert, Matthew D. Cain, Ph.D., submitted an expert report in support of Lead Plaintiffs' Motion for Certification of the Class, which addressed market efficiency and common damages methodologies. Dr. Cain was deposed and he and his team assisted with the preparation of the proposed Plan of Allocation for the proceeds of the Settlement.

(c) **Outside Investigation Firm**: $21,775.00. These are the fees of an outside investigation firm that assisted with the international aspects of the case investigation. Given Estée Lauder's business—including its travel retail's headquarters in Europe and the prevalence of *daigou* in the Asia-Pacific ("APAC") region —Lead Plaintiffs' pursuit of the claims involved documents and witnesses located across the globe, notably China, which required specialized research into foreign law and local customs, and international investigators.

(d) **Counsel for Former Employee Potential Witnesses**: $3,977.50. In connection with the investigation of the claims, my firm interviewed 33 potential witnesses, three of whom provided information that was used for former employee witness allegations in the Complaint. We obtained counsel for some of the witnesses in connection with responding to potential discovery requests.

(e) **Mediation Fees:** $138,218.75. These are Lead Plaintiffs' share of the fees of mediator Hon. Layn R. Phillips (Ret.) of Phillips ADR Enterprises. The Mediator oversaw the three formal mediation sessions and negotiations between the Parties, which ultimately led to the acceptance of his mediator's recommendation and the proposed Settlement before the Court.

(f) **Litigation Support:** $142,424.95. These are the fees of Lead Plaintiffs' e-discovery vendor, which was retained to process and store the more than 684,000 pages of electronic discovery gathered in the Action. This vendor was key for the efficient collection, maintenance, and analysis of this substantial amount of electronic information. These expenses include the estimated costs of "cold storage" of the data pending the Settlement becoming effective. If more than the estimated costs is incurred, the estimate will be the cap. If less than the estimate is incurred, the unused balance will be returned to the Settlement Fund.

(g) **Depositions/Court Reporting:** $26,762.62. These are Lead Plaintiffs' share of the costs and expenses incurred in connection with the five depositions in the case.

(h) **Online Legal & Factual Research:** $21,389.46. These expenses relate to the usage of electronic databases, such as PACER, Thomson Research, Bloomberg, LexisNexis Risk Solutions, and Westlaw. These databases were used to obtain access to financial data, employment and factual information, and legal research. Usage is tracked using a client-matter number specific to this case.

(i) **Work-Related Transportation, Hotels & Meals:** $43,245.72. In connection with the litigation of this case, the firm paid for work-related transportation expenses related to working after hours, attending the mediations, and depositions. This expense also includes estimated travel costs for representatives of Lead Plaintiffs to attend the final Settlement Hearing. If less than this estimate is incurred, the excess will be returned to the Settlement Fund. If more than this estimate is incurred, this estimate will be the cap. (Any first-class airfare has been reduced to be comparable to economy rates.)

7. With respect to the standing of my firm, attached hereto as Exhibit C 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 16th day of July, 2026.

MICHAEL P. CANTY

EXHIBIT A

Estée Lauder Securities Settlement

EXHIBIT A

LODESTAR REPORT

FIRM: LABATON KELLER SUCHAROW LLP
REPORTING PERIOD: INCEPTION THROUGH JULY 15, 2026

PROFESSIONAL	STATUS	CURRENT RATE	HOURS	LODESTAR
Gardner, J.	(P)	$1,450	39.8	$57,710.00
Belfi, E.	(P)	$1,400	75.1	$105,140.00
Canty, M.	(P)	$1,300	278.1	$361,530.00
McConville, F.	(P)	$1,250	109.4	$136,750.00
Zeiss, N.	(P)	$1,250	84.6	$105,750.00
Rogers, M.	(P)	$1,150	22.2	$25,530.00
Vasilchenko, I.	(P)	$1,125	39.8	$44,775.00
Bradley, G.	(P)	$1,125	33.5	$37,687.50
Buell, G.	(P)	$1,000	62.5	$62,500.00
Christie, J.	(P)	$975	1,089.0	$1,061,775.00
Bissell-Linsk, J.	(P)	$975	15.3	$14,917.50
Meyers, J.	(A)	$700	1,497.4	$1,048,180.00
Barrett, T.	(A)	$700	528.4	$369,880.00
Wood, C.	(A)	$650	236.8	$153,920.00
Boscolo, S.	(A)	$600	331.5	$198,900.00
Boehme, C.	(A)	$600	71.2	$42,720.00
Apter-Vidler, N.	(A)	$600	69.6	$41,760.00
Stiene, C.	(A)	$600	13.5	$8,100.00
Harmon, G.	(A)	$575	298.7	$171,752.50
Knoll, L.	(A)	$575	176.6	$101,545.00
Leggio, P.	(A)	$575	63.1	$36,282.50
Yu, N.	(A)	$425	515.6	$219,130.00
Eynon, T.	(A)	$400	146.0	$58,400.00
Bryan, A.	(A)	$350	342.2	$119,770.00
Rosenberg, E.	(OC)	$1,025	113.0	$115,825.00
Cividini, D.	(OC)	$950	377.5	$358,625.00
Schervish II, W.	(OC)	$850	48.7	$41,395.00
Manningham, N.	(OC)	$800	45.3	$36,240.00
Butler, A.	(SA)	$550	1,169.5	$643,225.00
Druhm, K.	(SA)	$550	129.6	$71,280.00

PROFESSIONAL	STATUS	CURRENT RATE	HOURS	LODESTAR
Brissett, V.	(SA)	$550	67.6	$37,180.00
Merlo, L.	(SA)	$530	1,055.4	$559,362.00
Drapkin, A.	(SA)	$530	969.8	$513,994.00
Aiyappasamy, S.	(SA)	$530	796.5	$422,145.00
Morales, G.	(SA)	$530	476.3	$252,439.00
Weitz, M.	(SA)	$525	1,253.0	$657,825.00
Miller, J.	(SA)	$525	1,112.3	$583,957.50
Acriche, M.	(SA)	$525	1,091.6	$573,090.00
Rubinstein, S.	(SA)	$525	990.5	$520,012.50
Miller, C.	(SA)	$525	954.9	$501,322.50
Farinella, M.	(SA)	$525	859.5	$451,237.50
Lee, J.	(SA)	$525	808.9	$424,672.50
Atilade, A.	(SA)	$525	777.6	$408,240.00
Pospischil, D.	(SA)	$525	769.5	$403,987.50
Lombardi, L.	(SA)	$525	757.5	$397,687.50
Farese, S.	(SA)	$525	730.6	$383,565.00
Martey, L.	(SA)	$525	706.1	$370,702.50
Hayashi, M.	(SA)	$525	688.8	$361,620.00
Kendall, A.	(SA)	$525	647.8	$340,095.00
Vigna, L.	(SA)	$505	1,327.4	$670,337.00
Rosenberg, J.	(SA)	$505	1,077.0	$543,885.00
Kim, J.	(SA)	$505	896.5	$452,732.50
Wostl, K.	(SA)	$505	813.7	$410,918.50
Turisse, A.	(SA)	$505	788.8	$398,344.00
Niogi, A.	(SA)	$505	654.7	$330,623.50
Brockman, J.	(SA)	$505	164.8	$83,224.00
Kussin, T.	(SA)	$505	102.6	$51,813.00
Philbert, J.	(SA)	$500	367.7	$183,850.00
Barnes, E.	(SA)	$475	951.5	$451,962.50
Winfield, M.	(SA)	$475	928.0	$440,800.00
Clarkin, C.	(SA)	$475	890.5	$422,987.50
Hart, N.	(SA)	$475	659.8	$313,405.00
Gaskill, W.	(SA)	$475	123.9	$58,852.50
Pinhas, V.	(SA)	$450	1,257.1	$565,695.00
Appel, C.	(SA)	$450	934.1	$420,345.00
Hussain, U.	(SA)	$450	505.0	$227,250.00
Heim, J.	(SA)	$450	432.0	$194,400.00
Hamlani, S.	(SA)	$450	238.0	$107,100.00
Weber, E.	(SA)	$440	1,028.4	$452,496.00
Carty, K.	(SA)	$440	805.8	$354,552.00
Bagwell, A.	(SA)	$440	460.4	$202,576.00
Abidi, S.	(SA)	$425	1,052.8	$447,440.00
Mumic, C.	(SA)	$425	898.3	$381,777.50

PROFESSIONAL	STATUS	CURRENT RATE	HOURS	LODESTAR
Boadi, D.	(SA)	$425	891.6	$378,930.00
Luth, K.	(SA)	$425	783.0	$332,775.00
Ramsey, L.	(SA)	$425	782.4	$332,520.00
Parham, C.	(SA)	$425	488.7	$207,697.50
Aksentijevich, I.	(SA)	$425	454.5	$193,162.50
Reid, B.	(SA)	$425	416.3	$176,927.50
Wortman, C.	(SA)	$425	332.3	$141,227.50
Sanchez, A.	(SA)	$405	811.3	$328,576.50
Divers, M.	(SA)	$405	630.8	$255,474.00
Aaron, Z.	(SA)	$405	291.0	$117,855.00
Greenbaum, A.	(I)	$700	91.7	$64,190.00
Rutherford, C.	(I)	$575	269.5	$154,962.50
Megibow, S.	(I)	$550	127.4	$70,070.00
Boria, C.	(PL)	$455	27.0	$12,285.00
Malonzo, F.	(PL)	$445	218.7	$97,321.50
Jones, A.	(PL)	$440	150.8	$66,352.00
Rogers, D.	(PL)	$440	31.0	$13,640.00
Silvestro, L.	(PL)	$415	27.3	$11,329.50
Gill, A.	(PL)	$175	50.5	$8,837.50
TOTALS			**47,772.3**	**$25,145,630.00**

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

EXHIBIT B

Estée Lauder Securities Settlement

EXHIBIT B

EXPENSE REPORT

FIRM: LABATON KELLER SUCHAROW LLP
REPORTING PERIOD: INCEPTION THROUGH JULY 15, 2026

CATEGORY		**TOTAL AMOUNT**
Court / Witness / Service Fees		$2,197.50
Postage / Overnight Delivery Services		$1,046.26
Long Distance Telephone / Wifi/ Conference Calls		$98.24
Experts/Consultants		$347,700.00
Damages/Market Efficiency/Plan of Allocation	$347,700.00	
Outside Investigation Firm		$21,775.00
Counsel for Former Employee Potential Witnesses		$3,977.50
Mediation		$138,218.75
Litigation Support[1]		$142,424.95
Depositions/Court Reporting		$26,762.62
Online Legal & Factual Research		$21,389.46
Work-Related Transportation / Hotels / Meals[2]		$43,245.72
Duplicating		$10,836.80
In-House BW: (11,622 pages at $0.20 per page)	$2,324.40	
In-House Color: (21,281 pages at $0.40 per page)	$8,512.40	
TOTAL		**$759,672.80**

[1] Total includes estimated monthly “cold storage” costs for storage of the electronic discovery through September 2026. If less than the estimate is incurred, the excess will be returned to the Settlement Fund. If more than the estimate is incurred, this estimate will be the cap.

[2] Total includes estimated travel costs for representatives of Lead Plaintiffs to attend the final Settlement Hearing. If less than the estimate is incurred, the excess will be returned to the Settlement Fund. If more than the estimate is incurred, the estimate will be the cap.

EXHIBIT C

Labaton
Keller Sucharow

2026

Labaton Keller Sucharow Credentials

New York | Delaware | London | Washington, D.C.

Labaton Keller Sucharow

Table of Contents

Labaton
Keller Sucharow

About the Firm

Labaton Keller Sucharow has recovered billions of dollars for investors, businesses, and consumers

Founded in 1963, Labaton Keller Sucharow LLP has earned a reputation as one of the leading plaintiffs' firms in the United States. For more than 60 years, Labaton Keller Sucharow has successfully exposed corporate misconduct and recovered billions of dollars in the United States and around the globe on behalf of investors and consumers. Our mission is to continue this legacy and to continue to advance market fairness and transparency in the areas of securities, corporate governance and shareholder rights, and consumer protection and data privacy litigation, as well as alternative dispute resolution. Our Firm has recovered significant losses for investors and secured corporate governance reforms on behalf of the nation's largest institutional investors, including public pension, Taft-Hartley, and hedge funds, investment banks, and other financial institutions.

Along with securing newsworthy recoveries, the Firm has a track record for successfully prosecuting complex cases from discovery to trial to verdict. As *Chambers and Partners* has noted, the Firm is ***"considered one of the greatest plaintiffs' firms,"*** and *The National Law Journal* "Elite Trial Lawyers" recently recognized our attorneys for their ***"cutting-edge work on behalf of plaintiffs."*** Our appellate experience includes winning appeals that increased settlement values for clients and securing a landmark U.S. Supreme Court victory in 2013 that benefited all investors by reducing barriers to the certification of securities class action cases.

Our Firm provides global securities portfolio monitoring and advisory services to more than 350 institutional investors, including public pension funds, asset managers, hedge funds, mutual funds, banks, sovereign wealth funds, and multi-employer plans—with collective assets under management (AUM) in excess of $6 trillion. We are equipped to deliver results due to our robust infrastructure of more than 90 full-time attorneys, a dynamic professional staff, and innovative technological resources. Labaton Keller Sucharow attorneys are skilled in every stage of business litigation and have challenged corporations from every sector of the financial market. Our professional staff includes financial analysts, paralegals, e-discovery specialists, certified public accountants, certified fraud examiners, and a forensic accountant. We have one of the largest in-house investigative teams in the securities bar.

Securities Litigation: As a leader in the securities litigation field, the Firm is a trusted advisor to more than 350 institutional investors with collective assets under management in excess of $6 trillion. Our practice focuses on portfolio monitoring and domestic and international securities litigation for sophisticated institutional investors. Since the passage of the Private Securities Litigation Reform Act of 1995, we have recovered more than $30 billion in the aggregate. Our success is driven by the Firm's robust infrastructure, which includes one of the largest in-house investigative teams in the plaintiffs' bar.

Corporate Governance and Shareholder Rights Litigation: Our breadth of experience in shareholder advocacy has also taken us to Delaware, where we press for corporate reform through our Wilmington office. These efforts have already earned us a string of enviable successes, including the historic $1 billion cash settlement three weeks before trial *in In re Dell Technologies Inc. Class V Stockholders Litigation*, the largest shareholder settlement ever in any state court in America and the 17th largest shareholder settlement of all time in federal and state court, and a $153.75 million settlement on behalf of shareholders *in In re Freeport-McMoRan Copper & Gold Inc. Derivative Litigation*, one of the largest derivative settlements ever achieved in the Court of Chancery.

Consumer Protection and Data Privacy Litigation: Labaton Keller Sucharow is dedicated to putting our expertise to work on behalf of consumers who have been wronged by fraud in the marketplace. Built on our world-class litigation skills, deep understanding of federal and state rules and regulations, and an unwavering commitment to fairness, our Consumer Protection and Data Privacy Litigation focuses on protecting consumers and improving the standards of business conduct through litigation and reform. Our team achieved a historic $650 million settlement in *the In re Facebook Biometric Information Privacy Litigation* matter—the largest consumer data privacy settlement ever, and one of the first cases asserting biometric privacy rights of consumers under Illinois' Biometric Information Privacy Act (BIPA).

"Labaton Keller Sucharow is 'superb' and 'at the top of its game.' The Firm's team of 'hard-working lawyers...push themselves to thoroughly investigate the facts' and conduct 'very diligent research.'"

– The Legal 500

Labaton
Keller Sucharow

Securities Class Action Litigation Practice

Labaton Keller Sucharow has been an advocate and trusted partner on behalf of institutional investors for more than 60 years. As a result of the significant victories the Firm has obtained for clients, Labaton Keller Sucharow has earned a reputation as a leading law firm for pension funds, asset managers, and other large institutional investors across the world.

Since the passage of the Private Securities Litigation Reform Act of 1995 (PSLRA), the Firm has recovered more than **$30 billion** for injured investors through securities class actions prosecuted throughout the United States against numerous public corporations and other corporate wrongdoers.

We have earned the trust of our clients and the courts, serving as lead counsel in some of the most intricate and high-profile securities fraud cases in history. These notable recoveries would not be possible without our exhaustive case evaluation process, which allows our securities litigators to 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, a rate well below the industry average.

Our attorneys are skilled in every stage of business litigation and have challenged corporations from every sector of the financial markets. More than half of the Firm's partners have trial experience. In many instances, this broad experience with every stage of litigation is supplemented by knowledge and expertise gained from prior professional experience. For example, seven of the Firm's partners have worked in government, including the Department of Justice (DOJ).

From investigation to the litigation of claims, we work closely with our clients to provide the information and analysis necessary to fully protect their investments. Labaton Keller Sucharow is one of the first firms in the country to have a dedicated, in-house investigations department. ***The Firm stands out in the securities class action bar in that our monitoring, investigation, and litigation services are all performed in-house.***

The Firm's success is reflected in the results Labaton Keller Sucharow achieves for its clients. Our world-class case evaluation and development services are informed by our experience serving as lead/co-lead counsel in more than 300 U.S. federal securities class actions.

Representative Experience

Labaton Keller 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

In one of the most complex and challenging securities cases in history, Labaton Keller Sucharow secured more than **$1 billion** in recoveries on behalf of co-lead plaintiffs Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Ohio Police and Fire Pension Fund 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 full settlement entailed a $725 million settlement with American International Group (AIG), a $97.5 million settlement with AIG's auditors, a $115 million settlement with former AIG officers and related defendants, and an additional $72 million settlement with General Reinsurance Corporation.

In re Countrywide Financial Corp. Securities Litigation

Labaton Keller Sucharow, as lead counsel for the New York State Common Retirement Fund and the five New York City public pension funds, secured a $624 million settlement on behalf of investors in one of the nation's largest issuers of mortgage loans. The Firm's focused investigation and discovery efforts uncovered incriminating evidence of credit risk misrepresentations. The settlement is one of the top 20 securities class action settlements in the history of the PSLRA.

In re Apple Inc. Securities Litigation

Labaton Keller Sucharow secured a $490 million settlement on behalf of our client the Employees' Retirement System of the State of Rhode Island. The case involves Apple's January 2017 software update that allegedly secretly slowed the performance of certain iPhones with battery-related issues, leading consumers to prematurely believe their devices had become obsolete and upgrade their iPhones at a fast rate. Apple revealed it had been intentionally slowing down certain iPhones, also disclosing that the problem was battery-related, as opposed to device-related, and offered discounted replacement batteries throughout 2018 in light of public outrage. The deliberate materially false and misleading statements also disregarded the U.S.-China trade war, declining Chinese economy, and the strength of the U.S. dollar had negatively impacted demand for iPhones in Greater China, Apple's third-largest marketing and most important growth market.

In re HealthSouth Corp. Securities Litigation

Labaton Keller 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. The $671 million settlement recovered for the class 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. In 2009, the court also granted final approval to a $109 million settlement with defendant Ernst & Young LLP. In addition, in 2010, the court granted final approval to a $117 million settlement with the remaining principal defendants in the case—UBS AG, UBS Warburg LLC, Howard Capek, Benjamin Lorello, and William McGahan.

LKS

In re Schering-Plough/ENHANCE Securities Litigation

As co-lead counsel, Labaton Keller Sucharow secured a $473 million settlement on behalf of co-lead plaintiff Massachusetts Pension Reserves Investment Management Board. The settlement was approved after five years of litigation and just three weeks before trial. 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

Labaton Keller Sucharow achieved an extraordinary settlement that provided for the recovery of $457 million in cash, plus an array of far-reaching corporate governance measures. Labaton Keller Sucharow represented lead plaintiff Connecticut Retirement Plans and Trust Funds. At the time of the settlement, it 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.

In re General Motors Corp. Securities Litigation

Labaton Keller Sucharow secured a settlement of $303 million as co-lead counsel in a case against automotive giant General Motors (GM) and its auditor Deloitte & Touche LLP (Deloitte). The final settlement is one of the largest settlements ever secured in the early stages of a securities fraud case, which consisted of a cash payment of $277 million by GM and $26 million in cash from Deloitte. 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.

Wyatt v. El Paso Corp.

Labaton Keller Sucharow secured a $285 million class action settlement against the El Paso Corporation on behalf of the 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. Upon approving the settlement, the court 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

Labaton Keller Sucharow served as co-lead counsel, securing a $294.9 million settlement on behalf of lead plaintiff 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, 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 was called a "tutorial" for plaintiffs and defendants alike in this fast-evolving area. After surviving motions to dismiss, the court granted final approval to settlements with the defendant Bear Stearns for $275 million and with Deloitte for $19.9 million.

In re Massey Energy Co. Securities Litigation

Labaton Keller Sucharow secured a $265 million all-cash settlement as co-lead counsel representing the Commonwealth of Massachusetts Pension Reserves Investment Trust in a case arising from one of the most notorious mining disasters in U.S. history. 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 coalmines in 2006. After another devastating explosion, which killed 29 miners in 2010, Massey's market capitalization dropped by more than $3 billion.

In re The Estée Lauder Companies, Inc. Securities Litigation

Labaton Keller Sucharow secured a $210 million settlement (pending final court approval) serving as lead counsel in a securities class action against The Estée Lauder Companies, Inc. (Estée) representing lead plaintiffs Macomb County Employees' Retirement System, Macomb County Retiree Health Care Fund, and Wayne County Employees' Retirement System. The case alleged that Estée, a global leader in luxury cosmetics and skincare, and certain executives misled investors by touting strong revenue growth while concealing the company's heavy reliance on grey-market sales channels and the negative impacts of stricter regulations on resellers, which forced the company into steep discounts, leading to lower revenues and profit margins. The Firm achieved notable victories throughout the case, including overcoming Defendants' motion to dismiss.

Boston Retirement System v. Uber Technologies, Inc.

Labaton Keller Sucharow achieved a $200 million settlement serving as lead counsel representing Boston Retirement System in an action against Uber Technologies Inc. The case alleges that offering documents for Uber's May 2019 IPO misleadingly heralded a "new day at Uber" and that Uber had left its checkered history in the past, while failing to disclose material facts concerning Uber's global playbook for illegally launching and operating its ridesharing business, illegal misclassification of Uber drivers as independent contractors rather than employees, deficient safety policies and practices that led to sexual assaults and other abuses, slowing growth, and massive restructuring and layoffs planned for the weeks and months after the IPO. The Firm overcame several hurdles to reach a settlement, including defeating Defendants' motion to appeal class certification in the U.S. Court of Appeals for the Ninth Circuit and overcoming Defendants' request to block the depositions of 16 high-level Uber executives and members of the board of directors.

LKS

In re Fidelity National Information Services, Inc. Securities Litigation.

Labaton Keller Sucharow serves as lead counsel in a securities class action against Fidelity National Information Services, Inc. (FIS) and achieved a $210 million settlement (pending final court approval) on behalf of lead plaintiffs Nebraska Investment Council, North Carolina Retirement Systems, and North Carolina Supplemental Retirement Plans. The complaint alleges that FIS misled investors about the success of the company's $48 billion acquisition of Worldpay and FIS failed to write down the value of Worldpay's goodwill, despite allegedly knowing of several facts demonstrating that the asset was worth many billions less than publicly stated. The Firm achieved a significant victory early in the litigation by defeating a motion to dismiss, with the court specifically citing the strength of the Plaintiffs' allegations. With class certification pending and following d, the parties agreed to a $210 million settlement.

Eastwood Enterprises, LLC v. Farha (WellCare Securities Litigation)

Labaton Keller Sucharow served as co-lead counsel and secured a $200 million settlement on behalf of the New Mexico State Investment Council and the Public Employees Retirement Association of New Mexico over allegations that WellCare Health Plans, Inc., a Florida-based healthcare service provider, disguised its profitability by overcharging state Medicaid programs. Further, under the terms of the settlement approved by the court, 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 SCANA Corporation Securities Litigation

Labaton Keller Sucharow served as co-lead counsel and secured a $192.5 million settlement on behalf of the class and co-lead plaintiff West Virginia Investment Management Board in this matter against a regulated electric and natural gas public utility. When the case settled in 2019, it represented the largest securities fraud settlement in the history of the District of South Carolina. The action alleged that for a period of two years, the company and certain of its executives made a series of misstatements and omissions regarding the progress, schedule, costs, and oversight of a key nuclear reactor project in South Carolina. Labaton Keller Sucharow conducted an extensive investigation into the alleged fraud, including by interviewing 69 former SCANA employees and other individuals who worked on the nuclear project. In addition, Labaton Keller Sucharow obtained more than 1,500 documents from South Carolina regulatory agencies, SCANA's state-owned junior partner on the nuclear project, and a South Carolina newspaper, among others, pursuant to the South Carolina Freedom of Information Act (FOIA). This information ultimately provided the foundation for our amended complaint and was relied upon by the court extensively in its opinion denying defendants' motion dismiss.

In re Bristol-Myers Squibb Securities Litigation

Labaton Keller Sucharow served as lead counsel representing the lead plaintiff, union-owned LongView Collective Investment Fund of the Amalgamated Bank (LongView), against drug company Bristol-Myers Squibb (BMS). LongView claimed that the company's press release touting its new blood pressure medication, Vanlev, left out critical information— that undisclosed results from the clinical trials indicated that Vanlev appeared to have life-threatening side effects. The Food and Drug Administration (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

Labaton Keller Sucharow secured a $170 million settlement as co-lead counsel on behalf of co-lead plaintiff Boston Retirement System. The 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. The 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. Labaton Keller Sucharow successfully argued that investors' losses were caused by Fannie Mae's misrepresentations and poor risk management, rather than by the financial crisis. This settlement is a significant feat, particularly following the unfavorable result in a similar case involving investors in Fannie Mae's sibling company, Freddie Mac.

In re Broadcom Corp. Class Action Litigation

Labaton Keller 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 2010, the Firm achieved a $160.5 million settlement with Broadcom and two individual defendants to resolve this matter, representing 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 the motion by Broadcom's auditor, Ernst & Young, 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 2012, the court approved a $13 million settlement with Ernst & Young.

In re Satyam Computer Services Ltd. Securities Litigation

Satyam Computer Services Ltd. (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, Labaton Keller Sucharow represented lead plaintiff, UK-based Mineworkers' Pension Scheme, which alleged that Satyam, related entities, Satyam's 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. Labaton Keller Sucharow achieved a $125 million settlement with Satyam and a $25.5 million settlement with the company's auditor, PricewaterhouseCoopers. .

Boston Retirement System v. Alexion Pharmaceuticals Inc

Serving as co-lead counsel representing Public Employee Retirement System of Idaho, Labaton Keller Sucharow achieved a $125 million settlement in a securities fraud case against Alexion Pharmaceuticals, Inc. and certain of its executives. The suit alleges that Alexion, a pharmaceutical drug company that generated nearly all of its revenue from selling the Company's flagship drug, Soliris, made materially false and misleading statements and omissions principally connected to Alexion's sales practices in connection with the marketing of Soliris.

In re Mercury Interactive Corp. Securities Litigation

Labaton Keller Sucharow served as co-lead counsel and secured a $117.5 million settlement on behalf of co-lead plaintiff Steamship Trade Association/International Longshoremen's Association Pension Fund. The plaintiffs alleged that Mercury Interactive Corp. (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.

In re CannTrust Holdings Inc. Securities Litigation

Labaton Keller Sucharow served as U.S. lead counsel on behalf of lead plaintiffs Granite Point Master Fund, LP; Granite Point Capital; and Scorpion Focused Ideas Fund in this action against CannTrust Holdings Inc., a cannabis company primarily traded on the Toronto Stock Exchange and the New York Stock Exchange, resulting in landmark settlements totaling CA$129.5 million. Class actions against the company commenced in both the U.S. and Canada, with the U.S. class action asserting that CannTrust made materially false and misleading statements and omissions concerning its compliance with relevant cannabis regulations and an alleged scheme to increase its cannabis production.

In re Oppenheimer Champion Fund Securities Fraud Class Actions and *In re Core Bond Fund*

Labaton Keller Sucharow served as lead counsel and represented individuals and the proposed class in two related securities class actions brought against Oppenheimer Funds, Inc., among others, and certain officers and trustees of two funds—Oppenheimer Core Bond Fund and Oppenheimer Champion Income Fund. 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*. The lawsuits alleged that the investment policies followed by the funds resulted in investor losses when the funds suffered drops in net asset value despite being presented as safe and conservative investments to consumers.

LKS

In re PG&E Corporation Securities Litigation

Labaton Keller Sucharow secured a $100 million settlement (pending final court approval) serving as lead counsel representing Public Employees Retirement Association of New Mexico in a securities class action against PG&E Corporation and Pacific Gas and Electric Company (together with PG&E Corporation, PG&E), and certain related officers, directors, and underwriters. The suit alleges that PG&E made false and misleading statements to investors about the company's progress, improvements, and regulatory compliance concerning wildfire safety protocols prior to the devastating Northern California wildfires in October 2017 (the North Bay Fires) and November 2018 (the Camp Fire). After PG&E filed for bankruptcy protection in 2019, the District Court stayed the action. Labaton continued to vigorously litigate the matter and secured notable victories, including ultimately overturning the stay in the Bankruptcy Court. Following two motions to dismiss, motion for class certification, and extensive mediation, the Parties reached an agreement to settle the action in December 2025.

In re Computer Sciences Corporation Securities Litigation

As lead counsel representing Ontario Teachers' Pension Plan Board, Labaton Keller 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 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 Service 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.

In re Allstate Corporation Securities Litigation

Labaton Keller Sucharow achieved a $90 million settlement as lead counsel representing the Carpenters Pension Trust Fund for Northern California, the Carpenters Annuity Trust Fund for Northern California, and the City of Providence Employee Retirement Systemin a securities case against The Allstate Corporation and certain current and former executives. The suit alleged that Allstate implemented an aggressive growth strategy, including lowering the company's underwriting standards, in an effort to grow its auto insurance business. Defendants are accused of concealing the resulting increase in the number of claims filed by the company's auto insurance customers for several months, while the company's CEO sold $33 million in Allstate stock. The Firm vigorously litigated the case for more than five years, overcoming Allstate's motion to dismiss and winning class certification two times, following remand to the District Court by the Seventh Circuit Court of Appeals.

City of Warwick Retirement System v. Catalent, Inc.

Labaton Keller Sucharow reached a $78 million settlement on behalf of investors in Catalent, Inc. The Firm serves as co-lead Counsel representing lead plaintiff Public Employees' Retirement System of Mississippi in a securities class action alleging that Catalent and certain executives engaged in a scheme to mislead Catalent investors about quality controls and operationality at certain Catalent manufacturing facilities and about the company's financial and accounting controls.

In re Nielsen Holdings PLC Securities Litigation

Labaton Keller Sucharow served as lead counsel representing Public Employees' Retirement System of Mississippi and secured a $73 million settlement in a securities class action against the data analytics company Nielsen Holdings PLC over allegations the company misrepresented the strength and resiliency of its business and the impact of the European Union's General Data Protection Regulation, commonly known as the GDPR.

City of Miami Fire Fighters and Police Officers Retirement Trust v. Okta, Inc.

Labaton Keller Sucharow achieved a $60 million settlement serving as lead counsel to Nebraska Investment Council and North Carolina Retirement Systems in a securities fraud case against Okta, Inc., the company's CEO Todd McKinnon, CFO and Executive Vice Chairman Brett Tighe, and COO and Co-Founder Frederic Kerrest. The case arises from Okta's acquisition of Auth0 in 2021 alleging Okta misled investors about the success of the post-acquisition integration with Auth0 by touting the benefits of the Auth0 integration for the Company; concealing the attrition of key senior Auth0 employees, along with key Okta employees, which caused severe problems for the integration; and concealing issues in the sales organization, such as Okta's difficulties selling products in Auth0's portfolio and vice versa.

Allison v. Oak Street Health Inc.

Labaton Keller Sucharow achieved a $60 million settlement serving as co-lead counsel to Boston Retirement Systems against Oak Street founder and CEO Michael Pykosz, Oak Street CFO Timothy Cook, two private equity firms and the subsidiaries in which they hold Oak Street stock, certain members of Oak Street's board of directors, and the underwriters for Oak Street's August 2020 IPO, December 2020 Secondary Public Offering (SPO), February 2021 SPO, and May 2021 SPO. The suit alleges that Oak Street Health, which focuses exclusively on patients that are Medicare eligible, failed to disclose that it used two forms of prohibited marketing tactics to attract new patients to sign up at its primary care centers.

In re Resideo Technologies Inc. Securities Litigation

Labaton Keller Sucharow served as co-lead counsel and secured a $55 million settlement on behalf of Naya Capital Management in an action alleging Resideo failed to disclose the negative effects of a spin-off on the company's product sales, supply chain, and gross margins, and misrepresented the strength of its financial forecasts.

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Public Employees' Retirement System of Mississippi v. Endo Int'l plc

Labaton Keller Sucharow served as lead counsel in a securities class action against Endo Pharmaceuticals. The case settled for $50 million, the largest class settlement in connection with a secondary public offering obtained in any court pursuant to the Securities Act of 1933. The action alleged that Endo failed to disclose adverse trends facing its generic drugs division in advance of a secondary public offering that raised $2 billion to finance the acquisition of Par Pharmaceuticals in 2015. The Firm overcame several procedural hurdles to reach this historic settlement, including successfully opposing defendants' attempts to remove the case to federal court and to dismiss the class complaint in state court.

Lilien v. Olaplex Holdings, Inc.

Labaton Keller Sucharow secured a $47.5 million settlement serving as lead counsel representing lead plaintiff Arkansas Teacher Retirement System in a securities class action against luxury hair care brand Olaplex Holdings, Inc. The action alleged that the offering documents filed in connection with Olaplex's 2021 IPO contained certain materially false and misleading statements.

Sinnathurai v. Novavax, Inc.

Labaton Keller Sucharow achieved a $47 million settlement serving as co-lead counsel in a securities class action against Novavax, Inc., a biotechnology company that focuses on the discovery, development, and commercialization of vaccines to prevent serious infectious diseases and address health needs, representing an individual. The company's product candidates include NVX-CoV2373, which was in development as a vaccine for COVID-19. Prior to the start of the Class Period, Novavax announced that it planned to complete Emergency Use Authorization (EUA) submissions for NVX-CoV2373 with the FDA in the second quarter of 2021. The suit alleges Novavax made false and/or misleading statements and/or failed to disclose that it overstated its manufacturing capabilities and downplayed manufacturing issues that would impact its approval timeline for NVX-CoV2373; as a result, Novavax was unlikely to meet its anticipated EUA regulatory timelines.

In re JELD-WEN Holding, Inc. Securities Litigation

Labaton Keller Sucharow was court-appointed co-lead counsel and represented Public Employees' Retirement System of Mississippi in a securities class action lawsuit against JELD-WEN Holding, Inc. and certain of its executives. The parties reached an agreement to settle the action for $40 million. The case is related to allegedly false and misleading statements and omissions concerning JELD-WEN's allegedly anticompetitive conduct and financial results in the doorskins and interior molded door markets and the merit of a lawsuit filed against JELD-WEN by an interior door manufacturer.

In re Opendoor Technologies Inc. Securities Litigation

Labaton Keller Sucharow served as lead counsel in a securities class action lawsuit against Opendoor Technologies Inc., securing a $39 million settlement representing Oakland County Employees' Retirement System, Oakland County Voluntary Employees' Beneficiary Association, and Indiana Public

Retirement System. The complaint alleged that Opendoor and certain of its executives and underwriters made materially false and misleading statements and omissions with respect to Opendoor's proprietary AI-powered pricing algorithm and its ability to dynamically adjust to changing market conditions, including in the Offering Documents issued in connection with Opendoor's December 2020 de-SPAC Merger and February 2021 Offering. The complaint further alleged that the price of Opendoor common stock trading on the NASDAQ and other U.S.-based trading platforms was artificially inflated as a result of Defendants' allegedly false and misleading statements and omissions and declined when the truth was allegedly revealed through a series of partial corrective disclosures.

City of Warren Police and Fire Retirement System v. World Wrestling Entertainment, Inc.

Labaton Keller Sucharow served as court-appointed lead counsel in a securities class action against World Wrestling Entertainment, Inc. (WWE), securing a $39 million settlement on behalf of lead plaintiff Firefighters Pension System of the City of Kansas City Missouri Trust. The action alleged WWE defrauded investors by making false and misleading statements in connection with certain of its key overseas businesses in the Middle East North Africa region. The lead plaintiff further alleged that the price of WWE publicly traded common stock was artificially inflated as a result of the company's allegedly false and misleading statements and omissions and that the price declined when the truth was allegedly revealed through a series of partial revelations.

In re Uniti Group Inc. Securities Litigation

Labaton Keller Sucharow served as co-lead counsel in a securities class action against Uniti Group Inc. and recovered $38.875 million. The action alleged misstatements and omissions concerning the validity and propriety of the April 24, 2015, REIT spin-off through which Uniti was formed and the master lease agreement Uniti entered into with Windstream Services with respect to telecommunications equipment. The court issued an order denying defendants' motion to dismiss in its entirety and denied defendants' motion for reconsideration of that ruling. In discovery, the Firm participated in dozens of depositions and reviewed millions of pages of documents.

Vazquez v. Masimo Corporation

Labaton Keller Sucharow reached a $33.75 million settlement serving as lead counsel in a securities class action against Masimo Corporation (Masimo or the Company) and certain executives (collectively, Defendants) representing Boston Retirement System, Central Pennsylvania Teamsters Pension Fund – Defined Benefit Plan, and Central Pennsylvania Teamsters Pension Fund – Retirement Income Plan. The action alleged that Defendants made false and misleading statements and omissions about the Company's healthcare business, Masimo's acquisition of the consumer audio firm Sound United, and the integration of the Sound United business. In November 2024, the Firm overcame Defendants' motion to dismiss in large part. Beginning in March 2025, the Parties engaged in formal discovery, with the Firm reviewing approximately 74,500 pages of documents, including approximately 40,000 pages of documents from ongoing, related litigations involving Defendants Masimo and Joseph Kiani. Fact discovery was ongoing when Defendants Masimo, Micah Young, Bilal Muhsin, and Eli Kammerman agreed to settle the matter.

In re Conduent Sec. Litigation

Labaton Keller Sucharow achieved a $32 million settlement in a securities class action against Conduent Inc., a company that specializes in providing infrastructure technology for its clients across multiple sectors, including E-ZPass Group. As part of the company's toll-collecting operations, Conduent offered a system that eliminated toll booths altogether, called all-electronic tolling or cashless tolling. The suit alleges that Conduent and its former CEO and former CFO falsely represented to investors that the company had addressed legacy IT issues it faced after its spin-off from Xerox. After extensive delays, Conduent finally started to migrate and consolidate its data centers without the necessary IT mapping resulting in severe network outages and service issues for multiple cashless tolling clients from several states including New York, Maryland, New Jersey, and Texas, which withheld revenue from or fined Conduent for its failure to meet its service requirements under its tolling contracts with those agencies.

In re Honest Company, Inc. Securities Litigation

Labaton Keller Sucharow secured a $27.5 million settlement serving as lead counsel in a securities class action against The Honest Company, Inc. alleging the company made numerous false and misleading statements regarding its financial prospectus in offering materials for the company's IPO. Specifically, Honest was accused of failing to disclose customers were experiencing issues with its leading diaper product, destocking and falling demand for COVID-19 products, and risks associated with Honest's customer acquisition and retention, and adverse economic conditions were already negatively impacting Honest's operating results at the time of the IPO. The Firm achieved significant victories throughout the case, including defeating two motions to dismiss and achieving class certification, with the court specifically citing the strength of the Plaintiffs' allegations.

Pension Trust Fund for Operating Engineers v. DeVry Education Group, Inc.

In a case that underscores the skill of our in-house investigative team, Labaton Keller Sucharow secured a $27.5 million recovery in an action alleging that DeVry Education Group, Inc. issued false statements to investors about employment and salary statistics for DeVry University graduates. The Firm took over as lead counsel after a consolidated class action complaint and an amended complaint were both dismissed. Labaton Keller Sucharow filed a third amended complaint, which included additional allegations based on internal documents obtained from government entities through FOIA and allegations from 13 new confidential witnesses who worked for DeVry. In denying defendants' motion to dismiss, the court concluded that the "additional allegations . . . alter[ed] the alleged picture with respect to scienter" and showed "with a degree of particularity . . . that the problems with DeVry's [representations] . . . were broad in scope and magnitude."

In re StoneCo Ltd. Securities Litigation.

Labaton Keller Sucharow served as lead counsel in a securities class action against StoneCo Ltd., securing a $26.75 million settlement on behalf of lead plaintiff Indiana Public Retirement System. The action alleged that StoneCo, a provider of financial technology solutions primarily in Brazil, misled investors about its role in the failure of a merchant lending program it once offered in Brazil.

ODS Capital LLC v. JA Solar Holdings Co. Ltd.

In a hard-won victory for investors, Labaton Keller Sucharow secured a $21 million settlement in a securities class action against JA Solar Holdings Co. Ltd and certain of its executives on behalf of ODS Capital LLC. The litigation involved allegations that defendants made misstatements or omissions that artificially depressed the price of JA Solar securities in order to avoid paying a fair price during the company's take-private transaction. As court-appointed co-lead counsel, Labaton Keller Sucharow revived the suit in an August 2022 Second Circuit ruling, after a lower court initially granted JA Solar's dismissal bid.

In re Barclays PLC Securities Litigation

Labaton Keller Sucharow served as lead counsel in a securities class action against Barclays PLC and secured a $19.5 million settlement on behalf of Boston Retirement System. The actions alleged that Barclays and certain of its executives made false and misleading statements and omissions regarding the strength and efficacy of Barclays' internal controls over financial reporting following its loss of "well-known seasoned issuer" status in the United States and becoming an "ineligible issuer," artificially inflating the value of Barclays' American Depository Shares.

Vancouver Alumni Asset Holdings Inc. v. Daimler A.G.

Labaton Keller Sucharow served as lead counsel on behalf of Public School Retirement System of Kansas City, Missouri, and secured a $19 million settlement in a class action against automaker Daimler AG. The action arose out of Daimler's alleged misstatements and omissions touting its Mercedes-Benz diesel vehicles as "green" when independent tests showed that under normal driving conditions, the vehicles exceeded the nitrous oxide emissions levels set by U.S. and E.U. regulators. Defendants lodged two motions to dismiss the case. However, the Firm was able to overcome both challenges. The court then stayed the action after the U.S. DOJ intervened. The Firm worked with the DOJ and defendants to partially lift the stay in order to allow lead plaintiffs to seek limited discovery.

Avila v. LifeLock, Inc.

Labaton Keller Sucharow served as co-lead counsel and secured a $20 million settlement on behalf of Oklahoma Police Pension and Retirement System and Oklahoma Firefighters Pension and Retirement System in a securities class action against LifeLock. The action alleged that LifeLock misrepresented the capabilities of its identity theft alerts to investors. While LifeLock repeatedly touted the "proactive," "near real-time" nature of its alerts, the actual timeliness of such alerts to customers did not resemble a near real-time basis. After being dismissed by the Arizona District Court twice, the Firm was able to successfully appeal the case to the Ninth Circuit and secured a reversal of the District Court's dismissals. The case settled shortly after being remanded to the District Court.

In re Prothena Corporation PLC Securities Litigation

Labaton Keller Sucharow, as co-lead counsel, secured a $15.75 million recovery in a securities class action against development-stage biotechnology company, Prothena Corp. The action alleged that Prothena and certain of its senior executives misleadingly cited the results of an ongoing clinical study of NEOD001—a drug designed to treat amyloid light chain amyloidosis and one of Prothena's principal assets. Despite telling investors that early phases of testing were successful, defendants later revealed that the drug was "substantially less effective than a placebo." Upon this news, Prothena's stock price dropped nearly 70 percent.

In re Acuity Brands, Inc. Securities Litigation

Labaton Keller Sucharow secured a $15.75 million settlement as co-lead counsel representing Public Employees' Retirement System of Mississippi in a securities class action lawsuit against Acuity Brands, Inc., a leading provider of lighting solutions for commercial, institutional industrial, infrastructure, and residential applications throughout North America and select international markets. The suit alleged that Acuity misled investors about the impact of increased competition on its business, including its relationship with its largest retail customer, Home Depot. Despite defendants' efforts, the court denied their motion to dismiss in significant part and granted class certification, rejecting their arguments in full. Defendants appealed the class certification order to the Eleventh Circuit Court of Appeals, which the Firm vigorously opposed. Subsequently, the parties mediated and agreed on a settlement-in-principle, and the Eleventh Circuit stayed the appeal and removed the case from the docket.

Awards and Accolades

Consistently Ranked as a Leading Firm:

Labaton Keller Sucharow was named a **2025 Securities Group of the Year** by *Law360*. This annual list highlights the practice groups behind the major litigation wins that have shaped the legal landscape.

Benchmark Litigation recognized Labaton Keller Sucharow both nationally and regionally, in **New York** and **Delaware**, in its 2026 edition and named 9 Partners as **National Securities Stars**, **Litigation Stars**, and **Future Stars** across the U.S. The Firm received top rankings in the **Securities** and **Dispute Resolution** categories. *Benchmark Litigation* also named the Firm a **"Top Plaintiffs Firm"** and the 2026 **"Plaintiff Firm of the Year."**

Labaton Keller Sucharow is recognized by *Chambers USA 2026* among the leading plaintiffs' firms in the nation, receiving a total of three practice group rankings and six partners ranked or recognized. *Chambers* notes that the Firm is **"well-respected"** and **"prominent player"** of the plaintiffs bar with an impressive team that **"demonstrates great judgment"** and has **"a great depth and breadth to handle any complex and sophisticated**" matter.

Labaton Keller Sucharow has been recognized as one of the **Nation's Best Plaintiffs' Firms** by *The Legal 500*. In 2026, the Firm earned a **Tier 1** ranking in **Securities Litigation** and in **M&A Litigation**. Eight Labaton Keller Sucharow attorneys were ranked or recommended in the guide, which notes the Firm as **"exceptional in every way," "very knowledgeable and experienced,"** and **"excellent at identifying the strongest claims in each case and aggressively prosecuting those claims without wasting time and resources on less strategically relevant issues."**

The National Law Journal "Elite Trial Lawyers" recognized Labaton Keller Sucharow as the **2023 Securities Litigation and Shareholder Rights Firm of the Year** and **Diversity Initiative Firm of the Year**. The awards recognize U.S. based law firms that have performed exemplary and cutting-edge work on behalf of plaintiffs.

Lawdragon recognized 18 Labaton Keller Sucharow attorneys among the **500 Leading Plaintiff Financial Lawyers** in the country in their 2026 guide. The guide recognizes attorneys that are **"the best in the nation—many would say the world—at representing plaintiffs."**

Six Labaton Keller Sucharow attorneys have been recognized by *The Best Lawyers in America*® 2026 Edition across four different categories. Labaton Keller Sucharow's attorneys received the recognition in the **Litigation – Securities**, **Corporate Governance Law**, **Mass Tort Litigation / Class Actions: Plaintiffs**, and **Mergers & Acquisitions Law** categories.

Professional Profiles

Eric J. Belfi
Chairman

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Practice Areas:

- Securities Litigation
- Corporate Governance and Shareholder Rights Litigation
- Non-U.S. Securities Litigation

Bar Admissions:

- New York

Eric J. Belfi is Chairman of Labaton Keller Sucharow LLP, one of the leading plaintiffs' firms in the world. As Chairman and Head of the Firm's Executive Committee, Eric is responsible for establishing the Firm's strategic direction and driving business innovation, growth, and a culture of performance and collaboration. His commitment to these priorities has helped the Firm deepen its practice area expertise, expand its global reach, and earn industry recognition for its workplace culture.

An accomplished litigator and former prosecutor, Eric represents many of the largest and most influential institutional investors across the world. His practice is focused on complex securities and shareholder rights litigation, both in the United States and abroad. In addition to his litigation practice, Eric is Chair of the Firm's Client Development Group and plays a central role in the Case Evaluation Group, helping to identify and develop impactful matters on behalf of institutional investor clients.

Highly regarded by industry observers for his professional achievements, Eric has been recognized by *Chambers & Partners USA* as a "notable practitioner" and is recommended by *The Legal 500* for excellence in the field of securities litigation. In further recognition of his accomplishments as a leader of the plaintiffs bar, *Lawdragon* has consistently honored Eric as a top lawyer across multiple categories including global litigation and plaintiff financial, and *The National Law Journal's* "Elite Trial Lawyers" has shortlisted Eric for "Plaintiff Attorney of the Year."

A respected voice on legal and regulatory issues, Eric has been featured in *The Wall Street Journal*, *Bloomberg Law*, *Financial Times*, *Law360*, and the *National Law Journal*, among others.

Prior to joining the Firm, Eric served as an Assistant Attorney General for the State of New York, where he led complex white-collar investigations with a focus on securities law violations. Previously, he served as an Assistant District Attorney in Westchester County, where he prosecuted economic and environmental crimes.

Eric is an active member of several industry organizations, including the National Association of Public Pension Attorneys (NAPPA), the National Conference on Public Employee Retirement Systems (NCPERS), and the International Foundation of Employee Benefit Plans (IFEBP). He is a board member of the Christopher J. Keller Memorial Foundation, in addition to serving on the Corporate Advisory Board of Cold Spring Harbor Laboratory and as a leading advocate for the North Shore Land Alliance. Eric remains deeply engaged with St. John's University and plays a leading role in the Christopher J. Keller Memorial Scholarship Fund.

Eric earned his Juris Doctor from St. John's University School of Law and received his Bachelor of Arts from Georgetown University.

Jonathan Gardner

Managing Partner and Head of Litigation

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Practice Areas:

- Securities Litigation
- Alternative Dispute Resolution

Bar Admissions:

- New York

Jonathan Gardner serves as the Managing Partner of Labaton Keller Sucharow LLP and as a member of its Executive Committee. He is based in the Firm's New York office.

With more than 30 years of experience, Jonathan serves as the Firm's Head of Litigation, overseeing all litigation matters, including the prosecution of complex securities fraud cases on behalf of institutional investors. He has played a pivotal role in developing the Firm's groundbreaking Alternative Dispute Resolution (ADR) Practice in response to the increasing use of mandatory arbitration clauses in consumer contracts.

Recognized as a "Star" by *Benchmark Litigation* and praised by peers as "engaged and strategic," Jonathan has also been named an "MVP" by *Law360* for securing significant successes in high-stakes litigation and complex global matters. Ranked by *Chambers & Partners USA* for Securities Litigation, he is described as "an outstanding lawyer who knows how to get results," while *The Legal 500* highlights his ability to "understand the unique nature of complex securities litigation and strive for practical, results-driven outcomes." *Crain's New York Business* named Jonathan a "Notable Leader in Law," and *Lawdragon* highlighted him as one of the "Managing Partners You Need to Know." He is also recognized by *Lawdragon* among the top "Global Plaintiff Lawyers," "Leading Lawyers," "Leading Litigators in America," and "Leading Plaintiff Financial Lawyers." In addition, *New York Law Journal* selected Jonathan as a finalist for "Office Managing Partner of the Year" and the "Innovation" award.

Jonathan has played an integral role in securing some of the largest class action recoveries against corporate offenders since the global financial crisis. He oversaw the Firm's team in the investigation and prosecution of *Boston Retirement System v. Uber Technologies, Inc.*, which resulted in a $200 million recovery, and *In re Barrick Gold Securities Litigation*, which resulted in a $140 million recovery, among" other cases. He has also served as the lead attorney in numerous cases resulting in significant recoveries for injured class members, including *In re Hewlett-Packard Company Securities Litigation* ($57 million recovery); *Public Employees' Retirement System of Mississippi v. Endo International PLC (*$50 million recovery); *Medoff v. CVS Caremark Corporation* ($48 million recovery); *In re Nu Skin Enterprises, Inc., Securities Litigation* ($47 million recovery); *In re Intuitive Surgical Securities Litigation* ($42.5 million recovery); *In re Carter's Inc. Securities Litigation* ($23.3 million recovery against Carter's and certain officers, as well as its auditing firm PricewaterhouseCoopers); and *In re Aeropostale Inc. Securities Litigation* ($15 million recovery).

Jonathan has led the Firm's representation of investors in many 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. 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 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 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 on 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.

Jonathan is a board member of the Christopher J. Keller Memorial Foundation. He is also a member of the Federal Bar Council, New York State Bar Association, and Association of the Bar of the City of New York.

Jonathan earned his Juris Doctor from St. John's University School of Law. He received his bachelor's degree from American University.

Michael P. Canty

Partner and General Counsel

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Practice Areas:

- Securities Litigation
- Consumer Protection and Data Privacy Litigation

Bar Admissions:

- New York

Michael P. Canty is a Partner in the New York office of Labaton Keller Sucharow LLP, where he serves on the Firm's Executive Committee and as its General Counsel. In addition, he leads one of the Firm's Securities Litigation teams and is Co-Chair of the Firm's Consumer Protection and Data Privacy Litigation team.

Highly regarded as one of the country's elite litigators, Michael is consistently ranked for excellence in securities and consumer protection litigation by *Chambers & Partners USA*, *The Legal 500*, *Benchmark Litigation*, *Law360*, and *Lawdragon*. He has been named a "Titan of the Plaintiffs Bar" by *Law360* and has been repeatedly recognized as a "Trailblazer" by *The National Law Journal* and the *New York Law Journal* for his impact on the practice and business of law. In addition, *Crain's New York Business* selected Michael to its list of "Notable Litigators and Trial Attorneys," and the *Daily Journal* recognized him as a "Leading Commercial Litigator."

Michael has successfully prosecuted a number of high-profile securities matters on behalf of institutional investors, including *In re Fidelity National Information Securities Litigation* ($210 million settlement, pending final court approval), *In re The Estée Lauder Companies, Inc. Securities Litigation* ($210 million settlement, pending final court approval), *Boston Retirement System v. Alexion Pharmaceuticals Inc.* ($125 million settlement), *In re PG&E Corporation Securities Litigation* ($100 million settlement, pending final court approval), *In re The Allstate Corporation Securities Litigation* ($90 million settlement), *In re Okta, Inc. Securities Litigation* ($60 million settlement), *Sinnathurai v. Novavax, Inc*. ($47 million settlement), and *In re Opendoor Technologies Inc. Securities Litigation* ($39 million settlement), as well as matters involving Advanced Micro Devices, Camping World Holdings, and Credit Acceptance Corp, among others. Michael is actively leading the litigation of prominent cases against ZoomInfo, Roblox, Regeneron Pharmaceuticals, and Lockheed Martin, among others.

In addition to his securities practice, Michael has a leading consumer data privacy litigation practice. Most notably, he co-led the team that secured a historic jury verdict in the landmark data privacy case *Frasco v. Flo Health*, finding Meta liable for its role in the unauthorized collection and commercial use of highly personal health data from third-party app Flo Health. This is one of the first cases where a jury has held a major technology company accountable for its handling of consumer health information.

Michael also achieved the historic $650 million settlement in the *In re Facebook Biometric Information Privacy Litigation* matter—one of the largest consumer data privacy settlements ever and one of the first cases asserting consumers' biometric privacy rights under Illinois' Biometric Information Privacy Act (BIPA). He currently serves as co-lead counsel in *Garner v. Amazon.com, Inc.*, alleging Amazon's illegal wiretapping and surreptitious recording through its Alexa-enabled devices.

Prior to joining the Firm, Michael served as an Assistant U.S. Attorney in the U.S. Attorney's Office for the Eastern District of New York, where he was the Deputy Chief of the Office's General Crimes Section. During his time as a federal prosecutor, Michael also served in the Office's National Security and Cybercrimes Section. Previously, he 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 U.S. Department of Justice and as a Nassau County 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 for planned attacks.

Before becoming a prosecutor, Michael worked as a Congressional Staff Member for the U.S. 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 a frequent commentator on legal and regulatory developments and has been featured in *The Washington Post*, *Law360*, and *The National Law Journal*, among others, and has appeared on CBS and NPR.

He is a board member of the Christopher J. Keller Memorial Foundation and a member of the Federal Bar Council American Inn of Court, which endeavors to create a community of lawyers and jurists and promotes the ideals of professionalism, mentoring, ethics, and legal skills. He is also a member of the

National Association of Public Pension Attorneys (NAPPA) and the Canadian Pension & Benefits Institute (CPBI).

Michael earned his Juris Doctor, *cum laude*, from St. John's University's School of Law. He received his Bachelor of Arts, *cum laude*, from Mary Washington College.

James T. Christie
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Practice Areas:

- Securities Litigation

Bar Admissions:

- New York

James T. Christie is a Partner in the New York office of Labaton Keller Sucharow LLP. James focuses his practice on prosecuting complex securities fraud cases on behalf of institutional investors. He is currently involved in litigating cases against major U.S. and non-U.S. corporations, including ZoomInfo, Roblox, Lockheed Martin, and Regeneron Pharmaceuticals, among others.

James is a member of the Firm's Executive Committee and also serves as Assistant General Counsel, in addition to being Co-Chair of the Technology Committee and Co-Chair of the Artificial Intelligence Committee.

Seen as an elite litigator, James is recommended by *The Legal 500* and has been selected to *Benchmark Litigation's* "40 & Under List." His achievements in securities litigation have also earned him recognition from *The National Law Journal* as a "Rising Star of the Plaintiffs Bar" and from *Law360* as a "Securities Rising Star," which noted his leadership in several high-profile matters. In addition, James has been consistently ranked as a "Leading Plaintiff Financial Lawyer" and "Next Generation Lawyer" by *Lawdragon* and *The Best Lawyers in America®* listed him as one of the "Best Lawyers in America: Ones to Watch" in the Litigation: Securities category.

James has played an instrumental role in securing landmark recoveries for investors, including: $210 million in *In re Fidelity National Information Securities Litigation* (pending final court approval), $210 million in *In re The Estée Lauder Companies, Inc. Securities Litigation* (pending final court approval), $192.5 million in *In re SCANA Corporation Securities Litigation,* $125 million in *Boston Retirement System v. Alexion Pharmaceuticals, Inc.,* $60 million in *In re Okta, Inc. Securities Litigation*, $47 million in *Sinnathurai v. Novavax, Inc*., $40 million in *In re Jeld-Wen Holding, Inc. Securities Litigation*, $39 million in *In re Opendoor Technologies Inc. Securities Litigation*, $20 million in *Avila v. LifeLock, Inc*., and $14.75 million in *In re PTC Therapeutics, Inc. Securities Litigation*, among others. James was also a crucial part of a cross-border effort in *In re Canntrust Holdings Securities Litigation* that obtained a landmark CA$129.5 million settlement against a Canadian cannabis producer and its executive officers.

James previously served as a Judicial Intern in the U.S. District Court for the Eastern District of New York under the Honorable Sandra J. Feuerstein.

He is an active member of the American Bar Association, the Federal Bar Council, and the Georgia Association of Public Pension Trustees (GAPPT), where he serves on the Rules Committee.

James earned his Juris Doctor from St. John's University School of Law, where he was the Senior Articles Editor of the *St. John's Law Review*, and his Bachelor of Science, *cum laude*, from St. John's University Tobin College of Business.

Francis P. McConville
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Practice Areas:

- Securities Litigation

Bar Admissions:

- New York

Francis P. McConville is a Partner in the New York office of Labaton Keller Sucharow LLP and a member of the Firm's Executive Committee. He focuses on prosecuting complex securities fraud cases on behalf of institutional investor clients. As Chair of the Firm's Case Evaluation Group, Francis leads the identification, investigation, and development of potential actions to recover investment losses caused by violations of the federal securities laws and to vindicate shareholder rights in response to corporate and fiduciary misconduct.

Francis has been named a "Rising Star" in securities litigation by *Law360* and *The National Law Journal's* "Elite Trial Lawyers." *The Best Lawyers in America®* named him among the "Ones to Watch" in the Securities Litigation category and *Lawdragon* has recognized him as one of the country's "Leading Plaintiff Financial Lawyers" and "Next Generation Lawyers." *Benchmark Litigation* also recognized him as a "Future Star" and named him to their "40 & Under List."

Francis has played a key role in filing several matters on behalf of the Firm, including *In re Fidelity National Information Services, Inc. Securities Litigation* ($210 million settlement, pending final court approval); *In re The Estée Lauder Companies, Inc. Securities Litigation* ($210 million settlement, pending final court approval); *Boston Retirement System v. Uber Technologies, Inc.* ($200 million settlement); *In re SCANA Securities Litigation* ($192.5 million settlement); *Boston Retirement System v. Alexion Pharmaceuticals, Inc.* ($125 million settlement); *In re PG&E Corporation Securities Litigation* ($100 million settlement, pending final court approval); *In re Nielsen Holdings PLC Securities Litigation* ($73 million settlement); *In re The Boeing Company Securities Litigation*; and *Ohio Carpenters Pension Fund v. Norfolk Southern Corporation*, among others.

Prior to joining Labaton Keller 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 courts 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 is an active member of the National Association of Public Pension Attorneys (NAPPA). He has served on *Law360*'s Securities Editorial Advisory Board.

Francis received his Juris Doctor, *magna cum laude*, from New York Law School where he was named a John Marshall Harlan Scholar and received a Public Service Certificate. Francis served as Associate Managing Editor of the *New York Law School Law Review* and worked in the Urban Law Clinic. He earned his Bachelor of Arts degree from the University of Notre Dame.

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Practice Areas:

- Securities Litigation
- Consumer Protection and Data Privacy Litigation

Bar Admissions:

- New York

Carol C. Villegas is a Partner in the New York office of Labaton Keller Sucharow LLP. Carol focuses on prosecuting complex securities fraud and consumer cases on behalf of institutional investors and individuals. Leading one of the Firm's Securities Litigation teams and co-leading the Firm's Consumer Protection and Data Privacy Litigation team, she is actively overseeing litigation against Boeing, PayPal, Merck, Charter Communications, PowerSchool, and Amazon, among others. In addition to her litigation responsibilities, Carol holds a variety of leadership positions within the Firm, including serving on the Firm's Executive Committee, as Chair of the Firm's Women's Initiative, and as Chief of Compliance. She is also a member of the Artificial Intelligence Committee.

Carol's development of innovative case theories in complex cases, her skillful handling of discovery work, and her adept ability during oral arguments has earned her accolades as one of the "top Securities Litigators" in the country from *Chambers & Partners USA* and *The Legal 500*, which hails her as "attentive, professional, and responsive" and highlights clients praise for helping them "better understand the process and how to value a case." She has been named "Plaintiff Litigator of the Year" by *Benchmark Litigation*. Carol has also been recognized by *Law360* as a "Class Action MVP," *The National Law Journal* as a "Plaintiffs' Trailblazer," *Forbes* as one of "America's Top Women Lawyers," and the *New York Law Journal* as a "Top Woman in Law," "New York Trailblazer," and "Distinguished Leader." *Business Today* named Carol one of the "Top 10 Most Influential Securities Litigation Lawyers in New York." *The National Law Journal*'s "Elite Trial Lawyers" has repeatedly recognized her superb ability to excel in high stakes matters on behalf of plaintiffs and selected her to its class of "Elite Women of the Plaintiffs Bar" and as a finalist for "Plaintiff Attorney of the Year." *Benchmark Litigation* has recognized her as a "Litigation Star" and among the "Top 250 Women in Litigation." *Lawdragon* has recognized her as a top lawyer across multiple categories including litigation, plaintiff financial, and consumer. Additionally, *Crain's New York Business* selected Carol to its lists of "Notable Women in Law" and "Notable Litigators and Trial Attorneys." The *Women in Business Law Awards* has named Carol "Securities Litigator of the Year," "Privacy & Data Protection Lawyer of the Year," and "Thought Leader of the Year," in addition to awarding her the prestigious "Outstanding Achievement Award." *Chambers & Partners USA* selected Carol as a finalist for "Diversity & Inclusion: Outstanding Contribution" and *New York Law Journal*'s New York Legal Awards selected her as a "Lawyer of the Year" finalist.

Notable recent successes in securities cases include *City of Warwick Retirement System v. Catalent, Inc.* ($78 million settlement), *In re Nielsen Holdings PLC Securities Litigation* ($73 million settlement), *Allison v. Oak Street Health Inc.* ($60 million settlement), and *City of Warren Police and Fire Retirement System v. World Wrestling Entertainment, Inc.* ($39 million settlement). Carol has also played a pivotal role in securing favorable settlements for investors, including in cases against DeVry, a for-profit university; AMD, a multi-national semiconductor company; Liquidity Services, an online auction marketplace; Aeropostale, a leader in the international retail apparel industry; Vocera, a healthcare communications provider; and Prothena, a biopharmaceutical company, among others. Carol has also helped revive a securities class action against LifeLock after arguing an appeal before the Ninth Circuit. The case settled shortly thereafter.

In addition to her securities practice, Carol has extensive experience representing consumers in high-profile data privacy litigation. Most notably, Carol secured a historic jury verdict in a landmark data privacy case against tech giant Meta Platforms Inc., finding Meta liable for its role in the unauthorized collection and commercial use of highly personal health data from third-party app Flo Health. This is one of the first cases where a jury has held a major technology company accountable for its handling of consumer health information. Carol currently serves as co-lead counsel in a suit alleging illegal wiretapping and surreptitious recording through Amazon's Alexa-enabled devices.

Prior to joining Labaton Keller 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 is an active member of the New York State Bar Association's Women in the Law Section and Chair of the Board of Directors of the City Bar Fund, the nonprofit 501(c)(3) arm of the New York City Bar Association. In 2024, she was appointed by the Court of Appeals to the New York State Board of Law Examiners, an organization that administers the bar examination to candidates seeking admission to practice law in the State of New York. Carol is also a board member of the Christopher J. Keller Memorial Foundation and a member of the Swedish Investment Fund Association (SIFA), the National Association of Public Pension Attorneys (NAPPA), the National Council on Teacher Retirement (NCTR), the National Association of Women Lawyers, and the Hispanic National Bar Association. In addition, Carol previously served on *Law360*'s Securities Editorial Board.

Carol is a frequent commentator on legal issues and has been featured in the *Financial Times, Law360, Investment & Pensions Europe, and National Law Journal*, among others.

Carol earned her Juris Doctor from New York University School of Law, where she was the recipient of The Irving H. Jurow Achievement Award for the Study of Law and received the Association of the Bar of the City of New York Diversity Fellowship. She received her bachelor's degree, with honors, from New York University.

She is fluent in Spanish.

Jake Bissell-Linsk

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Practice Areas:

- Securities Litigation
- Consumer Protection and Data Privacy Litigation

Bar Admissions:

- New York

Jake Bissell-Linsk is a Partner in the New York office of Labaton Keller Sucharow LLP. Jake focuses his practice on prosecuting complex securities fraud and consumer cases on behalf of institutional investors and individuals. He is Co-Chair of the Firm's Artificial Intelligence Committee.

Jake is widely recognized for his achievements in securities and data privacy litigation. *Benchmark Litigation* selected him to its "40 & Under List," which highlights the "best and brightest litigators across the U.S.," and he has been consistently recognized as a leading plaintiff lawyer by *Lawdragon*. In addition, Jake has been named among the "Best Lawyers in America: Ones to Watch" by the *Best Lawyers in America*®. Earlier in his career, he was honored as a "Rising Star" by industry leading publications, including *The National Law Journal's* "Elite Trial Lawyers," *New York Law Journal*, and *Law360*.

Jake has litigated federal securities class actions in jurisdictions across the country at both the District Court and Appellate Court level. He is currently litigating cases against General Motors and Cruise, alleging executives misrepresented the safety and capabilities of their autonomous driving technologies, and against Boeing alleging the company misstated its safety practices.

Jake has played a pivotal role in securing favorable settlements for investors in a variety of securities actions, including in matters against Nielsen ($73 million settlement), a case that involved allegations of inflated goodwill and the effect of the EU's GDPR on the company; Oak Street Health ($60 million settlement), a case involving allegations that it used two forms of prohibited marketing tactics to attract Medicare-eligible patients to sign up at its primary care centers; and Qihoo ($29.75 million settlement) and JA Solar ($21 million settlement), cases alleging misrepresentations about projections and post-merger plans included in proxies prior to a management buyout.

Beyond securities cases, Jake has played an integral role in consumer protection and data privacy litigation matters. Most notably, he was a key member of the team that secured the historic jury verdict in a landmark data privacy case against tech giant Meta Platforms Inc., finding Meta liable for its role in the unauthorized collection and commercial use of highly personal health data from third-party app Flo Health. This is one of the first cases where a jury has held a major technology company accountable for its handling of consumer health information.

Jake was previously a Litigation Associate at a multinational corporate law firm, where he worked on complex commercial litigation including derivative suits and securities claims. He also assisted defendants in government investigations and provided litigation advice on M&A transactions and during restructurings. While in law school, Jake interned for Judge Melvin L. Schweitzer at the New York Supreme Court (Commercial Division).

Jake earned his Juris Doctor, *magna cum laude*, from the University of Pennsylvania Law School, where he served as Senior Editor of the *University of Pennsylvania Law Review* and as Associate Editor of the *East Asia Law Review*. He received his bachelor's degree, *magna cum laude*, from Hamline University.

Garrett J. Bradley

Partner

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Practice Areas:

- Securities Litigation

Bar Admissions:

- New York
- Massachusetts

Garrett J. Bradley is a Partner in the New York office of Labaton Keller Sucharow LLP. Garrett has decades of experience helping institutional investors, public pension funds, and individual investors recover losses attributable to corporate fraud. A former state prosecutor, Garrett has been involved in hundreds of securities fraud class action lawsuits that have, in aggregate, recouped hundreds of millions of dollars for investors. Garrett's past and present clients include some of the country's largest public pension funds and institutional investors.

Highly regarded as an accomplished litigator, Garrett was selected as one of New England's "Top Rated Lawyers" by *ALM Media* and *Martindale-Hubbell* and among the "Top 100 Trial Lawyers in Massachusetts" by *The American Trial Lawyers Association*. In addition, the Massachusetts Academy of Trial Attorneys and the Massachusetts Bar Association selected Garrett as "Legislator of the Year."

Prior to joining the Firm, Garrett worked as an Assistant District Attorney in the Plymouth County District Attorney's office. He also served in the Massachusetts House of Representatives for 16 years, where he represented the Third Plymouth District.

Garrett is a Fellow of the Litigation Counsel of America, an invitation-only society of trial lawyers comprised of less than 0.5% of American lawyers. He is also a member of the International Foundation of Employee Benefit Plans (IFEBP), The Public Justice Foundation, and the Million Dollar Advocates Forum.

Garrett earned his Juris Doctor from Boston College Law School and his Bachelor of Arts from Boston College.

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Guillaume Buell
Partner

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Practice Areas:

- Securities Litigation
- Non-U.S. Securities Litigation
- Corporate Governance and Shareholder Rights Litigation

Bar Admissions:

- New York
- Massachusetts
- Supreme Court of the United States
- Texas

Guillaume Buell is a Partner in the New York and London offices at Labaton Keller Sucharow LLP. He is an experienced and trusted advisor to a wide range of institutional investors in the United States, the United Kingdom, Canada, and Europe regarding global securities litigation, corporate governance matters, and shareholder rights. His clients include a wide range of pension funds, asset managers, insurance companies, and other sophisticated investors. As part of the Firm's Non-U.S. Securities Litigation Practice, which is one of the first of its kind, Guillaume serves as liaison counsel to institutional investors in select overseas matters. He also advises clients on complex consumer matters.

Guillaume's achievements have earned him recognition as a "Future Star" and among the top "40 & Under" litigators by *Benchmark Litigation*. In addition, *Lawdragon*, named him a "Next Generation Lawyer" and among the "500 Global Plaintiff Lawyers."

Guillaume has played an important role in cases against CVS Caremark, Uniti Group, Nu Skin Enterprises, Conduent, Stamps.com, Genworth Financial, Rent-A-Center, and Castlight Health, among others.

Prior to joining the Firm, Guillaume was an attorney at a prominent defense firm in New York and a boutique litigation firm in Houston, where he provided legal counsel to a wide range of Fortune 500 and other corporate clients in the aviation, construction, energy, financial, consumer, pharmaceutical, and insurance sectors in state and federal litigations, government investigations, and internal investigations. While in law school, Guillaume was a Judicial Intern with the Honorable Loretta A. Preska, United States District Court for the Southern District of New York, and an Intern with the Government Bureau of the Attorney General of Massachusetts.

Guillaume is an active member of the National Association of Public Pension Attorneys (NAPPA), where he serves as an appointed member of its Securities Litigation Committee, Fiduciary & Governance Committee, and the New Member Education Committee. In addition, he is actively involved with the International Foundation of Employee Benefit Plans (IFEBP), the National Conference on Public Employee Retirement Systems (NCPERS), the Florida Public Pension Trustees Association (FPPTA), the Michigan Association of Public Employee Retirement Systems (MAPERS), the Association of Canadian Pension Management (ACPM), and the Canadian Pension & Benefits Institute (CPBI).

Guillaume received his Juris Doctor from Boston College Law School, where he was the recipient of the Boston College Law School award for outstanding contributions to the law school community. He was also a member of the National Environmental Law Moot Court Team, which advanced to the national quarterfinals and received recognition for best oralists. He received his Bachelor of Arts, *cum laude* with departmental honors, from Brandeis University.

Guillaume is fluent in French and conversant in German. He is an Eagle Scout and actively involved in his hometown's local civic organizations.

Joseph N. Cotilletta
Partner

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Practice Areas:

- Corporate Governance and Shareholder Rights
- Securities Litigation

Bar Admissions:

- New York
- New Jersey

Joseph N. Cotilletta is a Partner in the New York office of Labaton Keller Sucharow LLP, where he prosecutes complex securities fraud cases on behalf of institutional and individual investors. He also represents investors in corporate governance and transactional matters, including class action and derivative litigation.

Joe has repeatedly been recognized as a "Top 40 Under 40" civil trial lawyer by *The National Trial Lawyers.* He has also been recognized as a "Rising Star of the Plaintiffs Bar" by *The National Law Journal* "Elite Trial Lawyers" and as a "Next Generation Lawyer" by *Lawdragon*.

Since joining the Firm, Joe has achieved extraordinary results for investors. He was a senior member of the litigation team that achieved a $200 million recovery in *Boston Retirement Systems v. Uber Technologies, Inc.*— a case that alleged Uber's $8.1 billion IPO offering documents misrepresented the company's business model, growth strategy, passenger safety efforts, and financial condition. The settlement was the fourth largest securities class action settlement in 2024.

Additionally, Joe was part of the team that secured a $1 billion settlement in *In re Dell Technologies Inc. Class V Stockholders Litigation*. The settlement currently stands as the largest shareholder settlement ever in any state court in America and the 17th largest shareholder settlement of all time in federal and state court.

Prior to joining the Firm, Joe was a senior associate at a prominent national law firm, where he gained substantial trial and litigation experience pursuing high-value cases in various jurisdictions throughout the United States. Joe helped obtain multi-million-dollar recoveries from some of the largest companies in the world and set legal precedent in multiple areas of the law. Since the start of his legal career, Joe has dedicated himself to becoming a skilled advocate, sharpening his litigation expertise while trying numerous cases as first or second chair and taking and defending hundreds of depositions. While in law school, he served as an extern for the Honorable Kim R. Gibson of the Western District of Pennsylvania.

Joe is a member of the Commercial and Federal Litigation Section as well as the Securities Litigation Committee of the New York State Bar Association.

Joe earned his Juris Doctor from Penn State Law, where he was selected to join the Order of Barristers and served as an Articles Editor for the *Penn State International Law Review*, in addition to serving on the Executive Board of the school's Moot Court. Joe received his Bachelor of Science in Business Administration from Bryant University, where he was captain of the Men's Lacrosse team that advanced to the program's first semi-finals playoff appearance.

He is conversant in Italian.

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Practice Areas:

- Securities Litigation

Bar Admissions:

- New York

Alfred L. Fatale III is a Partner in the New York office of Labaton Keller Sucharow LLP. Leading one of the Firm's Securities Litigation teams, he is actively overseeing litigation against PACS Group, Inc., Concho Resources, Norfolk Southern Corporation, Rent the Runway, ON24, and PDD Holdings, Inc. among others.

Alfred's success in moving the needle in the legal industry has earned him industry wide recognition. He has been recognized as a top securities litigator by *Chambers & Partners USA*, a securities "MVP" by *Law360*, and a "trailblazer" by *The National Law Journal* and *The American Lawyer*. In addition, *Benchmark Litigation* selected Alfred as a "Future Star" and named him to its prestigious "40 & Under" list, and *Business Today* named him one of the "Top 10 Most Influential Securities Litigation Lawyers in New York." Alfred has also been recognized by *The Best Lawyers in America*® as one of the "Best Lawyers in America: Ones to Watch" in the Litigation: Securities category, and he has been consistently ranked as a leading plaintiff financial lawyer by *Lawdragon*.

Alfred led the team that secured a $200 million recovery in *Boston Retirement System v. Uber Technologies, Inc.*, a case that alleged Uber's $8.1 billion IPO offering documents misrepresented the company's business model, growth strategy, passenger safety efforts, and financial condition.

In addition, Alfred represents individual and institutional investors in cases related to the protection of the financial markets and public securities offerings in trial and appellate courts throughout the country. In particular, he is leading the Firm's efforts to litigate securities claims in state courts following the U.S. Supreme Court's decision in *Cyan, Inc. v. Beaver County Employees Retirement Fund* while also overseeing litigation of several cases in federal courts.

Since joining the Firm in 2016, Alfred has lead the investigation and prosecution of successful cases such as *In re ADT Inc. Securities Litigation*, resulting in a $30 million recovery; *In re Honest Company, Inc. Securities Litigation*, resulting in a $28 million recovery; *In re BrightView Holdings, Inc. Securities Litigation*, resulting in a $11.5 million recovery; *John Ford, Trustee of the John Ford Trust v. UGI Corporation*, resulting in a $10.25 million recovery; *Plymouth County Retirement Association v. Spectrum Brands Holdings Inc.*, resulting in a $9 million recovery; *In re SciPlay Corp. Securities Litigation*, resulting in an $8.275 million recovery; and *In re Livent Corp. Securities Litigation*, resulting in a $7.4 million recovery.

Prior to joining the Firm, Alfred was an Associate at a prominent defense firm, where he advised and represented financial institutions, investors, officers, and directors in a broad range of complex disputes and litigations including cases involving violations of federal securities law and business torts. Previously, Alfred served as a Judicial Extern under the Honorable Robert C. Mulvey.

Alfred is an active member of the American Bar Association and the New York City Bar Association.

Alfred earned his Juris Doctor from Cornell Law School, where he was a member of the *Cornell Law Review* as well as the Moot Court Board. He received his bachelor's degree, *summa cum laude*, from Montclair State University.

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Practice Areas:

- Securities Litigation

Bar Admissions:

- New York

Christine M. Fox is a Partner in the New York office of Labaton Keller Sucharow LLP. With more than 25 years of securities litigation experience, Christine prosecutes complex securities fraud cases on behalf of institutional investors. In addition to her litigation responsibilities, Christine serves as the Chair of the Firm's Diversity Committee and Pro Bono Committee and is a member of the Firm's Investigations Committee.

The National Law Journal's "Elite Trial Lawyers" has selected Christine to its class of Elite Women of the Plaintiffs Bar, and *Crain's New York Business* named her to its list of "Notable Women in Law." Additionally, *Lawdragon* has repeatedly recognized her as one of the "Leading Plaintiff Financial Lawyers in America."

Christine is actively involved in litigating matters against Boeing, Hain Celestial, Charter Communications, Merck, Stride, and West Pharmaceutical Services. She has played a pivotal role in securing favorable settlements for investors in class actions against Barrick Gold Corporation, one of the largest gold mining companies in the world ($140 million recovery); Catalent, a multinational pharmaceutical manufacturer ($78 million recovery); Nielsen, a data analytics company that provides clients with information about consumer preferences ($73 million recovery); Oak Street Health, a primary care center operator that focus exclusively on Medicare-eligible patients ($60 million recovery); Nu Skin Enterprises, a multilevel marketing company ($47 million recovery); Intuitive Surgical, a manufacturer of robotic-assisted technologies for surgery ($42.5 million recovery); and World Wrestling Entertainment, a media and entertainment company ($39 million recovery).

Christine is actively involved in several pro bono immigration cases at the Firm.

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 is an active member of the New York City Bar Association, where she serves as Co-Chair of the Securities Litigation Committee. She is also a member of the American Bar Association and the Puerto Rican Bar Association.

Christine earned her Juris Doctor from the University of Michigan Law School and received her bachelor's degree from Cornell University.

Christine is conversant in Spanish.

Jamie E. Hanley

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Practice Areas:

- Securities Litigation
- Non-U.S. Securities Litigation

Bar Admissions:

- England & Wales - Solicitor

Jamie E. Hanley is the Partner-in-Charge of the London office of Labaton Keller Sucharow LLP and a member of the Firm's Client Development and Case Evaluation Groups. An accomplished litigator with more than 25 years of experience in the UK, Jamie has represented thousands of individual and institutional investors. His practice focuses on international securities and shareholder rights litigation, as well as advancing corporate governance reforms.

Jamie has a particular interest in ESG issues, and throughout his career he has stood on the side of workers and individuals who have been harmed by corporate negligence and malfeasance.

Jamie is recognized as a "Leading Global Litigator" by *Lawdragon.*

Prior to joining Labaton Keller Sucharow LLP, Jamie served at the Management Board level at two leading UK law firms for 17 years and then as General Counsel at the GMB Trade Union, where he retains an interest.

Outside of work, Jamie is heavily engaged in civic and political issues. He is an experienced chairman, having led boards across the legal, political, and educational sectors. He is currently non-executive Chair of a major more than £60 million UK anchor institution. Jamie has twice stood for election to the UK Parliament, and as a policy maker and campaigner, he has worked alongside two UK Prime Ministers and a U.S. President.

Jamie is an active member of Pensions UK (f/k/a PLSA) and Pensions for Purpose.

Jamie graduated with Honours in Law from The University of Hull, subsequently graduating from The College of Law with Commendation. Jamie is also a graduate of the Oxford University Executive Leadership Programme. Jamie is a practicing solicitor and is qualified to practice in England and Wales.

Jesse L. Jensen
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Practice Areas:

- Securities Litigation

Bar Admissions:

- New York
- Supreme Court of the United States

Jesse L. Jensen is a Partner in the New York office of Labaton Keller Sucharow LLP and a member of the Firm's Securities Litigation Practice. Jesse focuses on prosecuting complex securities fraud cases on behalf of the Firm's institutional investor clients. He has extensive experience managing all phases of litigation, from investigation through trial.

Jesse has been widely recognized for his achievements in securities litigation. *Benchmark Litigation* has repeatedly named him to its "40 & Under List" and recognized him as a "Future Star," and *Lawdragon* has included him among its "500 Leading Plaintiff Financial Lawyers."

Jesse has been an integral part of the litigation teams that recovered over $1 billion dollars lost from alleged corporate fraud and misconduct in numerous major actions, including *In re Kraft Heinz Securities Litigation* ($450 million recovery), *In re Wilmington Trust Securities Litigation* ($210 million recovery), *Lord Abbett Affiliated Fund, Inc. v. Navient Corp.* ($35 million recovery), and *In re Synchrony Financial Securities Litigation* ($34 million recovery), among others.

Prior to joining Labaton Keller Sucharow, Jesse was a Partner at Bernstein Litowitz Berger & Grossmann LLP, focusing on complex commercial and securities litigation. Earlier in his career, Jesse was an Associate at Hughes Hubbard & Reed LLP, where he specialized in audit and accounting liability issues.

Jesse earned his Juris Doctor from New York University School of Law, where he served as Editor of the *NYU Journal of Law and Business*. Jesse received his Bachelor of Arts from the University of Washington.

Domenico "Nico" Minerva
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Practice Areas:

- Securities Litigation
- Corporate Governance and Shareholder Rights Litigation

Bar Admissions:

- New York
- Delaware

Domenico "Nico" Minerva is a Partner in the New York office of Labaton Keller Sucharow LLP. A former financial advisor, his work focuses on securities and shareholder derivative litigation, representing Taft-Hartley, public pension funds, hedge funds, asset managers, insurance companies, and banks across the world. Nico advises leading pension funds and other institutional investors on issues related to corporate fraud in the U.S. securities markets.

Nico is described by clients as "always there for us" and known to provide "an honest answer and describe all the parameters and/or pitfalls of each and every case." As a result of his work, the Firm has received a Tier 1 ranking in Class Actions from *The Legal 500*. *Lawdragon* has recognized Nico as one of the country's "Leading Plaintiff Financial Lawyers" and "Leading Global Litigators."

Nico's extensive securities litigation experience includes the case against global security systems company Tyco and co-defendant PricewaterhouseCoopers (*In re Tyco International Ltd., Securities Litigation*), which resulted in a $3.2 billion settlement—the largest single-defendant settlement in post-PSLRA history.

He also has counseled companies and institutional investors on corporate governance reform. Nico played an important role in the $1 billion recovery in *In re Dell Technologies Inc. Class V Stockholders Litigation*, which currently stands as the largest shareholder settlement ever in any state court in America and the 17th largest shareholder settlement of all time in federal and state court.

On behalf of consumers, Nico represented a plaintiff in *In re ConAgra Foods Inc.,* over misleading claims that Wesson-brand vegetable oils are 100% natural.

An accomplished speaker, Nico has given numerous presentations to investors on topics related to corporate fraud, wrongdoing, and waste.

He is an active member of the National Association of Public Pension Plan Attorneys (NAPPA) and the International Foundation of Employee Benefit Plans (IFEBP).

Nico earned his Juris Doctor from Tulane University Law School, where he completed a two-year externship with the Honorable Kurt D. Engelhardt of the United States District Court for the Eastern District of Louisiana. He received his bachelor's degree from the University of Florida.

Lauren A. Ormsbee
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Practice Areas:

- Securities Litigation

Bar Admissions:

- New York
- Supreme Court of the United States

Lauren A. Ormsbee is a Partner in the New York office of Labaton Keller Sucharow LLP. Leading one of the Firm's Securities Litigation teams, her practice focuses on prosecuting complex securities fraud cases on behalf of institutional investors. She is actively overseeing cases against New York Community Bancorp, Extreme Networks, Zeta Global Holdings, KinderCare, and QuidelOrtho Corporation.

Lauren has been recognized as one of "The Top 50 Attorneys of New York" by *Attorney Intel* and has been named a "Leading Plaintiff Financial Lawyer" and among the "Leading Lawyers in America" by *Lawdragon*. *Crain's New York Business* selected her to its lists of "Notable Women in Law" and "Notable Litigators and Trial Attorneys." Lauren has been named a finalist for "Securities Lawyer of the Year" and "Thought Leader of the Year" by *The Women in Business Law Awards*, and *Law.com's* Women, Influence, & Power in Law Awards named Lauren a finalist for "Ally of the Year" in recognition of her commitment to fostering a culture of belonging and empowerment.

Lauren has obtained hundreds of millions of dollars in recoveries representing institutional investors and individuals in a variety of class and direct actions involving securities fraud and other fiduciary violations, including *In re HealthSouth Bondholder Litigation*, resulting in a $230 million recovery; *In re Wilmington Trust Securities Litigation*, resulting in a $210 million recovery; *In re SCANA Corporation Securities Litigation*, resulting in a $192.5 million recovery; *In re Allergan Generic Drug Pricing Securities Litigation*, resulting in a $130 million recovery; *In re New Century Securities Litigation*, resulting in a $125 million recovery; and *Lilien v. Olaplex Holdings, Inc.*, resulting in a $47.5 million recovery, among others.

Prior to joining the Firm, Lauren was a Partner at Bernstein Litowitz Berger & Grossmann LLP focusing on complex commercial and securities litigation. Previously, Lauren was an associate at Paul Weiss

Rifkind Wharton & Garrison LLP and served as a law clerk to the Honorable Colleen McMahon in the Southern District of New York.

Lauren is an active member of the New York City Bar Association, where she previously served as Co-Chair of the Securities Litigation Committee and Chaired the annual Securities Litigation & Enforcement Institute. She is also a member of the National Association of Public Pension Attorneys and serves on *Law360*'s Securities Editorial Advisory Board.

Lauren earned her Juris Doctor, *cum laude*, from the University of Pennsylvania Law School, where she was the Research Editor of the *University of Pennsylvania Law Review*. Lauren received her Bachelor of Arts from Duke University.

Mark D. Richardson

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Practice Areas:

- Corporate Governance and Shareholder Rights Litigation

Bar Admissions:

- Delaware
- New York
- Pennsylvania

Mark D. Richardson is a Partner in the Delaware office of Labaton Keller Sucharow LLP. Mark focuses on representing shareholders in corporate governance and transactional matters, including class action and derivative litigation.

Mark has been recognized by *Chambers & Partners USA* for his work in the Delaware Court of Chancery. He has been recognized by *Benchmark Litigation* as a "Future Star" and has been named to their "40 & Under List," and is recommended by *The Legal 500*. Clients highlighted his team's ability to "generate strong cases and take creative and innovative positions." *Lawdragon* has recognized him as one of the country's "Leading Plaintiff Financial Lawyers" and "Next Generation Lawyers." *The Best Lawyers in America*® named him among the "Ones to Watch" in the Corporate Governance and Compliance Law, Mergers and Acquisitions Law, and Securities Litigation categories.

Mark has litigated numerous matters through trial, including in the Delaware Court of Chancery, FINRA and AAA arbitrations, and a five-month jury trial in New Jersey state court. Mark served as co-lead counsel in the following matters that recently were tried or settled: *In re Dell Technologies Inc. Class V Stockholders Litigation* ($1 billion settlement*); Ontario Provincial Council of Carpenters' Pension Trust Fund, et al. v. Walton, et al.* ($123 million settlement plus corporate governance reforms); *In re Pattern Energy Group Inc. Stockholders Litigation* ($100 million class settlement—largest settlement of *Revlon* claims in Delaware history); *In re TerraForm Power, Inc. Merger Stockholders Litigation* ($83.75 million settlement); *In re Columbia Pipeline Group, Inc*. ($79 million pre-trial partial settlement and $199 million post-trial ruling); *In re Coty Inc. Stockholder Litigation* ($35 million settlement); *In re Straight Path Communications Inc. Consolidated Stockholder Litigation* ($12.5 million partial settlement); *In re Amtrust Financial Services Stockholder Litigation* ($40 million settlement*); In re AGNC Investment Corp*. ($35.5 million settlement); *In re Stamps.com* ($30 million settlement); *In re*

Homefed Corp. ($15 million settlement); and *In re CytoDyn Corp*. (rescission of over $50 million in director and officer stock awards).

Prior to joining Labaton Keller Sucharow, Mark was an Associate at Schulte Roth & Zabel LLP where he gained substantial experience in complex commercial litigation within the financial services industry and advised and represented clients in class action litigation, expedited bankruptcy proceedings and arbitrations, fraudulent transfer actions, proxy fights, internal investigations, employment disputes, breaches of contract, enforcement of non-competes, data theft, and misappropriation of trade secrets.

In addition to his active caseload, Mark has contributed to numerous publications and is the recipient of The Burton Awards Distinguished Legal Writing Award for his article published in the *New York Law Journal*, "Options When a Competitor Raids the Company." His notable publications include the article "'Zapata Drift': A Proposal for Improving Trust in the Special Litigation Committee Process" published in the *Delaware Journal of Corporate Law*. Mark also serves on *Law360*'s Delaware Editorial Advisory Board.

Mark earned his Juris Doctor from Emory University School of Law, where he served as the President of the Student Bar Association. He received his Bachelor of Science from Cornell University.

Michael H. Rogers
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Practice Areas:

- Securities Litigation

Bar Admissions:

- New York

Michael H. Rogers is a Partner in the New York office of Labaton Keller Sucharow LLP. An experienced litigator, Mike focuses on prosecuting complex securities fraud cases on behalf of institutional investors.

Mike is recommended by *The Legal 500* in the area of Securities Litigation.

Mike has been a member of the lead counsel teams in many successful class actions, including those against Countrywide Financial ($624 million settlement), HealthSouth ($671 million settlement), State Street ($300 million settlement), SCANA ($192.5 million settlement), CannTrust (CA $129.5 million settlement), Alexion Pharmaceuticals ($125 million settlement), Mercury Interactive ($117.5 million settlement), Computer Sciences Corp. ($97.5 million settlement), Novavax ($47 million settlement), Jeld-Weld Holding ($40 million recovery), Virtus Investment Partners ($20 million settlement), and Acuity Brands ($15.75 million settlement).

Prior to joining the Firm, 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. 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 earned his Juris Doctor, *magna cum laude*, from the Benjamin N. Cardozo School of Law, Yeshiva University. He received his bachelor's degree, *magna cum laude*, from Columbia University.

Mike is proficient in Spanish.

Brendan W. Sullivan
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Practice Areas:

- Corporate Governance and Shareholder Rights Litigation

Bar Admissions:

- Delaware

Brendan W. Sullivan is a Partner in the Delaware office of Labaton Keller Sucharow LLP. He focuses on representing investors in corporate governance and transactional matters, including class action litigation.

Brendan helped secure a $100 million settlement, currently the largest settlement of *Revlon* claims in Delaware history, in *In re Pattern Energy Group Inc. Stockholders Litigation,* an $83.75 million settlement in *In re TerraForm Power, Inc. Merger Stockholders Litigation* and a $79 million pre-trial partial settlement with trial judgment in excess of $200 million in *In re Columbia Pipeline Group, Inc. Merger Litigation*.

Brendan is recommended by *The Legal 500* for the excellence of his work in the Delaware Court of Chancery and Dispute Resolution and is recognized as a "Leading Plaintiff Financial Lawyer" and "Next Generation Lawyer" by *Lawdragon*. *Law360* named him a "Securities Rising Star" and *Benchmark Litigation* also named him to their "40 & Under List."

Prior to joining Labaton Keller Sucharow, Brendan was an Associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP where he gained substantial experience in class and derivative matters relating to mergers and acquisitions and corporate governance. During law school, he was a Law Clerk for Honorable Judge Leonard P. Stark, U.S. District Court for the District of Delaware.

Brendan's pro bono experience includes representing a Delaware charter school in a mediation concerning a malpractice claim against its former auditor.

Brendan earned his Juris Doctor from Georgetown University Law Center where he was the Notes Editor on the *Georgetown Law Journal* and his Bachelor of Arts from the University of Delaware.

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Practice Areas:

- Corporate Governance and Shareholder Rights Litigation

Bar Admissions:

- New York

John Vielandi is a Partner in the New York office of Labaton Keller Sucharow LLP. John focuses on representing investors in corporate governance and fiduciary duty matters, including shareholder class and derivative litigation.

John has been recognized as a "Leading Plaintiff Financial Lawyer" by *Lawdragon*.

Notable matters where John served as lead or co-lead counsel include *In re Warner Bros. Discovery, Inc. Stockholders Litigation* ($125 million class settlement); *Ontario Provincial Council of Carpenters Pension Trust Fund v Walton et al.* ($123 million derivative settlement and robust governance reforms); *In re Pattern Energy Group Inc. Stockholders Litigation* ($100 million class settlement); *In re TerraForm Power, Inc. Merger Stockholders Litigation* ($83.75 million settlement); *Nantahala Capital Partners II Limited Partnership v. QAD Inc.* ($65 million class settlement)*; In re Coty Inc. Stockholder Litigation* ($35 million class and derivative settlement and additional governance reforms); *Employees' Retirement System of Rhode Island v Marciano et al*. ($30 million derivative settlement and substantial governance reforms); *Macomb County Employees' Retirement System v. McBride et al.*, ($30 million derivative settlement); *In re Golden Nugget Online Gaming, Inc. Stockholders Litigation* ($22 million class settlement); *In re HomeFed Corp. Stockholder Litigation* ($15 million settlement); *In re Hemisphere Media Group, Inc. Stockholders' Litigation* ($15 million class settlement); and *John Makris, et al. v. Ionis Pharmaceuticals, Inc., et al*. ($12.5 million settlement).

John joined the Firm from Bernstein Litowitz Berger & Grossmann, where he was a key member of the teams that litigated numerous high-profile actions, including *City of Monroe Employees' Retirement System v. Rupert Murdoch et al.* and *In re Vaalco Energy, Inc. Consolidated Stockholder Litigation*. While in law school, John was a Legal Intern at the New York City Office of Administrative

Trials and Hearings and a Judicial Intern for the Honorable Carolyn E. Demarest of the New York State Supreme Court.

John earned his Juris Doctor from Brooklyn Law School, where he was the Notes and Comments Editor for the *Journal of Corporate, Financial and Commercial Law*, and was awarded the CALI Excellence for the Future Award. He received his bachelor's degree from Georgetown University.

Ned Weinberger

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Practice Areas:

- Corporate Governance and Shareholder Rights Litigation

Bar Admissions:

- Delaware
- New York
- Pennsylvania

Ned Weinberger is a Partner in the Delaware office of Labaton Keller Sucharow LLP and Chair of the Firm's Corporate Governance and Shareholder Rights Litigation Practice.

Ned has been recognized for many years by *Chambers & Partners USA* in the Delaware Court of Chancery, earning a Band 1 ranking. He is noted for being "a very good case strategist and strong oral advocate." After being named a "Future Star" early in his career, Ned is now recognized by *Benchmark Litigation* as a "Litigation Star." He has also been named a "Leading Lawyer" by *The Legal 500*, whose sources remarked that he "is one of the best plaintiffs' lawyers in Delaware," who "commands respect and generates productive discussion where it is needed." *Law360* named Ned a "Titan of the Plaintiffs Bar" in 2025 and *The National Law Journal* named him a "Plaintiffs' Trailblazer." *Lawdragon* has also recognized him as one of the country's "Leading Plaintiff Financial Lawyers," "Leading Litigators," and "Leading Lawyers in America." *The Best Lawyers in America*® listed him as one of the "Best Lawyers in America" in the Litigation: Mergers and Acquisitions category. In addition, Ned was a finalist for "Plaintiff Attorney of the Year" by *The National Law Journal's* "Elite Trail Lawyers" and "Litigator of the Year" by *The American Lawyer*.

Ned was named a "Litigator of the Week" by The American Lawyer for securing a $1 billion cash settlement three weeks before trial in *In re Dell Technologies Inc. Class V Stockholders Litigation*. The $1 billion recovery in *Dell*, which the Delaware Court of Chancery described as the "first home run" in M&A shareholder litigation, currently stands as the largest shareholder settlement ever in any state court in America and the 17th largest shareholder settlement of all time in federal and state court.

Other notable recoveries where Ned served as lead or co-lead counsel include: *In re Warner Brothers Discovery, Inc. Stockholder Litigation* ($125 million cash settlement); *Ontario Provincial Council of Carpenters' Pension Trust Fund, et al. v. Walton, et al*. ($123 million settlement plus corporate governance reforms); *In re Pattern Energy Group Inc. Stockholders Litigation* ($100 million class settlement); *In re TerraForm Power, Inc. Merger Stockholders Litigation* ($83.75 million settlement); *In re Columbia Pipeline Group, Inc. Merger Litigation* ($79 million pre-trial settlement with individual defendants; claims against corporate defendant tried to judgment); *Nantahala Capital Partners II Limited Partnership v. QAD Inc.* ($65 million class recovery); *In re Cornerstone Building Brands, Inc. Stockholder Litigation* ($45 million) *In re AmTrust Financial Services Inc. Stockholder Litigation* ($40 million class settlement); *H&N Management Group, Inc. & Aff Cos Frozen Money Purchase Plan v. Couch, et al*. ($35.5 million class settlement); *Employees' Retirement System of Rhode Island v. Marciano et al*. ($30 million settlement, plus significant corporate governance reforms); *In re HomeFed Corp. Stockholder Litigation* ($15 million settlement); and *John Makris, et al. v. Ionis Pharmaceuticals, Inc., et al.* ($12.5 million settlement), among others.

Ned is a Member of the Advisory Board of the Institute for Law and Economic Policy (ILEP), a research and educational foundation dedicated to enhancing investor and consumer access to the civil justice system. Ned also serves on the Board of Directors of the Jewish Federation of Delaware.

Ned earned his Juris Doctor from the Louis D. Brandeis School of Law at the University of Louisville, where he served on the *Journal of Law and Education*. He received his bachelor's degree, *cum laude*, from Miami University.

Mark S. Willis
Partner

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Practice Areas:

- Securities Litigation
- Non-U.S. Securities Litigation

Bar Admissions:

- District of Columbia

Mark S. Willis is a Partner in the Washington, D.C. and London offices of Labaton Keller Sucharow LLP. With more than three decades of experience, his 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 also heads the Firm's non-U.S. practice, advising clients in over 100 cases in jurisdictions such as Australia, Japan, Brazil, Canada, the UK, Germany, the Netherlands, Italy, Denmark, and elsewhere. This practice is wholly unique in that it is genuinely global, independent, and fully comprehensive.

Mark is recommended by *The Legal 500* for excellence in securities litigation and has been named one of *Lawdragon*'s top "Global Plaintiff Lawyers," "Leading Global Litigators," and "Leading Plaintiff Financial Lawyers in America." Under his leadership, the Firm has been awarded *Law360*'s "Practice Group of the Year Awards" for Class Actions and Securities.

In U.S. matters, Mark currently represents La Caisse, one of Canada's largest institutional investors, against PayPal in one of the largest ongoing U.S. shareholder class actions, as well as the Utah Retirement Systems in several pending shareholder actions. He represented institutions from the UK, Spain, the Netherlands, Denmark, Germany, Belgium, Canada, Japan and the U.S. in a novel lawsuit in Texas against BP plc that salvaged claims dismissed from the parallel U.S. class action. 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 (*i.e.*, New York and Amsterdam). The Dutch portion of this $145 million trans-Atlantic recovery involved a landmark decision that substantially broadened that court's jurisdictional reach to a scenario where the claims were not brought under Dutch law, the wrongdoing occurred outside the Netherlands, and none of the parties were domiciled there. 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, making this the first time in a shareholder class action that such reforms were secured from non-issuer defendants.

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.

Mark is an active member of the National Association of Public Pension Plan Attorneys (NAPPA).

Mark earned his Juris Doctor from the Pepperdine University School of Law and his Master of Laws from Georgetown University Law Center.

Nicole M. Zeiss
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Practice Areas:

- Securities Litigation

Bar Admissions:

- New York

Nicole M. Zeiss is a Partner in the New York office of Labaton Keller Sucharow LLP. A litigator with more than two decades of class action experience, Nicole leads the Firm's Settlement Group, which analyzes the fairness and adequacy of the procedures used in class action settlements. Her practice focuses on negotiating and documenting complex class action settlements and obtaining the required court approval of the settlements, notice procedures, and payments of attorneys' fees.

Nicole was part of the Labaton Keller Sucharow team that successfully litigated the $185 million settlement in *In re Bristol-Myers Squibb Securities Litigation*. 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 were damaged by fraud in the telecommunications, hedge fund, and banking industries. Over the past fifteen years, Nicole has been focused on finalizing the Firm's securities class action settlements, including in cases against Schering-Plough ($473 million), Massey Energy Company ($265 million), SCANA ($192.5 million), Fannie Mae ($170 million), and Alexion Pharmaceuticals ($125 million), among many others.

Prior to joining Labaton Keller Sucharow, Nicole practiced 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 is a member of the New York City Bar Association and the New York State Bar Association. Nicole also maintains a commitment to pro bono legal services.

She received a Juris Doctor from the Benjamin N. Cardozo School of Law, Yeshiva University, and earned a Bachelor of Arts in Philosophy from Barnard College.

Labaton Keller Sucharow

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Practice Areas:

- Securities Litigation

Bar Admissions:

- Illinois
- Florida

Mark Bogen is Of Counsel in the Washington, D.C. office of Labaton Keller Sucharow LLP. Mark 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 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 helped 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.

Prior to joining the Firm, Mark served as an Assistant State Attorney and as a Special Assistant to the State Attorney's Office in the State of Florida. Previously, he served as legal counsel to the American Association of Professional Athletes, an organization of more than 4,000 retired professional athletes. Mark also has extensive experience writing weekly legal columns for the *Sun Sentinel*, one of the largest daily newspapers circulated in Florida.

Mark earned his Juris Doctor from Loyola University School of Law. He received his bachelor's degree from the University of Illinois.

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Practice Areas:

- Non-U.S. Securities Litigation
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Bar Admissions:

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Hui Chang is Of Counsel in the New York office of Labaton Keller Sucharow LLP where she concentrates her practice in the areas of client development and shareholder litigation. As a co-manager of the Firm's Non-U.S. Securities Litigation Practice, Hui advises institutional investor clients regarding fraud-related losses on securities, and on the investigation and development of securities fraud actions outside of the United States.

Hui previously served as a member of the Firm's Case Evaluation Group, where she was involved in the identification, investigation, and development of potential actions to recover investment losses resulting from violations of the federal securities laws and corporate and fiduciary misconduct. Hui has assisted the Firm in securing a number of lead counsel appointments in several high-profile class actions.

Hui has been recognized as a "Next Generation Lawyer" by *Lawdragon*.

Prior to joining the Firm, Hui was a Litigation Associate at a national firm primarily focused on securities class action litigation, where she played a key role in prosecuting a number of high-profile securities fraud class actions, including *In re Petrobras Securities Litigation* ($3 billion recovery).

She is a member of the National Association of Public Pension Plan Attorneys (NAPPA), the National Association of State Retirement Administrators (NASRA), the National Council on Teacher Retirement (NCTR), and the State Association of County Retirement Systems (SACRS).

Hui earned her Juris Doctor from the University of California College of the Law, San Francisco, where she worked as a Graduate Research Assistant and a Moot Court Teaching Assistant. She received her bachelor's degree from the University of California, Berkeley.

Hui is fluent in Portuguese and proficient in Taiwanese.

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Derick I. Cividini is Of Counsel in the New York office of Labaton Keller Sucharow LLP, where he serves as the Firm's Director of E-Discovery. Derick focuses his practice on prosecuting complex securities fraud cases on behalf of institutional investors, including class actions, corporate governance matters, and derivative litigation. As the Director of E-Discovery, he is responsible for managing the Firm's discovery efforts, particularly with regard to the implementation of e-discovery best practices for ESI (electronically stored information) and other relevant sources. In addition to his litigation responsibilities, Derick is a member of the Firm's Artificial Intelligence Committee.

Derick's discovery efforts helped the Firm secure the historic $1 billion settlement in *In re Dell Technologies Inc. Class V Stockholders Litigation*, currently standing as the largest shareholder settlement ever in any state court in America and the 17th largest shareholder settlement of all time in federal and state court; $516 million in settlements in *In re Lehman Brothers Equity/Debt Securities Litigation*; a $210 million settlement (pending final court approval) in *In re Fidelity National Information Securities Litigation*; and a $200 million recovery in *Boston Retirement System v. Uber Technologies, Inc.*, among others. His discovery efforts also played an instrumental role in securing a historic jury verdict in a landmark data privacy case against tech giant Meta Platforms, in *Frasco v. Flo Health*—one of the first cases where a jury has held a major technology company accountable for its handling of consumer health information.

Derick earned his Juris Doctor and Master of Business Administration from Rutgers University. He received his Bachelor of Science in Finance from Boston College.

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Bar Admissions:

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Arthur E. Coia, II is Of Counsel to Labaton Keller Sucharow LLP, where he advises leading pension funds, Taft-Hartley funds, and other institutional investors on corporate fraud in both domestic and international securities markets.

Arthur brings a wealth of experience to his role, with more than 25 years of experience in investments and their application to tax-exempt benefit plans, and more than a decade of experience helping investors recover losses attributable to corporate fraud.

Prior to joining the Firm, Arthur worked with legal and investment teams on developing client strategy. Previously, he served as the President of a Registered Investment Advisor for over 10 years.

Arthur has the distinction of being a fourth generation member of the Laborers' International Union of North America (LiUNA!). He has also been a member of Laborers Local 271 for more than 37 years, where he served as a delegate to the 1991 International Convention.

Arthur often speaks at benefits related educational conferences such as the International Foundation of Employee Benefit Plans (IFEBP) and the National Labor Management Conference (NLMC).

Arthur earned his Juris Doctor from Georgetown University Law Center. He received his Bachelor of Science in Business Administration and Finance from Georgetown University.

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- Securities Litigation

Bar Admissions:

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James M. Fee is Of Counsel in the New York office of Labaton Keller Sucharow LLP. As a senior member of the Firm's Alternative Dispute Resolution Practice, he represents more than one million clients in complex matters involving data breaches, misuse of personal data, cryptocurrency, consumer finance, and personal banking litigation.

In addition to his work in ADR, James has significant experience prosecuting securities fraud class actions on behalf of institutional investors. James has been a key member of teams that achieved significant recoveries for investors in actions against Alexion Pharmaceuticals ($125 million settlement), Catalent ($78 million settlement), Oak Street Health ($60 million settlement), and Barclays PLC ($19.5 million settlement).

James has been recognized as a "Next Generation Lawyer" by *Lawdragon*.

Prior to joining Labaton Keller Sucharow, James was an Associate at a plaintiffs' securities litigation firm where he was involved in the prosecution of several high-profile securities class actions including cases against Equifax ($149 million settlement), Novo Nordisk ($100 million settlement), and Boeing. Before law school, James served as a Legislative Aide at the U.S. Senate.

James has extensive pro bono experience, which includes working on asylum applications, drafting various amicus filings, and successfully resolving Section 1983 claims brought by a Rikers Island inmate. Additionally, James is an Accredited Attorney at the U.S. Department of Veterans Affairs, qualified to assist veterans with their disability benefits claims.

James earned a Juris Doctor from Boston College Law School, where James was Executive Articles Editor of the *Boston College International & Comparative Law Review*. He received a Bachelor of Arts in Political Science from the University of Pennsylvania, where he was captain of the swim team and received the Class of 1915 Award in recognition of academic and athletic achievements.

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Prior to joining the Firm, Michael was General Counsel at the Boston Water & Sewer Commission. Previously, he was a Partner at a national litigation firm, where he represented clients in complex legal matters. Michael also served as President of the Boston City Council and as Boston City Councilor at Large, as well as Assistant District Attorney in the Massachusetts Suffolk County District Attorney's Office.

Michael earned his Juris Doctor from Boston University School of Law. He received his bachelor's degree from Boston College.

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Joshua M. Glasser is Of Counsel in the New York office of Labaton Keller Sucharow LLP. Josh focuses his practice on representing investors in corporate governance and transactional matters, including class action and shareholder derivative litigation.

Josh has been recognized as a "Next Generation Lawyer" by *Lawdragon*.

Josh helped secure notable recoveries in *In re Warner Bros. Discovery, Inc. Stockholders Litigation* ($125 million settlement); *Bucks County Employees' Retirement System v. Clayton, Dubilier & Rice, LLC* ($70 million settlement); *In re Cornerstone Building Brands, Inc. Stockholders Litigation* ($45 million settlement); *Employees' Retirement System of Rhode Island v. Marciano et al.* ($30 million settlement and corporate governance reforms); *Kormos v. Playtika Holding UK II Limited* ($24.75 million settlement)*; In re Hemisphere Media Grp., Inc. Stockholders Litigation* ($15 million settlement); and *In re Sculptor Capital Management, Inc. Stockholder Litigation* ($6.5 million settlement and credit for contributing to increased merger price).

Before joining Labaton Keller Sucharow, Josh was an Associate at Weil, Gotshal & Manges LLP, where his practice focused on litigating shareholder class and derivative actions under Delaware and federal law. Prior to that, he was a Judicial Law Clerk for the Honorable Karen L. Valihura of the Delaware Supreme Court.

Josh's pro bono experience includes representing criminal defendants, including arguing an appeal before the New York State Supreme Court, Appellate Division, First Department, and serving the City of New York as a Special Assistant Corporation Counsel. Josh is also a member of the Hebrew Free Loan Society's Next Generation Steering Committee.

Josh earned his Juris Doctor, *cum laude*, from Georgetown University Law Center, where he served on the Executive Board of the *American Criminal Law Review* and as Managing Editor of the journal's *Annual Survey of White Collar Crime*. While in law school, Josh was a Legal Intern for the U.S. Department of Justice Civil Division Federal Programs Branch. He received his Bachelor of Arts in History, *magna cum laude*, from Amherst College.

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Practice Areas:

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Bar Admissions:

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Lara Goldstone is Of Counsel in the New York office of Labaton Keller Sucharow LLP. Lara 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. Her work focuses on monitoring the well-being of institutional investments and counseling clients on best practices in securities, corporate governance and shareholder rights, and consumer class action litigation.

Lara has achieved significant settlements on behalf of clients. She represented investors in high-profile cases against LifeLock, KBR, Fifth Street Finance Corp., NII Holdings, Rent-A-Center, and Castlight Health. Lara has also served as legal adviser to clients who have pursued claims in state court, derivative actions in the form of serving books and records demands, and non-U.S. actions.

Before joining the Firm, Lara worked as a Legal Intern in the Larimer County District Attorney's Office and the Jefferson County District Attorney's Office. She also volunteered at Crossroads Safehouse, which provided legal representation to victims of domestic violence.

Lara is an active member of the International Foundation of Employee Benefit Plans (IFEBP), and Texas Association of Public Employee Retirement Systems (TEXPERS). She is also a member of the Firm's Women's Initiative.

Lara earned her Juris Doctor from the University of Denver Sturm College of Law. She received her bachelor's degree from George Washington University, where she was a recipient of a Presidential Scholarship for academic excellence.

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Practice Areas:

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Bar Admissions:

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Matthew J. Grier is Of Counsel in the New York office of Labaton Keller Sucharow LLP. Matt focuses his practice on litigating securities fraud class actions on behalf of institutional investors.

Matt is currently litigating cases against General Motors, Teladoc Health, and Nike, among others.

Matt has been recognized as a "Next Generation Lawyer" by *Lawdragon* and a “Premier Class Action Leader of Tomorrow” by *Class Action Updates*.

Prior to joining the Firm, Matt was an Associate at a multinational law firm, where his practice focused on commercial and class action litigation, including securities class actions, as well as white collar defense and investigations implicating federal securities laws.

Matt’s pro bono experience includes providing representation to individuals in criminal proceedings.

Matt earned his Juris Doctor, *magna cum laude*, from Fordham University School of Law where he was elected to the Order of the Coif, served as a member of the *Fordham Urban Law Journal*, and received the David F. and Mary Louise Condon Prize in American Legal History and Archibald R. Murray Public Service Award. He received his Bachelor of Arts in Political Science from Kenyon College.

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Practice Areas:

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Nicholas D. Manningham is Of Counsel in the New York office of Labaton Keller Sucharow LLP. Nicholas focuses on litigating securities fraud class actions on behalf of institutional investors.

Nicholas has been recognized as a "Next Generation Lawyer" by *Lawdragon*.

Nicholas has been instrumental in securing more than $300 million in settlement relief for investors. Most recently, Nicholas played a leading role in helping the Firm secure a $210 million recovery (pending final court approval) for investors in *In re Fidelity National Information Securities Litigation*. He was also instrumental in helping the Firm recover $60 million for investors in *In re Okta, Inc. Securities Litigation* and $39 million in *In re Opendoor Technologies Inc. Securities Litigation*. Nicholas is actively litigating prominent cases against Roblox, Everbridge, Lockheed Martin, Regeneron, and others.

Nicholas brings substantial litigation and trial experience to the Firm. Nicholas began his legal career as an Assistant Corporation Counsel for the New York City Law Department where he represented the City of New York in federal civil rights actions. There, Nicholas served as lead trial counsel in two federal trials, both of which resulted in complete jury verdicts in favor of his clients. Nicholas also served as Judicial Intern to the Honorable Ramon E. Reyes, Jr. of the U.S. District Court for the Eastern District of New York.

Nicholas is an active member of the New York City Bar Association.

Nicholas earned his Juris Doctor, *cum laude*, from Brooklyn Law School. He received his bachelor's degree from the University of Michigan.

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Practice Areas:

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Bar Admissions:

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James McGovern is Of Counsel in the Washington, D.C. office of Labaton Keller Sucharow LLP and advises leading pension funds and other institutional investors on issues related to corporate fraud in domestic and international securities markets. James' 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 Juris Doctor, *magna cum laude*, from Georgetown University Law Center. He received his bachelor's and master's from American University, where he was awarded a Presidential Scholarship and graduated with high honors.

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Practice Areas:

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Bar Admissions:

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Elizabeth Rosenberg is Of Counsel in the New York office of Labaton Keller Sucharow LLP. Elizabeth focuses on litigating complex securities fraud cases on behalf of institutional investors, with a focus on obtaining court approval of class action settlements, notice procedures and payment of attorneys' fees.

Prior to joining Labaton Keller Sucharow, Elizabeth was an Associate at Whatley Drake & Kallas LLP, where she litigated securities and consumer fraud class actions. Elizabeth began her career as an Associate at Milberg LLP where she practiced securities litigation and was also involved in the pro bono representation of individuals seeking to obtain relief from the World Trade Center Victims' Compensation Fund.

Elizabeth earned her Juris Doctor from Brooklyn Law School. She received her bachelor's degree from the University of Michigan.

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Practice Areas:

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Bar Admissions:

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William Schervish is Of Counsel in the New York office of Labaton Keller Sucharow LLP and serves as the Firm's Director of Financial Research. As a key member of the Firm's Case Evaluation Group, William identifies, analyzes, and develops cases alleging securities fraud and other forms of corporate misconduct that expose the Firm's institutional clients to legally recoverable losses.

William has been practicing securities law for more than 15 years. As a complement to his legal experience, William is a Certified Public Accountant (CPA), a CFA® Charterholder, and a Certified Fraud Examiner (CFE) with extensive work experience in accounting and finance.

William has played a key role in filing several matters on behalf of the Firm, including *In re Fidelity National Information Services, Inc. Securities Litigation* ($210 million recovery, pending final court approval); *In re The Estée Lauder Companies, Inc. Securities Litigation* ($210 million recovery, pending final court approval); *In re Barrick Gold Securities Litigation* ($140 million recovery); *In re Nielsen Holdings PLC Securities Litigation* ($73 million recovery); and *In re Uniti Group Inc. Securities Litigation* ($39 million recovery), among others.

Prior to joining the Firm, William worked as a finance attorney at Mayer Brown LLP, where he drafted and analyzed credit default swaps, indentures, and securities offering documents on behalf of large banking institutions. William's professional background also includes positions in controllership, securities analysis, and commodity trading. He began his career as an auditor at PricewaterhouseCoopers.

William earned a Juris Doctor, *cum laude*, from Loyola University. He received a Bachelor of Science, *cum laude*, in Business Administration from Miami University.

EXHIBIT 10

Compendium of Unreported Cases

TAB 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: ALIBABA GROUP HOLDING LTD. SECURITIES LITIGATION	Master File No. 1:20-CV-09568-GBD-JW

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND THE PLAN OF ALLOCATION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

Case 1:23-cv-09569-GSD-JW Document 1043 Filed 07/16/2025 Page 11 of 331

Court-appointed lead plaintiff Salem Gharsalli and additional representative plaintiffs Laura Ciccarello, Dineshchandra Makadia, and Wusheng Hu (collectively, "Plaintiffs")[1] on behalf of themselves and the Settlement Class, respectfully submit this memorandum of law in support of their unopposed motion for final approval of the proposed Settlement and Plan of Allocation

I. PRELIMINARY STATEMENT[2]

After nearly four years of hard-fought litigation, Plaintiffs have obtained a $433,500,000 (the "Settlement Amount") all cash, non-reversionary settlement for the benefit of the Settlement Class. This is an exceptional result for the Settlement Class under the circumstances, and it was secured in a procedurally fair manner.

Substantively, the $433,500,000 recovery constitutes approximately 3.73% of the $11.629 billion of ***maximum*** damages ***potentially*** available in this case. This is more than ***triple*** the median recovery of 1.2% of estimated damages in securities class actions in 2024, and more than ***nine times*** the median recovery of 0.4% in securities class action settlements during the past decade where investor losses exceeded $10 billion. Ex. 6 (excerpts from Edward Flores and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2024 Full-Year Review* (NERA Jan. 22, 2024) ("NERA Report")) at 26 (Fig. 23), 27 (Fig. 24). It is also the ***largest ever*** securities class action

[1] All capitalized terms, unless otherwise defined herein, have the meanings set forth in the Stipulation and Agreement of Settlement, dated October 25, 2024 (the "Stipulation"; ECF No. 136-1), or in the concurrently-filed Declaration of Kara M. Wolke in Support of: (I) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Wolke Declaration"). Unless otherwise indicated, citations to "¶__" and "Ex." refer, respectively, to paragraphs in, and exhibits to, the Wolke Declaration.

[2] The Wolke Declaration is an integral part of this submission and, for the sake of brevity, the Court is respectfully referred to it for a detailed description of, *inter alia*: the factual background and procedural history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; the risks and uncertainties of continued litigation; the services Plaintiffs' Counsel provided to the Settlement Class; and the terms of the Plan of Allocation of the Net Settlement Fund.

settlement against a company based in the People's Republic of China ("China" or "PRC") (*see* Ex. 14 (collecting cases)), and one of the 50 largest since the PSLRA was enacted thirty years ago. Ex. 8 (ISS Securities Class Action Services, *The Top 100 U.S. Class Action Settlements of All-Time as of December 31, 2023* (Institutional Shareholder Services 2023)) at 6-7.

The proposed Settlement is all the more noteworthy when juxtaposed against the significant risks that Plaintiffs overcame, and would have had to overcome, to prevail in this complex securities fraud litigation. While the case faced two motions to dismiss, Plaintiffs only partially prevailed. The Court dismissed: (i) an entire theory of liability relating to Ant Group, a fintech company in which Alibaba Group Holding Ltd. ("Alibaba" or the "Company") owned a significant equity interest (the "Ant Group IPO Claim"); (ii) Plaintiffs' loss causation allegations with respect to one of the two alleged corrective disclosure dates related to the surviving theory of liability (*i.e.*, Alibaba's alleged use of merchant exclusivity practices in violation of Chinese laws (the "Antitrust Claim")); and (iii) Alibaba founder Jack Ma from the Action. *See In re Alibaba Grp. Holding Ltd. Sec. Litig.*, 2023 WL 2601472 (S.D.N.Y. Mar. 22, 2023).

Of course, the risks did not end at the pleading stage. For example, Plaintiffs faced an immediate material risk that the Court would deny their fully briefed motion for class certification. Defendants had forcefully argued that the one remaining alleged corrective disclosure relating to the Antitrust Claim would not survive class certification, as, according to Defendants, the market was well aware of Alibaba's continued deployment of exclusivity practices and the associated regulatory risks during the putative class period. *See, e.g.*, ECF No. 107 at p.3 ("Because the market was well aware of Alibaba's use of exclusivity during the putative Class Period, the stock drop lacks the requisite 'link' to the Challenged Misstatements to create an inference of price impact."). Had Defendants prevailed on their price impact argument, it would have effectively ended the Action. And, even if

Plaintiffs secured class certification, they would still have to gather enough evidence to prevail at summary judgment, prove their case at trial, and win any appeals. The risk of losing at any of these phases was very real, and it was greatly enhanced by the fact that Plaintiffs would be litigating against a corporate defendant represented by highly skilled defense counsel.

Moreover, the key documents and witnesses, including third-party witnesses, were all located in China, which significantly complicated discovery. While China signed onto the Hague Evidence Convention in 2023, it made significant reservations, including that service of process would be valid only through China's designated central authority. In short, Plaintiffs faced years of costly litigation ahead, with a very strong possibility that the case could yield little or no recovery in the future. *See In re China Sunergy Sec. Litig.*, 2011 WL 1899715, at *5 (S.D.N.Y. May 13, 2011) ("the Company's location in China would have posed a barrier that would have increased the difficulty and expense of discovery, and might have made it impossible to collect some of the evidence or take depositions necessary to prove Plaintiffs' claims.").[3] Given the many risks of continued litigation, there is no question that the Settlement is substantively fair.

The Settlement was also negotiated through a procedurally fair process. The attorneys for the Parties are experienced securities class action litigators, who were well-informed of the strengths and weaknesses of the case after years of vigorous litigation, and the Settlement is the product of mediator's proposal following a months-long mediation process overseen by the Honorable Layn R. Phillips, a former United States District Court Judge. Prior to signing the Stipulation, Plaintiffs' Counsel, *inter alia*:

- drafted the initial complaint in the Action;
- conducted a comprehensive investigation of the claims asserted in the Action, which included, among other things: (a) reviewing and analyzing (i) Alibaba's SEC filings; (ii)

[3] Unless otherwise indicated, all emphasis is added and citations and quotations omitted.

Case 1:20-cv-09568-GBD-JW Document 1043 Filed 07/26/25 Page 14 of 31

public reports, blog posts, research reports prepared by securities and financial analysts, news and wire articles, and other information available on the internet concerning Alibaba, including many published in Mandarin Chinese; (iii) investor call transcripts; (iv) announcements by the Chinese State Administration for Market Regulation ("SAMR"); and (v) other publicly available material concerning Alibaba and related entities; (b) retaining and working with a bilingual private investigator based in Hong Kong to assist in the investigation relating to Plaintiffs' alleged claims, including, in particular, accessing and reviewing information filed by Alibaba and third parties with the SAMR in China, the Stock Exchange for Hong Kong, and the Shanghai STAR Market; (c) having relevant documents translated from Chinese to English; and (d) consulting with experts in the fields of loss causation and damages;

- utilized the comprehensive investigation and research to draft and file the 147-page Amended Consolidated Class Action Complaint (the "Complaint"), plus exhibits, asserting claims against Alibaba, Daniel Yong Zhang ("Zhang"), Maggie Wei Wu ("Wu"), and Jack Ma ("Ma") under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), and against Zhang, Wu, and Ma under Section 20(a) of the Exchange Act;[4]
- researched and drafted oppositions to the two separate motions to dismiss filed by (a) Alibaba, Zhang and Wu; and (b) Ma; participated in oral argument on the motions; and ultimately prevailed in part (*see* ECF No. 83);
- engaged in significant discovery efforts, which entailed, *inter alia*: (a) exchanging initial disclosures; (b) propounding six sets of requests for production of documents and one set of written interrogatories; (c) noticing the deposition of Alibaba pursuant to Fed. R. Civ. P. 30(b)(6); (d) participating in an initial Case Management Conference before Magistrate Judge Jennifer E. Willis; (e) responding to Defendants' requests for production and producing over 15,000 pages of documents; (f) meeting and conferring regarding the scope of discovery in this Action, including participating in numerous telephonic or video conferences, and exchanging approximately 40 meet and confer letters, as well as dozens of e-mails;[5] (g) strategically reviewing and analyzing more than 1.07 million pages of documents produced by Defendants and third parties over the course of the Action, many of which were written in Mandarin Chinese; and (h) preparing "deposition materials," containing summaries of each potential deponent's background, relevant documents, and potential lines of questioning for depositions, which depositions were contemplated to commence in September 2024 and continue through December 2024;
- negotiated a stipulation governing the treatment of confidential information and documents, which was endorsed by the Court;
- fully briefed Plaintiffs' motion for class certification, which entailed, *inter alia*:

[4] Exhibits 1 through 8 to the Complaint were copies of documents written in Chinese, with certified English translations. *See* ECF No. 55.

[5] Following these substantial negotiations, the Parties agreed to the parameters for Defendants' search of Electronically Stored Information (or "ESI"), pursuant to which Defendants agreed to search the e-mail and DingTalk messages of 28 custodians by applying 465 search terms (155 discrete terms searched in each English, simplified Chinese, and traditional Chinese). ¶41.

(a) assisting in the preparation and submission of expert and rebuttal reports on market efficiency by Dr. David Tabak and defending his class certification deposition; (b) preparing for and defending the four Plaintiffs' depositions; (c) deposing Defendants' expert, Dr. Glenn Hubbard, Ph.D.; and (d) moving to strike in part a sur-reply filed by Defendants;

- participated in an unsuccessful full-day, in-person mediation with former U.S. District Court Judge Phillips in Newport Beach, California, before which the Parties exchanged opening and supplemental mediation statements and exhibits on the issues of liability, damages and class certification;
- engaged in months of follow-up negotiations with Judge Phillips and Defendants' Counsel following the unsuccessful mediation that ultimately resulted in a mediator's recommendation to the settle the Action for $433.5 million;
- drafted and then negotiated the Term Sheet, Stipulation (including the exhibits thereto) and Supplemental Agreement with Defendants' Counsel; and
- worked with Plaintiffs' damages expert to craft a plan of allocation. *See* ¶¶10, 19-69.

The Settlement is, therefore, the result of arms-length negotiations, conducted by informed and experienced counsel, in conjunction with an experienced neutral.

As discussed in greater detail below and in the Wolke Declaration, Plaintiffs and their counsel believe that the proposed Settlement meets the standards for final approval and is in the best interests of the Settlement Class. Accordingly, Plaintiffs respectfully request that the Court grant final approval to the Settlement.

Plaintiffs also move for approval of the proposed Plan of Allocation of the Net Settlement Fund. The Plan of Allocation was developed in conjunction with Plaintiffs' damages expert and is designed to distribute the proceeds of the Net Settlement Fund fairly and equitably to Settlement Class Members. No Settlement Class Member is favored over another under the proposed Plan; rather, all Settlement Class Members—including Plaintiffs—are treated in the same manner. *See* Ex. 1-A at ¶¶53-76. Because the Plan of Allocation is fair and reasonable, it too should be approved.

II. <u>STANDARDS FOR FINAL APPROVAL UNDER RULE 23(e)</u>

Rule 23(e) of the Federal Rules of Civil Procedure provides that a class action settlement must be presented to the Court for approval and should be approved if the Court finds it "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Rule 23(e)(2), which governs final approval, requires courts to consider the following in determining whether a settlement is fair, reasonable, and adequate:

> (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitable relative to each other.

Fed. R. Civ. P. 23(e)(2).

Factors (A) and (B) "identify matters . . . described as procedural concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement," while factors (C) and (D) "focus on . . . a substantive review of the terms of the proposed settlement" (*i.e.*, "[t]he relief that the settlement is expected to provide to class members"). Advisory Committee Notes to 2018 Amendments (324 F.R.D. 904, at 919); *see also In re 3D Sys. Sec. Litig*., 2024 WL 50909, at *5 (E.D.N.Y. Jan. 4, 2024) ("In conducting this inquiry, courts consider the substantive and procedural fairness of a proposed settlement to determine whether the terms of the settlement and the negotiation process leading up to it are fair."). These factors "add to, rather than displace, the *Grinnell* factors" traditionally considered by courts within the Second Circuit. *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019); *see also In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 692 (S.D.N.Y. Nov. 7, 2019) (evaluating settlement based on factors set forth in Fed. R. Civ. P. 23(e)(2) and *Grinnell*).[6]

[6] The *Grinnell* factors are: (1) complexity, expense and likely duration of the case; (2) reaction of the class; (3) stage of the proceedings and the amount of discovery completed; (4) risks of proving liability; (5) risks of proving damages; (6) risks of maintaining the class through the trial; (7) ability of defendants to fund a larger judgment; (8) range of reasonableness of the settlement fund in light of the best possible recovery; and (9) range of reasonableness of the settlement fund in light of all attendant risks. *City of Detroit v. Grinnell Corp*., 495 F.2d 448, 463 (2d Cir. 1974).

As set forth below, the proposed Settlement satisfies the criteria for final approval under the Rule 23(e)(2) factors, as well as the non-duplicative *Grinnell* factors.

III. ARGUMENT

A. The Settlement Is Fair, Reasonable, And Adequate And Warrants Final Approval

1. Plaintiffs And Counsel Adequately Represented The Settlement Class

Rule 23(e)(2)(A) requires the Court to consider whether the "class representatives and class counsel have adequately represented the class." FED. R. CIV. P. 23(e)(2)(A). "Determination of adequacy typically entails inquiry as to whether: 1) plaintiff's interests are antagonistic to the interest of other members of the class and 2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." *Cordes & Co. Fin. Servs., Inc. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007); *GSE Bonds*, 414 F. Supp. 3d at 692; *see also Denney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006) ("the proposed class representative must have an interest in vigorously pursuing the claims of the class, and must have no interests antagonistic to the interests of other class members.").

Here, Plaintiffs have no interests antagonistic to other class members; rather, Plaintiffs' interests are aligned with other Settlement Class Members' interests because they all suffered the same injuries—monetary losses resulting from Defendants' alleged violations of the federal securities laws. *See GSE Bonds*, 414 F. Supp. 3d at 692; *Lea v. Tal Educ. Grp.*, 2021 WL 5578665, at *6 (S.D.N.Y. Nov. 30, 2021) ("Plaintiffs interests are directly aligned with the interests of the Settlement Class as they all involved purchased TAL's ADSs during the Class Period and allegedly suffered harm as a result of Defendants' alleged misdeeds."). "Because of these injuries, plaintiffs have an interest in vigorously pursuing the claims of the class." *GSE Bonds*, 414 F. Supp. 3d at 692. Indeed, each Plaintiff has ***proven*** their commitment to the litigation by, *inter alia*, overseeing the litigation and regularly communicating with their counsel; providing written discovery responses and producing documents;

sitting for deposition; and participating in settlement discussions with Plaintiffs' Counsel. *See* Ex. 2, ¶¶3-5; Ex. 3, ¶¶3-5; Ex. 4, ¶¶3-5; Ex. 5, ¶¶3-5.

"Plaintiffs have [also] demonstrated their commitment to this litigation by retaining qualified and experienced counsel." *Tal Educ. Grp.*, 2021 WL 5578665, at *6. Plaintiffs' Counsel have substantial experience in securities class actions, and have diligently litigated on behalf of the putative class throughout the litigation. *See* Exs. 9-C (Glancy Prongay & Murray LLP ("GPM") firm résumé) & 10-C (Pomerantz LLP firm résumé); *see also* ¶¶19-69 (detailing Lead Counsel's extensive investigation, briefing on the motions to dismiss and class certification, significant discovery efforts, and hard-fought mediation efforts). Plaintiffs and their counsel have, therefore, adequately represented the proposed Settlement Class. *See Mild v. PPG Indus., Inc.*, 2019 WL 3345714, at *3 (C.D. Cal. July 25, 2019) (finding adequacy where "Plaintiff's … interest in obtaining the largest possible recovery is aligned with the interests of the rest of the Settlement Class members"; and "Lead Counsel [GPM] are highly experienced in securities litigation and have vigorously prosecuted the Settlement Class's claims by expending significant time and effort on the case.").

2. The Settlement Is The Result Of Arm's-Length Negotiations

Rule 23(e)(2)(B) evaluates whether the proposed settlement "was negotiated at arm's length." FED. R. CIV. P. 23(e)(2)(B). In conducting this analysis, courts recognize that a "mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure." *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001); *see also Jones v. Singing River Health Servs. Found.*, 865 F.3d 285, 295 (5th Cir. 2017) ("[t]he involvement of 'an experienced and well-known' mediator 'is also a strong indicator of procedural fairness.'") (quoting *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 618 (S.D.N.Y. 2012)).

Here, the Parties' settlement negotiations were facilitated by former federal judge Layn R. Phillips through a formal in-person mediation session, and approximately two months of follow up negotiations, that ultimately culminated in the Parties' accepting Judge Phillips' recommendation to settle the Action for $433,500,000. The arm's-length nature of the settlement negotiations, and the involvement of a mediator with substantial experience mediating complex securities class actions, supports the conclusion that the Settlement is fair and was achieved free of collusion. *See Deutsche Bank*, 236 F.3d at 85 (a "mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure"); *In re Bear Stearns Cos., Inc. Sec., Deriv., & ERISA Litig.*, 909 F. Supp. 2d 259, 265 (S.D.N.Y. 2012) (settlement "procedurally fair" where the parties engaged in mediation before "retired federal judge Layn R. Phillips, an experienced and well-regarded mediator of complex securities cases"). Moreover, "[t]he fact . . . that the Settlement is based on a mediator's proposal further supports a finding that the settlement agreement is not the product of collusion." *Lusk v. Five Guys Enters. LLC*, 2022 WL 4791923, at *9 (E.D. Cal. Sept. 30, 2022).

3. The Settlement Is A Fair And Reasonable Result For The Settlement Class In Light Of The Benefits Of The Settlement And The Risks Of Continued Litigation

Under Rule 23(e)(2)(C), when evaluating the fairness, reasonableness, and adequacy of a settlement, the Court must also consider whether "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal" along with other relevant factors. FED. R. CIV. P. 23(e)(2)(C).[7] As discussed below, each supports final approval.

[7] Rule 23(e)(2)(C)(i) essentially incorporates six of the *Grinnell* factors: complexity, expense, and likely duration of the litigation (first factor); risks of establishing liability and damages (fourth and fifth factors); risks of maintaining class action status through trial (sixth factor); and range of reasonableness of the settlement fund in light of the best possible recovery and the attendant risks of litigation (eighth and ninth factors). *See Grinnell*, 495 F.2d at 463; *see also GSE Bonds*, 414 F. Supp. 3d at 693 ("This inquiry overlaps significantly with a number of *Grinnell* factors, which help guide the Court's application of Rule 23(e)(2)(C)(i).").

(a) Complexity, Expense And Duration Of Litigation

"As a general matter, the more complex, expensive, and time consuming the future litigation, the more beneficial settlement becomes as a matter of efficiency to the parties and to the Court." *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 381-82 (S.D.N.Y. 2013); *see also Gordon v. Vanda Pharm. Inc.*, 2022 WL 4296092, at *4 (E.D.N.Y. Sept. 15, 2022) ("settlement is favored when the alternative–litigating the case–will be long, complex, and expensive."). "[S]ecurities class actions are by their very nature complicated and district courts in this Circuit have long recognized that securities class actions are notably difficult and notoriously uncertain to litigate." *City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *5 (S.D.N.Y. May 9, 2014); *Strougo v. Bassini*, 258 F. Supp. 2d 254, 258 (S.D.N.Y. 2003) (it is "beyond cavil that continued litigation in this multi-district securities class action would be complex, lengthy, and expensive, with no guarantee of recovery by the class members."). This case was no exception; in fact, it was "significantly more complex, expensive, and risky by virtue of the fact that Defendants are based in China." *In re PPDAI Grp. Inc. Sec. Litig.*, 2022 WL 198491, at *9 (E.D.N.Y. Jan. 21, 2022).

Although numerous obstacles have been overcome to get to this point, prevailing in continued litigation would require Plaintiffs to surmount many more. These obstacles include obtaining evidence sufficient to prove Plaintiffs' case, all of which is located in China. *See Yang v. Focus Media Holding Ltd.*, 2014 WL 4401280, at *6 (S.D.N.Y. Sept. 4, 2014) ("It can be difficult and sometimes impossible to obtain evidence from China because of its very different regulatory regime governing access to documents and witnesses."). Document discovery would have been hampered by China's state secrecy and data privacy laws, which Defendants argued limit the type of information that can be exported out of the country and produced to third parties, such as Plaintiffs. ¶41; *see also PPDAI Grp.*, 2022 WL 198491, at *9. As a result, Lead Counsel may have been restricted or forbidden from reviewing certain documents, and there is no guarantee they would have been able to conduct the document discovery necessary to prove their case.

Furthermore, to the extent Plaintiffs obtained documents, the vast majority of the key documents were, and would be, written in Chinese. ¶¶42, 44. Prosecution of the Action required a team of attorneys who are fluent in Chinese, and review of the documents was, and would continue to be, protracted and expensive. It would also involve the review and translation of many more documents than what would ultimately be offered as evidence at trial. ¶¶80-82; *see also Monsanto Int'l Sales Co., Inc. v. Hanjin Container Lines, Ltd.*, 770 F. Supp. 832, 836 (S.D.N.Y. 1991) ("[T]hese records are also presumably in Chinese and . . . would have to be translated at significant cost. … Because English-speaking lawyers would try the case here, the parties would have to translate far more documents and deposition testimony in order for trial attorneys to ascertain what they should or should not offer at trial."). Additionally, translation accuracy can be contentious because a word or phrase may have multiple meanings or a different context-specific meaning, which can lead to evidentiary disputes and increased cost. *See In re Vitamin C Antitrust Litig.*, 2013 WL 6858853, at *2 (E.D.N.Y. Dec. 30, 2013) (noting that case involved "extensive Chinese documents that had to be translated with concomitant disputes over the accuracy of the translations"); *see also* ¶80.

Obtaining deposition testimony would also have proven extremely difficult and costly. *See Jun Yan v. Libo Zhou*, 2021 WL 4059478, at *3 (E.D.N.Y. Sept. 7, 2021) ("The law of China prohibits Defendants from being deposed while they are within the borders of People's Republic of China without permission from the authority of the People's Republic of China.") (citing Article 277 of Chinese Civil Law). Although there are cumbersome official approval procedures in China that could theoretically be used to request a deposition, it is Lead Counsel's understanding that very few such requests have been granted in recent decades. The probability of Plaintiffs being able to examine third parties in this case was, therefore, almost non-existent. *See Tal Educ. Grp.*, 2021 WL 5578665, at *9 ("The probability of Plaintiffs being able to examine third parties in this case, as well as take depositions in the People's Republic of China, or Hong Kong, would be extremely difficult and costly, if not outright unfeasible").[8]

Moreover, to the extent depositions do take place in cases with Chinese defendants, it is Lead Counsel's experience that they are almost always conducted in another jurisdiction outside of mainland China, such as Hong Kong or Singapore. ¶45; ECF No. 91 at 10 ("a significant number of depositions will occur in a mutually agreeable location in Asia (likely Hong Kong) and will require translation, necessitating extensive travel and coordination."). This is a costly and drawn-out endeavor, involving international flights and hotels, many hours of travel time, significant time changes, and the depositions themselves are more time-consuming and expensive given the need for a main interpreter and check interpreters. *Id.*; *see also Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534, at *10 (S.D.N.Y. Oct. 16, 2019) (settlement supported where continued litigation "would necessarily require the expense of travelling to Hong Kong to depose Defendant's witnesses though interpreters, and the costly translation of many Chinese documents.").

The case was further complicated by its subject matter. Plaintiffs' federal securities claims arise from alleged conduct that implicates complex antitrust and regulatory issues under Chinese law. *See Vitamin C*, 2013 WL 6858853, at *2 (case was complicated by, *inter alia*, "analysis of Chinese law"). Continued prosecution would have required extensive expert testimony in these areas and, as

[8] *See also Wei Su v. Sotheby's, Inc.*, 2019 WL 4053917, at *3 (S.D.N.Y. Aug. 28, 2019) ("According to the United States Department of State, China does not permit attorneys to take depositions in China for use in foreign courts; such depositions, as a general matter, may only be accomplished through requests to its Central Authority under the Hague Evidence Convention; consular depositions would require permission from the Central Authority on a case by case basis; and participation in unapproved deposition activity could result in the arrest, detention or deportation of the American attorneys and other participants." (cleaned up)).

Defendants maintained, enforcement of Chinese antitrust laws and administrative guidance related thereto was not clear cut, especially as it pertained to the "platform economy sector" in China, thereby increasing Plaintiffs' risk of loss. *See* ECF Nos. 61 & 77; *see also*, *infra*, Sec. IV.A.3.(c) (discussing risks to proving liability).

Finally, this case has been pending for over four years. Assuming Plaintiffs' claims were certified under Rule 23 (and not reversed on a Rule 23(f) interlocutory appeal), and survived summary judgment, litigating the Action through trial and post-trial appeals would undoubtedly be a long and expensive endeavor that would consume substantial judicial and private resources with a potential recovery—if any—years from now. *GSE*, 414 F. Supp. 3d at 693 ("even if plaintiffs were to prevail at trial, post-trial motions and the potential for appeal could prevent the class members from obtaining any recovery for several years, if at all."). By contrast, the Settlement provides an immediate and substantial recovery for the Settlement Class. The complexity, expense, and delay of continued litigation thus favors final approval. *See In re Indep. Energy Holdings PLC Sec. Litig.,* 2003 WL 22244676, at *3 (S.D.N.Y. Sept. 29, 2003) (possibility of continued litigation involving expert discovery, summary judgment motions, pre-trial orders, and trial "weighs heavily in favor of ... [s]ettlement"); *Christine Asia Co.*, 2019 WL 5257534, at *10 (approving settlement and recognizing that continued litigation against Chinese defendants would be "particularly onerous and expensive").

(b) Risk Of Obtaining And Maintaining Class Action Status

At the time the Parties agreed to settle Plaintiffs' class certification motion was pending. While Plaintiffs believe certification was warranted, Defendants vigorously opposed that motion, and success was not a forgone conclusion. *See* ECF Nos. 99-102, 107-110, 113-124, 129; Wolke Decl., ¶¶52-65. Indeed, this Court has declined to certify an investor class before. *In re Moody's Corp. Sec. Litig.*, 274 F.R.D. 480 (S.D.N.Y. 2011). Settlement Class Members would receive nothing if the Court denied class certification, and even if the Court granted Plaintiffs' motion, the risk of decertification—in this Court or on a Rule 23(f) interlocutory appeal—was real. *See Ark. Teacher Ret. Sys. v. Goldman Sachs Grp., Inc.*, 77 F.4th 74 (2d Cir. 2023) (decertifying a class of investors after 12 years of litigation); *see also Chatelain v. Prudential-Bache Sec., Inc.*, 805 F. Supp. 209, 214 (S.D.N.Y. 1992) ("Even if certified, the class would face the risk of decertification."). "The risks attendant to certifying a class and defending any decertification motion supports approval of the settlement." *Tal Educ. Grp.*, 2021 WL 5578665, at *10.

(c) Risks Of Establishing Liability And Damages

In considering these factors, "a court should balance the benefits afforded the Class, including immediacy and certainty of recovery, against the continuing risks of litigation." *GSE*, 414 F. Supp. 3d at 694. While Lead Counsel believes Plaintiffs' claims have merit, they also recognize substantial obstacles to proving liability and class-wide damages. When compared to the certainty and significant benefits of the Settlement, these risks militate against further litigation and support final approval.

Establishing Liability: This Action is premised on anticompetitive "exclusivity practices" that Alibaba allegedly employed after being instructed to stop at a November 5, 2019, SAMR administrative guidance meeting, and the December 23, 2020, news that the SAMR had "started [an] investigation amid reports that Alibaba had engaged in monopolistic conduct such as placing unreasonable restrictions on merchants or other users of its platforms." ECF No. 55 (Complaint), ¶374. The Complaint also alleged a separate series of misstatements concerning the planned November 2020 IPO of Ant Group, in which Alibaba had a 33% equity stake. The Court dismissed the challenged Ant Group IPO statements, and Defendant Ma, from the Action entirely, substantially narrowing the case. The Court also dismissed one of two alleged loss causation dates on the surviving Antitrust Claim. *See* ECF No. 83; Wolke Decl. ¶¶34-35, 83.

The surviving Antitrust Claim involves complex economic and regulatory issues regarding the ecommerce market and Chinese antitrust law, among other potentially applicable laws and regulations. Proving these claims would present a significant challenge. Defendants argued at the pleading stage that Alibaba disclosed its "market approach with traffic resource allocation on our e-commerce platforms," in contrast to its "prior narrowly deployed exclusive partnerships," and that "prior to and during the putative Class Period, Chinese legal scholars noted the ambiguity and vigorous debate" regarding whether "traffic resource allocation" violated Chinese antitrust law. ECF No. 61 at 7. While Plaintiffs strongly believe the evidence supports their allegations, a jury may nevertheless agree with Defendants' argument, putting at risk Plaintiffs' ability to prove falsity, scienter, ***and*** loss causation—all required elements of their claims. *See Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005).

Defendants would likely argue, *inter alia*, that ambiguity as to whether Alibaba's practices violated Chinese antitrust law was incompatible with a finding of scienter. While Plaintiffs believe that they could establish scienter after the development of the evidentiary record, they also recognize that "[p]roving scienter is hard to do." *Christine Asia Co.*, 2019 WL 5257534, at *12; *see also Pearlstein v. BlackBerry Ltd.*, 2022 WL 4554858, at *5 (S.D.N.Y. Sept. 29, 2022) ("proof of state of mind is inherently difficult"); *see also Smith v. Dominion Bridge Corp.*, 2007 WL 1101272, at *5 (E.D. Pa. Apr. 11, 2007) ("stockholders normally have little more than circumstantial and accretive evidence to establish the requisite scienter"). This is especially true here because Plaintiffs may be unable to compel the depositions of fact witnesses who could provide insight into Defendants' state of mind. *See Yang v. Focus Media Holding Ltd.*, 2014 WL 4401280, at *6 (S.D.N.Y. Sept. 4, 2014) ("the court is mindful of the fact that, because Focus Media is headquartered in the People's Republic of China, the litigation faces many other obstacles, such as the lack of subpoena power to compel the appearance of fact witnesses").

<u>Loss Causation and Damages:</u> Even if Plaintiffs established liability, they faced significant risks in proving loss causation and damages. *See Dura Pharm.*, 544 U.S. at 345-46 (plaintiffs bear "the burden of proving that the defendant's misrepresentations caused the loss for which the plaintiff seeks to recover"); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009) ("It is well-established that plaintiffs alleging claims under Section 10(b) of the '34 Act must prove loss causation."). For example, in opposing class certification, Defendants argued that "the market believed during the putative Class Period that Alibaba's exclusivity practices were ongoing," and thus the SAMR's announcement of its investigation into Alibaba on December 23, 2020—the only alleged corrective disclosure to survive the pleading stage—did not reveal any new information about Alibaba's practices. ECF No. 107 at 15. Even if the Court certified Plaintiffs' proposed class, Defendants would likely make a similar argument at summary judgment and trial that, if accepted by the trier of fact, could fatally undermine Plaintiffs' claims.

Of course, to resolve all disputed issues regarding damages and loss causation, the Parties would have relied on expert testimony. This creates further risk because Plaintiffs could not be certain whether a jury would accept the view of their experts or of the well-qualified experts that Defendants would no doubt be able to present at trial. *See In re Facebook, Inc. IPO Sec. and Deriv. Litig.*, 2015 WL 6971424, at *5 (S.D.N.Y. Nov. 9, 2015) (settlement "generally favored" where "damages would be subject to a battle of the experts, with the possibility that a jury could be swayed by experts for Defendants, who could minimize or eliminate the amount Plaintiffs' losses."); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *6 (S.D.N.Y. Dec. 23, 2009) ("If there is anything in the world that is uncertain when a case like [a securities class action] is taken to trial, it is what the jury will come up with as a number for damages.").

(d) Range Of Reasonableness In Light Of The Best Possible Recovery And Attendant Risks Of Litigation

"Courts typically analyze the last two *Grinnell* factors together." *BlackBerry*, 2022 WL 4554858, at *6 (citing *Grinnell*, 495 F.2d at 463). In so doing, the adequacy of the amount offered in settlement must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987).

Here, the proposed Settlement provides $433,500,000 for the benefit of the Settlement Class. This is an outstanding result in light of the significant risks of continued litigation. Plaintiffs' damages expert estimates that if Plaintiffs had fully prevailed on all their claims at summary judgment and after a jury trial, and if the Court and jury accepted Plaintiffs' damages theory—*i.e.*, Plaintiffs' ***best case scenario***—the total ***maximum*** damages ***potentially*** available in this Action would be approximately $11.629 billion. Thus, the $433,500,000 recovery equates to a recovery of approximately 3.73% of maximum potential damages. This is more than ***triple*** the median recovery of 1.2% of estimated damages in securities class actions in 2024, and more than ***nine times*** the median recovery of 0.4% in securities class action settlements during the past decade where investor losses exceeded $10 billion. Ex. 6 (NERA Report at 26 (Fig. 23), & 27 (Fig. 24). "Further, as in any securities class action, it is almost certain that less than 100% of eligible Class Members will file claims (despite efforts made to notify as many eligible claimants as possible); accordingly, the percentage of damages that claiming Class Members will recover will likely be higher—and could be significantly higher." *BlackBerry*, 2022 WL 4554858, at *7.[9]

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[9] This is not a claims-made settlement. If the Settlement is approved, Defendants will not have any right to the return of a portion of the Settlement based on the number or value of the claims submitted. *See* Stipulation ¶13.

Of course, no litigation is risk-free, and Defendants would have raised serious arguments relating to all aspects of Plaintiffs' case, including Plaintiffs' loss causation allegations. For example, at class certification, Defendants argued that confounding news unrelated to the Antitrust Claim caused or contributed to the price drop on December 24, 2020. ECF 107 at 18-20. Even if this argument did not defeat class certification, Defendants would no doubt argue at summary judgment and trial that Plaintiffs are required to disaggregate any losses unrelated to the Antitrust Claim. *See FLAG Telecom*, 574 F.3d at 36 ("to establish loss causation, *Dura* requires plaintiffs to disaggregate those losses caused by 'changed economic circumstances, changed investor expectations, new industry-specific or firm-specific facts, conditions, or other events,' from disclosures of the truth behind the alleged misstatements"); *In re Signet Jewelers Ltd. Sec. Litig.*, 2019 WL 3001084, at *20 (S.D.N.Y. July 10, 2019) ("plaintiff[s] ultimately will need to disaggregate confounding factors to prove economic loss"). Had Defendants' arguments concerning loss causation been accepted in whole or in part, it could have eliminated or greatly reduced any potential recovery.[10] And, even if Plaintiffs were successful at trial, Defendants could have challenged the damages of each and every large class member in post-trial proceedings, substantially reducing any aggregate recovery. ¶84. A victory—much less one that exceeded $433,500,000—was far from assured.

Given the range of possible results in this litigation against PRC-based Defendants, there can be no question that the Settlement Amount constitutes a considerable achievement and weighs heavily in favor of the final approval.

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[10] *See In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (granting defendants' motion for judgment as a matter of law following plaintiffs' verdict based on plaintiffs' expert's failure to disaggregate certain negative information), *aff'd sub nom.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012); *In re Scientific Atl., Inc. Sec. Litig.*, 754 F. Supp. 2d 1339, 1379-80 (N.D. Ga. 2010) (granting motion for summary judgment because plaintiffs did not disentangle fraud-related and non-fraud-related portions of stock decline).

4. Rule 23(e)(2)(C) Factors Either Support Final Approval Or Are Neutral

Under Rule 23(e)(2)(C), courts also must consider whether the relief provided for the class is adequate in light of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;" "the terms of any proposed award of attorney's fees, including timing of payment;" and "any agreement required to be identified under Rule 23(e)(3)." FED. R. CIV. P. 23(e)(2)(C)(ii)-(iv). Each either supports final approval of the Settlement or is neutral and does not suggest any basis for finding the Settlement inadequate.

Rule 23(e)(2)(C)(ii): The method for processing Settlement Class Members' claims and distributing relief to eligible claimants includes well-established, effective procedures for processing claims and efficiently distributing the Net Settlement Fund. Here, A.B. Data, the Claims Administrator selected by Lead Counsel and approved by the Court (*see* ECF No. 139, ¶7), will process claims under the guidance of Lead Counsel, allow claimants an opportunity to cure any claim deficiencies or request the Court to review their claim denial, and, lastly, mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund (per the Plan of Allocation) after Court approval. Claims processing, like the method proposed here, is standard in securities class action settlements. *See Tal Educ. Grp.*, 2021 WL 5578665, at *11 (approving securities class action settlement with a nearly identical distribution process); *In re Stable Road Acquis. Corp. Sec. Litig.*, 2024 WL 3643393, at *7 (C.D. Cal. Apr. 23, 2024) (same). It is well established, and necessary, because neither Plaintiffs nor Defendants possess the individual investor trading data required for a claims-free process to distribute the Net Settlement Fund. *See Becker v. Bank of New York Mellon Trust Co., N.A.*, 2018 WL 6727820, at *7 (E.D. Pa. Dec. 21, 2018) ("The requirement that class members submit documentation to substantiate their holdings . . . will facilitate the filing of legitimate claims, yet is not overly demanding given the range of permissible documentation.").

<u>Rule 23(e)(2)(C)(iii)</u>: The Notice stated that Lead Counsel would apply for a percentage of the common fund fee award in an amount not to exceed 30% to compensate all Plaintiffs' Counsel for services rendered on behalf of the Settlement Class. Lead Counsel is, however, only seeking an attorneys' fee of 25% of the Settlement Fund (which, by definition, includes interest earned on the Settlement Amount). A requested fee of 25% is reasonable in light of the work performed and the results obtained. It is also consistent with awards in similar complex class action cases. *See* Fee Memorandum, Sec. III.C.1. (percentage of the fund analysis).[11] More importantly, approval of the requested attorneys' fees is separate from approval of the Settlement, and the Settlement may not be terminated based on any ruling with respect to attorneys' fees. *See* Stipulation, ¶16.

<u>Rule 23(e)(2)(C)(iv)</u>: The Parties entered into a confidential agreement establishing certain conditions under which Defendants may terminate the Settlement if Settlement Class Members who collectively purchased or acquired a specific number of Alibaba ADS validly exclude themselves from the Settlement. "This type of agreement is standard in securities class action settlements and has no negative impact on the fairness of the Settlement." *Christine Asia Co.*, 2019 WL 5257534, at *15; *see also BlackBerry*, 2022 WL 4554858, at *7 ("To protect the Class, the specific terms of the Supplemental Agreement are confidential to avoid creating incentives for a small group of investors to opt out solely to leverage the threshold to exact an individual settlement.").

5. The Settlement Treats All Members Of The Settlement Class Equitably Relative To Each Other

Rule 23(e)(2)(D) requires courts to evaluate whether the settlement treats class members equitably relative to one another. The Settlement easily satisfies this standard. Under the proposed

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[11] *See also In re Comverse Tech., Inc. Sec. Litig.*, 2010 WL 2653354, at *6 (E.D.N.Y. June 24, 2010) ("Lead Counsel's request for 25% of the [$225 million] Settlement Amount is consistent with, or lower than, the fee awards in other 'megafund' securities fraud actions in this Circuit."); Ex. 6 (NERA Report), at 30 (Fig. 27) (statistical review of all PSLRA settlements from 2015 to 2024 finding that 25% is the median fee award in cases with recoveries ranging from $100 million to $500 million).

Case 1:23-cv-09563-ASD-JW Document 104-3 Filed 02/12/25 Page 31 of 34

Plan of Allocation, each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund. Specifically, an Authorized Claimant's *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. ¶103. Courts have repeatedly approved similar plans. *See Tal Educ. Grp.*, 2021 WL 5578665, at *11 (finding "methodology is appropriate and consistent with many other securities class action settlements' plans of allocation" where "Class Members will receive a *pro rata* share of the Net Settlement Fund in the proportion that the Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants."); *BlackBerry*, 2022 WL 4554858, at *8.

6. The Remaining *Grinnell* Factors Weigh In Favor Of Final Approval

The Reaction of the Settlement Class: The second *Grinnell* factor—the reaction of the class—overlaps with Rules 23(c)(2)(B)(vi), on the opportunity for exclusion, and 23(e)(5)(A), on the opportunity to object. As required by Rule 23(c)(2)(B)(vi) and (e)(5)(A), the Settlement affords Settlement Class Members the opportunity to request exclusion from, or object to, the Settlement. Ex. 1-A (Notice) at ¶¶78-80, 82-88. In total, as of February 10, 2025, notice of the Settlement has been disseminated to 1,088,190 potential Settlement Class Members and nominees, which includes 635,095 mailed Notice Packets (consisting of the Notice and Proof of Claim Form), and 453,095 emailed links to the Notice Packet. Ex. 1 at ¶11. As of February 10, 2025, A.B. Data has received only six (6) requests for exclusion, and not a single objection has been filed with the Court. *Id.* at ¶19; *see also* Wolke Decl. at ¶5.[12] The Settlement Class's positive reaction strongly supports final approval of the Settlement. *See, e.g.*, *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002)

[12] The deadline to request exclusion from, or object to any aspect of, the Settlement is March 6, 2025. Any objections or additional opt-outs received after the date of this filing will be addressed on reply.

("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy."); *see also Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement."); *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *6 (S.D.N.Y. July 21, 2020) ("The absence of any objections and the small number of requests for exclusion support a finding that the Settlement is fair, reasonable, and adequate.").

<u>The Stage of the Proceedings and the Amount of Discovery Completed</u>: The third *Grinnell* factor examines "whether the parties had adequate information about their claims such that their counsel can intelligently evaluate the merits of plaintiff's claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs' causes of action for purposes of settlement." *Bear Stearns*, 909 F. Supp. 2d at 267. Here, at the time the Settlement was reached, Plaintiffs had opposed two motions to dismiss, had the benefit of the Court's decision on the motion to dismiss, engaged in extensive discovery, fully briefed Plaintiffs' hotly contested class certification motion, and had been preparing for months for fact depositions of Alibaba witnesses to begin in Hong Kong in September 2024. In addition, pursuant to the Term Sheet, Plaintiffs received confirmatory discovery, including further document discovery and interviews with two senior Alibaba officers, and did not execute the Stipulation until after assessing that discovery. In total, Plaintiffs reviewed and analyzed approximately 1.07 million pages of documents produced by Defendants, many of which were produced in Chinese. Because Plaintiffs and their counsel had sufficient information to evaluate the strengths and weaknesses of the case at the time of settlement, this factor supports final approval. *See In re Tenaris S.A. Sec. Litig.*, 2024 WL 1719632, at *7 (E.D.N.Y. Apr. 22, 2024) ("Lead Plaintiffs' thorough investigation and witness interviews, the parties' settlement negotiations, and the interrogatories and document discovery obtained by Lead Plaintiffs provide the Court with sufficient assurance that Lead Plaintiffs are likely to have obtained adequate information about their claims.").

<u>The Ability of Defendants to Withstand a Greater Judgment</u>: Alibaba's ability to withstand a greater judgment (*Grinnell* factor seven) does not counsel against final approval. Defendants no doubt ***could*** withstand a greater judgment, but "a defendant is not required to empty its coffers before a settlement can be found adequate." *Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *11 (S.D.N.Y. March 24, 2014). Defendants' financial wherewithal "do[es] not ameliorate the force of the other *Grinnell* factors, which lead to the conclusion that the settlement is fair, reasonable and adequate." *Id*. The more pertinent risk to consider in this regard is Plaintiffs' ability to ***collect*** on a greater judgment. Given the uncertainty around enforcement of U.S. judgments under Chinese law, Plaintiffs' ability to collect on a greater judgment—even if obtained—is far from clear. *See* ¶85.[13] This factor thus weighs in favor of granting final approval of the Settlement.

B. The Notice Program Satisfies The Requirements Of Due Process And Rule 23

For any class certified under Rule 23(b)(3), due process and Rule 23 require that class members be given "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." FED. R. CIV. P. 23(c)(2)(B). The Notice provides all the necessary information required by Rule 23(c)(2)(B) and satisfies the requirements of the PSLRA, 15 U.S.C. § 78u-4(a)(7). This Court has already found that the proposed notice program is adequate and sufficient. *See* ECF No. 139, ¶¶7-9. Lead Counsel and A.B. Data carried out the notice program as proposed. In sum, the notice program detailed in ¶¶88-97 of the Wolke Declaration and the Walter Declaration (Ex. 1 at ¶¶2-12, 15-18) fairly apprises Settlement Class Members of their

[13] *See also Tenaris*, 2024 WL 1719632, at *8 ("Importantly, Tenaris has very few assets within the United States, which would significantly complicate enforcement efforts and could result in continued litigation in foreign courts arising out of enforcement efforts even if Tenaris's international operations are able to withstand judgment.").

rights with respect to the Settlement, and is the best notice practicable under the circumstances. *See Mauss v. NuVasive, Inc.*, 2018 WL 6421623, at *2-3 (S.D. Cal. Dec. 12, 2018) (combination of mailed notice, publication of summary notice in *Investor's Business Daily* and over *Globe Newswire*, and posting of notice on settlement website satisfied requirements of "Rule 23, the Private Securities Litigation Reform Act ('PSLRA'), and due process.").

C. Certification Of The Settlement Class For Settlement Purposes Is Appropriate

In granting preliminary approval, the Court found this case appropriate for class certification for settlement purposes, and appointed Plaintiffs as class representatives and GPM as class counsel. *See* ECF No. 139 at ¶¶1-3. Nothing has changed since preliminary approval that would undermine the Court's conclusion, and class certification for settlement purposes remains appropriate. *See Fleming v. Impax Labs. Inc.*, 2022 WL 2789496, at *4 (N.D. Cal. July 15, 2022); *Stable Road*, 2024 WL 3643393, at *11.

D. The Plan Of Allocation Is Fair And Reasonable And Should Be Approved

"To warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized – namely, it must be fair and adequate." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005). "This does not mean that the plan must be perfect; rather, an allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *BlackBerry*, 2022 WL 4554858, at *8 (cleaned up).

The Plan of Allocation, as detailed in ¶¶100-07 of the Wolke Declaration, and set forth in the Notice (Ex. 1-A (Notice) ¶¶53-76), is based on an out-of-pocket theory of damages consistent with Section 10(b) of the Exchange Act, and reflects an assessment of the damages that Plaintiffs contend could have been recovered under the theories of liability asserted in the Action. More specifically, the Plan of Allocation reflects, and is based on, Plaintiffs' allegation that the price of Alibaba ADS was artificially inflated during the Settlement Class Period due to Defendants' alleged material misrepresentations and omissions. The Plan of Allocation is based on the premise that the decrease in the price of Alibaba ADS that followed the alleged corrective disclosure that occurred on December 23, 2020, may be used to measure the alleged artificial inflation in the price of Alibaba ADS prior to the disclosure. ¶102; Ex. 1-A (Notice) ¶57.

An individual Claimant's recovery under the Plan of Allocation will depend on a number of factors, including how many Alibaba ADS the Claimant purchased, acquired, or sold during the Settlement Class Period, when that Claimant bought, acquired, or sold the ADS, and the number of valid claims filed by other Claimants. If a Claimant purchased Alibaba ADS during the Settlement Class Period, but did not hold any of those ADS through the alleged corrective disclosure, the Claimant is not a Settlement Class Member and would have no Recognized Loss under the Plan of Allocation, as any loss suffered would not have been caused by the revelation of the alleged fraud. And, as noted above (*see* Sec. IV.A.5), each Authorized Claimant—including Plaintiffs—will receive, subject to a $10 *de minimis* provision, his, her or its *pro rata* share of the Net Settlement Fund, which will be their Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. Lead Counsel believes that the proposed Plan of Allocation will result in a fair and equitable distribution of the Net Settlement Fund among Settlement Class Members attributable to the conduct alleged in the Complaint. *See Stable Road*, 2024 WL 3643393, at *10-11 (approving substantially similar plan of allocation); *BlackBerry*, 2022 WL 4554858, at *8 (same). Approval of the proposed Plan of Allocation is, therefore, appropriate.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant the request relief.

Dated: February 20, 2025

GLANCY PRONGAY & MURRAY LLP

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Additional Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2025, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/ Kara M. Wolke
Kara M. Wolke

TAB 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: ALIBABA GROUP HOLDING LTD. SECURITIES LITIGATION	Master File No. 1:20-CV-09568-GBD-JW Hon. George B. Daniels

JUDGMENT APPROVING CLASS ACTION SETTLEMENT

WHEREAS, a consolidated class action is pending in this Court entitled *In re Alibaba Group Holding Ltd. Securities Litigation*, Case No. 1:20-cv-09568-GBD-JW (the "Action");

WHEREAS, (a) lead plaintiff Salem Gharsalli ("Lead Plaintiff"), and additional representative plaintiffs Laura Ciccarello, Dineshchandra Makadia, and Wusheng Hu (collectively, with Lead Plaintiff, "Plaintiffs"), on behalf of themselves and the Settlement Class (defined below), and (b) defendants Alibaba Group Holding Ltd. ("Alibaba"), Daniel Yong Zhang ("Zhang"), Maggie Wei Wu ("Wu"), and former defendant Jack Yun Ma ("Ma") (Zhang, Wu, and Ma, collectively, the "Individual Defendants"; and together with Alibaba, "Defendants"; and together with Plaintiffs, the "Parties") have entered into a Stipulation and Agreement of Settlement dated October 25, 2024 (the "Stipulation"), that provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the "Settlement");

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Stipulation;

WHEREAS, by Order dated October 28, 2024 (the "Preliminary Approval Order"), this Court: (a) preliminarily approved the Settlement; (b) certified the Settlement Class solely for purposes of effectuating the Settlement; (c) ordered that notice of the proposed Settlement be provided to potential Settlement Class Members; (d) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; and (e) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, due and adequate notice has been given to the Settlement Class;

WHEREAS, the Court conducted a hearing on March 27, 2025 (the "Settlement Hearing") to consider, among other things, (a) whether the terms and conditions of the Settlement are fair, reasonable and adequate to the Settlement Class, and should therefore be approved; and (b) whether a judgment should be entered dismissing the Action with prejudice as against Defendants; and

WHEREAS, the Court having reviewed and considered the Stipulation, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

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

2. **Incorporation of Settlement Documents** – This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on October 25, 2024; and (b) the Notice and the Summary Notice, both of which were filed with the Court on February 20, 2025.

3. **Class Certification for Settlement Purposes** – The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Action as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class consisting of all persons and/or entities that purchased or otherwise acquired Alibaba American Depositary Shares ("ADS"; NYSE: BABA) between November 13, 2019 and December 23, 2020, inclusive (the "Settlement Class Period"). Excluded from the Settlement Class are: (a) persons who suffered no compensable losses; (b) Defendants; the present and former officers and directors of Alibaba at all relevant times; members of their Immediate Families and their legal representatives, heirs, successors, or assigns, and any entity in which any of the Defendants, or any person excluded under this subsection (b), has or had a

controlling interest at any time; (c) any trust of which an Individual Defendant is the settler or which is for the benefit of an Individual Defendant and/or member(s) of their Immediate Families; (d) present and former parents, subsidiaries, assigns, successors, and predecessors of Alibaba; and (e) Defendants' liability insurance carriers. Also excluded from the Settlement Class are the persons listed on Exhibit 1 hereto who are excluded from the Settlement Class pursuant to request.

4. **Adequacy of Representation** – Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order certifying Plaintiffs as Class Representatives for the Settlement Class and appointing Lead Counsel as Class Counsel for the Settlement Class. Plaintiffs and Lead Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement and have satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

5. **Notice** – The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the Releases to be provided thereunder); (iii) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses; (iv) their right to object to any aspect of the Settlement, the Plan of Allocation and/or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses; (v) their right to exclude themselves from the Settlement Class; and (vi) their right to appear at the Settlement Hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) 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, as amended, and all other applicable law and rules.

6. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the amount of the Settlement; the Releases provided for therein; and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Settlement Class. The Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

7. The Action and all claims asserted against Defendants in the Action by Plaintiffs and the other Settlement Class Members are hereby dismissed with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

8. **Binding Effect** – The terms of the Stipulation and of this Judgment shall be forever binding on Defendants, Plaintiffs and all other Settlement Class Members (regardless of whether or not any individual Settlement Class Member submits a Claim Form or seeks or obtains a distribution from the Net Settlement Fund), as well as their respective successors and assigns. The persons listed on Exhibit 1 hereto are excluded from the Settlement Class pursuant to request and are not bound by the terms of the Stipulation or this Judgment.

9. **Releases** – The Releases set forth in paragraphs 5 and 6 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly

incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that:

(a) Without further action by anyone, and subject to paragraph 10 below, upon the Effective Date of the Settlement, Plaintiffs' Releasors shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Plaintiffs' Claim against Defendants and the other Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees. This Release shall not apply to any person listed on Exhibit 1 hereto.

(b) Without further action by anyone, and subject to paragraph 10 below, upon the Effective Date of the Settlement, Defendants' Releasors shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Defendants' Claim against Named Plaintiffs and the other Plaintiffs' Releasees, and shall forever be barred enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Plaintiffs' Releasees. This Release shall not apply to any person listed on Exhibit 1 hereto.

10. Notwithstanding paragraphs 9(a) – (b) above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

11. **Rule 11 Findings** – The Court finds and concludes that the Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the institution, prosecution, defense, and settlement of the Action.

12. **No Admissions** – Neither this Judgment, the Term Sheet, the Stipulation (whether or not consummated), including the exhibits thereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Term Sheet and the Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet, the Stipulation and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants' Releasees with respect to the truth of any fact alleged by Named Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants' Releasees or in any way referred to for any other reason as against any of the Defendants' Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(b) shall be offered against any of the Plaintiffs' Releasees, as evidence of, or construed as, or deemed to be evidence of any presumption, concession or admission by any of the Plaintiffs' Releasees that any of their claims are without merit, that any of the Defendants' Releasees had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; or

(c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given under the Settlement represents the amount which could be or would have been recovered after trial; *provided, however*, that the Parties and the Releasees and their respective counsel may refer to this Judgment and the Stipulation to effectuate the protections from liability granted hereunder and thereunder or otherwise to enforce the terms of the Settlement.

13. **Retention of Jurisdiction** – Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any motion for an award of attorneys' fees and/or Litigation Expenses by Lead Counsel in the Action that will be paid from the Settlement Fund; (d) any motion to approve the Plan of Allocation; (e) any motion to approve the Class Distribution Order; and (f) the Settlement Class Members for all matters relating to the Action.

14. Separate orders shall be entered regarding approval of a plan of allocation and the motion of Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses. Such orders shall in no way affect or delay the finality of this Judgment and shall not affect or delay the Effective Date of the Settlement.

15. **Modification of the Agreement of Settlement** – Without further approval from the Court, Plaintiffs and Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of

the Court, Plaintiffs and Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

16. **Termination of Settlement** – If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Plaintiffs, the other Settlement Class Members and Defendants, and the Parties shall revert to their respective positions in the Action as of July 3, 2024, as provided in the Stipulation.

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

SO ORDERED this 27th day of March, 2025.

MAR 27 2025

George B. Daniels

Hon. George B. Daniels
United States District Judge

TAB 3

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re CLARENT CORPORATION SECURITIES LITIGATION

No. C 01-03361 CRB

______________________________/

VERDICT FORM AS TO JERRY CHANG'S LIABILITY

Section 10(b) Claim Against Jerry Chang

First Quarter 2000

1. Did Jerry Chang make an untrue statement of a material fact or omit a material fact necessary under the circumstances to keep the statements that were made from being misleading in Clarent's Quarterly Report on Form 10-Q or earnings release for first quarter 2000?

Yes ____ No X

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 2. IF YOU ANSWERED "NO," PLEASE PROCEED TO QUESTION 5.

2. Did Jerry Chang act either knowingly or recklessly in making the false statement or omission you found in answering Question 1?

Yes ____ No ____

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 3. IF YOU ANSWERED "NO," PLEASE PROCEED TO QUESTION 5.

3. Did Jerry Chang act knowingly or recklessly (choose one)?

Knowingly ____ Recklessly ____

PLEASE PROCEED TO QUESTION 4.

4. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable result of the misstatement or omission you found in answering Question 1?

Yes ____ No ____

PLEASE PROCEED TO QUESTION 5.

Second Quarter 2000

5. Did Jerry Chang make an untrue statement of a material fact or omit a material fact necessary under the circumstances to keep the statements that were made from being misleading in Clarent's

United States District Court
For the Northern District of California

Quarterly Report on Form 10-Q or earnings release for second quarter 2000?

Yes ____ No X

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 6. IF YOU ANSWERED "NO," PLEASE PROCEED TO QUESTION 9.

6. Did Jerry Chang act either knowingly or recklessly in making the false statement or omission you found in answering Question 5?

Yes ____ No ____

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 7. IF YOU ANSWERED "NO," PLEASE PROCEED TO QUESTION 9.

7. Did Jerry Chang act knowingly or recklessly (choose one)?

Knowingly ____ Recklessly ____

PLEASE PROCEED TO QUESTION 8.

8. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable result of the misstatement or omission you found in answering Question 5?

Yes ____ No ____

PLEASE PROCEED TO QUESTION 9.

Third Quarter 2000

9. Did Jerry Chang make an untrue statement of a material fact or omit a material fact necessary under the circumstances to keep the statements that were made from being misleading in Clarent's Quarterly Report on Form 10-Q or earnings release for third quarter 2000?

Yes ____ No X

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 10. IF YOU ANSWERED "NO," PLEASE PROCEED TO QUESTION 13.

10. Did Jerry Chang act either knowingly or recklessly in making the false statement or omission you found in answering Question 9?

Yes ____ No ____

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 11. IF YOU ANSWERED "NO," PLEASE PROCEED TO QUESTION 13.

11. Did Jerry Chang act knowingly or recklessly (choose one)?

Knowingly ____ Recklessly ____

PLEASE PROCEED TO QUESTION 12.

12. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable result of the misstatement or omission you found in answering Question 9?

Yes ____ No ____

PLEASE PROCEED TO QUESTION 13.

Fourth Quarter and Year-End 2000

13. Did Jerry Chang make an untrue statement of a material fact or omit a material fact necessary under the circumstances to keep the statements that were made from being misleading in Clarent's Annual Report on Form 10-K for 2000 or earnings release for fourth quarter and year-end 2000?

Yes X No ____

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 14. IF YOU ANSWERED "NO," PLEASE PROCEED TO QUESTION 17.

14. Did Jerry Chang act either knowingly or recklessly in making the false statement or omission you found in answering Question 13?

Yes X No ____

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 15. IF YOU ANSWERED "NO,"

PLEASE PROCEED TO QUESTION 17.

15. Did Jerry Chang act knowingly or recklessly (choose one)?

Knowingly ____ Recklessly X

PLEASE PROCEED TO QUESTION 16.

16. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable result of the misstatement or omission you found in answering Question 13?

Yes ____ No X

PLEASE PROCEED TO QUESTION 17.

First Quarter 2001

17. Did Jerry Chang make an untrue statement of a material fact or omit a material fact necessary under the circumstances to keep the statements that were made from being misleading in Clarent's Quarterly Report on Form 10-Q or earnings release for first quarter 2001?

Yes X No ____

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 18. IF YOU ANSWERED "NO," PLEASE PROCEED TO QUESTION 21.

18. Did Jerry Chang act either knowingly or recklessly in making the false statement or omission you found in answering Question 17?

Yes X No ____

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 19. IF YOU ANSWERED "NO," PLEASE PROCEED TO QUESTION 21.

19. Did Jerry Chang act knowingly or recklessly (choose one)?

Knowingly ____ Recklessly X

PLEASE PROCEED TO QUESTION 20.

United States District Court
For the Northern District of California

20. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable result of the misstatement or omission you found in answering Question 17?

Yes ____ No X

PLEASE PROCEED TO QUESTION 21.

Second Quarter 2001

21. Did Jerry Chang make an untrue statement of a material fact or omit a material fact necessary under the circumstances to keep the statements that were made from being misleading in Clarent's Quarterly Report on Form 10-Q or earnings release for second quarter 2001?

Yes X No ____

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 22. IF YOU ANSWERED "NO," PLEASE SIGN AND DATE BELOW AND THEN PROCEED TO THE JURY VERDICT FORM AS TO ERNST & YOUNG. IF BOTH JURY VERDICT FORMS HAVE BEEN COMPLETED, PLEASE STOP, SIGN AND DATE BELOW, AND REPORT YOUR FINDINGS TO THE COURT.

22. Did Jerry Chang act either knowingly or recklessly in making the false statement or omission you found in answering Question 21?

Yes X No ____

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 23. IF YOU ANSWERED "NO," PLEASE SIGN AND DATE BELOW AND THEN PROCEED TO THE JURY VERDICT FORM AS TO ERNST & YOUNG. IF BOTH JURY VERDICT FORMS HAVE BEEN COMPLETED, PLEASE STOP, SIGN AND DATE BELOW, AND REPORT YOUR FINDINGS TO THE COURT.

23. Did Jerry Chang act knowingly or recklessly (choose one)?

Knowingly X Recklessly ____

PLEASE PROCEED TO QUESTION 24.

Case 1:23-cv-10063-AS CR Document 1-4 Filed 02/16/05 Page 7 of 11

24. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable result of the misstatement or omission you found in answering Question 21?

Yes X No ____

PLEASE SIGN AND DATE BELOW AND THEN PROCEED TO THE JURY VERDICT FORM AS TO ERNST & YOUNG. IF BOTH JURY VERDICT FORMS HAVE BEEN COMPLETED, PLEASE STOP, SIGN AND DATE BELOW, AND REPORT YOUR FINDINGS TO THE COURT.

Dated: 2/16/05

[signature]
Jury Foreperson

United States District Court
For the Northern District of California

Case 1:23-cv-00639-S Document 125-106 Filed 02/16/25 Page 57 of 311

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re CLARENT CORPORATION SECURITIES LITIGATION

No. C 01-03361 CRB

______________________________/

VERDICT FORM AS TO ERNST & YOUNG LLP'S LIABILITY

United States District Court
For the Northern District of California

Section 10(b) Claim Against Ernst & Young

Year-End 2000

1. Did Ernst & Young make an untrue statement of a material fact or omit a material fact necessary under the circumstances to keep the statements that were made from being misleading in Clarent's Annual Report on Form 10-K for 2000 (including Ernst & Young's Audit Report), issued March 29, 2001?

Yes ____ No X

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 2. IF YOU ANSWERED "NO," PLEASE PROCEED TO QUESTION 5.

2. Did Ernst & Young act either knowingly or recklessly in making the false statement or omission you found in answering Question 1?

Yes ____ No ____

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 3. IF YOU ANSWERED "NO," PLEASE PROCEED TO QUESTION 5.

3. Did Ernst & Young act knowingly or recklessly (choose one)?

Knowingly ____ Recklessly ____

PLEASE PROCEED TO QUESTION 4.

4. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable result of the misstatement or omission you found in answering Question 1?

Yes ____ No ____

PLEASE PROCEED TO QUESTION 5.

First Quarter 2001

5. Did Ernst & Young make an untrue statement of a material fact or omit a material fact necessary under the circumstances to keep the statements that were made from being misleading in Clarent's

Quarterly Report on Form 10-Q or earnings release for first quarter 2001?

Yes ____ No X

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 6. IF YOU ANSWERED "NO," PLEASE PROCEED TO QUESTION 9.

6. Did Ernst & Young act either knowingly or recklessly in making the false statement or omission you found in answering Question 5?

Yes ____ No ____

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 7. IF YOU ANSWERED "NO," PLEASE PROCEED TO QUESTION 9.

7. Did Ernst & Young act knowingly or recklessly (choose one)?

Knowingly ____ Recklessly ____

PLEASE PROCEED TO QUESTION 8.

8. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable result of the misstatement or omission you found in answering Question 5?

Yes ____ No ____

PLEASE PROCEED TO QUESTION 9.

Second Quarter 2001

9. Did Ernst & Young make an untrue statement of a material fact or omit a material fact necessary under the circumstances to keep the statements that were made from being misleading in Clarent's Quarterly Report on Form 10-Q or earnings release for second quarter 2001?

Yes X No ____

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 10. IF YOU ANSWERED "NO," PLEASE SIGN AND DATE BELOW AND THEN PROCEED TO THE JURY VERDICT FORM AS TO JERRY CHANG. IF BOTH JURY VERDICT FORMS HAVE BEEN COMPLETED, PLEASE

STOP, SIGN AND DATE BELOW, AND REPORT YOUR FINDINGS TO THE COURT.

10. Did Ernst & Young act either knowingly or recklessly in making the false statement or omission you found in answering Question 9?

Yes ____ No X

IF YOU ANSWERED "YES," PLEASE PROCEED TO QUESTION 11. IF YOU ANSWERED "NO," PLEASE SIGN AND DATE BELOW AND THEN PROCEED TO THE JURY VERDICT FORM AS TO JERRY CHANG. IF BOTH JURY VERDICT FORMS HAVE BEEN COMPLETED, PLEASE STOP, SIGN AND DATE BELOW, AND REPORT YOUR FINDINGS TO THE COURT.

11. Did Ernst & Young act knowingly or recklessly (choose one)?

Knowingly ____ Recklessly ____

PLEASE PROCEED TO QUESTION 12.

12. Was the market price of Clarent stock inflated as a direct or a reasonably foreseeable result of the misstatement or omission you found in answering Question 9?

Yes ____ No ____

PLEASE SIGN AND DATE BELOW AND THEN PROCEED TO THE JURY VERDICT FORM AS TO JERRY CHANG. IF BOTH JURY VERDICT FORMS HAVE BEEN COMPLETED, PLEASE STOP, SIGN AND DATE BELOW, AND REPORT YOUR FINDINGS TO THE COURT.

Dated: 2/16/05

Jury Foreperson

United States District Court
For the Northern District of California

TAB 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CNOVA N.V. SECURITIES LITIGATION This Document Relates To: All Actions	MASTER FILE 16 CV 444-LTS

~~[PROPOSED]~~ FINAL JUDGMENT AND ORDER OF DISMISSAL

This matter came before the Court for hearing pursuant to this Court's Order Granting Preliminary Approval of Settlement, Granting Conditional Class Certification, and Providing for Notice dated October 11, 2017 ("Preliminary Approval Order"), and the Court having received declarations attesting to the mailing of the Notice and the publication of the Publication Notice in accordance with the Preliminary Approval Order, on the application of Lead Plaintiffs and Defendants for approval of the settlement ("Settlement") set forth in the Stipulation and Agreement of Settlement dated as of September 20, 2017 ("Stipulation"), the proposed Plan of Allocation of the Settlement proceeds, Lead Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses, and interim reimbursement of notice and administration expenses and, following a hearing on March 15, 2018 before this Court to consider the applications, all supporting papers and arguments of Lead Plaintiffs and Defendants, and other proceedings held herein, as well as for the reasons stated on the record by the Court at the hearing before the Court on March 15, 2018, and good cause appearing therefore,

IT IS HEREBY ADJUDGED, DECREED AND ORDERED:

1. This Final Judgment incorporates by reference the definitions in the Stipulation, and all terms used herein defined in the Stipulation shall have the same meanings as set forth in

the Stipulation unless specifically set forth differently herein. The terms of the Stipulation are fully incorporated in this Final Judgment as if set forth fully herein.

2. The Court has jurisdiction over the subject matter of this Action and all parties to the Action, including all Class Members.

3. This Court finds that due and adequate notice was given of the Settlement, the Plan of Allocation of the Settlement proceeds, and Lead Counsel's application for an award of attorneys' fees and/or reimbursement of expenses, as directed by this Court's Preliminary Approval Order, and that the forms and methods for providing such notice to Class Members:

(a) constituted the best notice practicable under the circumstances, including individual notice to all Class Members who could be identified through reasonable effort;

(b) was reasonably calculated, under the circumstances, to apprise Class Members of: (i) the proposed Settlement of this class action and the right to exclude themselves from the Class; (ii) their right to object to any aspect of the proposed Settlement, including the terms of the Stipulation and the Plan of Allocation; (iii) their right to appear at the Settlement Hearing, either on their own or through counsel hired at their own expense, if they are not excluded from the Class; and (iv) the binding effect of the proceedings, rulings, orders and judgments in this Action, whether favorable or unfavorable, on all Persons and entities who are not excluded from the Class;

(c) was reasonable and constituted due, adequate, and sufficient notice to all Persons and entities entitled to be provided with notice; and

(d) fully satisfied all the applicable requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995, due process, and all other applicable laws.

4. Pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, the Court hereby grants final certification of the Class consisting of all Persons that purchased Cnova N.V. ordinary shares from November 19, 2014 through February 23, 2016, inclusive (the "Class Period"), issued pursuant and/or traceable to Cnova's Registration Statement, which incorporated the Prospectus that was filed pursuant to Rule 424(b)(4) on November 21, 2014, in connection with Cnova N.V's initial public offering on or about November 19, 2014. Excluded from the Class are (i) Defendants; (ii) the officers and directors of Defendants; (iii) Casino Guichard Perrachon SA; (iv) the officers and directors of any excluded Person; (v) members of the immediate family of any excluded Person; the legal representatives, agents, heirs, successors, subsidiaries, affiliates or assigns of any excluded Person; and (vi) any other Person in which any excluded Person has a beneficial ownership interest and had contractual control over the operations and/or management of such other Person during the Class Period to the extent of the excluded Person's beneficial ownership interest in such Person.

5. With respect to the Class, the Court finds that:

(a) the Class satisfies all of the requirements of Rule 23(a) of the Federal Rules of Civil Procedure because:

i. the members of the Class are so numerous that joinder of all members is impracticable;

ii. there are questions of law and fact common to the Class;

iii. the claims and defenses of the representative parties are typical of the Class; and

iv. the representative parties will fairly and adequately protect the interests of the Class.

(b) In addition, the Court finds that the Action satisfies the requirement of Rule 23(b)(3) of the Federal Rules of Civil Procedure in that there are questions of law and fact common to the Class Members that predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy; and

(c) The Court finds that Lead Plaintiffs Michael Schwabe and Jaideep Khanna have claims that are typical of the claims of other Class Members and that they have and will adequately represent the interest of Class Members and appoints them as the representatives of the Class, and appoints Plaintiffs' Lead Counsel, Brower Piven, A Professional Corporation, as Class Counsel.

6. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement set forth in the Stipulation and finds that said Settlement, and all transactions preparatory and incident thereto, is, in all respects, fair, reasonable, and adequate to, and is in the best interests of, Lead Plaintiffs and all Class Members based on, among other things: the Settlement resulted from arm's-length negotiations between the Lead Plaintiffs and Defendants and/or their counsel; the amount of the recovery for Class Members being well within the range of reasonableness given the strengths and weaknesses of the claims and defenses thereto and the risks of non-recovery and/or recovery of a lesser amount than is represented through the Settlement by continued litigation through all pretrial, trial and appellate procedures; and the recommendation of the Lead Plaintiffs and Defendants, in particular experienced Plaintiffs' Lead Counsel. Accordingly, the Settlement embodied in the Stipulation is hereby approved in all respects and shall be consummated in accordance with its terms and

conditions. The parties are hereby directed to perform the terms of the Stipulation, and the Clerk of the Court is directed to enter and docket this Final Judgment in this Action.

7. This Court hereby approves the Plan of Allocation as set forth in the Notice as fair and equitable. The Court directs the Claims Administrator, under the supervision of Lead Counsel, to proceed with the processing of Proofs of Claim and the administration of the Settlement pursuant to the terms of the Plan of Allocation and, upon completion of the claims processing procedure, to present to this Court a proposed final distribution order for the distribution of the Net Settlement Fund to eligible Class Members, as provided in the Stipulation and Plan of Allocation.

8. This Court hereby awards and directs payment as provided in the Stipulation to Plaintiffs' Lead Counsel reimbursement of their out-of-pocket litigation expenses in the amount of $163,778.44, and attorneys' fees equal to thirty-three and one-third percent (33 1/3 %) of the Settlement Fund, with interest to accrue on all such amounts at the same rate and for the same periods as has accrued by the Settlement Fund from the date of this Final Judgment to the date of actual payment of said attorneys' fees and expenses to Plaintiffs' Lead Counsel as provided in the Stipulation. The Court finds the amount of attorneys' fees awarded herein are fair and reasonable based on: (a) the work performed and costs incurred by Plaintiffs' Lead Counsel; (b) the complexity of the case; (c) the risks undertaken by Plaintiffs' Lead Counsel and the contingent nature of their employment; (d) the quality of the work performed by Plaintiffs' Lead Counsel in this Action and their standing and experience in prosecuting similar class action securities litigation; (e) awards to successful plaintiffs' counsel in other, similar litigation; and (f) the very substantial benefits achieved for Class Members through the Settlement. The Court also finds that the requested reimbursement of expenses is proper as the expenses incurred by

Plaintiffs' Lead Counsel, including the costs of experts, were reasonable and necessary in the prosecution of this Action on behalf of Class Members.

9. Plaintiffs' Lead Counsel may apply, from time to time, for any fees and/or expenses incurred by them solely in connection with the administration of the Settlement and distribution of the Net Settlement Fund to Class Members to the extent any such application combined with the award of attorneys' fees granted in paragraph 9 above does not exceed thirty-three and one-third (33 1/3) percent of the Settlement Fund.

10. All payments of attorneys' fees and reimbursement of expenses to Plaintiffs' Lead Counsel in the Action shall be made from the Settlement Fund, and the Released Parties shall have no liability or responsibility for the payment of any of Plaintiffs' Lead Counsel's attorneys' fees or expenses except as expressly provided in the Stipulation with respect to the cost of Notice and administration of the Settlement.

11. Pursuant to the Preliminary Approval Order, any putative Class Member had the right to request exclusion from the Class or object to any aspect of the Settlement, Plan of Allocation and/or Plaintiffs' Lead Counsel's application for an award of attorneys' fees equal to one-third of the settlement Fund and reimbursement of expenses not to exceed $400,000, by requesting such exclusion from the Class or asserting such objection(s), in writing, in the manner provided for by the Preliminary Approval Order. Over 9,600 copies of the Notice were sent to prospective Class Members. In response, not a single putative Class Member has, timely or untimely, requested exclusion from the Class or objected to any aspect of the Settlement, Plan of Allocation and/or Plaintiffs' Lead Counsel's application for an award of attorneys' fees or reimbursement of expenses as set forth in the Notice. Accordingly, pursuant to Rule 23(c)(3) of

the Federal Rules of Civil Procedure, all Class Members are bound by this Final Judgment and by the terms of the Stipulation.

12. The Releasing Parties, whether or not such Person executes and delivers a Proof of Claim or otherwise shares in the Settlement Fund, (a) shall be deemed by operation of law to have fully, finally and forever, released, relinquished, waived, dismissed and forever discharged each and every Released Claim against the Released Parties, and (b) shall forever be enjoined from prosecuting, commencing, or instituting, either directly or indirectly, or assisting in the commencement or prosecution of, whether in the United States or elsewhere, any Released Claim against any Released Party. The Released Parties are deemed to fully, finally and forever release, relinquish and discharge the Released Defendants' Claims against Lead Plaintiffs and/or Plaintiffs' Lead Counsel.

13. Pursuant to the Private Securities Litigation Reform Act ("PSLRA"), as codified at 15 U.S.C. § 78u-4(f)(7)(A), every Person is permanently and forever barred and enjoined from filing, commencing, instituting, prosecuting or maintaining, either directly, indirectly, representatively, or in any other capacity, in this Court, or in any other federal, foreign, state or local court, forum or tribunal, any claim, counterclaim, cross-claim, third-party claim or other actions based upon, relating to, or arising out of the Released Claims and/or the transactions and occurrences referred to in the Complaint, or in any other pleadings filed in the Action (including, without limitation, any claim or action seeking indemnification and/or contribution, however denominated) against any of the Released Parties, whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, or are asserted under federal, foreign, state, local or common law.

14. The Court hereby dismisses with prejudice the Action and all Released Claims against each and all Released Parties and without costs to any of the parties as against the others.

15. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be offered, received or deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Parties with respect to the truth of any fact asserted in this Action or the validity of any claim that had been or could have been asserted in this 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 the Released Parties; or (b) is or may be offered, received or deemed to be or may be used as an admission of, or evidence of, any fault, negligence, wrongdoing or omission of any of the Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; (c) may be offered, received or is admissible in any proceeding except an action to enforce or interpret the terms of the Stipulation, the Settlement contained therein, and any other documents executed in connection with the performance of the agreements embodied therein; or (d) may be construed against the Released Parties or any Class Member 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. Defendants and/or the other Released Parties may file the Stipulation and/or this Final Judgment and Order in any action that may be brought against them in order to support a defense or counterclaim based on the principles of res judicata, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Court finds that

during the course of the Action, Lead Plaintiffs, Defendants and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

16. The Court finds that, pursuant to the Class Action Fairness Act of 2005, the Defendants provided timely and adequate notice of this Settlement to the appropriate state and federal officials.

17. Without affecting the finality of this Final Judgment in any way, this Court hereby reserves and retains continuing jurisdiction over: (a) implementation and enforcement of any award or distribution from the Settlement Fund or Net Settlement Fund; (b) disposition of the Settlement Fund or Net Settlement Fund; (c) determining applications for payment of attorneys' fees and/or expenses incurred by Plaintiffs' Lead Counsel in connection with administration and distribution of the Net Settlement Fund; (d) payment of taxes by the Settlement Fund; (e) all parties hereto for the purpose of construing, enforcing, and administering the Stipulation; and (f) any other matters related to finalizing the Settlement and distribution of the proceeds of the Settlement.

18. Neither appellate review nor modification of the Plan of Allocation set forth in the Notice, nor any action in regard to the award of attorneys' fees and/or reimbursement of expenses to Plaintiffs' Lead Counsel and/or the award of costs and expenses to Lead Plaintiffs, shall affect the finality of any other portion of this Final Judgment, and each shall be considered separate for the purposes of appellate review of this Final Judgment.

19. In the event that the Settlement does not become Final in accordance with the terms of the Stipulation, then this Final Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all

orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

20. This Final Judgment and Order is a final judgment in the Action as to all claims asserted. This Court finds, for purposes of Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay and expressly directs entry of judgment as set forth herein.

Dated: March 19, 2018

HONORABLE LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE

TAB 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE Y-mAbs THERAPEUTICS, INC. SECURITIES LITIGATION	Civil Action No.: 1:23-cv-00431-AS

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

On the 28th day of October, 2024, a hearing having been held before this Court to determine, among other things: (1) whether the terms and conditions of the Stipulation of Settlement dated June 26, 2024 (the "Stipulation") are fair, reasonable, and adequate for the settlement of all claims asserted by Lead Plaintiff and the Settlement Class against Y-mAbs Therapeutics, Inc., Thomas Gad and Claus Juan Møller San Pedro (collectively, the "Defendants") as a settlement of this litigation (the "Settlement"); (2) whether to approve the proposed Plan of Allocation as a fair and reasonable method to allocate the Net Settlement Fund among the Settlement Class Members; (3) whether to approve Lead Counsel's application for an award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund; and (4) whether to approve Lead Plaintiff's application for a compensatory award to be paid from the Settlement Fund.

The Court having considered all matters submitted to it at the hearing and otherwise; and

It appearing that the Notice substantially in the form approved by the Court in the Court's Order Preliminarily Approving Settlement and Providing For Notice ("Preliminary Approval Order") was mailed to all reasonably identifiable potential Settlement Class Members; and

It appearing that the Publication Notice substantially in the form approved by the Court in the Preliminary Approval Order was published in accordance with the Preliminary Approval Order and the specifications of the Court; and

It appearing that the Stipulation, all forms of the Notice, and the Proof of Claim were posted on the Claims Administrator's website;

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

1. Unless indicated otherwise, capitalized terms used herein have the same meanings defined in the Stipulation.

2. The Court has jurisdiction over the subject matter of the Action, Lead Plaintiff, all Settlement Class Members, and the Defendants.

3. In the Preliminary Approval Order the Court certified, for purposes of the Settlement only, the Action as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) on behalf of the Settlement Class consisting of all persons who purchased, or otherwise acquired, the stock of Y-mAbs between October 6, 2020, and October 28, 2022, both dates inclusive (the "Settlement Class Period"). Excluded from the Settlement Class are Defendants; members of their immediate families and their affiliates; any entity in which any Defendant had a controlling interest during the Settlement Class Period; any person who served as an officer or director of Y-mAbs during the Settlement Class Period; the judges presiding over the Action and the immediate family members of such judges; any persons or entities listed on the Settlement Exclusion List (as defined in the Stipulation); and the successors, heirs, and assigns of any excluded person. Per the terms of the Stipulation, Defendants shall assist in identifying the persons and entities to be excluded from the Settlement Class. Also excluded are those persons or entities who filed valid and timely requests

for exclusion in accordance with the Preliminary Approval Order. If any persons or entities have filed such valid and timely requests for exclusion, they are set forth in Exhibit A hereto; if no person or entity has filed such a valid and timely request for exclusion, there is no Exhibit A hereto.

4. The Court hereby finds that the forms and methods of notifying the Settlement Class of the Settlement and its terms and conditions met the requirements of due process and Fed. R. Civ. P. 23 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 thereto of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation. No Settlement Class Member is relieved from the terms of the Settlement, including the releases provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice. A full opportunity has been offered to the Settlement Class Members to object to the proposed Settlement and to participate in the hearing thereon. The Court further finds that the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully discharged and that the statutory waiting period has elapsed. Thus, it is hereby determined that all members of the Settlement Class are bound by this Order and Final Judgment, except those persons (if any) listed on Exhibit A to this Order and Final Judgment.

5. The Settlement, whereby Defendants caused to be paid per the terms of the Stipulation an aggregate gross payment amount of nineteen million six hundred fifty thousand dollars ($19,650,000.00), is approved as fair, reasonable and adequate, and in the best interests of the Settlement Class. The Court finds that there was no collusion in connection with the Stipulation; the Stipulation was the product of informed, arm's length negotiations among

competent, able counsel representing the Parties' interests; and the record is sufficiently developed and complete to have enabled the Lead Plaintiff, Lead Counsel, Defendants, and their counsel to have adequately evaluated and considered their positions before deciding to settle. Lead Plaintiff and Defendants are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

6. Except with respect to any persons who have validly and timely requested exclusion from the Settlement Class (as listed on any Exhibit A hereto), this Action is dismissed with prejudice as to the Defendants.

7. Lead Plaintiff and all Settlement Class Members (regardless of whether they submitted a Proof of Claim or share in the Settlement Fund) on behalf of themselves, their successors, heirs, executors, administrators, and assigns, hereby release, waive, and forever discharge all of the Released Settlement Class Claims against Defendants and other Released Parties. Lead Plaintiff and the Settlement Class Members hereby are permanently and forever enjoined from prosecuting the Released Settlement Class Claims, as set forth in the Stipulation. For purposes of this Order and Final Judgment:

a. "Released Settlement Class Claims" means any and all claims and causes of action of every nature and description, whether known or Unknown Claims, whether contingent or absolute, whether suspected or unsuspected, whether asserted or unasserted, whether arising under federal, state, local, common, statutory, administrative or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that Lead Plaintiff or any other member of the Settlement Class: (i) asserted in

Case 1:23-cv-06094-AS Document 126 Filed 10/29/24 Page 57 of 131

the Action; or (ii) could have asserted in any court or forum that arise out of or are based on the allegations, transactions, facts, matters, occurrences, representations, or omissions in any of Plaintiffs' pleadings in the Action and that relate to the purchase or acquisition of shares of Y-mAbs common stock during the Settlement Class Period. "Released Settlement Class Claims" shall exclude claims relating to the enforcement of the Settlement.

b. "Released Parties" means, for the Released Settlement Class Claims, (a) Defendants Y-mAbs, Gad, Møller, Rajah (b) their respective past, present or future directors, officers, employees, parents, partners, members, principals, agents, owners, fiduciaries, shareholders, related or affiliated entities, subsidiaries, divisions, accountants, auditors, attorneys, associates, consultants, advisors, insurers, co-insurers, reinsurers, trustees, estates, beneficiaries, administrators, foundations, underwriters, banks or bankers, personal or legal representatives, divisions, joint ventures, spouses, domestic partners, family members, heirs, executors, or any other person or entity acting or purporting to act for or on behalf of any of the Defendants, and each of their respective predecessors, successors and assigns, and any trusts for which any of them are trustees, settlors, or beneficiaries, and (c) any persons or entitles listed on the Settlement Exclusion List (as defined in the Settlement Agreement).

8. Defendants and other Released Parties, on behalf of themselves, their successors, heirs, executors, administrators, and assigns, hereby fully, finally, and forever release, relinquish, and discharge each and every one of the Released Defendant Claims against Lead Plaintiff, any Settlement Class Member, and any of their counsel including Lead Counsel. Defendants and other

Released Parties are hereby permanently and forever enjoined from prosecuting the Released Defendant Claims, as set forth in the Stipulation. For purposes of this Order and Final Judgment:

a. "Released Defendant Claims" means any and all claims or causes of action of every nature and description, whether known or Unknown Claims, whether asserted or unasserted, whether arising under federal, state, local, common, statutory, administrative or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against Defendants, including without limitation any claims under Fed. R. Civ. P. 11, except for claims relating to the enforcement of the Settlement.

b. "Released Parties" means, for the Released Defendant Claims, Lead Plaintiff, Lead Counsel, and the Settlement Class members.

9. **Bar Order**: All Persons are barred from commencing, prosecuting, or asserting any Barred Claims (as defined below). All Barred Claims are hereby extinguished, discharged, satisfied, and unenforceable. If any term of this Bar Order is held to be unenforceable after the date of entry, such provision shall be substituted with such other provision as may be necessary to afford all Released Parties the fullest protection permitted by law from any Barred Claim. For purposes of this Order and Final Judgment:

a. "Barred Claim" means any claim, if any, however styled, whether for indemnification, contribution, or otherwise and whether arising under state, federal or common law, against the Defendants or other Released Parties (including claims asserted by Released Parties against other Released Parties) where the claim is or arises from a Released Claim and the alleged injury to such Person arises from that Person's alleged liability to the Settlement Class or any Settlement Class Member, including any claim in which a Person seeks to recover from any of the Released Parties (i) any amounts such person or entity has or might become liable to pay to the Settlement Class or any Settlement Class Member and/or (ii) any costs, expenses, or attorneys' fees from defending any claim by the Settlement Class or any Settlement Class Member.

10. Notwithstanding the foregoing, nothing in this Order and Final Judgment:

a. Will bar the Released Parties from pursuing claims that are outside the scope of or independent of the Released Claims, including but not limited to any claim that any Released Party may have for indemnification related to costs and expenses incurred in conjunction with the Action;

b. Will bar or constitute a release of any claim by any of the Released Parties for insurance or reinsurance coverage arising out of, related to, or in connection with this Action or the Released Claims; or

c. Shall prevent Lead Plaintiff or any Settlement Class Member from pursuing any claim against Defendants or other Released Parties that are excluded from the Released Settlement Class Claims as set forth above.

d. Shall prevent any Person listed on any Exhibit A hereto from pursuing any claim against any Released Party; if any such Person pursues any such claim against any Released Party, nothing in this Order and Final Judgment or in the

Stipulation shall operate to preclude such Released Party from (i) asserting any claim of any kind against such Person, including any Released Claim or (ii) seeking contribution or indemnity from any Person, including any other Released Party, in respect of the claim made by a Person listed on Exhibit A.

11. Lead Plaintiff's counsel are awarded attorneys' fees in the amount of $ 6,543,350.00, plus interest at the same rate and for the same periods as earned by the Settlement Fund (until paid), and expenses in the amount of $ 55,464.66, plus interest at the same rate and for the same periods as earned by the Settlement Fund (until paid), such amounts to be paid from the Settlement Fund upon entry of this Order. Lead Counsel shall thereafter be solely responsible for allocating the attorneys' fees and expenses among Wolf Popper LLP and Glancy Prongay & Murray LLP in the manner in which ~~Lead Counsel in good faith believe reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Actions.~~ Lead Counsel described in its October 28, 2024 letter to the Court at Dkt. 68. In the event that this Judgment does not become Final, and any portion of the Fee and Expense Award has already been paid from the Settlement Fund, Lead Counsel shall within thirty (30) calendar days of entry of the order rendering the Settlement and Judgment non-Final or notice of the Settlement being terminated, refund the Settlement Fund the Fee and Expense Award paid to Lead Counsel.

12. Lead Plaintiff is awarded the sum of $ 5,000.00, as reasonable costs and expenses directly relating to the representation of the Settlement Class as provided in 15 U.S.C. § 78u-4(a)(4), such amounts to be paid from the Settlement Fund upon the Effective Date of the Settlement.

13. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members.

14. The Court finds that all parties and their counsel have complied with each requirement of Fed. R. Civ. P. 11 as to all proceedings herein.

15. Neither this Order and Final Judgment, the Preliminary Approval Order, the Stipulation (including the exhibits thereto), the Memorandum Of Understanding ("MOU"), nor any of the negotiations, documents or proceedings connected with them shall be deemed to be, or be, argued to be offered or received:

a. Against any of the Defendants or other Released Parties as evidence of, or construed as evidence of, any presumption, concession, or admission by any of the Defendants or other Released Parties with respect to the truth of any fact alleged by the Lead Plaintiff in this Action or the validity of any claim that has been or could have been asserted against any of the Defendants or the Released Parties in this Action, or the deficiency of any defense that has been or could have been asserted in the Action, or of any alleged wrongdoing or liability by any of the Defendants or other Released Parties;

b. Against any of the Defendants, the Lead Plaintiff, any Settlement Class Member, or the other Released Parties as evidence of, or construed as evidence of, any presumption, concession, or admission by any of them with respect to any liability, negligence, fault, or wrongdoing as against any of them in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation, provided, however, that if this Stipulation is approved by the Court, the Defendants, the Lead Plaintiff, any Settlement Class Member, and the other

Released Parties may refer to it to effectuate the liability protection granted them hereunder;

c. Against any of the Defendants or other Released Parties as evidence of, or construed as evidence of, any presumption, concession, or admission by any of them that the Settlement Amount represents the amount which could or would have been received after trial of the Action against them;

d. Against the Lead Plaintiff or any Settlement Class Member as evidence of, or construed as evidence of, any presumption, concession, or admission by Lead Plaintiff or any Settlement Class Member that any of their claims are without merit, or that any defenses asserted by the Defendants in the Action have any merit, or that damages recoverable in the Action would not have exceeded the Settlement Fund;

e. Against the Lead Plaintiff or any Settlement Class Member or Lead Counsel as evidence of, or construed as evidence of, any infirmity of the claims alleged by the Lead Plaintiff in the Complaint or the Action or of any lack of merit to the claims or the Action or of any bad faith, dilatory motive, or inadequate prosecution of the claims or the Action or any non-compliance with Fed. R. Civ. P. or any similar rule or ethical obligation.

16. Notwithstanding the foregoing Paragraph 15, the Parties and other Released Parties may file or refer to this Order and Final Judgment, the Stipulation, Preliminary Approval Order, and/or any Proof of Claim Form: (a) to effectuate the liability protections granted hereunder or thereunder, including without limitation, to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or

any theory of claim preclusion or issue preclusion or similar defense or counterclaim; (b) to obtain a judgment reduction under applicable law; (c) to enforce any applicable insurance policies and any agreements relating thereto; or (d) to enforce the terms of the Stipulation and/or this Order and Final Judgment.

17. Exclusive jurisdiction is hereby retained over the Parties for all matters relating to the Action, including the administration, interpretation, effectuation or enforcement of the Stipulation or Settlement 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 Settlement Class Members.

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

19. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is directed pursuant to Fed. R. Civ. P. 54(b).

20. The finality of this Order and Final Judgment shall not be affected, in any manner, by any appeals concerning the Attorneys' Fees and Expenses awarded herein, the compensatory award to Lead Plaintiff, or the Plan of Allocation.

21. In the event that the Settlement does not become Final and effective in accordance with the terms and conditions set forth in the Stipulation, then the Stipulation, except as otherwise provided in ¶¶2.3, 2.4, 2.5, 3.6, 3.9, 3.11, 3.12, 3.13, 3.14, 3.15, 8.2, 9.2, 9.3, 9.4, 10.1, 10.4, 10.5, 10.13, 10.14, 10.16, and 10.18 therein, including any amendment(s) thereto, the Preliminary Approval Order, as set forth in ¶26 thereof, and this Order and Final Judgment, except for ¶¶14, and 20-22 shall be rendered null and void of no further force or effect, and all Parties shall be deemed to have reverted *nunc pro tunc* to their respective status prior to the execution of the MOU,

and all Parties shall proceed in all respects as if the MOU and the Stipulation had not been executed and the related orders had not been entered, without prejudice in any way from the negotiation, fact, or terms of the Settlement, and preserving all of their respective claims and defenses in the Action, and shall revert to their respective positions in the Action. In such circumstances, all Parties shall thereafter work together to arrive at a mutually agreeable schedule for resuming litigation of the Action.

22. In the event the Settlement and Judgment do not become Final or the Settlement is terminated in accordance with the terms and conditions set forth in the Stipulation, within ten (10) business days of entry of the order rendering the Settlement and Judgment non-Final or notice of the Settlement being terminated, all monies then held in the Notice & Administration Account and Settlement Fund, including interest earned, shall be returned to Defendants or any other person or entity who or which paid any portion of the Settlement Fund, *pro rata* as had been paid by them respectively, per their instructions, except for any monies paid or any then-accrued costs yet-to-be-paid for Notice & Administration Costs, Taxes, and Tax Expenses. Under those circumstances, Lead Counsel shall undertake to return those amounts by taking all steps necessary to cause the Escrow Agent to make the foregoing repayments. Lead Plaintiff and the Settlement Class shall have no responsibility for the return of such consideration.

23. If, instead, the Settlement and Judgment become Final, once they become Final, there shall be no reversion whatsoever of any monies held in the Notice & Administration Account or Settlement Account to any of the Defendants or any other person or entity who or which paid any portion of the Settlement Amount.

24. Any Court orders entered during this Action relating to the confidentiality of information shall survive this Settlement.

Local Rule 23.1 requires that in class action cases, the notice "must include a statement of the names and addresses of the applicants for the fees and the amounts requested respectively and must disclose any fee sharing agreements with anyone." Here, the notice sent out to class members mentioned the names of the other law firms with whom fees would be shared (Glancy Prongay & Murray LLP and Wolf Popper LLP) and indicated that Lead Counsel would be requesting a total amount "not greater than one-third . . . of the Settlement Fund." Dkt. 64-1. While the notice did not comply with all of Local Rule 23.1's requirements, the disclosures that were made satisfy the Court that no remedial action is needed. However, counsel are reminded to familiarize themselves with and adhere closely to Local Rule 23.1 in all future proceedings.

The Clerk of Court is respectfully directed to close the case.

Dated: October 29, 2024

THE HON. ARUN SUBRAMANIAN
UNITED STATES DISTRICT JUDGE

TAB 6

Case 1:07-cv-12388-WGY Document 1051 Filed 11/13/14 Page 1 of 3

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KIRK DAHL, et al., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. BAIN CAPITAL PARTNERS, LLC, et al., Defendants.	Lead Case No. 1:07-cv-12388-WGY **PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, LITIGATION EXPENSES, AND NAMED PLAINTIFF SERVICE AWARDS**

Lead Counsel, on behalf of all Plaintiffs' Counsel, respectfully submit this Motion for an Award of Attorneys' Fees, Litigation Expenses, and Named Plaintiff Service Awards. As set forth in the accompanying Memorandum in Support of an Award of Attorneys' Fees, Litigation Expenses, and Named Plaintiff Service Awards ("Fee Memorandum"); Declaration of Co-Lead Counsel in Support of Named Plaintiffs' Motions for Final Approval of Settlements and Supplemental Plan of Allocation of Settlement Proceeds and for an Award of Attorneys' Fees and Expenses; and Declaration of Daryl F. Scott in Support of Co-Lead Counsel's Application for Award of Attorneys' Fees, Litigation Expenses, and Named Plaintiff Service Awards, Plaintiffs' Counsel ask that this Court award fees in the amount of $194,865,000 (33% of the $590,500,000 common fund), as well as costs and expenses totaling $12,028,514.99. In addition to fees and expenses, Plaintiffs' Counsel also request that the Court approve total service awards in the amount of $25,000 each for Police and Fire Department Retirement System of the City of Detroit ("Detroit PFRS") and Omaha Police and Fire Department Retirement System (Omaha PFRS"), as well as $10,000 for Dr. Dahl and $5,000 for Mr. Wojno. Named Plaintiffs made significant time commitments on behalf of the Class during the seven-year litigation. The total amount of incentive awards requested for all Named Plaintiffs is $65,000.

In further support of this Motion, Plaintiffs' Counsel have filed herewith the aforementioned Fee Memorandum. For the reasons stated therein, Plaintiffs' Counsel request

Case 1:07-cv-12388-WGY Document 1051 Filed 11/13/14 Page 2 of 3

that their Motion be granted.

LOCAL RULE 7.1 CERTIFICATION

Pursuant to D. Mass. Local Rule 7.1(a)(2), the undersigned hereby certifies that counsel for Plaintiffs has conferred with counsel for Settling Defendants, and that Settling Defendants take no position as to the relief requested by this Motion.

Dated: November 13, 2014

Respectfully submitted,

s/ Stacey P. Slaughter

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Co-Lead Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2014, I caused the foregoing to be served via the Electronic Filing System on all of Settling Defendants' counsel of record and via email on all attorneys who have agreed to accept service via email at defendantsprivatequity@scott-scott.com.

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 13, 2014.

s/ Stacey P. Slaughter
Stacey P. Slaughter (admitted *pro hac vice*)
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TAB 7

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LOU HADDOCK, as trustee of the Flyte Tool & Die Company, Inc. 401-K Profit Sharing Plan, PETER WIBERG, as trustee of the Crown Tool & Die Co. Inc. Salary Deferral Profit Sharing Plan, ALAN GOUSE, as trustee of the Greater Hartford Easter Seal Rehabilitation Center, Inc., Tax Sheltered Annuity Plan and the Money Accumulation Pension Plan for the Employees of Hartford Easter Seal Rehabilitation Center, Inc., Trust, CHRISTOPHER ANDERSON, as trustee of the Anderson Law Firm, P.C. 401(k) Profit Sharing Plan and Trust, f/k/a the Anderson & Ferdon P.C. 401(k) Profit Sharing Plan, H. GRADY CHANDLER, as trustee of the Law Offices of H. Grady Chandler, P.C., 401(k) Profit Sharing Plan and Trust, and CHRISTOPHER M. McKEON, as trustee of the Bershtein, Volpe & McKeon Profit Sharing Plan, f/k/a the Bershtein, Lippman, Bachman & McKeon Profit Sharing Plan, PLAINTIFFS, v. NATIONWIDE FINANCIAL SERVICES INC., and NATIONWIDE LIFE INSURANCE CO., DEFENDANTS.	§	CASE NO. 01-CV-1552 (SRU)

MEMORANDUM IN SUPPORT OF PLAINTIFFS' COUNSEL'S MOTION FOR AWARD OF FEES AND EXPENSES FROM THE COMMON FUND AND FOR INCENTIVE AWARDS FOR CLASS REPRESENTATIVES

Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Counsel for Plaintiffs Peter Wiberg, Alan Gouse, Christopher Anderson, H. Grady Chandler, and Christopher M. McKeon, in their capacities as trustees of retirement plans that purchased Annuity Contracts and/or Trust Platforms from Nationwide ("Plaintiffs"), on behalf of themselves and all others

Case 3:01-cv-01552-SRU Document 125-18 Filed 03/26/21 Page 92 of 311

similarly situated (the "Class"), respectfully submit this Memorandum of Law in Support of their Motion for Award of Fees and Expenses from the Common Fund and for Incentive Awards for Class Representatives ("Motion"). Defendants Nationwide Financial Services, Inc. and Nationwide Life Insurance Co. (collectively, "Defendants"), pursuant to the Settlement Stipulation and Release ("Stipulation"), do not object to this Motion.[1]

I. Introduction

Over the past thirteen years, Plaintiffs' Counsel have devoted substantial time and expense to thoroughly investigate and vigorously prosecute the Class' claims. The risk that Plaintiffs' Counsel assumed for the benefit of the Class in this complex ERISA case was immense.

Now that that Plaintiffs' Counsel's labor and risk-taking have resulted in a tremendous benefit to the Class in the form of a $140 million common fund settlement, plus substantial non-cash future benefits to the Class, Class Counsel asks that the Court award fair compensation for the enormous risk they bore and excellent services they rendered for the Class. Plaintiffs' Counsel respectfully request a fee award of 35% of the total common fund, plus reimbursement of their reasonable and necessary expenses.

As discussed below, Plaintiffs' Counsel's request for a fee of just over one-third of the common fund settlement is well within the range of reasonableness under the factors set forth in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000), and under the percentage-of-the-fund method approved by the Second Circuit.

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[1] The Stipulation is on file with the Court as Exhibit A to Plaintiffs' Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement [Doc. 588-1]. Capitalized terms are given the meaning defined in the Stipulation unless separately defined herein. In an effort not to burden the Court with excessive or duplicative submissions, this Memorandum assumes familiarity with prior proceedings in this case, and with Plaintiffs' Motion (and Memorandum of Law in Support) of Unopposed Motion for Final Approval of Class Action Settlement, submitted contemporaneously herewith.

II. Background

When the Court conducts its final fairness hearing on the Settlement between Plaintiffs and Defendants, Plaintiffs' Counsel will have been working on this case for nearly fourteen (14) years. The extensive procedural history of the Litigation, resulting in no less than six published opinions, is well-known to the Court and is summarized in detail in Plaintiffs' Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement [Doc. 588-1] at 4-8. Only after more than thirteen (13) years of vigorously contested litigation, and after hard-fought, arm's-length negotiation by highly experienced counsel, Plaintiffs and Defendants reached a Settlement resolving the claims of Plaintiffs and the members of the Class.

None of these successes on behalf of the Class would have been possible without Plaintiffs' Counsel's relentless pursuit of costly discovery and extensive motion practice during the entire period between filing and settlement. As is described in the accompanying Declaration of Marc R. Stanley, attached as Exhibit A hereto ("Stanley Dec."), Plaintiffs have issued multiple rounds of written discovery requests, served dozens of third-party subpoenas for documents, taken dozens of depositions, conducted many informal interviews, reviewed tens of thousands of pages of electronic and hard-copy documents, analyzed significant amounts of data, hired and consulted with data, accounting and other experts, and responded to Defendants' discovery requests to Plaintiffs. Plaintiffs also engaged in numerous hard-fought battles with Defendants—represented by one of the country's most prominent litigation firms—over potentially dispositive motions to dismiss and for summary judgment, and successfully fought a long-ranging skirmish over class certification that involved two trips to the Second Circuit. *See, e.g.*, Stanley Dec. ¶¶ 3-4.

Now, having achieved an excellent result for the Class, Plaintiffs' Counsel respectfully requests that the Court grant an attorneys' fee award of 35% (just over one-third) of the common fund, plus a reimbursement of the $1,308,264.36 that Plaintiffs' Counsel advanced on behalf of the Class. For the reasons outlined below, Plaintiffs' Counsel's request for a fee of 35% of the common fund is well within the range of reasonableness under the percentage method approved by the Second Circuit in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000). This award would fairly compensate Plaintiffs' Counsel for more than a decade of time and effort spent litigating on behalf of the Class and for the substantial risk they personally assumed for the direct benefit of their clients and the Class.

Additionally, Plaintiffs' Counsel respectfully recommends and requests that the Court award $25,000 in incentive and reimbursement payments ("Case Contribution Fees" as defined in the Stipulation) to each of the five Class representatives ($125,000 total), as each of them provided valuable benefit to their fellow Class Members through their active participation and assistance of Plaintiffs' Counsel in the prosecution of this case.

III. Argument

A. An Award to Class Counsel of 35% of the Common Fund is Warranted Under the *Goldberger* Factors and Reasonable Under the Percentage-of-the-Fund Method Approved By the Second Circuit

"If attorneys' efforts create or preserve a fund or benefit for others in addition to their own clients, the court is empowered to award fees from the fund." Manual on Complex Litigation, Fourth, §14.11 (2014) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161 (1939); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116 (1885); *Trs. of the Internal Improvement Fund v. Greenough*, 105 U.S. 527 (1882)).

Rule 23(h) of the Federal Rules of Civil Procedure requires that courts award fees that are "reasonable," and the Second Circuit has approved both the lodestar and percentage-of-the-fund methods as reasonable methods of calculating attorneys' fees in common fund cases. In an attempt to balance efficiencies and fairness, the Second Circuit has expressed a preference for the percentage method, as it minimizes the burden on the district courts. *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000); *see also In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 136 (S.D.N.Y. 2008) ("The trend in the Second Circuit, however, has been to express attorneys' fees as a percentage of the total settlement, rather than to use the lodestar method to arrive at a reasonable fee.").

Regardless of which method is used, "district courts should continue to be guided by the traditional criteria in determining a reasonable common fund fee, including: '(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.'" *Goldberger,* 209 F.3d at 50. Here, analysis of each of these "*Goldberger* factors" squarely supports Plaintiffs' Counsel's fee request.

1. Plaintiffs' Counsel Devoted Substantial Expense and Personnel and More Than a Decade of Time to Thoroughly Investigating and Vigorously Pursuing the Class Claims.

The first *Goldberger* factor requires that the Court consider whether the attorneys' fees are reasonable in light of the amount of time and labor Plaintiffs' Counsel expended pursuing Plaintiffs' claims. As outlined in the Stanley Declaration, Plaintiffs' Counsel have invested extensive time and labor on behalf of the Class. And not only did Plaintiffs' Counsel spend many hours on this Litigation, they spent those hours efficiently, as would be demonstrated by comparing their time with the time Defendants' highly-skilled counsel—whose efficiency was surely being closely monitored by its clients—spent.

Moreover, while class action litigation is often lengthy and hard-fought, this case was extraordinary. For example, this case has been pending more than twice as long as the average class action. The strong and unrelenting defensive positions adopted by Defendants for years made it difficult for Plaintiffs' Counsel to drive this case to a conclusion at trial.

2. This Case Involves Unique and Highly Complex Issues and is One of the Largest ERISA Classes Ever Settled

To the best of Plaintiffs' Counsel's knowledge, this case consists of one of the largest ERISA classes ever settled. When the Settlement was reached, it received considerable attention within the industry in part because of its magnitude. As one commentator described it: "Needless to say, this is the most substantial settlement ever in an ERISA fiduciary breach case involving the receipt of revenue sharing by a service provider. … [T]his settlement is nearly 10 times greater than recent settlements against ING and Mass Mutual." Stanley Dec. ¶ 7 & Exh. 1; *see also* Stanley Dec. ¶ 8 & Exh 2 ("The proposed settlement of $140 million is thought to be the largest ever in such a case"); *id.* ¶ 9 & Exh. 3.

In pursuing the Class's claims, Plaintiffs' Counsel undertook the formidable task and enormous responsibility of litigating on behalf of tens of thousands of Plan Trustees across the country. This required Plaintiffs' Counsel to understand and develop proof regarding Defendants' Mutual Fund revenue sharing practices over the course of several years, beginning many years before the case was initiated. *Cf. In re Priceline.com Inc. Sec. Litig.*, 2007 WL 2115592, at *4 (D. Conn. July 20, 2007) ("The magnitude and complexity of this case are apparent from the more than six years of contentious discovery, intricate issues regarding proof of liability and loss and complex accounting issues."). The duration and scope of Defendants' Mutual Fund revenue sharing practices translated directly into work for Plaintiffs' Counsel, as it resulted in the processing of tens of thousands of pages of relevant evidence and dozens of witnesses.

Courts have found complexity where class counsel is required to "master… [a] new or novel area of the law." *In re Merrill Lynch Tyco Research Sec. Litig*., 249 F.R.D. 124, 139 (S.D.N.Y. 2008) or "use . . . a particularly novel or complex skill," *Ling v. Cantley & Sedacca, L.L.P.*, 2006 WL 290477, at *2 (S.D.N.Y. Feb. 8, 2006). This action was complex both in terms of the procedural requirements associated with class certification (which the Supreme Court changed during the pendency of Defendants' first interlocutory appeal of class certification to the Second Circuit in its opinion in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011)) and the underlying substantive claims at issue, which required Plaintiffs to devote substantial time to navigating the intricacies of ERISA. Aggravating these complexities was the fact that the law governing calculation and proof of damages in class actions also underwent significant developments during the pendency of the case. *See, e.g., Comcast v. Behrend*, 133 S. Ct. 1426, 1437 (2013) (affirming that "individual damages calculations do not preclude class certification under Rule 23(b)(3)," but reversing certification of class because its proposed damages model was inadequate to show damages on a class-wide basis). And compounding the difficulty of establishing their claims was the fact that Plaintiffs "faced the difficult task of proving their case almost exclusively through the testimony of [Defendants'] employees and former employees, who could be considered hostile witnesses." *In re Veeco Instruments, Inc. Sec. Litig.*, 2007 WL 4115808, at *7 (S.D.N.Y. Nov. 7, 2007).

3. Class Counsel Faced the Very Real Risk That They Would Never Be Compensated For Their Efforts On Behalf of the Class

In determining the level of compensation for Plaintiffs' Counsel, the risk of the litigation, or the certainty of success at the time of filing, is of all the *Goldberger* factors "'perhaps the foremost' factor to be considered in determining whether to award an enhancement." 209 F.3d at 54. Importantly, this analysis must be done *without* the benefit of hindsight, but based upon the risks counsel faced at the outset. *DiFilippo v. Morizio*, 759 F.2d 231, 234 (2d Cir. 1985). This "[r]isk falls along a spectrum, and should be accounted for accordingly." *In re Fine Host Corp. Sec. Litig*., 2000 WL 33116538, at *4 (D. Conn. Nov. 8, 2000). This analysis is qualitative as well, and the amount of risk must be evaluated in conjunction with the reason for the risk, so cases that are risky simply because they lack merit should be compensated differently from those that present other types of risks. *Id.* Courts consider two primary types of risks: contingency risk, and the risk particular to the facts and claims alleged.

Contingency risk is the risk that a lawyer takes when he or she agrees to represent a client without payment unless the client prevails and recovers from the defendant. Under a traditional hourly billing arrangement, a lawyer is paid regularly by his or her client for services performed. In contrast, a lawyer who works under a contingent-fee arrangement must wait for the resolution of the matter, or may not ever receive payment if the plaintiff does not prevail. Thus, courts consider contingency risk in order to compensate class counsel for taking on Plaintiffs case without payment, because, "as the Second Circuit has noted '[n]o one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success.'" *In re Sturm, Ruger, & Co., Inc. Sec. Litig.*, 2012 WL 3589610, at *12 (D. Conn. Aug. 20, 2012) (citation omitted).

In evaluating contingency risk, courts weigh factors such as the length of time counsel has represented the class without payment, the amount of expenses advanced to the class, and the certainty of eventual payment. *Farinella v. Paypal, Inc.*, 611 F. Supp. 2d 250, 271 (E.D.N.Y. 2009) (noting that "[t]his factor is intended to recognize the fact that cases taken on a contingent fee basis entail risk of non-payment for the attorneys that prosecute them, and it embodies an assumption that contingency work is entitled to greater compensation than noncontingency work," but finding that the high risk of the litigation was caused by the weak merits of the RICO claims and did not support an increased fee award). Here, Plaintiffs' Counsel have represented Plaintiffs on contingency since 2001 and have advanced over $1.3 million in expenses.

In addition to the inherent risk counsel faces by taking a case without any guarantee of payment, courts must consider the likelihood of success of the specific claims made by the plaintiffs. This risk includes any element of the claim that decreases the likelihood that there will be a recovery for the class, such as the likelihood that class counsel will be able to persuade a court to certify the plaintiff class, and if so, the chance that the class certification will be overturned on appeal or later decertified because of new evidence. "Similarly, the class, and by extension Lead Counsel, faced substantial risks that they would not prevail if the parties litigated the action through trial and appeal." *In re Citigroup Inc. Sec. Litig*., 965 F. Supp. 2d 369, 399 (S.D.N.Y. 2013), *appeal withdrawn* (Dec. 23, 2013), *appeal withdrawn* (Jan. 14, 2014) (finding that while most securities cases face little risk of non-recovery, the circumstances in Citigroup, including the absence of prior government investigation, increased the risks to the class).

Other risks include the likelihood that the claims will survive a motion to dismiss, summary judgment, and whether, after surpassing those hurdles, the plaintiffs will be likely to prevail at trial. *See, e.g., Berlinsky v. Alcatel Alsthom Compagnie Generale D'Electricite*, 970 F. Supp. 348, 352 (S.D.N.Y. 1997) (risk deemed high where defendant was foreign corporation). And even if victory is achieved at trial, plaintiffs still face the risk of appeals and reversals on appeal. These risks must be evaluated in light of the specific type of claim and evidence available in a particular case.

A primary risk that Plaintiffs faced was the development and evolution of the law on class certification, and on the substantive law of ERISA. For example, even after this Court had denied Defendants' motions to dismiss and for summary judgment on grounds that Nationwide lacked fiduciary status under ERISA, and after the Second Circuit rejected Defendants' second interlocutory appeal brought in part on these grounds, Defendants again moved for summary judgment on the ground that the Seventh Circuit's opinion in *Leimkuehler v. American United Life Ins. Co.*, 713 F.3d 905 (7th Cir. 2013), changed the substantive law of ERISA.

Moreover, litigation risk is not limited to risks associated with proving liability, but may extend to risks related to proof of damages. *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998) ("In contrast to their confidence in the relative strength of their evidence regarding liability, Class Counsel "candidly concede" that there are numerous and substantial risks regarding proof of substantial damages."). Here, while Plaintiffs contended that their damages were theoretically quite simple, Defendants maintained that they were extremely complex and tied to issues such as offset and pass-through. And even if Plaintiffs were successful in establishing liability at the first phase of trial, a bifurcated second phase dedicated exclusively to the damages issue was to follow—as well as the certainty of appeal if Plaintiffs ultimately prevailed.

In short, Plaintiffs' claims faced substantial risk of every type: this case lasted significantly longer than others because of the spirited challenges brought by Defendants; federal class certification jurisprudence and the substantive law of ERISA was unsettled and evolving; and there was no guarantee that Plaintiffs would prevail on damages on even if they could prove liability, or on appeal as to either issue. In light of the significant time and expense outlaid and extreme risks faced, Plaintiffs' Counsel's request for attorneys' fees equal to 35% of the settlement fund is reasonable, and on a broader level, an award of this size is necessary if counsel are to be incentivized to take such meritorious, but uncertain, cases in the future.

4. Class Counsel Provided High-Quality Representation to the Class, As Demonstrated By the Excellent Result Achieved Against Formidable Opposing Counsel

To evaluate the quality of the representation, the Second Circuit directs courts to measure "by results, and that such results may be calculated by comparing 'the extent of possible recovery with the amount of actual verdict or settlement.'" *In re Fine Host Corp. Sec. Litig.*, MDL 1241, 2000 WL 33116538, at *4 (D. Conn. Nov. 8, 2000) (citations omitted). Here, Plaintiffs estimate that the settlement sum represents a significant portion of the recoverable damages.

Thus, the $140 million non-reverting common fund is an exceptional result. The result is even more outstanding because "[u]nlike other cases where the class award consisted significantly of injunctive relief, stock, price rollbacks or hard-to-value coupons," Plaintiffs' Counsel negotiated for the Class Members to receive their Settlement payments in cash. *In re AOL Time Warner*, *Inc. Sec. Litig.*, 2006 WL 3057232, at *17 (S.D.N.Y. Oct. 25, 2006).

As set forth in the biographies submitted at the class certification stage on file with the Court, and as this Court previously determined, Plaintiffs' Counsel is highly experienced at prosecuting the types of claims at issue in this Litigation. *Haddock v. Nationwide Financial Services, Inc.*, 262 F.R.D. 97, 120 (D. Conn. 2009) ("After reviewing the firm and attorney C.V.s attached to the motion for class certification, I find that the plaintiffs have engaged qualified, experienced, and capable attorneys to litigate this ERISA class action suit on their behalf.") Additionally, "[t]he quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004). Here, Plaintiffs' Counsel litigated against parties represented by one of the nation's preeminent firms, Wilmer Cutler Pickering Hale and Dorr LLP. There is no question that the quality of counsel faced by Plaintiffs' Counsel was high.

5. A 35% Fee Is Reasonable in Relation to the Settlement and Consistent With Fee Awards in the Second Circuit and Cases of Similar Size and Complexity

Courts traditionally award plaintiffs' counsel fees in class actions based on either a reasonable percentage of the settlement fund (the "percentage-of-the-fund method") or an assessment by the court of the market value of the work plaintiffs' attorneys performed (the "lodestar method"). The trend in the Second Circuit is to award attorneys' fees using the percentage of the fund calculation. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) ("The trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation") (citation omitted).

Plaintiffs' Counsel's request for 35% of the settlement fund is in keeping with the fee awards to counsel in the Second Circuit and in cases across the country of similar size and complexity. *See, e.g., Heekin v. Anthem, Inc.*, 2012 WL 5472087, at *2 (S.D. Ind. Nov. 20, 2012) (awarding 33.33% of $90 million fund); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 33.30% of $586 million fund); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *4-16 (E.D. Pa. June 2, 2004) (awarding 33% of $202.5 million fund); *In re Buspirone Antitrust Litig.*, No. 01-md-1410 (S.D.N.Y. Apr. 11, 2003) (awarding 33% of common fund of $220 million); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839 (D.D.C. July 16, 2001) (awarding 34.6% of $365 million fund). Moreover, fee awards of this percentage are typical in class action settlements in the Second Circuit that are not as great in magnitude. *See, e.g., In re Publication Paper Antitrust Litig.*, 2009 WL 2351724, at *1 (D. Conn. July 30, 2009) (approving "an award of attorneys' fees of $233,100, which constitutes approximately one-third of the total settlement fund amount"); *Central States Se. & Sw. Areas Health & Welfare Fund v. Merck–Medco Managed Care, L.L.C.*, 504 F.3d 229, 249 (2d Cir. 2007) (affirming award of 30% of $42.5 million settlement); *Calibuso v. Bank of Am. Corp.*, 299 F.R.D. 359, 363 (E.D.N.Y. 2014) (awarding 33% of $38.2 million settlement fund); *Davis v. J.P. Morgan Case & Co.*, 827 F. Supp. 2d 172, 178 (W.D.N.Y. 2011) (awarding 33.33% of $42 million settlement); *Collins v. Olin Corp.*, 2010 WL 1677764, at *6 (D. Conn. Apr. 21, 2010) ("A compensation of one third of the total fund is in line with the percentage fees awarded in similar class action suits.") (citing *Silverberg v. People's Bank*, 23 Fed. Appx. 46, 48 (2d Cir. 2001)).

Notably, in two recent ERISA class action settlements approved in the District of Connecticut, the amounts awarded as attorneys' fees far exceeded, on a percentage basis, the 35% requested by Plaintiffs' Counsel in this case. *See* Stanley Dec. (Exh. A) at Exh. 4 (independent fiduciary report in *Phones Plus, Inc. v. Hartford Life Ins. Co. et al.*, No. 3:06-cv-01835 (AVC), referencing $13,775,000 settlement fund and $6,862,500 fee award: 49.87%) & Exh. 5 (independent fiduciary report in *Healthcare Strategies, Inc. v. ING Life Ins. & Annuity Co.*, No. 3:11-cv-00282 (WGY), referencing $14,950,000 settlement fund and $6,200,000 fee award: 41.47%).

Lastly, Plaintiffs' Counsel has estimated that the requested fee award would amount to approximately three times their lodestar, *see* Stanley Dec. ¶ 6, making the requested award reasonable on this basis as well. *Goldberger*, 209 F.3d at 50 ("[W]here [the lodestar method is] used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court. Instead, the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case."); *see also Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 (2d Cir. 2005) (citing *Welch v. Forbes, Inc. v. Cendant Corp.*, 243 F.3d 722, 742

(3d Cir. 2001) (surveying cases with recoveries over $100 million and finding lodestar multiplier of 1.35 to 2.99 common)); *In re Comverse Tech., Inc. Secs. Litig.*, 2010 WL 26533 (E.D.N.Y. June 24, 2010) (approving 2.78 lodestar multiplier in $116 million settlement); *In re Buspirone Antitrust Litig.*, No. 01-md-1410 (S.D.N.Y. Apr. 11, 2003) (approving 8.46 multiplier in $220 million settlement).

6. Plaintiffs' Counsel's Request is Grounded in Sound Public Policy

Courts routinely recognize "the importance that fair and reasonable fee awards have in encouraging private attorneys to prosecute class actions on a contingent basis . . . on behalf of those who otherwise could not afford to prosecute." *In re Sturm, Ruger, & Co., Inc.*, 2012 WL 3589610, at *13 (D. Conn. Aug. 20, 2012) (citations omitted); *see also AOL Time Warner*, 2006 WL 3057232, at *18 (remarking that a nine-figure attorney award would "galvanize the best of the class action bar into action" and simultaneously "have a deterrent effect on errant corporate leaders, [by] signaling that counsel will be well paid for their efforts"); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999) ("In rendering awards of attorneys' fees, 'the Second Circuit and courts in this district also have taken into account the social and economic value of class actions, and the need to encourage experienced and able counsel to undertake such litigation.'"). For this reason, court-awarded fees "must be reasonable, but they must also serve as an inducement for lawyers to make similar efforts in the future." *In re Initial Pub. Offering*, 671 F. Supp. 2d at 511 (citing *In re Visa Check/Master Money Antitrust Litig.*, 297 F. Supp. 2d 503, 524 (E.D.N.Y. 2003); *see also Goldberger*, 209 F.3d at 51 (noting the "commendable sentiment in favor of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest")).

Accordingly, a fee award equal to 35% in a successful ERISA class action is appropriate in order to encourage other attorneys to likewise serve as private attorneys general in enforcing fiduciary standards under the ERISA statute in the future. It is especially appropriate to approve a fee award of just over one third in this case, moreover, as public policy strongly favors rewarding Plaintiffs' Counsel for zealously litigating for more than thirteen years a novel and challenging case and prevailing on multiple dispositive motions; for pursuing the case past class certification and prevailing time and again on class certification motions and on appeal; and for ultimately securing a highly favorable $140 million settlement for the Class. In this case, moreover, Plaintiffs' Counsel not only successfully prosecuted Plaintiffs' challenges to Defendants' Mutual Fund revenue sharing practices, but they also spurred others in the industry to adapt and change their practices, and led to important regulatory changes. It is thus not an understatement to suggest that the filing of the original complaint in this case in 2001 has served as a catalyst for change in practices throughout the investment industry and that the effect of the $140 million settlement secured by Plaintiffs' Counsel will ensure that that process of increasing transparency will continue into the future.

B. The Court Should Award Class Counsel Reimbursement of Expenses

"It is well established that counsel who create a common fund are entitled to the reimbursement of expenses that they advance to a class." *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *10 (S.D.N.Y. Nov. 7, 2007); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 763 (2d Cir. 1998) (finding that "[a]ttorney's fees awards include those reasonable out-of-pocket expenses incurred by attorneys and ordinarily charged to their clients."). So long as the expenses requested are "incurred and customarily charged to their clients" and "incidental and necessary to the representation of those clients," courts award reimbursement of the expenses from the common fund. *In re Veeco Instruments Inc.*, 05 MDL 01695CM, 2007 WL 4115808, at *10. "Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course." *In re Arakis Energy Corp. Sec. Litig.*, 2001 WL 1590512, at *17 n.12

(E.D.N.Y. Oct. 31, 2001); *In re Payment Card*, 991 F. Supp. 2d at 448 (finding expenses of $27,037,716.97 to be "reasonable out-of-pocket expenses incurred over the course of litigating the case.").

Plaintiffs' Counsel's advancement of costs for such items as expert witnesses[2], deposition reporters and transcripts, copying, research, and court filing fees was necessary to the successful prosecution of Plaintiffs' claims and should, in fairness, be repaid from the common fund. *In re Vitamin C Antitrust Litig*., 2012 WL 5289514, at *11 (E.D.N.Y. Oct., 23, 2012) (awarding $2,562,549 in expenses incurred in the prosecution of the action which the court found to be "reasonable litigation expenses"); *see also* Stanley Dec. (Exh. A) at Exh. 6 (master expense list). Further, Plaintiffs' Counsel's expenses are of the kind that are usually paid by clients in non-common-fund cases. *See In re Global Crossing Secs. & ERISA Litig*., 225 F.R.D. 436, 468 (S.D.N.Y. 2004) ("The expenses incurred—which include investigative and expert witnesses, filing fees, service of process, travel, legal research, and document production and review—are the type for which 'the paying, arms' length market' reimburses attorneys. For this reason, they are properly chargeable to the Settlement fund."). The Court should accordingly approve an award of Attorneys' Expenses in the amount of $1,308,264.36.[3] Stanley Dec. ¶ 12 & Exh. 6.

[2] This includes the $25,000 paid by Plaintiffs' Counsel to the Independent Fiduciary, Nick Saakvitne.

[3] Additionally, if the Settlement is approved in this case, KCC (the Settlement Administrator) will distribute the entire $140,000,000 Settlement Amount pursuant to the terms of the Settlement Stipulation and Release. The cost of KCC's services is dependent largely on the number of Claim Forms filed. At present, KCC does not anticipate that the claim rate will exceed fifty percent (50%), in which case KCC's total charges to be deducted from the Settlement Amount would be $543,355. Therefore, Plaintiffs' Counsel asks the Court to authorize actual notice and claim Administrative Expenses not to exceed $543,355. Should actual expenses be less than $543,355, that difference will be distributed to Class Members. *See* Stanley Dec. ¶ 13.

C. The Court Should Grant Case Contribution Fees to the Five Class Representatives

Plaintiffs' Counsel respectfully recommends and requests that the Class Representatives be awarded incentive and reimbursement payments ("Case Contribution Fees" as defined in the Stipulation) for resources they expended to the benefit of the entire Class. Incentive payments awards "are not uncommon in class action cases and are within the discretion of the court." *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187 (W.D.N.Y. 2005). Indeed, Second Circuit courts "routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place." *See In re Gilat Satellite Networks, Ltd.*, 2007 WL 2743675, at *19 (E.D.N.Y. Sept. 18, 2007) (citation omitted). In granting such awards, courts in the Second Circuit should consider: the existence of special circumstances including the personal risk (if any) incurred by the plaintiff in becoming and continuing as a litigant; the time and effort expended by that plaintiff in assisting in the prosecution of the litigation or in bringing to bear added value (*e.g.*, factual expertise); any other burdens sustained by that plaintiff in lending himself or herself to the prosecution of the claim; and, of course, the ultimate recovery. *Denney v. Jenkens & Gilchrist*, 230 F.R.D. 317, 355 (S.D.N.Y. 2005), *aff'd in part, vacated in part on other grounds*, 443 F.3d 1253 (2d. Cir. 2006).

In this case the Class Representatives deserve reimbursement and incentive payments because they actively and effectively fulfilled their obligations as representatives of the Class, contributing their own time to support Class Counsel's investigation and development of this case, and to meet the discovery demands that were placed upon them by Nationwide. Four of them were also named as counterclaim defendants by Nationwide, but continued diligently pursuing their claims for the benefit of the Class despite the risk to themselves.

Additionally, in support of this case and to the benefit of the entire Class, Class Representatives: (1) met and conferred with Class Counsel on multiple occasions to provide documents and information to support the factual development of the claims of the Class; (2) provided documents in response to extensive discovery demands issued by Nationwide; (3) prepared and appeared for depositions (in some cases, multiple depositions); (4) made themselves available without hesitation to Plaintiffs' Counsel for consultation as factual issues emerged during discovery; and (5) conferred with Plaintiffs' Counsel concerning the settlement of this matter. The Class Representatives did all of these things at their own expense and without any guarantee of reimbursement of the expenses they incurred or compensation for the resources (human and otherwise) they devoted for the benefit of the Class. For their efforts in support of the Class, Plaintiffs' Counsel respectfully recommend and request that each of the Class Representatives be awarded an incentive and reimbursement payment of $25,000.

Courts in this and other jurisdictions recognize the importance of compensating lead plaintiffs for their costs and expenses. *See, e.g.*, *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (approving incentive awards of $303,000, which were nearly eight times greater than the class payments); *In re Vitamin C*, 2012 WL 5289514, at *11 (approving incentive awards of $50,000 each to representative plaintiffs, "[i]n light of the size of the possible payments to class members, the length and complexity of this litigation, and the substantial efforts expended by [the representatives] on behalf of the class"); *Wright v. Stern*, 553 F. Supp. 2d 337 (S.D.N.Y. 2008) (approving awards of $50,000 to each of 11 named plaintiffs in an employment discrimination case that spanned a decade); *In re Publication Paper Antitrust Litig.*, 2009 WL 2351724, at *1 (approving incentive award of $20,000); Stanley Dec. (Exh. A) at Exh.

5 (independent fiduciary report in *Healthcare Strategies, Inc. v. ING Life Ins. & Annuity Co.*, No. 3:11-cv-00282 (WGY), referencing Case Contribution Fee Awards of $50,000 and $25,000).

Courts may also "consider the relationship between the requested incentive award and the amounts recovered by absent class members under the settlement." *Denney*, 230 F.R.D. at 355, and ["[t]he amount of the incentive award is related to the personal risk incurred by the individual or any additional effort expended by the individual for the benefit of the lawsuit." *In re Vitamin C*, 2012 WL 5289514, at *11. The awards requested herein, which total $125,000, are modest, collectively constituting less than one-tenth of one percent of the Settlement Fund. *See, e.g.*, *In re Lorazepam & Clorazepate Antitrust Litig.*, 2003 WL 22037741 (D.D.C. June 16, 2003) (approving incentive payments of $35,000 to class representatives where they amounted to 0.2% of the settlement fund) (citing *Dornberger v. Metropolitan Life Ins. Co.*, 203 F.R.D. 118, 143 (S.D.N.Y.2001)).

III. Conclusion

For the reasons set forth herein, and in light of the excellent result achieved on behalf of the Class in this Litigation, Plaintiffs' Counsel respectfully request that the Court award attorneys' fees in the amount of $49,000,000, constituting 35% of the settlement fund, reimbursement of $1,308,264.36 in litigation costs and expenses, and incentive and reimbursement awards of $25,000 each to the Class Representatives.

DATED this 26th day of March, 2015.

Respectfully submitted,

/s/ Marc R. Stanley

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 26, 2015, the foregoing document was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system and by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

/s/ Marc R. Stanley

MARC R. STANLEY

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LOU HADDOCK, as trustee of the Flyte Tool & Die Company, Inc. 401-K Profit Sharing Plan, PETER WIBERG, as trustee of the Crown Tool & Die Co. Inc. Salary Deferral Profit Sharing Plan, ALAN GOUSE, as trustee of the Greater Hartford Easter Seal Rehabilitation Center, Inc., Tax Sheltered Annuity Plan and the Money Accumulation Pension Plan for the Employees of Hartford Easter Seal Rehabilitation Center, Inc., Trust, CHRISTOPHER ANDERSON, as trustee of the Anderson Law Firm, P.C. 401(k) Profit Sharing Plan and Trust, f/k/a the Anderson & Ferdon P.C. 401(k) Profit Sharing Plan, H. GRADY CHANDLER, as trustee of the Law Offices of H. Grady Chandler, P.C., 401(k) Profit Sharing Plan and Trust, and CHRISTOPHER M. McKEON, as trustee of the Bershtein, Volpe & McKeon Profit Sharing Plan, f/k/a the Bershtein, Lippman, Bachman & McKeon Profit Sharing Plan, PLAINTIFFS, v. NATIONWIDE FINANCIAL SERVICES INC., and NATIONWIDE LIFE INSURANCE CO., DEFENDANTS.	§ §	CASE NO. 01-CV-1552 (SRU)

DECLARATION OF MARC R. STANLEY IN SUPPORT OF MOTION FOR AWARD OF FEES AND EXPENSES FROM THE COMMON FUND AND FOR INCENTIVE AWARDS FOR CLASS REPRESENTATIVES

Marc R. Stanley hereby deposes and states as follows:

1. My name is Marc R. Stanley. I am over twenty-one years of age, of sound mind, have never been convicted of a felony, and am fully competent to make this declaration. I have personal knowledge of the matters addressed herein.

2. I am a principal of Stanley Law Group ("the Firm"). I have more than twenty years in complex class action litigation. As a consequence, I am familiar with the amount of attorney and support staff time it takes to pursue this type of litigation, the reasonable hourly billing rates charged by attorneys and support staff with our qualifications for this type of litigation and the types and reasonable amounts of expenses that reasonably must be incurred in litigation of this type.

3. The Firm served as counsel of record for Plaintiffs and the Class in this action.[1] The role of the Firm in this litigation has been: (a) to act as Plaintiffs' Counsel in this case with full responsibility for and active participation in all aspects of the litigation, including discovery, motion practice, and trial preparation; (b) active consultation and coordination with other Plaintiffs' Counsel in the case; and (c) negotiation and consummation of the settlement of this case.

4. Together with other Plaintiffs' Counsel in this case, the Firm actively litigated this case on behalf of Plaintiffs and the Class for more than thirteen (13) years, beginning in 2001. The many tasks the Firm and other Plaintiffs' Counsel performed over this period of time in connection with their services for Plaintiffs and the Class include the issuance of multiple rounds of written discovery requests, service of dozens of third-party subpoenas for documents, conduct and defense of dozens of oral depositions, conduct of many informal interviews, meetings, and strategy sessions, review of tens of thousands of pages of electronic and hard-copy documents, analysis of significant amounts of data, hiring and consultation with expert witnesses, response to Defendants' discovery requests to Plaintiffs, extensive briefing and oral argument in

[1] Unless otherwise indicated, all defined terms herein have the same meaning as set forth in the Settlement Stipulation and Release on file with the Court as Exhibit A to Plaintiffs' Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement [Doc. 588-1].

connection with potentially dispositive motions to dismiss, for summary judgment, and for class certification, defense of class certification on two separate occasions at the Second Circuit, and extensive pretrial preparation.

5. I make this Declaration in support of the Firm's application for an award of attorneys' fees for services in the above-captioned litigation and for reimbursement of expenses reasonably incurred in the course of such representation.

6. Based on my personal involvement with virtually every aspect of this case from inception to settlement, I am familiar with all of the work performed by the Firm, and I am of the opinion that and all of the hours expended by the Firm in connection with this litigation were reasonably and necessarily incurred. Based on input I have received from other Plaintiffs' Counsel regarding the work they performed in connection with this litigation, and based on my familiarity with the hourly rates charged by the Firm and other Plaintiffs' Counsel for attorneys and support staff, I estimate the total lodestar reasonably and necessarily incurred to date in connection with this litigation to be approximately one-third the amount of the $49,000,000 Attorney's Fee award requested by Plaintiffs' Counsel in the Motion this Declaration supports.

7. Attached hereto as Exhibit 1 is a true and correct copy of an internet-published article dated December 15, 2014, last accessed on March 26, 2015 at http://blog.fraplantools.com/13-years-haddock-v-nationwide-settles-140000000/.

8. Attached hereto as Exhibit 2 is a true and correct copy of an internet-published article dated December 17, 2014, last accessed on March 26, 2015 at http://www.thinkadvisor.com/2014/12/17/enforcement-nationwide-to-pay-140m-in-13-year-eris?page_all=1.

9. Attached hereto as Exhibit 3 is a true and correct copy of an internet-published article dated December 15, 2014, last accessed on March 26, 2015 at http://www.benefitspro.com/2014/12/15/nationwide-agrees-to-140m-erisa-settlement?page_all=1.

10. Attached hereto as Exhibit 4 is a true and correct copy of the independent fiduciary report filed in *Phones Plus, Inc. v. Hartford Life Ins. Co. et al.*, No. 3:06-cv-01835 (AVC), referencing a $13,775,000 settlement fund and a $6,862,500 fee award (a 49.87% fee award).

11. Attached hereto as Exhibit 5 is a true and correct copy of the independent fiduciary report filed in *Healthcare Strategies, Inc. v. ING Life Ins. & Annuity Co.*, No. 3:11-cv-00282 (WGY), referencing a $14,950,000 settlement fund and a $6,200,000 fee award (a 41.47% fee award).

12. Attached hereto as Exhibit 6 is a summary indicating the total of $1,308,264.56 in unreimbursed expenses incurred by Plaintiffs' Counsel in the prosecution of this litigation. I am familiar with these expenses and the reasons they were incurred, and in my opinion all of these expenses and their amounts were reasonably and necessarily incurred in the prosecution of this litigation. The expenses incurred in this action and reflected on this summary are derived from expense vouchers, check records, and other source materials maintained by the Firm, or from similar materials provided to me by other Plaintiffs' Counsel.

13. If the Settlement is approved in this case, KCC (the Settlement Administrator) will distribute the entire $140,000,000 Settlement Amount pursuant to the terms of the Settlement Stipulation and Release. Pursuant to written cost estimates furnished to me by KCC, the cost of KCC's services is dependent largely on the number of Claim Forms filed. At present, KCC does not anticipate that the claim rate will exceed fifty percent (50%), in which case KCC's

total charges to be deducted from the Settlement Amount would be $543,355. Therefore, Plaintiffs' Counsel ask the Court to authorize actual notice and claim Administrative Expenses not to exceed $543,355. Should actual expenses be less than $543,355, that difference will be distributed to Class Members.

14. I declare under penalty of perjury that the foregoing is true and correct to my knowledge, information, and belief this 26th day of March 2015.

/s/ Marc R. Stanley

MARC R. STANLEY

EXHIBIT 1

Case 3:21-cv-01659-ASR Document 12-9-1 Filed 07/1/6/15 Page 1 29 of 31

After 13 years, Haddock v. Nationwide settles for $140,000,000

Thomas E. Clark,
Jr.

On Friday December 12, 2014, the parties in Haddock v. Nationwide filed a motion for the court to approve a settlement worth $140,000,000. Originally filed in 2001, the lawsuit concerned the plaintiffs' allegation that Nationwide received undisclosed revenue sharing payments from non-proprietary mutual funds in violation of ERISA.

The procedural history is extensive with 6 published orders from the court and multiple trips to the 2nd Circuit Court of Appeals. A more thorough background of the case is included in the motion seeking settlement.

As noted above, the $140,000,000 is split between two different certified classes, with $110,000,000 for one and $30,000,000 for the other. The plaintiffs' will seek up to 35% of the settlement amount in attorney's fees or $49,000,000 and up to $2,000,000 in costs.

The settlement also calls for extensive non-monetary relief:

Defendants will supplement the disclosures for its new group variable annuity customer proposals, its new group variable annuity contracts, and its plan sponsor website that relate to Mutual Fund-related fees and expenses in connection with group variable annuity products. Defendants will also add language in new customer proposals or plan sponsor website(s) informing trustees of Plans holding group variable annuity contracts of the opportunity to be transferred to a product where Mutual Fund Payments are credited to the Plan in the form of reduced asset fees in an amount equivalent to the disclosed reimbursement rate received for each Mutual Fund investment option.

Defendants will also supplement the disclosures for its new individual variable annuity customer proposals and its new product prospectuses that relate to Mutual Fund-related fees and expenses in connection with individual variable annuity products with specific language in these disclosures that Nationwide shall provide, upon Plan Trustees' written request, its best estimate of plan-specific, aggregate data regarding the Mutual Fund Payments received in connection with the Plan's investments for the previous calendar year.

Defendants will also supplement the disclosures for its trust customer proposals, new trust, custodial, services or program agreements, and plan sponsor website that relate to Mutual Fund-related fees and expenses in connection with trust products. Defendants will also add language to the new customer proposals; trust, custodial, service or program agreements; or plan sponsor website(s) informing trustees of Plans holding group variable annuity contracts of the opportunity to be transferred to a product where Mutual Fund Payments are credited to the Plan in the form of reduced asset fees in an amount equivalent to the disclosed reimbursement rate received for each Mutual Fund investment option.

Defendants will enhance the procedures for certain future changes to the Product Menus in connection with Annuity Contracts and the Program Menus for the Trust Platforms as follows:

For group variable annuity products and Trust Platforms, Defendants will specifically identify to Plan Trustees, via mail, electronic delivery, or Defendants' plan sponsor website, any addition of a Mutual Fund investment option to a Product Menu or Program Menu at the time of the addition. Defendants will update the new customer proposals; trust, custodial, service or program agreements; or plan sponsor website(s), as applicable, to inform Plan trustees that such Product and Program Menu additions are identified on the plan sponsor websites.

For group variable annuity products and Trust Platforms, Defendants will provide to Plan trustees written notice of any removal or substitution of a Mutual Fund investment option from the Product and Program Menus that is initiated solely by Defendants, and will not remove or substitute that fund from the Product or Program Menu for a particular

Case 3:11-cv-01592-SRU Document 125-18-1 Filed 07/16/15 Page 120 of 311
Plan until it has received affirmative consent from that Plan's trustee(s). Such notice shall be provided via mail, electronic delivery, or published on the plan sponsor websites at least thirty (30) days prior to the removal or substitution of a Mutual Fund investment option, and shall state the effective date of such removal or substitution. Defendants will update their new customer proposals; trust, custodial, service or program agreements; or plan sponsor website(s), as applicable, to inform Plan trustees that such removals or substitutions from the Product and Program Menus are identified on the plan sponsor websites.

For group variable annuity products and Trust Platforms, Defendants generally will not substitute one fund for another or otherwise unilaterally remove or substitute a fund from a Plan Menu. Defendants will confirm this change in their business practices by modifying their contracts and Trust Platforms to eliminate any authority to unilaterally remove or substitute a fund from a Menu (the group variable annuity modifications will be subject to State insurance department approval).

For group variable annuity products, in those circumstances where a substitution or removal is necessitated by the actions of Mutual Funds (such as decisions by Mutual Funds or corresponding separate accounts to liquidate a fund, merge funds, change investment advisers or sub-advisers, or make other changes that prevent Nationwide Life from offering an investment option on the Plan Menu, or otherwise require Nationwide Life to change the Plan Menu), where administratively feasible, Nationwide Life will provide sixty (60) days written notice to the trustee of each Plan affected by the change via notice sent by first class mail, fax, or email. The notice will: (1) explain the proposed modification to the Plan Menu; (2) fully disclose any resulting changes in the Mutual Fund Payment rate received by Nationwide; (3) identify the effective date of the change; (4) explain the Plan trustee's right to terminate the Annuity Contract; and (5) reiterate that, pursuant to the contract provisions agreed to by the Plan trustee, failure to object or otherwise respond shall be deemed to be consent to the proposed change. Nationwide Life will confirm this change in their business practice by modifying their existing and future Annuity Contracts to reflect this notice process (the Annuity Contract modifications will be subject to State insurance department approval).

For Trust Platforms, NFS has enhanced its notification procedures in those circumstances where a substitution or removal is necessitated by the actions of Mutual Funds (such as decisions by Mutual Funds or corresponding separate accounts to liquidate a fund, merge funds, change investment advisers or sub-advisers, make other changes that prevent NFS from offering an investment option on the Plan Menu, or otherwise require NFS to change the Plan Menu). These notification enhancements are substantially the same as the proposed enhancements to the group variable annuity products' notification procedures.

For Individual Variable Annuities, Nationwide Life agrees to follow applicable U.S. Securities and Exchange Commission regulations, including notice requirements, with regard to the addition, substitution or removal of any investment option.

As part of the Settlement, current and future group variable annuity contract holders and those holding trust, custodial, services or program agreements, shall be offered the opportunity to be transferred to a product or Trust Platform where Mutual Fund Payments are credited to the Plan in the form of reduced asset fees in an amount equivalent to the disclosed reimbursement rate received for each Mutual Fund investment option. Defendants agree that they will continue to make available at least one Trust Platform offering for which Mutual Fund Payments are passed through in their entirety and/or the Mutual Fund Payment amounts are disclosed, subject to the restrictions on Defendants' ability to substitute one fund for another as set forth in the Stipulation.

Defendants shall begin to implement these changes within six (6) months of the Settlement Effective Date, and will make diligent and good faith efforts to ensure that the implementation of these changes is concluded within twelve (12) months of the Settlement Effective Date, unless there is a change in applicable law or regulatory policy that renders any change or practice unlawful or impracticable or imposes different disclosure or other substantive requirements.

Our Thoughts

Needless to say, this is the most substantial settlement ever in an ERISA fiduciary breach case involving the receipt of revenue sharing by a service provider. It is unclear from the settlement how much of the conduct at issue in the lawsuit is still being done by Nationwide. Nonetheless, this settlement is nearly 10 times greater than recent settlements against ING (see ING Settles ERISA Class Action Lawsuit Over Revenue Sharing Practices) and MassMutual (see MassMutual Settles Excessive Fee Lawsuit).

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EXHIBIT 2

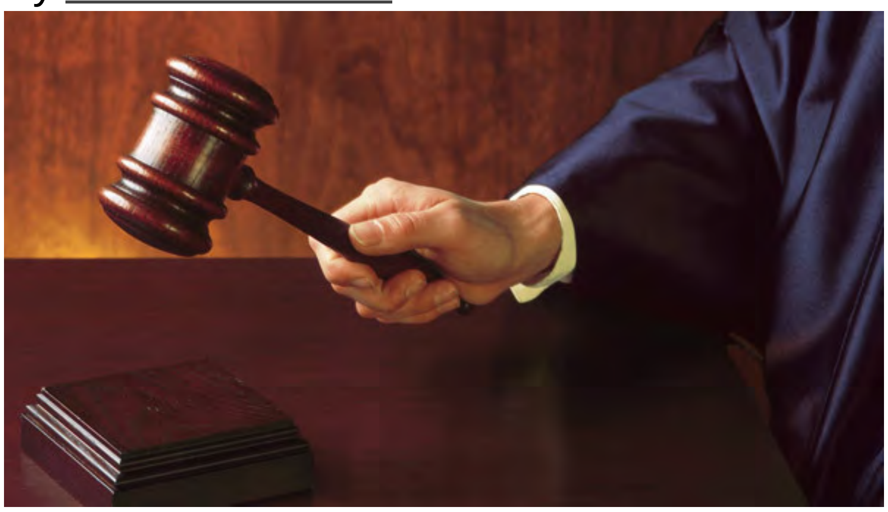
ThinkAdvisor

DECEMBER 17, 2014

Enforcement: Nationwide to Pay $140M in 13-Year ERISA Settlement

Also, Avon to pay SEC $130M to settle FCPA violations; more

By Marlene Y. Satter ThinkAdvisor



A case that has dragged on for 13 years was finally settled, with Nationwide agreeing to a tentative settlement in an ERISA case.

Among other enforcement actions, the SEC was busy, filing charges on cases ranging from securities fraud to FCPA violations, fraudulent stock manipulation, manipulative trading, a phony gold mining scheme and audit failures.

In addition, a jury reached a verdict in the SEC's favor in a case filed in January of 2012.

13-Year Litigation Brings $140 Million Settlement From Nationwide

It took over 13 years of litigation, but Nationwide Life Insurance Co., and its affiliate, Nationwide Financial Services Inc., have finally made a tentative agreement procedures should provide clear direction how to do so, as neglecting complaints can exacerbate a bad situation.

Anti-Fraud Provisions of the Investment Advisers Act

RIAs and IARs should view themselves as fiduciaries at all times, whether they meet the legal definition or not. Deviating from the fiduciary standard of full disclosure while courting clients may cause the advisor significant problems.

to settle a service-provider revenue-sharing lawsuit. The proposed settlement of $140 million is thought to be the largest ever in such a case.

Money isn't the only thing Nationwide has agreed to. Other provisions in the agreement apply to disclosure of mutual fund revenue agreements, and will likely affect other service providers in the future, since the company is the third-largest writer of 401(k) contracts.

Not only will Nationwide have to improve notification procedures for the addition or deletion of a mutual fund from an annuity, it will also have to provide extensive fee and expense disclosure forms for all its group and individual variable annuity contracts through plan sponsors' websites.

The original case, *Haddock vs. Nationwide*, was filed in August of 2001 in federal court in Connecticut. The plaintiffs, trustees of five employer-sponsored defined contribution plans, and that Nationwide received undisclosed revenue sharing payments from third-party nonproprietary mutual funds that resulted in losses to the plans and breaches of Nationwide's fiduciary duty under ERISA.

While Nationwide claimed the revenue sharing amounted to "service contract payments" that the mutual fund companies paid for "services" rendered by Nationwide, the plaintiffs argued that, on the contrary, the money was plan assets retained by Nationwide, in violation of ERISA, in exchange for offering the mutual fund companies' products.

In an amended memorandum of decision, U.S. District Judge Stefan Underhill wrote, "In other words, the trustees contend that Nationwide engages in a quid pro quo arrangement with the mutual funds, agreeing to include their funds as investment options for the plans in exchange for the revenue-sharing payments."

As the case dragged on, plaintiffs amended their complaints, Nationwide twice appealed the certification of the case as a class action and there were motions to dismiss.

It's not a done deal yet; the proposed settlement still must be approved by the court.

Avon to Pay $130M to Settle FCPA Violations

The SEC charged global beauty products company Avon Products Inc. with violating the Foreign Corrupt Practices Act (FCPA) by failing to put controls in place to detect and prevent payments and gifts to Chinese government officials from employees and consultants at a subsidiary.

Avon entities agreed to pay a total of $135 million to settle the SEC's charges and a parallel case announced today by the U.S. Department of Justice and the U.S. Attorney's Office for the Southern District of New York.

The SEC alleges that Avon's subsidiary in China made $8 million worth of payments in cash, gifts, travel, and entertainment to gain access to Chinese officials implementing and overseeing direct selling regulations in China. Avon sought to be among the first allowed to test the regulations, and eventually received the first direct selling business license in China in March 2006.

The improper payments also were made to avoid fines or negative news articles that could have impacted Avon's clean corporate image required to retain the license. Examples of improper payments alleged in the SEC's complaint include paid travel for Chinese government officials within China or to the U.S. or Europe as well as such gifts as Louis Vuitton merchandise, Gucci bags, Tiffany pens, and corporate box tickets to the China Open tennis tournament.

"Avon's subsidiary in China paid millions of dollars to government officials to obtain a direct selling license and gain an edge over their competitors, and the company reaped substantial financial benefits as a result," said Scott Friestad, an associate director in the SEC's Division of Enforcement. "Avon missed an opportunity to correct potential FCPA problems at its subsidiary, resulting in years of additional misconduct that could have been avoided."

Home Restoration Business Owner Charged With Fraud by SEC

David Fleet, owner of a home restoration business in upstate New York, was charged with securities fraud by the SEC after he sold unsecured notes to investors to finance his real estate ventures.

According to the agency, Fleet misrepresented or failed to disclose vital information to investors in Cornerstone Homes Inc., which was in the business of buying and restoring distressed single-family homes to sell or rent to low-income customers.

Among other things, Fleet claimed his company didn't use bank financing at times when Fleet relied heavily on bank mortgages to get nearly all the homes Cornerstone was buying with investor money.

Not only that, but during the real estate downturn, Fleet turned to secret investments in stock options to try to keep his company afloat. Not only did he not tell his investors about this, even as he lost between $3 and $4 million of the $6 million or so that he invested, he actually entered the options market just shortly after he sent newsletters to investors, many of them senior citizens, warning that investing in the stock market was risky and they would be better off investing their money in Cornerstone. Fleet ended up filing for bankruptcy.

The SEC is seeking financial remedies and a permanent injunction against Fleet.

SEC Charges Scientific Instruments Manufacturer With FCPA Violations

Bruker Corporation, a Billerica, Mass.-based global manufacturer of scientific instruments, was charged by the SEC with violations of the Foreign Corrupt Practices Act (FCPA) for providing nonbusiness-related travel and improper payments to various Chinese government officials to try to win business.

According to the agency, Bruker Corporation failed to prevent and detect approximately $230,000 in improper payments out of its China-based offices that falsely recorded them in books and records as legitimate business and marketing expenses. The payments brought Bruker approximately $1.7 million in profits from sales contracts with state-owned entities in China whose officials received the improper payments.

A Bruker office in China paid more than $111,000 to Chinese government officials under 12 suspicious collaboration agreements contingent on state-owned entities providing research on Bruker products or using Bruker products in demonstration laboratories. The agreements did not specify what the state-owned entities had to do to get paid, and no work product was actually provided. Some agreements were made directly with a Chinese government official, and in some cases the official was paid directly.

Other improper payments involved reimbursements to Chinese government officials for leisure travel to the U.S., Czech Republic, Norway, Sweden, France, Germany, Switzerland, and Italy. These officials often were responsible for authorizing the purchase of Bruker products, and the leisure trips typically followed business-related travel for the officials funded by the company.

Bruker self-reported its misconduct and provided extensive cooperation during the SEC's investigation. While neither admitting nor denying the charges, Bruker agreed to pay approximately $2.4 million to settle: $1,714,852 in disgorgement, $310,117 in prejudgment interest and a $375,000 penalty. It has also taken remedial action to revise its compliance program and beef up internal controls on travel and contract approvals.

SEC Charges New Orleans Energy Company, Execs With Stock Manipulation

New Orleans-based Treaty Energy Company and five of its executives were charged by the SEC with running a stock trading scheme in which they claimed to have struck oil in Belize so they could manipulate the company's stock price while illegally selling restricted shares to the public.

According to the agency, the oil-and-gas company's scheme had three parts. The first was in January 2012, when company founder Ronald Blackburn directed Treaty Energy to issue a press release claiming that the so-called Belize oil strike contained an estimated five to six million barrels of recoverable oil. Treaty's stock price shot up nearly 80% that day, and Blackburn and the four other officers made at least $3.5 million in illicit profits.

The Belize government publicly refuted the news the very next day, calling the company's statement "false and misleading" and "irresponsible." However, Blackburn and the company's officers continued to mislead investors by claiming that Belize was merely downplaying an actual oil strike for strategic reasons.

The second part of the scheme was Treaty Energy's failure to disclose in public filings from 2009 to 2013 that Blackburn, who had previously been convicted of federal income tax evasion, actually controlled the company and was a de facto officer. The four other officers—Andrew Reid, Bruce Gwyn, Lee Schlesinger and Michael Mulshine—all knew Blackburn's true role at the company, but intentionally kept from the public in its disclosures that a convicted felon was in charge.

The third part of the scheme began in November 2013 when Treaty Energy offered investors working interests in a West Texas well, claiming low-risk working interests and an expected return of 111.42% over a 10-year period. Treaty Energy and its officers, however, knew the well produced only marginal amounts of oil; from October 2013 to October 2014, its total production was just 235 barrels.

Treaty Energy's outside counsel Samuel Whitley enabled these actions with legal opinion letters that allowed the company and its officers to illegally distribute unregistered stock to the public. He was aware that Blackburn was running the company and Treaty Energy was abusing registration rules under the federal securities laws, but did nothing to stop any of it and issued the opinion letters that kept the scheme going.

The SEC has charged Treaty Energy, Blackburn, Reid, Gwyn, Mulshine and Schlesinger with securities fraud as well as violations of the registration and reporting violations of the federal securities laws. The agency seeks disgorgement of ill-gotten gains with prejudgment interest plus financial penalties as well as penny stock bars, officer-and-director bars, and permanent injunctions against them. Reid and Gwyn are additionally charged with signing false certifications in Treaty Energy's SEC filings, and Whitley is accused of securities registration violations.

SEC Charges Equity Research Firm With Manipulative Trading

Paul Pollack, owner of Phoenix-based equity research firm Montgomery Street Research LLC, was charged by the SEC with manipulating the market for a publicly traded stock he was soliciting investors to purchase.

According to the agency, after a company hired his firm to assist in two private placement offerings, Pollack conducted approximately 100 wash trades where the buy or sell orders came within 90 seconds of each other at prices and quantities that were virtually identical. The wash trades are alleged to have occurred during a nearly one-year period and created the appearance of consistent active trading in the otherwise thinly traded stock.

Pollack and Montgomery Street Research raised more than $2.5 million from 11 investors after being hired by the company to raise money and make introductions to potential investors in its stock. Among other things, they identified and solicited potential investors, provided financial information regarding the issuer, fielded investor inquiries, and in some instances received transaction-based compensation.

Pollack and his firm are also charged with acting as brokers on behalf of the company without first registering with the SEC.

Two Individuals and Companies Charged in Gold Mining Scheme

The SEC has charged two individuals and their companies in a phony gold mining scheme based in Miami.

According to the agency, Michael Crow and Alexandre Clug promised investors a stake in so-called “quick-to-production” gold mines that their company Aurum Mining LLC purported to own and operate in Brazil and Peru. Crow, who had filed for personal bankruptcy, teamed up with Clug to raise approximately $3.9 million from seniors and other investors in Florida, who never received any money back from their investments.

Instead, Crow and Clug used much of the money they raised to cover their monthly salaries, rental of upscale apartments in Lima, and other living or travel expenses.

Among the phony claims made by the pair was one that Aurum Mining had acquired a 50% interest in a Brazilian gold mine with reserves of approximately $400 million worth of gold. The two knew the claims were baseless and had no backing by any mining authorities.

Crow had already been the target of two earlier SEC actions, and was barred from working in the securities industry or acting as an officer or director of a public company. That didn’t stop him, however.

Crow and Clug established PanAm Terra Inc. as a public company and raised $400,000 from investors in Florida for purported farmland investment opportunities in South America. PanAm Terra never disclosed in SEC filings that Crow acted as a de facto officer despite being barred. The filings also hid Crow's bankruptcy. The company never bought any farmland, much of the money going instead to Crow, Clug and their business associates.

Crow and Clug operated another company called The Corsair Group through which they brokered the sale of bonds to investors and received more than $10,000 in transaction-based compensation. The Corsair Group was not registered as a broker-dealer and Crow and Clug were not associated with any registered broker-dealer. Crow had been barred from associating with any broker-dealer.

In a separate action, certified public accountant Angel Lana agreed to settle findings that he was involved in the scheme as the CFO of Aurum Mining. Without admitting or denying the findings, he agreed to pay a $50,000 penalty and be barred from practicing as an accountant on behalf of any SEC-regulated entity for five years.

Hong Kong Firm, Two Accountants Sanctioned on Audit Failures

The SEC imposed sanctions against a Hong Kong-based audit firm and two accountants for failing to properly audit year-end financial statements of a company that the SEC has charged with fraud.

Baker Tilly Hong Kong Limited, its director Andrew Ross, and its former director Helena Kwok ignored red flags surrounding approximately $59 million in related-party transactions reflected in internal accounting records of China North East Petroleum Holdings Limited but not adequately disclosed in year-end 2009 financial statements.

The audit failure resulted in the magnitude of 176 related-party transactions detailed in an independent forensic accounting report not being adequately disclosed. In addition, the resulting financial statements failed to adequately disclose the magnitude of the related-party transactions and mention that they involved the then-CE and his mother. The audit team also failed to properly obtain adequate evidential matter to support its audit report.

The agency said that Baker Tilly and the two accountants failed to plan and implement an appropriate audit response to the related-party transactions. Baker Tilly consequently issued an audit report containing an unqualified opinion on China North East Petroleum's financial statements.

Baker Tilly, Ross, and Kwok neither admitted nor denied the findings of the order, which censures Baker Tilly. They did, however, agree to settle the SEC's charges. Baker Tilly must disgorge its audit fees of $75,000 plus prejudgment interest of $9,101, and cannot accept any new U.S. issuer audit clients until an independent consultant has reviewed and certified that the firm's audit policies and procedures are compliant with SEC regulations and PCAOB standards. Ross and Kwok must pay penalties of $20,000 and $10,000 respectively and are barred from practicing as an accountant on behalf of any SEC-regulated entity for at least three years.

Jury Finds Securities Fraud in 2012 SEC Case

The SEC was handed a victory by a jury that found BankAtlantic Bancorp, Inc., now known as BBX Capital Corporation, and CEO Alan Levan committed securities fraud in connection with BBX's public disclosures and financial statements in 2007.

The case, brought by the SEC in January of 2012, charged the bank and Levan with misleading investors by making statements in public filings and earnings calls that hid the deteriorating state of a large portion of the bank's commercial residential real estate land acquisition and development portfolio in 2007. BankAtlantic and Levan then committed accounting fraud when they schemed to minimize BankAtlantic's losses on their books by improperly recording loans they were trying to sell from this portfolio in late 2007.

After a six-week trial, the SEC said, the jury found "that Levan's 2007 statements during BBX's second quarter earnings conference call fraudulently misled investors regarding the financial health of the bank, that BBX's 2007 annual report fraudulently understated the Bank's loss for that year by approximately $53 million, and that Levan and BBX engaged in a course of business that operated as a fraud throughout 2007."

-- Check out last week's enforcement roundup: ***SEC, DOL Enforcement: Fiduciaries Fined $4.7M Over Fake Health Plan***

EXHIBIT 3

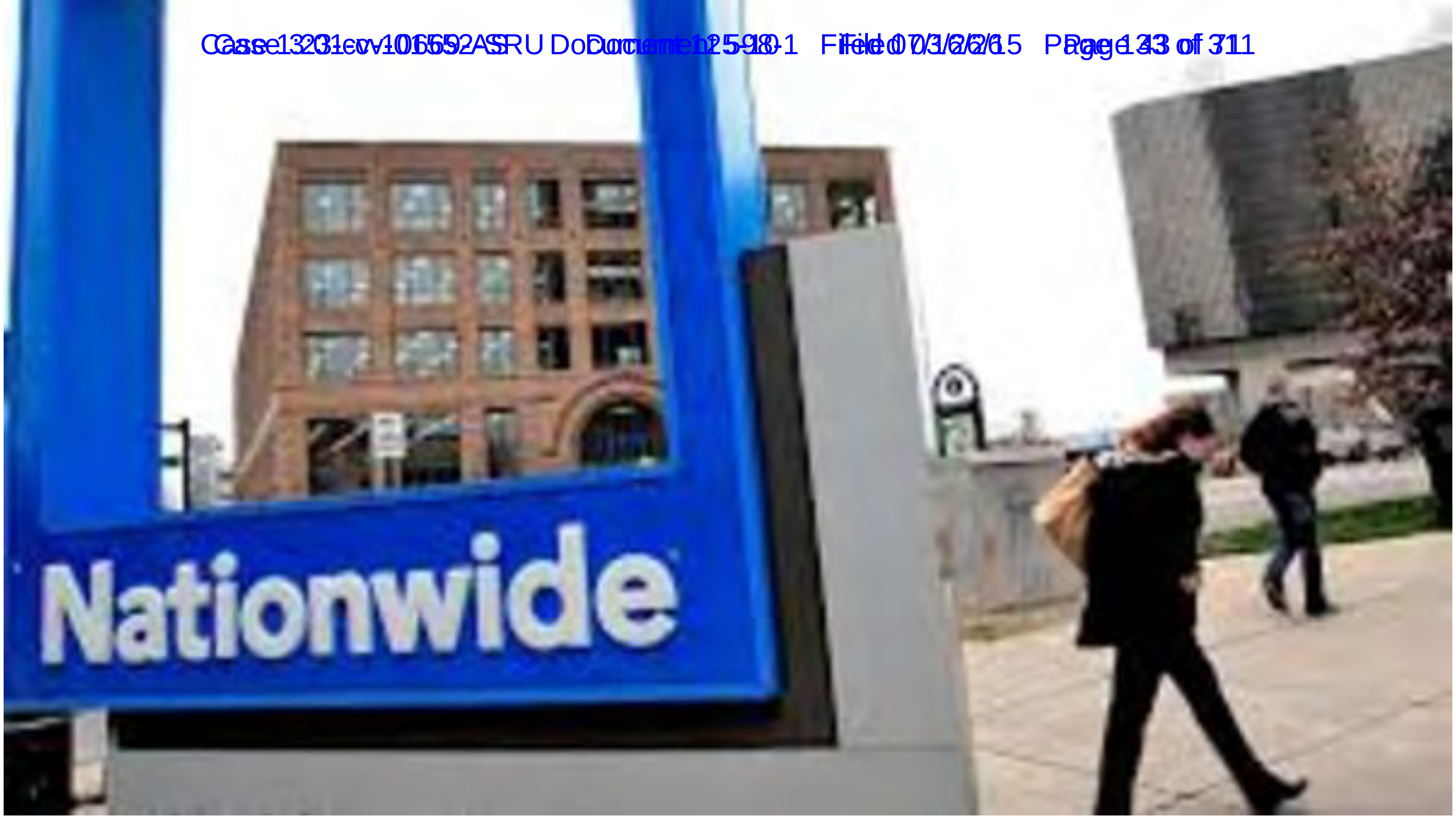
FEATURED NEWS

CONFERENCE TWEETS

Want more news and insights from the 2015 NAPA 401(

Nationwide agrees to $140M ERISA settlement

DEC 15, 2014 | BY NICK THORNTON



More than 13 years of litigation has yielded a tentative settlement in Haddock vs. Nationwide, a $140 million deal believed to be the largest ever in a service-provider revenue-sharing lawsuit.

Nationwide Life Insurance Co., and its affiliate, Nationwide Financial Services Inc., signed off on the preliminary deal late last week, according to court documents.

On top of the money, Nationwide agreed to several other points that will change how it and, most likely, other service providers disclose their revenue agreements with mutual funds going forward.

Nationwide – the third-largest writer of 401(k) contracts in the nation – will be required to provide extensive fee and expense disclosure forms for all of its group and individual variable annuity contracts through plan sponsors' websites.

It also agreed to enhance its notification procedures in the event a fund is added or removed from an annuity.

Also read: Hope for greater fee transparency

Filed in August of 2001 in federal court in Connecticut, the plaintiffs, who were trustees of five employer-sponsored defined contribution plans, alleged Nationwide's revenue-sharing agreements with third-party, non-propriety mutual fund companies resulted in losses to the plans and breaches of Nationwide's fiduciary duties under ERISA.

The plaintiffs – led by Flyte Tool& Die, a plastic molding company in Bridgeport, Connecticut – claimed Nationwide used outside mutual funds with high management fees so that it could maximize the "undisclosed kickbacks" it received.

Participant contributions and employer matches were invested in one of two variable annuity accounts with Nationwide that held assets from multiple plans. The trusts were largely made up of mutual funds.

Plans and participants chose which mutual funds to invest in from a selection of funds offered by Nationwide.

According to court documents, in the early to mid-1990s, Nationwide began arranging revenue-sharing agreements with mutual fund companies.

Nationwide's contention was that the revenue-sharing, or "service contract payments," paid for "services" Nationwide provided to the funds they implemented.

But the plaintiffs claimed that those payments to Nationwide from mutual fund companies constituted plan assets and were retained in violation of ERISA.

The plaintiffs also argued the arrangements violated ERISA because the fund companies effectively paid Nationwide a percentage of the plans' investments in exchange for Nationwide offering their funds.

"In other words, the trustees contend that Nationwide engages in a quid pro quo arrangement with the mutual funds, agreeing to include their funds as investment options for the plans in exchange for the revenue-sharing payments," wrote U.S. District Judge Stefan Underhill in a factual background of the case.

The case involved a procedural maze of plaintiffs' amended complaints, motions to dismiss, and two appeals by Nationwide before the 2nd Circuit Court of Appeals challenging the lower court's certification of the class.

The plaintiffs claimed that Nationwide's revenue payments were subject to ERISA because Nationwide acted as fiduciaries in that it selected investment options for plan investment menus and reserved a "unilateral" right to replace investment options.

The case was scheduled to go to trial in February. A judge must sign off on the settlement. The lawyers for the plaintiffs will get 35 percent of the money, plus $2 million more.

The settlement, according to the Fiduciary Matters blog, is nearly 10 times greater than recent settlements against ING and **MassMutual**.

Also read:
Plenty to keep the ERISA lawyers busy

EXHIBIT 4

NICHOLAS L. SAAKVITNE
A LAW CORPORATION

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ERISA FIDUCIARY SERVICES • EMPLOYEE BENEFITS LAW

February 9, 2010

Patrick A. Klingman, Esq.
James E. Miller, Esq.
Shepherd, Finkelman, Miller & Shah, LLP
65 Main Street
Chester, CT 06412

Re: ***<u>Report of Independent Fiduciary, PHONES PLUS, INC., Plan Administrator of the Phones Plus Retirement Savings Plan, on behalf of itself and all others similarly situated, v. HARTFORD LIFE INSURANCE COMPANY and NEUBERGER BERMAN MANAGEMENT, INC. Civil Action No. 3:06-cv-01835 (AVC) (the "Action") Approving Settlement Agreement and Release</u>***

Gentlemen:

By Fiduciary Services Agreement dated December 7 and 9, 2009, I was engaged by counsel to act as Independent Fiduciary on behalf of the Members of the Settlement Classes as set forth in Paragraph 1.1 of the Settlement Agreement and Release (the "Settlement") to review the reasonableness of the Settlement and determine whether to approve it on behalf of the Settlement Classes.

Such role constitutes:

- that of Named Fiduciary in accordance with the provisions governing plan Fiduciaries contained in the Employee Retirement Income Security Act of 1974, as amended ("ERISA"); and

- that of an acknowledged plan Fiduciary on behalf of the retirement plans which comprise the Members of the Settlement Classes with respect to the settlement of the referenced class action litigation, in accordance with the provisions of Prohibited Transaction Class Exemption 2003-39 ("PTCE 2003-39").

I have extensive experience in serving as an ERISA Independent Fiduciary, including in connection with ERISA class action litigation. A statement of my credentials is attached to this Report.

Consistent with the requirements of PTCE 2003-39: (1) neither I nor my law corporation has any relationship to, nor interest in, any of the parties to the litigation (including the Members of the Settlement Classes) that might affect the exercise of my best judgment as Independent Fiduciary; (2) the terms of the Settlement are described in a written settlement agreement; (3) I have acknowledged in writing that I am a Fiduciary with respect to the Settlement on behalf of the Members of the Settlement Classes; and (4) I will maintain or cause to be maintained for a period of at least six years the records described in PTCE 2003-39.

Summary of Facts

On November 14, 2006, Phones Plus, Inc. filed the Action, a putative class action against the Hartford Financial Services Group, Inc. ("HFSG"), Hartford Life Insurance Company ("Hartford Life"), and Neuberger Berman Management, Inc. ("Neuberger Berman") in the United States District Court for the District of Connecticut on its own behalf and on behalf of all trustees, sponsors, fiduciaries, and administrators of employee pension benefit plans covered by the ERISA subject to Internal Revenue Code ("IRC") section 401(k) for which, since November 14, 2003, Hartford Life has received revenue sharing payments (e.g., asset based sales compensation, service fees under distribution and/or servicing plans adopted by funds pursuant to Rule 12b-1 under the Investment Company Act of 1940, administrative service fees and additional payments, expense reimbursements and other similar compensation) from any mutual fund or investment advisor (the "Putative Class").

[On January 13, 2009, the United States District Court for the District of Connecticut (the "Court") entered and approved a Stipulation of Dismissal as to the claims against HFSG].

[On July 17, 2009,the Court entered an Order of Final Approval of Class Action Settlement, Award of Attorney's Fees and Expenses, and Dismissal, which approved a settlement between Phones Plus, Inc. and Neuberger Berman and dismissed all claims against Neuberger Berman with prejudice].

The complaints and other filings by Phones Plus, Inc. in the Action alleged various claims against Hartford Life and/or HFSG relating to Hartford Life's operation of its retirement plan business, including but not limited to claims brought under ERISA, 29 U.S.C. section 1001 et seq., for breach of fiduciary duty (29 U.S.C. section 1104), violation of the prohibited transaction rules (29 U.S.C. section 1106), and knowing participation in a breach of trust.

All of such claims arose, in whole or in part, from Hartford Life's contractual arrangements with and/or provision of various services to retirement plans and/or its receipt from mutual funds and collective investment funds of revenue sharing payments.

Hartford Life thereafter asserted counterclaims against Phones Plus, Inc., the plan administrator and fiduciary of the Phones Plus Plan, for contribution under ERISA, indemnity under ERISA, common law contribution, common law indemnity, and breach of fiduciary duty and stated that it reserves the right to assert the same or similar counterclaims against the Putative Class or the Putative Class's retirement plans.

Hartford Life, as Third-Party Plaintiff also asserted third-party claims against the Third-Party Defendants, the trustees and fiduciaries of the Phones Plus Plan, for contribution under ERISA, indemnity under ERISA, common law contribution, common law indemnity, and breach of fiduciary duty and stated that it reserves the right to assert the same or similar claims against the trustees and fiduciaries of the Putative Class or of the Putative Class's retirement plans.

During the discovery period, the parties engaged in substantial discovery to evaluate the merits of their respective claims and defenses; and in an attempt to resolve the disputes between them, Phones Plus, Inc. and Hartford Life engaged in multiple mediation sessions with an experienced and well-respected private mediator, Professor Eric D. Green of Resolutions LLC and the Boston University School of Law.

Following such mediation efforts, the parties, through their respective attorneys, have reached an agreement to settle the claims, counterclaims, and third-party claims in the Action on the terms and conditions set forth in the Settlement.

[Hartford Life, Phones Plus, Inc. and the Third-Party Defendants vigorously deny any wrongdoing and any liability based on all claims, counterclaims, and third-party claims described above].

Terms of Settlement

The Settlement, if finally approved by the Court:

- converts the Action to a Class Action, with Monetary Relief Class Members (subject to opt out) and Structural Changes Class Members (non-opt out);

- provides a $13,775,000 settlement amount, paid by Hartford Life, to be allocated (subject to attorney's fees as described below) among the non-opting out Monetary Relief Class Members in accordance with a Plan of Allocation [a Case Contribution Fee Award of up to $25,000 for Phones Plus, Inc. is requested, subject to Court approval, to be paid from the Settlement amount];

- provides a $300,000 administrative costs amount, also paid by Hartford Life, to cover the costs of administering the settlement amount, allocating and disbursing it among the Monetary Relief Class Members;

- provides that Hartford Life will make meaningful structural changes to its insurance and annuity contracts and business practices which will provide agreed clarity and certainty on a going-forward basis as to the propriety of its future conduct and future receipt of revenue sharing;

- provides for meaningful disclosures by Hartford Life to new and existing customers, for not less than five years, regarding revenue sharing rates, expense ratios, separate account fees, maintenance fees, and per participant fees (the "Fee and Expense Disclosure Reports");

- provides for an award of plaintiff's attorneys fees and expenses not to exceed $6,862,500 [which amount plaintiff's counsel has advised me in writing is substantially less than their time incurred (at their normal hourly rates) plus their expenses incurred to date with respect to the Action]; and

- includes broad general releases, indemnifications, and agreements not to sue relating to claims, counterclaims, and third-party claims relating to or arising out of the matters, etc. alleged in the Action.

[This summary of the 40-plus page Settlement Agreement and Release is of necessity a summary].

Independent Fiduciary Due Diligence

In reviewing the matters set forth above and the reasonableness of the Settlement as a comprehensive settlement of the claims asserted (and any others that could be anticipated), taking into consideration the Members of the Settlement Classes' likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone, I discussed the claims, their bases, potential problems with the litigation and the specifics of the Settlement, with:

- Patrick A. Klingman and James E. Miller of Shepherd, Finkelman, Miller & Shah, LLP and Ron Kravitz of Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP, co-lead and Class Counsel [including a meeting with counsel in September, 2009]; and

- Mark B. Blocker and Eric Mattson of Sidley Austin LLP, counsel for Hartford Life.

My review included without limitation the following documents:

Phones Plus, Inc. et. al. v. Hartford Life Insurance Company et. al.

- Second Amended Class Action Complaint

- Defendant Hartford Life Insurance Company's Answer, Affirmative Defenses and Counterclaims

- Defendant / Third-Party Plaintiff Hartford Life Insurance Company's Amended Third-Party Complaints

- Third-Party Defendants' Answer and Affirmative Defenses to The Amended Third-Party Complaint

- Plaintiff's Answer and Affirmative Defenses to Counterclaims

- Defendant Hartford Life Insurance Company's Memorandum In Support of its Motion for Summary Judgment

- Plaintiff's Memorandum of Law in Opposition to The Motion For Summary Judgment of Defendant

- Defendant Hartford Life Insurance Company's Reply in Support Of Motion for Summary judgment

- Settlement Agreement and Release, various drafts through 1/18/10, Including Plan of Allocation, Form of Notice, and Forms of Preliminary Approval Order and Final Approval Order

- Expert Report of Michael G. Mayer, Tabs and Exhibits

- Expert Report of Craig Merrill, Appendices and Exhibits

- Declaration of Scott D. Hakala Regarding the Expert Reports of Professor Craig Merrill and Michael G. Mayer and Exhibits

- Declaration of James Scheinberg

* * * * *

Haddock et. al. v. Nationwide Financial Services, Inc., U.S. Dist Ct D. Conn 11/06/09 Ruling on Motion to Strike, Motion to Intervene, and Motion for Class Certification (and prior rulings)

Columbia Air Services, Inc. et. al. v. Fidelity Management Trust Company, U.S. Dist Ct D. Mass 9/30/2008

Dennis Hecker et. al. v. Deere & Company et. al., U.S. Ct of App. 7th Cir 2/12/2009

Joseph Ruppert et. al. v. Principal Life Insurance Co., U.S. Dist Ct S.D. Iowa 11/5/2009

* * * * *

PWBA Advisory Opinion 97-15A

PWBA Advisory Opinion 97-16A

EBSA Advisory Opinion 2003-09A

Prohibited Transaction Class Exemption 2003-39

Summary of Conclusions

The Settlement is reasonable and provides an appropriate recovery and valuable future reports of relevant ongoing fee and expense information (the Fee and Expense Disclosure Reports) to plan participants in and plan fiduciaries of retirement plans which are Members of the Settlement Classes, taking into account the likelihood of full recovery, the value of such reports, the risks and expenses of litigation, and the value of claims foregone.

Specifically:

- as to monetary damages, the $13,775,000 settlement amount is substantial in comparison to (1) the $35,400,000 which defense expert witness Michael G. Mayer identifies as possible damages, or (2) the $37,231,518 to $44,960,555 which plaintiff's expert witness Scott D. Hakala computes as possible damages;

- as to the value of the Future Fee and Expense Disclosure Reports to be provided by Hartford Life, plaintiff's expert witness James Scheinberg assigns a minimum value of $625 per plan (19,500 plans), per year for the five year reporting period, totaling somewhat in excess of $60 million, as the minimum aggregate value to the Members of the Settlement Classes of such reports. While I might discount that figure somewhat based on uncertainties (a) about the extent to which the disclosure itself will have a moderating influence on future Hartford Life fees and expenses and (b) about whether most or all of the Members of the Settlement Classes will avail themselves of the information provided in such reports, nevertheless I agree that the Fee and Expense Disclosure Reports add very substantial value to the Settlement.

- in light of the monetary recovery and the Fee and Expenses Disclosure Reports, and the obvious fact that in order to obtain such recovery and relief the retirement plans, singularly or as a class, would have had to incur attorney's fees and expenses (this was a strongly defended Action), plaintiff's attorney's fees and expenses request of up to $6,862,500, comprising less than their fees (at normal hourly rates) and expenses incurred to date, in my view is reasonable notwithstanding the close to 50% of the economic portion of the Settlement which it would consume, and does not alter my conclusion that the Settlement is reasonable and in the best interests of the Members of the Settlement Classes.

Discussion

While 100% of the recoverable economic damages (if plaintiffs prove their case in all respects) may be in the $35 million to $45 million range, the legal issues are uncertain, and with respect to the main case supporting plaintiffs (*Haddock, et al v. Nationwide Financial Services*, currently pending, also in United States District Court, District of Connecticut, and most recently (November 6, 2009) certified as a Class Action by the Court): (1) the case has not yet proceeded to judgment so uncertainties remain whether plaintiffs there can prove their case in whole or in part, (2) the 2nd Circuit has not yet ruled on the key issues; and (3) there appear to be differences between the underlying Nationwide Life Insurance Company facts and the Hartford Life Insurance Company facts.

When I consider these uncertainties about *Haddock*, as well as the adverse decisions in other districts and courts of appeal [*Hecker et. al. v. Deere & Company et. al.* (7th Cir 2/12/09]; *Columbia Air Services, Inc. et. al. v. Fidelity Management Trust Company* [U.S. Dist Ct. D. Mass 9/30/2008]; and most recently, *Joseph Ruppert et. al. v. Principal Life Insurance Co.*, U.S. Dist Ct. S.D. Iowa [11/5/2009], I conclude that a 30.6% - 39.36% economic recovery [$13,775,000 gross settlement amount divided by either $35 million or $45 million] is reasonable; and when I add in the substantial value added by the Fee and Expense Disclosure Reports (even if I discount somewhat the $60 million value ascribed to them) I conclude that the value of the Settlement is substantial to the Members of the Settlement Classes, and an attorney fee and expenses reward of up to $6,862,500 appears reasonable and does not alter my conclusion.

The Fee and Expense Disclosure Reports are a substantial element of the Settlement, and valuing them is a difficult task (with Mr. Scheinberg's analysis probably the best analysis possible under the circumstances). Whether or not one reaches the $60 million aggregate value he assigns to the Reports, his analysis in my view is worthy of respect, and the value of such Reports to the Members of the Settlement Classes certainly appears to total tens of millions of dollars, adding great value to the Settlement.

In the "claims foregone" area, while the releases in the Settlement are broad, it does not appear to me that there are meaningful claims not yet asserted which the releases will block. I believe that the pending complaint fully addresses all apparent issues and claims relating to Hartford Life's revenue sharing arrangements with participating retirement plans.

Finally, a Case Contribution Fee award by the Court to plaintiff Phones Plus, Inc. of up to $25,000.00 is not material in comparison to the overall $13,775,000 settlement fund, appears reasonable given the burdens imposed on plaintiff (including being subject to a counterclaim) and does not alter my conclusion regarding the Settlement.

In sum, I believe that the Settlement is a reasonable and attractive settlement for the retirement plans, which comprise the Members of the Settlement Classes, and I hereby approve it as Independent Fiduciary acting on their behalf.

Sincerely,

NICHOLAS SAAKVITNE
Independent Fiduciary of
EMPLOYEE BENEFIT PLANS
532 Colorado Avenue 2nd Floor
Santa Monica, CA 90401-2408

NICHOLAS L. SAAKVITNE
Independent Fiduciary for the
Members of the Settlement Classes
[PHONE PLUS, INC. et. al. v.
HARTFORD LIFE INSURANCE
COMPANY et. al.

Enclosure

Copy (w/encl.) to:

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Case 1:23-cv-10659-ASRU Document 125-1 Filed 07/16/25 Page 156 of 311

APPENDIX

Statement of Credentials of Independent Fiduciary

Nicholas L. Saakvitne [N.Y.U. School of Law J.D. 1976, L.L.M. in Taxation 1977; Fellow, American College of Employee Benefits Counsel] has been an ERISA attorney for more than 30 years. Since 1997, he has acted as an ERISA fiduciary for employee benefit plans, and such fiduciary service now comprises substantially all of his practice.

Serving as Trustee and Independent Fiduciary to coordinate the termination of orphan retirement plans (working closely with the EBSA division of the U.S. Department of Labor and, for defined benefit pension plans, with the Pension Benefit Guaranty Corporation) he believes he has served as fiduciary for more than 250 plans and has overseen approximately $1 billion of plan benefit payments / direct rollovers. Mr. Saakvitne has been appointed as a plan fiduciary by many federal courts, and on occasion by California state courts.

Mr. Saakvitne has served as Trustee and Independent Fiduciary for more than 25 Employee Stock Ownership Plans over the past 10 years, on an ongoing basis for active plans, and to negotiate stock purchase or stock / asset sale transactions or to approve settlements or review other ESOP fiduciary transactions, and ESOPs are a growing part of his fiduciary practice.

On several occasions, Mr. Saakvitne has acted as Independent Fiduciary for retirement plans to review and approve Class Action ERISA litigation settlements, working with nationally recognized members of the plaintiff's Bar and established defense counsel.

He has also been approved as Independent Fiduciary for several prohibited transaction exemptions issued by the National Office of the U.S. Department of Labor.

* * * * *

EXHIBIT 5

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ERISA FIDUCIARY SERVICES • EMPLOYEE BENEFITS LAW

September 5, 2014

James E. Miller, Esq.
Laurie Rubinow, Esq.
Shepherd, Finkelman, Miller & Shah, LLP
65 Main Street
Chester, CT 06412

Re: ***<u>Report of Independent Fiduciary, HEALTHCARE STRATEGIES, INC. et al. v. ING LIFE INSURANCE AND ANNUITY COMPANY Civil Case No. 3:11-cv-00282 (WGY) United States District Court for the District of Connecticut (the "Litigation") Approving Settlement Agreement and Release on Behalf of the Members of the Settlement Class</u>***

Dear Counsel:

By Fiduciary Services Agreement dated May 28, 2014, I was engaged by Plaintiffs' counsel to act as Independent Fiduciary on behalf of the Members of the Settlement Class as set forth in Paragraph 1.25 of the Settlement Agreement and Release (the "Settlement") to review the reasonableness of the Settlement and determine whether to approve it on behalf of the Settlement Class (as I have) or to recommend that such Members object to the Settlement or file Requests for Exclusion from the Settlement (the deadline for which was September 3, 2014).

Such role constitutes:

- that of Named Fiduciary in accordance with the provisions governing plan Fiduciaries contained in the Employee Retirement Income Security Act of 1974, as amended ("ERISA"); and

- that of an acknowledged plan Fiduciary on behalf of the retirement plans which comprise the Members of the Settlement Class with respect to the settlement of the referenced class action litigation, in accordance with the provisions of Prohibited Transaction Class Exemption 2003-39 as amended ("PTCE 2003-39").

I have extensive experience in serving as an ERISA Independent Fiduciary, including in connection with ERISA class action litigation. A statement of my credentials is attached to this Report.

Consistent with the requirements of PTCE 2003-39: (1) neither I nor my law corporation has any relationship to, nor interest in, any of the parties to the Litigation (including the Members of the Settlement Class) that might affect the exercise of my best judgment as Independent Fiduciary; (2) the terms of the Settlement are described in a written settlement agreement; (3) I have acknowledged in writing that I am a Fiduciary with respect to the Settlement on behalf of the Members of the Settlement Class; and (4) I will maintain or cause to be maintained for a period of at least six years the records described in PTCE 2003-39. I affirm the existence of a genuine controversy involving the Members of the Settlement Class, reflected by the Litigation and the Settlement; and (as set forth herein) I confirm that the conditions of PTCE 2003-39 are satisfied with respect to the Settlement.

Summary of Facts

On February 23, 2011, Plaintiff Healthcare Strategies, Inc. filed the Litigation, a putative class action against ING Life Insurance and Annuity Company ("ING") in the United States District Court for the District of Connecticut on its own behalf and on behalf of a class which ultimately was certified as all administrators of employee pension benefit plans covered by the ERISA subject to Internal Revenue Code ("IRC") sections 401(a),(k) with which ING has maintained a contractual relationship based on a group annuity contract or a group funding arrangement for which since February 23, 2005, ING has received revenue sharing payments (e.g., asset based sales compensation, service fees under distribution and/or servicing plans adopted by funds pursuant to Rule 12b-1 under the Investment Company Act of 1940, administrative service fees and additional payments and expense reimbursement) from any mutual fund, investment advisor or related entity.

Pursuant to a Motion to Intervene that was granted by the Court on December 26, 2012, The DeRosa Corporation was added as a party plaintiff and class representative.

The Complaints and other filings by Plaintiffs in the Litigation alleged various claims against ING relating to ING's operation of its retirement plan business, including but not limited to claims brought under ERISA, 29 U.S.C. section 1001 et seq., for breach of fiduciary duty (29 U.S.C. section 1104), violation of the prohibited transaction rules (29 U.S.C. section 1106), and knowing participation in a breach of trust.

All of such claims arose, in whole or in part, from ING's contractual arrangements with and/or provision of various services to retirement plans and/or its receipt from mutual funds and collective investment funds of revenue sharing payments.

During the pendency of the case, the Parties first began discussing the possibility of seeking an amicable resolution of the Litigation in August, 2012. The parties ultimately began utilizing the services of a highly respected mediator, Mark E. Segall, Esq. of JAMS, the former Head of Litigation, Senior Vice President and Associate General Counsel of JP Morgan Chase. The mediation occurred over the course of approximately six (6) months, beginning in the Spring of 2013 and continuing during the trial as to liability. In advance of the mediation sessions, the parties prepared and submitted mediation briefs which set forth each party's positions regarding legal theories, evidence and possible damages.

Following lengthy and vigorous litigation efforts on both sides extending over almost four years, including Motion to Dismiss, Motions for Summary Judgment, the mediation and a four-week trial, the parties (following closing arguments at trial) requested the Court to delay any ruling and resumed negotiations which culminated in the Settlement. The Settlement terms were arrived at only after three (3) full days of mediation, as well as a number of telephone conferences with the mediator, as well as direct negotiations between counsel and ING's Chief Counsel for Litigation, Regulatory and Employment matters in the United States, which lasted for a period of several additional months after closing arguments as to liability. These efforts are described in greater detail in the Motions and Memoranda of Law in Support of Preliminary and Final Approval of the Settlement, in the Notice, and in James E. Miller's Declaration in Support of the Motion for Final Approval.

The parties, through their respective attorneys, have reached an agreement to settle the claims and disputes in the Litigation on the terms and conditions set forth in the Settlement.

Notwithstanding the Settlement, ING vigorously denies any wrongdoing and any liability based on all claims described above.

Terms of Settlement

The Settlement*, if finally approved by the Court:

- provides a $14,950,000.00 settlement amount, paid or caused to be paid by ING, to be allocated (subject to attorney's fees and expenses as described below and administration costs) among the Class Members who tender a claim (Instruction Form) in accordance with a Plan of Allocation [a Case Contribution Fee Award of $50,000.00 for one of the named Plaintiffs (HSI) and of $25,000.00 for the other (TDC), or a total of $75,000.00 is requested, subject to Court approval, to be paid from the settlement amount];

- provides that the settlement amount will bear the costs of notice and administration and related costs for the implementation of the economic portion of the Settlement;

- provides that ING will make meaningful structural changes to its insurance and annuity contracts and business practices which will provide agreed clarity and certainty on a going-forward basis as to the propriety of its future conduct and future receipt of revenue sharing, including permitting Class Members to choose a Product Menu that provides no revenue sharing payments to ING and instead has the Class Member bear certain direct and administrative expenses;

- provides for meaningful disclosures by ING to new and existing customers, for not less than five years, regarding revenue sharing rates, expense ratios, separate account fees, maintenance fees, and per participant fees (the "Fee and Expense Disclosure Reports");

- provides for an award of Plaintiff's attorneys fees not to exceed $6,200,000.00 [which amount Plaintiff's counsel has advised me in writing is

---

* *The Settlement Class consists of all administrators of employee pension benefit plans covered by ERISA subject to Internal Revenue Code section 401(a), (k) with which ING has maintained a contractural relationship based on a group annuity contract or group funding agreement and for which, since February 23, 2005 and until February 7, 2013, ING has received revenue sharing payments (e.g., asset-based sales compensation, service fees under distribution and/or servicing plans adopted by funds pursuant to Rule 12b-1 under the Investment Company Act of 1940, administrative service fees and additional payments, and expense reimbursement) from any mutual fund, investment advisor or related entity. Excluded from the Settlement Class are ING, any administrators of employee pension benefit plans for which ING's directors, officers or employees are beneficiaries and any employee pension benefit plans for which the Judge to whom the Litigation is assigned or any other judicial officer having responsibility for the Litigation is a beneficiary, all plan administrators of employee pension benefit plans with which ING had a contract and which were invested through Separate Account "C" and those 16 members of the previously certified class that opted out of the certified class (Excluded Class Members).*

approximately $3,000,000.00 less than their time incurred (at their normal hourly rates)] plus an award of their expenses incurred to date not to exceed $615,000.00 with respect to the Litigation; and

- includes broad general releases, indemnifications, and agreements not to sue relating to claims, counterclaims, and third-party claims relating to or arising out of the matters, etc. alleged in the Litigation.

[This summary of the 35 page Settlement Agreement and Release is of necessity a summary].

Independent Fiduciary Due Diligence

In reviewing the matters set forth above and the reasonableness of the Settlement as a comprehensive settlement of the claims asserted (and any others that could be anticipated), taking into consideration the Members of the Settlement Class's likelihood of further recovery, the amount of cash and other benefits expected to be received by the Class Members, the risks and costs of litigation, the scope of the release of claims, and the value of claims foregone, I discussed the claims, their bases, potential problems with the Litigation and the specifics of the Settlement, with:

- James E. Miller and Laurie Rubinow of Shepherd, Finkelman, Miller & Shah, LLP, Class Counsel [including a meeting with counsel in May, 2014]; and

- Gregory C. Braden of Morgan, Lewis & Bockius, LLP, counsel for Defendant.

My review included without limitation the following documents:

- Class Action Complaint [1]
- Court's Class Certification [102]
- Amended Class Action Complaint [157]
- Defendant's Answer to Amended Complaint [168]
- Court Order Denying Motion to Decertify Class [201]
- Court Order Denying Motion for Summary Judgment [210]

- Plaintiffs' Answer and Affirmative Defenses to Counterclaims [211]

- Joint Pretrial Memorandum [218]

- Defendant's Trial Memo [221]

- Defendant's Proposed Findings of Fact and Conclusions of Law [230]

- Plaintiffs' Trial Memo [228]

- Defendant's Post-Trial Brief [261]

- Plaintiffs' Proposed Findings of Fact and Conclusions of Law [265]

- Transcript: Closing Statements of Plaintiffs and Defendant and remarks of the Court (10/3/2013)

* * * * *

- Plaintiffs' Mediation Brief (4/26/2013)

- Defendant's Expert Christine M. Hammer Report (9/30/2013)

- Plaintiffs' Expert James Scheinberg Declaration (8/26/2014)

* * * * *

- Plaintiffs' Unopposed Motion for Settlement Agreement Preliminary Approval, together with Memorandum in Support, including Settlement Agreement and Release, Plan of Allocation, Form of Notice and Summary Notice, Instruction Form, and Forms of Preliminary Approval Order and Final Approval Order [273]

- Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement [273-1]

- Settlement Agreement and Release [273-2]

- Court Order (6/2/2014) providing Preliminary Approval of Settlement Agreement and Approving Form and Manner of Notice [274]

- Plaintiffs' Motion and Memorandum of Law in Support of Final Approval of Settlement [276, 276-1]

- Declaration of James E. Miller in Support of Plaintiffs' Motion for Final Approval of Settlement [276-3]

* * * * *

Prohibited Transaction Class Exemption 2003-39 and June 15, 2010 Amendment to Class Exemption 2003-39

Summary of Conclusions

The Settlement is reasonable and provides: (1) an appropriate cash recovery, (2) valuable future reports of relevant ongoing fee and expense information (the Fee and Expense Disclosure Reports), and (3) access to a zero revenue-sharing Products Menu which may result in substantial savings to Members of the Settlement Class, making the Settlement attractive in the aggregate, taking into account the substantial uncertainty whether Plaintiffs could have prevailed on the necessary components of the Litigation (ING's fiduciary status in the context of the revenue sharing payments), the risks and expenses of litigation generally, the likelihood of further recovery, the amount of cash and other benefits expected to be received, the value of such reports, the scope of the release of claims, and the value of claims foregone.

Specifically:

- as to monetary damages, the $14,950,000.00 settlement amount is substantial in comparison to many class action settlements;

- as to the value of the Future Fee and Expense Disclosure Reports to be provided by Defendant, Plaintiffs' expert witness* has asserted that they will provide meaningful value to the estimated 18,000 plans in the Class.

* *James Scheinberg*

While it is difficult for me independently to quantify such value, I agree that the Fee and Expense Disclosure Reports add substantial value to the Settlement.

- in addition, the Class Members can elect a Products Menu with zero revenue sharing payments credited to their accounts (and instead pay ING's fees directly); in many cases this is anticipated to produce very meaningful savings to the plans and plan participants.

- in light of the monetary recovery, the Fee and Expenses Disclosure Reports, the zero revenue sharing Products Menu and the obvious fact that in order to obtain such recovery and relief individual retirement plans, singularly or as a class, would have had to incur very substantial attorney's fees and expenses to overcome strong defenses, making such approach impracticable, the Settlement offers Class Members their only realistic access to these recoveries / resources.

- Attorney's fees and expense awards (and Case Contribution fee awards) typically are within the purview of the Court and are subject to Court approval. As Independent fiduciary, I believe that Plaintiffs' attorney's fees and expenses request of $6,815,000.00, comprising only about 70% of their fees (at normal hourly rates) and expenses incurred to date, is reasonable notwithstanding the close to 45.6% of the economic portion of the Settlement which it would consume, and does not alter my conclusion that the Settlement is reasonable and in the best interests of the Members of the Settlement Classes.

- While the requested Case Contribution fee awards are substantial, they are in the context of a four-year litigation process which included a four-week trial.

<u>My conclusion approving the Settlement is further supported by the absence of any objections and only three requests from exclusion to the Settlement</u>. [16 members of the certified Class requested exclusion in 2013, prior to the Settlement].

<u>Discussion</u>

The Settlement, Plaintiffs' Memoranda of Law in Support of Preliminary Approval and Final Approval, and the Notice, describe in detail the history of the Litigation, the underlying claims and possible defenses, the damages claimed and relief sought by

Plaintiffs, the substantial contested motion, litigation (4-week trial), mediation and negotiation process which culminated in the Settlement, and the remedies and releases to be provided as a part thereof.

The parties are in fundamental disagreement as to all aspects of Plaintiffs' claims, and there remains substantial question whether the Court would have found ING to be an ERISA fiduciary either generally or in the context of the Revenue Sharing payments.

Case law has been inconsistent with respect to the finding of ERISA fiduciary status and resulting fiduciary liability underlying Plaintiffs' claims involving life insurance service providers and revenue sharing payments *; the level of damages in such cases is difficult to determine and may not amount to many millions of dollars; and Defendants at all times mounted a strong defense. All these factors suggest that the Settlement is an excellent one for Class Members.

The Fee and Expense Disclosure Reports are a substantial element of the Settlement, and valuing them is a difficult task. Whether or not Mr. Scheinberg's per plan estimate is accurate, the value of such Reports to the Members of the Settlement Classes certainly appears to be significant, adding additional value to the Settlement. Further, the Class members' opportunity to elect a Products Menu option which avoids all revenue sharing payments (at the cost of bearing the administrative expenses directly) has the potential to be a very substantial economic benefit. It is clear that Defendant will expend substantial amounts both assembling and disseminating the required Fee and Expense Disclosure Reports on an ongoing basis, and in implementing the structural changes to its contracts and business practices required by the Settlement.

In the "claims foregone" area, while the releases in the Settlement are broad, they are in the context of the specific claims made in the Litigation, and it does not appear to me that there are meaningful claims not yet asserted which the releases will block. I believe that the pending Complaint fully addresses all apparent issues and claims relating to Defendant's revenue sharing arrangements with participating retirement plans.

As to attorney's fees, Plaintiffs' counsel have informed me in writing that their accumulated fees at their normal hourly rates total $9,009,973.00 (not surprising given the four year legal battle and four week trial); that their costs to date total $687,282.23; and that

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* *Plaintiffs' Memorandum of Law in Support of their Unopposed Motion for Preliminary Approval of Settlement (on pp 3-4) cite both affirmative cases and three cases reaching negative conclusions, and there have been others.*

they expect to incur another $350,000.00 in fees and expenses before the matter is concluded. Given these facts (and subject to the Court's review and conclusion of course), the requested award of $6,815,000.00, though a substantial portion of the $14,950,000.00 settlement amount, does not appear excessive to me.

Finally, the requested Case Contribution Fees award by the Court to Plaintiff Healthcare Strategies, Inc. of $50,000.00 and to Plaintiff The Derosa Corporation of $25,000.00, while substantial in comparison to the overall $14,950,000.00 settlement fund, appear reasonable given the burdens imposed on named Plaintiffs (including attendance of the 4-week trial and subjection to depositions, and counter claims) and does not alter my conclusion regarding the Settlement.

Accordingly:

(1) As previously stated, I affirm the existence of a genuine controversy involving the Members of the Settlement Class;

(2) I believe that the Settlement is reasonable in light of the settlement terms, including the scope of the release of claims, the amount of cash and other benefits an disclosures anticipated to be received by the Members of the Settlement Class, the likelihood of full recovery by the Members of the Settlement Class, the amount of attorney's fees and other costs and expenses to by paid from the recovery, the risks and costs of litigation, and the value of claims foregone;

(3) I conclude that the terms and conditions of the Settlement are not less favorable to the Members of the Settlement Class than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances;

(4) The Settlement is not part of an agreement, arrangement or understanding designed to benefit a part in interest to any Member of the Settlement Class; and

(5) The Settlement satisfies the conditions for the application of PTCE 2003-39.

In sum, I believe that the Settlement is a reasonable and attractive settlement for the retirement plans, which comprise the Members of the Settlement Class and in the best interests of participants and beneficiaries thereof, and I hereby approve it as Independent Fiduciary acting on their behalf, and I recommend that the Class Members file claims and otherwise participate in the Settlement.

Sincerely,

NICHOLAS L. SAAKVITNE
Independent Fiduciary for the
Members of the Settlement Class
[HEALTHCARE STRATEGIES, INC.
et al. v. ING LIFE INSURANCE
AND ANNUITY COMPANY]

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Statement of Credentials of Independent Fiduciary

Nicholas L. Saakvitne [N.Y.U. School of Law J.D. 1976, L.L.M. in Taxation 1977; Fellow, American College of Employee Benefits Counsel] has been an ERISA attorney for more than 30 years. Since 1997, he has acted as an ERISA fiduciary for employee benefit plans, and such fiduciary service now comprises substantially all of his practice.

Serving as Trustee and Independent Fiduciary to coordinate the termination of orphan retirement plans (working closely with the EBSA division of the U.S. Department of Labor and, for defined benefit pension plans, with the Pension Benefit Guaranty Corporation), he has served as fiduciary for thousands of plans and has overseen well over $1 billion of plan benefit payments/direct rollovers. Mr. Saakvitne has been appointed as a plan fiduciary by many Federal courts, and on occasion by California state courts.

Mr. Saakvitne has served as Trustee and Independent Fiduciary for more than 100 Employee Stock Ownership Plans over the past 15 years, on an ongoing basis for active plans, and to negotiate stock purchase or stock/asset sale transactions, or to approve settlements or review other ESOP fiduciary transactions. **ESOP fiduciary service now is the majority of his practice, and he currently serves as Trustee for more than 85 ESOPs in 14 states.**

On many occasions, Mr. Saakvitne has acted as Independent Fiduciary for retirement plans to review and approve Class Action ERISA litigation settlements and/or to revive plans for purposes of coordinating distribution of settlement proceeds, working with nationally recognized members of the plaintiff's Bar and established defense counsel.

He has also been approved as Independent Fiduciary for several Prohibited Transaction Exemptions issued by the National Office of the U.S. Department of Labor.

* * * * *

[2014]

EXHIBIT 6

Haddock v. Nationwide
Summary of Expenses

Expense Type	Total
Copies	$119,202.13
Delivery/Courier	$8,278.01
Deposition & Video	$67,234.93
ESI	$24,940.89
Expert Witnesses	$761,619.48
Filing Fees/Court Fees	$325.00
Independent Fiduciary	$25,000.00
Internet/Research	$24,883.04
Mediation	$29,876.92
Meetings	$14,287.11
Mileage	$231.32
Miscellaneous	$106.29
Parking	$3,723.04
Phone/LD/CC/Fax	$14,186.01
Postage	$854.79
Professional Fees	$43,617.74
Service	$3,401.70
Software	$4,488.50
Travel	$162,007.66
TOTALS	$1,308,264.56

TAB 8

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LOU HADDOCK, a*s trustee of the Flyte Tool & Die Company, Inc. 401-K Profit Sharing Plan*, et al., Plaintiffs, v. NATIONWIDE LIFE INSURANCE CO., and NATIONWIDE FINANCIAL SERVICES, INC., Defendants.	No. 3:01-cv-1552 (SRU)

FINAL ORDER AND CONSENT JUDGMENT

On the 31st day of March, 2015, a hearing having been held before this Court to determine: (a) whether the Annuity Contracts Sub-Class and the Trust Platform Sub-Class should be certified pursuant to Rule 23 of the Federal Rules of Civil Procedure for Settlement purposes; (b) whether the Settlement Stipulation and Release, and the terms provided therein, should be approved as fair, reasonable, and adequate for purposes of Rule 23 of the Federal Rules of Civil Procedure, and in the best interests of the Class; and (c) whether the application of Plaintiff's Counsel for an award of Attorneys' Fees and Expenses should be approved. The Court having considered all matters and materials submitted to it at the hearing and otherwise, NOW, THEREFORE, HEREBY ORDERS, ADJUDGES AND DECREES THAT:

1. The Court adopts all defined terms as set forth in the Settlement Stipulation and Release (the "Stipulation") for purposes of this Consent Judgment.

2. For purposes of implementing and enforcing the terms of the Stipulation, the Court has jurisdiction over the subject matter of the Litigation, Plaintiffs, the Class Members,

and Defendants Nationwide Life Insurance Company and Nationwide Financial Services, Inc. (collectively, "Defendants").

3. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Litigation is properly and finally certified as a class action for settlement purposes. The Sub-Classes for purposes of settlement are defined as follows:

> Annuity Contracts Sub-Class: All trustees of all retirement plans covered by ERISA which had group variable annuity contracts with Nationwide Life or whose participants or plans had individual variable annuity contracts with Nationwide Life at any time from January 1, 1996, or the first date Nationwide Life began receiving payments from mutual funds based on a percentage of the assets invested in the funds by Nationwide Life, whichever came first, to the date of September 30, 2014.
>
> Trust Platform Sub-Class: All trustees of all retirement plans covered by ERISA that had trust, custodial, services, or program agreements and/or arrangements with NFS at any time from January 1, 2009 to September 30, 2014.

Excluded from each sub-class are potential Class Members who timely opted out of the Settlement Class.

4. The Court appoints Plaintiffs Peter Wiberg, trustee of the Crown Tool & Die Co. Inc. Salary Deferral Profit Sharing Plan; Alan Gouse, trustee of the Greater Hartford Easter Seal Rehabilitation Center, Inc., Tax Sheltered Annuity Plan and the Money Accumulation Pension Plan for the Employees of Hartford Easter Seal Rehabilitation Center, Inc., Trust; Christopher Anderson, trustee of the Anderson Law Firm, P.C. 401(k) Profit Sharing Plan and Trust, f/k/a the Anderson and Ferdon P.C. 401(k) Profit Sharing Plan; and H. Grady Chandler, trustee of the Law Offices of H. Grady Chandler, P.C., 401(k) Profit Sharing Plan and Trust, as class representatives of the Annuity Contracts Sub-Class for Settlement purposes only. The Court hereby appoints Christopher M. McKeon, trustee of the Bershtein, Volpe & McKeon, Profit Sharing Plan f/k/a the Bershtein, Lippman, Bachman & McKeon Profit Sharing Plan, as class representative of the Trust Platform Sub-Class for Settlement purposes only.

5. The Court appoints Plaintiffs' Counsel as Counsel for the Annuity Contract Sub-Class and the Trust Platform Sub-Class for settlement purposes only. Marc R. Stanley, of the Stanley Law Group, and William Bloss of Koskoff, Koskoff & Bieder, PC, are appointed Lead Settlement Counsel.

6. With respect to the Class, this Court finds and concludes that for purposes of Settlement: (a) the members of the Sub-Classes are so numerous that joinder of all Class Members is impracticable; (b) there are questions of law and fact common to the Sub-Classes, which predominate over any individual questions; (c) Named Plaintiffs Wiberg, Gouse, Anderson, and Chandler are adequate representatives of the Annuity Sub-Class Class Members, and Named Plaintiff McKeon is an adequate representative of the Trust Platform Sub-Class Members; (d) the claims of Named Plaintiffs Wiberg, Gouse, Anderson, and Chandler are typical of the claims of the other members of the Annuity Contracts Sub-Class, and the claims of Named Plaintiff McKeon are typical of the claims of the other members of the Trust Platform Sub-Class; (e) the questions of law and fact common to the members of the Sub-Classes predominate over any questions affecting only individual members the Sub-Classes; (f) Named Plaintiffs and their Counsel have fairly and adequately represented and protected the interests of the Class Members; and (g) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the Class Members in individually controlling the prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by Class Members, (iii) the desirability or undesirability of continuing the litigation of these claims in this particular forum, and (iv) the difficulties likely to be encountered in the management of the class action.

7. The Court finds that distribution, mailing, and Internet-posting of the Class Notice and the Published Class Notice, as provided for in the Preliminary Approval Order, constituted the best notice practicable under the circumstances to all persons in the Class; that the Class Notice provided full and accurate information concerning the proposed Settlement and the Litigation, and further provided due and adequate notice of the proceedings regarding the Settlement; and that the Class Notice and Published Class Notice otherwise fully met the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the Constitution of the United States, and any other applicable law.

8. Defendants' notice to Federal and State regulators complied with the notice requirements of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715.

9. The Settlement of the Litigation as set forth in the Stipulation is approved in all respects as fair, reasonable, and adequate, and in the best interests of the Class. The Court notes that no written objections were filed by Class Members and that no objector appeared before the Court at the Settlement Hearing, and thus there is no evidence establishing that the Settlement is not fair, reasonable, and adequate or that the Settlement is not in the best interests of the Class. Accordingly, the Parties are directed to consummate and perform the Stipulation in accordance with all applicable terms and provisions.

10. The Court finds that the Class Members are fiduciaries of the ERISA-covered plans they represent, that they bring this action on behalf of the Plans, their Participants and beneficiaries, and that they have the authority to bind the Plans and their Participants and beneficiaries to all the terms and conditions of the Stipulation and Settlement. The Court finds that the Class Members have a legal obligation under ERISA to act in the interest of the Plans, their Participants, and their beneficiaries; that the interests of the members of the Class are

therefore in privity with the interests of the Plans, their fiduciaries, their Participants, and their beneficiaries; all such parties are adequately represented by the Class Members; and that all such parties are hereby bound by the Stipulation, Settlement, and this Order. The Court further finds that the members of the Class have a legal obligation under ERISA to act in the best interest of the Plans, their Participants and beneficiaries in exercising any discretion in the settlement of this action and disposition of any Net Settlement Fund received by their Plans. Finally, the Court finds that none of the Parties has engaged in any prohibited transaction or otherwise violated ERISA by entering into this Settlement, or by performing the terms of the Stipulation, or receiving and disposing of the Net Settlement Fund, if they do so in accordance with the terms of the Stipulation and/or the Plan of Allocation.

11. The Amended Complaint and the Litigation, and all Claims and Causes of Action (including Unknown Claims) that are based upon or related to, directly or indirectly, in whole or in part, (a) the allegations, facts, subjects, or issues that were or could have been set forth or raised in the Litigation, including, but not limited to, the solicitation, negotiation, arrangement, receipt, retention, or other conduct with regard to Mutual Fund Payments; or (b) the Released Conduct, are hereby dismissed with prejudice as to Defendants in accordance with Rule 23(e) of the Federal Rules of Civil Procedure.

12. As a result of Nationwide's agreement to implement the actions described in Section F of the Stipulation, and for so long as Nationwide continues to abide by the practices described in Section F of the Stipulation, the Court accepts and adopts as reasonable the Parties' Stipulation, and the Parties' intent that such Stipulation precludes and provides a complete defense to any and all claims contrary to the Parties' Stipulation, and finds that Nationwide is not a fiduciary within the meaning of the common law and ERISA, including any subsection of

Section (3)(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A), and that Nationwide's receipt of Mutual Fund Payments, and the practice of revenue sharing, shall not constitute a breach of any fiduciary duty or any prohibited transaction under the common law and ERISA, including Section 404 or Section 406 of ERISA, 29 U.S.C. §§ 1104 and 1106, because, to the extent that Nationwide complies with Section F of the Stipulation:

(a) Nationwide does not exercise authority or control respecting the management or disposition of any assets of any Plan when Nationwide solicits, negotiates, arranges for, receives, or retains Mutual Fund Payments;

(b) Nationwide does not have discretionary authority or discretionary responsibility in the administration of any Plan when Nationwide solicits, negotiates, arranges for, receives, or retains any Mutual Fund Payments;

(c) Nationwide does not exercise any discretionary authority or any discretionary control respecting management of any Plan when Nationwide solicits, negotiates, arranges for, receives, or retains Mutual Fund Payments; and

(d) Nationwide does not render investment advice for a fee or other compensation, directly or indirectly, nor does it have any authority or responsibility to do so, when Nationwide solicits, negotiates, arranges for, receives, or retains Mutual Fund Payments. The Court makes these findings in connection with its determination that the proposed Settlement is fair, reasonable, and adequate under Rule 23 of the Federal Rules of Civil Procedure.

13. The Court further accepts and adopts as reasonable the Parties' Stipulation, and the Parties' intent that such Stipulation precludes and provides a complete defense to any and all claims contrary to the Parties' Stipulation, and finds that Nationwide's compliance with the

terms of the Stipulation (including entering into this Settlement) shall not create any common law or ERISA fiduciary duty, or constitute a breach of fiduciary duty or prohibited transaction in violation of the common law or ERISA, including Sections 404 or 406 of ERISA, 29 U.S.C. §§ 1104, 1106. The Court makes these findings in connection with its determination that the proposed Settlement is fair, reasonable, and adequate under Rule 23 of the Federal Rules of Civil Procedure. In entering this Consent Judgment, the Court is not implying that, in the absence of the changes described in Section F of the Stipulation, Nationwide was a fiduciary with respect to soliciting, negotiating, arranging for, receiving, or retaining Mutual Fund Payments, breached any fiduciary duty, violated any prohibited transaction rule, or was otherwise in violation of the common law or ERISA in any respect.

14. When this Settlement becomes Final, Plaintiffs and each of the Class Members, and the Plans and Plan Participants they represent, will be bound to the fullest extent permissible under the law to have fully, finally, and forever released, relinquished, and discharged Nationwide and all other Released Parties from any and all Claims or Causes of Action (including Unknown Claims) that are based upon or related to, directly or indirectly, in whole or in part: (a) the allegations, facts, subjects, or issues that were or could have been set forth or raised in the Litigation, including, but not limited to, the solicitation, negotiation, arrangement, receipt, retention, or other conduct with regard to Mutual Fund Payments; or (b) the Released Conduct.

15. When this Settlement becomes Final, Plaintiffs and each of the Class Members, and the Plans and Participants they represent, shall have expressly waived any and all provisions, rights and benefits conferred by any law of the United States, or any state or territory of the

United States, or principle of common law, which are similar, comparable, or equivalent to California Civil Code §1542. In particular, California Civil Code § 1542 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.

Plaintiffs and each of the Class Members, and the Plans and Participants they represent, expressly waive the rights and benefits conferred by California Civil Code § 1542. They understand and acknowledge that they may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes or has reason to believe to be true with respect to the subject matter of the Release described above. Nevertheless, Plaintiffs and each of the Class Members, and the Plans and Participants they represent, expressly, fully, finally, and forever settle, discharge, and release any and all Claims or Causes of Action (including Unknown Claims) in this Release, including Unknown Claims, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future (including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts) that are based upon or related to, directly or indirectly, (a) the allegations, facts, subjects, or issues that were or could have been set forth or raised in the Litigation, including, but not limited to, the solicitation, negotiation, arrangement, receipt, retention, or other conduct with regard to Mutual Fund Payments; or (b) the Released Conduct. Plaintiffs and each of the Class Members, and the Plans and Participants they represent, shall have acknowledged that the foregoing waiver was separately bargained for and a key element of the Settlement of which this Release is a part.

16. When this Settlement becomes Final, Plaintiffs and each of the Class Members, and the Plans and Plan Participants they represent, will be bound by this Stipulation and have agreed and covenanted not to file, encourage, support, join in, continue, assist in, or pursue any Claim or Cause of Action (including Unknown Claims) against Nationwide Life Insurance Company, Nationwide Financial Services, Inc., or any other Released Party that is based upon or related to, directly or indirectly, in whole or in part: (a) the allegations, facts, subjects, or issues that were or could have been set forth or raised in the Litigation, including, but not limited to, the solicitation, negotiation, arrangement, receipt, or retention of Mutual Fund Payments; or (b) the Released Conduct. Plaintiffs, and each of the Class Members and the Plans and Plan Participants they represent, further have acknowledged and accepted Nationwide's solicitation, negotiation, arrangement, receipt, retention, or other conduct with regard to Mutual Fund Payments in connection with their retirement products, and agree not to bring a lawsuit in the future on the basis of any such solicitation, negotiation, arrangement, receipt, retention, or other conduct with regard to Mutual Fund Payments.

17. When this Settlement becomes Final, Plaintiffs and each of the Class Members, and the Plans and Plan Participants they represent, shall be forever barred and enjoined from commencing, instituting, joining in, continuing, or prosecuting against Nationwide Life Insurance Company, Nationwide Financial Services, Inc., and all other Released Parties, any and all past, present, and future Claims or Causes of Action (including Unknown Claims) that are based upon or related to, directly or indirectly, in whole or in part: (a) the allegations, facts, subjects, or issues that were or could have been set forth or raised in the Litigation, including the

solicitation, negotiation, arrangement, receipt, retention, or other conduct with regard to Mutual Fund Payments; or (b) the Released Conduct.

18. No Class Member, or the Plans and Participants they represent, shall have any Claims or Causes of Action (including Unknown Claims) against Nationwide Life Insurance Company, Nationwide Financial Services, Inc., any other Released Party, Nationwide's Counsel, or any other agent designated by any of the foregoing, based on the Plan of Allocation or on distributions made in accordance with the Plan of Allocation.

19. Any order or appeal relating to Attorneys' Fees, Attorneys' Expenses, or to the allocation or distribution of the Settlement Amount, shall not operate to terminate or cancel the Settlement, the Settlement Stipulation and Release, or affect or delay the finality of this Consent Judgment.

20. The Parties are to bear their own costs, except as otherwise provided in the Settlement, the Settlement Stipulation and Release, or the terms of this Order.

21. In the event that the Settlement fails to become Final in accordance with its terms, then this Consent Judgment shall be rendered null and void, and shall be vacated and, in such event, all orders entered in connection with the Settlement shall be null and void. In such event, the findings herein shall also be null and void, and the Parties shall be restored to their respective positions in the Litigation on the date immediately prior to the entry of the Stipulation. In such event, the terms and provisions of the Stipulation shall have no further force and effect with respect to the Parties and shall not be used in this Litigation or in any other proceeding for any purpose, and this Consent Judgment, the Preliminary Approval Order, and the Settlement Stipulation and Release, and any other order or decision issued or filed in connection with this Settlement, shall be treated as vacated, *nunc pro tunc,* provided however, that the obligations of

Plaintiffs' Counsel in Section J of the Stipulation to return any and all attorneys' fees and expenses paid by Defendants, plus interest, will continue to have full force and effect, will be fully enforceable by Defendants, and will *not* be vacated.

22. In recognition of their work, the time and expenses incurred on behalf of the Class Members and the value of the results achieved on behalf of the Class Members, pursuant to the terms of the Settlement Stipulation and Release, the Class Representatives shall each be entitled to receive a Case Contribution Fee of $25,000 and Class Counsel shall be entitled to receive reasonable Attorneys' Fees in the amount of $49,000,000, plus Attorneys' Expenses of $1,308,264.36. In addition, the Settlement Administrator, KCC, shall be entitled to receive its actual notice and claim charges not to exceed $543,355. To the extent KCC's charges are less than $543,355, that difference will be distributed to the Class Members based on the plan of allocation.

23. The Lead Settlement Counsel shall allocate the Attorneys' Fees among Plaintiffs' Counsel in a manner that the Lead Settlement Counsel in good faith believes reflects the contributions of such counsel to the initiation, prosecution, and settlement of the Litigation. The Lead Settlement Counsel shall also allocate the Case Contribution Fees to the Class Representatives as directed by the Court. Any disputes regarding Attorneys' Fees or the Case Contribution Fee shall be resolved by the Court.

24. The Stipulation and the Settlement, whether or not consummated, and any negotiations, discussions or proceedings in connection with the Stipulation or the Settlement shall not be used, offered, or admissible in any proceeding for any purpose, including but not limited to:

(a) Offered, referred to, or received against Nationwide as evidence of, or construed as or deemed to be evidence of any presumption, concession, or admission by Nationwide of the truth of, any fact alleged by Plaintiffs, any Class Member, their Plans or Plan Participants, or any other persons, or to the validity of any Claims or Causes of Action (including Unknown Claims) that have been or could have been asserted in the Litigation, or the deficiency of any defense that has been or could have been asserted in the Litigation, or of any liability, negligence, fault, or wrongdoing of Nationwide;

(b) Offered, referred to, or received against Nationwide as evidence of, or as a presumption, concession, or admission of the truth of, any liability, duty, breach of a duty, misrepresentation or omission to state by Nationwide, or against Plaintiffs as evidence of any infirmity in the claims of Plaintiffs;

(c) Offered, referred to, or received against Nationwide as evidence of, or as a presumption, concession, or admission of the truth of, any action or failure to act; and

(d) Construed against Nationwide or Plaintiffs as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial.

25. Without affecting the finality of this Consent Judgment in any way, the Court shall retain exclusive jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and Defendants, Plaintiffs, the Class Members, and the Plans and Plan Participants they represent, submit to the jurisdiction of the Court for purposes of implementing and enforcing the terms of the Stipulation. All funds held in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until the funds are distributed in accordance with the Stipulation.

The Clerk shall enter this Consent Judgment and close this case.

It is so ordered.

Dated at Bridgeport, Connecticut, this 9th day of April 2015.

/s/ STEFAN R. UNDERHILL

Stefan R. Underhill
United States District Judge

TAB 9

1

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re JDS UNIPHASE CORPORATION SECURITIES LITIGATION

No. C 02-1486 CW

VERDICT QUESTIONS FORM

FILED
NOV 27 2007
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

E01

Part A--Section 10(b) and Section 20 False or Misleading Statements Liability

Please answer the questions below for each of the statements on the Table of Challenged Statements and indicate your unanimous answers on the Verdict Table. If a box on the Verdict Table is blacked out or already filled in, that means that the question does not apply to the corresponding statement or that the parties have agreed to an answer. Please skip any question that is blacked out or already answered. A "yes" answer favors Plaintiffs; a "no" answer favors Defendants.

1. 1/20 Do you find that this challenged statement contains an untrue statement of material fact, or omits a material fact necessary under the circumstances to keep the statement that was made from being misleading? Answer Yes or No.

If you answered "Yes," please proceed to Question 2, and if Question 2 is blacked out, please skip to Question 3. If you answered "No," please return to Question 1 for the next statement.

2. 1/20 Do you find that the challenged statement was <u>not</u> accompanied by meaningful cautionary statements as defined in the instructions? Answer Yes or No.

If you answered "Yes," please proceed to Question 3. If you answered "No," please return to Question 1 for the next statement.

3. 1/20 Please enter "Yes" in the box representing any Individual Defendant who you find was substantially involved in the preparation of the challenged statement.

If you identified any Individual Defendant, or if any Individual Defendant was already marked, please proceed to Question 4a. If you did not identify any Individual Defendant and no Individual Defendant was already marked, please return to Question 1 for the next statement.

4a. Do you find that any Individual Defendant who you found in Question 3 made or was responsible for the statement, or who the parties agree made the statement, did so with actual knowledge that the statement was materially false or misleading? Answer Yes or No.

If you answered "No" for any Individual Defendant identified in Question 4a, please answer Question 4b for that Individual Defendant. Otherwise, skip to Question 5.

4b. Do you find that any Individual Defendant who you found in Question 3 made or was responsible for the statement, or who the parties agree made the statement, did so with deliberate recklessness? Answer Yes or No.

If you answered "Yes" to Question 4a or 4b for any Individual Defendant, please proceed to Question 5. Otherwise, please return to Question 1 for the next statement.

5. Do you find that the untrue statement of material fact, or the omitted material fact, played a substantial part in causing a loss to Plaintiffs? Answer Yes or No.

If you answered "Yes," please proceed to Question 6. If you answered "No," please return to Question 1 for the next statement.

6. Please enter "Yes" in the box representing any Individual Defendant who you find directly or indirectly controlled the person who made the challenged statement, directly or indirectly induced the person to make the statement, and did <u>not</u> act in good faith.

Please return to Question 1 for the next statement. When you have completed the chart for all statements, please review your answers recorded on the Verdict Table. If you found for Plaintiff on any statement (i.e. if you answered "yes" in Column 5 for <u>any</u> statement), please proceed to Part B, Question 7. Otherwise, please skip to Part D, Question 14.

Part B--Section 10(b) and Section 20 False or Misleading Statements Damages

7. Which of these two methods do you find is the most accurate method for calculating damages in this case?

11/20

___ Dollar Inflation ___ Percentage Inflation

If you selected "Dollar Inflation," please complete Question 8. If you selected "Percentage Inflation," please complete Question 9 on Page 5. (Do not complete both tables.)

8. If you answered "Dollar Inflation," please complete the table, following the instructions below.

   a. Please black out Column 2 for any date on which you do not find that the challenged statement(s) on that date caused a loss (i.e. for which you answered "No" in Column 5 of the Verdict Table).
   b. Beginning with the first date that is not blacked out in Column 2, please enter the dollar amount by which you find the false or misleading statement(s) made on that date inflated the price of JDSU stock.
   c. For this first row only, please copy the amount you entered in Column 2 into Column 4.
   d. Proceed to the next row. If Column 2 is not blacked out, enter the dollar amount by which you find the false or misleading statement(s) made on this date inflated the price of JDSU stock. Enter, in Column 3, the amount, if any, by which you find that any corrective disclosures, since the date of the previous row, have reduced the inflation created by false or misleading statements. Take the number from Column 4 in the previous row, add the number, if any, in Column 2, subtract the number, if any, in Column 3, and enter the result in Column 4.
   e. Please continue to complete each row.

When you are finished, please skip to Part C, Question 10.

Dollar Inflation Table

COLUMN 1	COLUMN 1a	COLUMN 2	COLUMN 3	COLUMN 4
Date	Price per share on this Date	Inflation created by false or misleading statement(s) on this date	Reduction in inflation due to corrective disclosures, if any, since previous date	Total inflation due to challenged statements on this date
4/25/00	$93.38	$	[redacted]	$
5/25/00	$79.00	[redacted]	$	$
6/25/00	$123.44	[redacted]	$	$
7/26/00	$135.94	$	$	$
8/25/00	$125.31	[redacted]	$	$
9/1/00	$123.81	$	$	$
9/7/00	$119.88	$	$	$
10/26/00	$74.44	$	$	$
10/30/00	$71.31	$	$	$
11/14/00	$75.63	$	$	$
11/17/00	$70.13	$	$	$
12/20/00	$46.00	[redacted]	$	$
1/25/01	$55.19	$	$	$
2/12/01	$40.63	$	$	$
2/13/01	$38.50	$	$	$
3/23/01	$23.19	$	$	$
4/24/01	$20.82	$	$	$
5/11/01	$20.69	$	$	$
6/15/01	$12.44	[redacted]	$	$
7/26/01	$9.47	[redacted]	$	$

9. If you selected "Percentage Inflation" in Question 7 above, please complete the table, following the instructions below.

a. Please black out Column 2 for any date on which you do not find that the challenged statement(s) on that date caused a loss (i.e. for which you answered "No" in Column 5 of the Verdict Table).

b. Beginning with the first date that is not blacked out in Column 2, please enter the percent by which you find the false or misleading statement(s) made on that date inflated the price of JDSU stock.

c. For this first row only, please copy the amount you entered in Column 2 into Column 4.

d. Proceed to the next row. If Column 2 is not blacked out, enter the percent by which you find that any false or misleading statement(s) made on this date inflated the price of JDSU stock. Enter, in Column 3, the amount, if any, by which you find that any corrective disclosures, since the date of the previous row, have reduced the inflation created by false or misleading statements. Take the number from Column 4 in the previous row, add the number, if any, in Column 2, subtract the number, if any, in Column 3, and enter the result in Column 4.

e. Please continue to complete each row.

When you are finished, please proceed to Part C, Question 10.

United States District Court
For the Northern District of California

Percentage Inflation Table

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
Date	Inflation created by false or misleading statement(s) on this date	Reduction in inflation due to corrective disclosures since previous date	Total inflation due to challenged statements on this date
4/25/00	%		%
5/25/00		%	%
6/25/00		%	%
7/26/00	%	%	%
8/25/00		%	%
9/1/00	%	%	%
9/7/00	%	%	%
10/26/00	%	%	%
10/30/00	%	%	%
11/14/00	%	%	%
11/17/00	%	%	%
12/20/00		%	%
1/25/01	%	%	%
2/12/01	%	%	%
2/13/01	%	%	%
3/23/01	%	%	%
4/24/01	%	%	%
5/11/01	%	%	%
6/15/01		%	%
7/26/01		%	%

Part C--Section 14(a) Misrepresentation in a Proxy Statement for Merger Liability & Damages

If you found in answer to Question 1 above that Statement 10 was materially false or misleading, please answer Question 10. Otherwise, please skip to Part D, Question 14.

10. Do you find that statement 10 was an essential link in the accomplishment of the JDS-SDL merger?

___ Yes ✓ No

Please proceed to Question 11

11. Do you find that Defendant Straus failed to act with ordinary or reasonable care when he made statement 10?

11/20

___ Yes ✓ No

Please proceed to Question 12.

12. Do you find that Defendant Muller failed to act with ordinary or reasonable care when he made statement 10?

11/20

___ Yes ✓ No

If you have answered "Yes" to Question 10 and to either Question 11 and/or Question 12, please proceed to Question 13. Otherwise, please skip to Part D, Question 14.

13a. If you did not determine damages for Statement 10 on the Verdict Table, do you find that Statement 10 played a substantial part in causing a loss to Plaintiffs?

11/20

___ Yes ✓ No

If you answered "Yes," please proceed to Question 13b. Otherwise, please skip to Part D, Question 14.

13b. What is the dollar amount or percentage amount that Statement 10 inflated the price of JDSU stock on February 13, 2001? Please answer only once, using the method you selected in response to Question 7.

$____________ or ____________%

Please proceed to Part D, Question 14.

Part D--Section 20A Trading on Inside Information Liability & Damages

14. Do you find that one or more of the Individual Defendants made a decision to sell shares of JDSU stock using material, non-public information about the company?

Defendant Abbe	Yes	____	No	X
Defendant Kalkhoven	Yes	____	No	X
Defendant Muller	Yes	____	No	X
Defendant Straus	Yes	____	No	X

If you answered "Yes" as to any defendant, please proceed. Otherwise, sign, date and return your verdict.

If, in answer to Question 7, you selected "Dollar Inflation," please complete Question 15. If you selected "Percentage Inflation," please skip to Question 16 on Page 12. (Do not complete both tables.)

15. If you selected "Dollar Inflation" in Question 7, please complete the table below for any Defendant who you found sold JDSU stock using material, non-public information.

a. Enter "Yes" in Column 2 for the date of any stock sale which you find the Individual Defendant made using material, non-public information about the company.

b. For every date on which you answered "Yes", please enter the dollar amount by which the price of JDSU stock was inflated because the public did not have this material information.

Then sign, date and return your verdict.

Dollar Inflation Tables

Defendant Abbe

Column 1	Column 1a	Column 2	Column 3
Date	Market Price Per Share on Date	Used Material, Non-Public Information?	Dollar Inflation on Date of Sale
8/1/00	$116.87		$
8/11/00	$117.75		$
2/26/01	$32.63		$
2/27/01	$27.81		$
2/28/01	$26.75		$

Defendant Kalkhoven

Column 1	Column 1a	Column 2	Column 3
Date	Market Price Per Share on Date	Used Material, Non-Public Information?	Dollar Inflation on Date of Sale
5/22/00	$85.31		$
5/24/00	$83.50		$
7/31/00	$118.16		$
8/4/00	$115.94		$
8/7/00	$121.19		$
8/21/00	$124.38		$
8/22/00	$124.50		$
8/31/00	$124.48		$
9/1/00	$123.81		$
9/7/00	$119.88		$
9/12/00	$103.19		$
9/13/00	$104.81		$

United States District Court
For the Northern District of California

9/18/00	$97.81		$
9/19/00	$107.94		$
9/20/00	$107.13		$
9/22/00	$107.00		$
9/25/00	$106.81		$
10/4/00	$94.06		$
10/5/00	$95.06		$
10/11/00	$85.88		$
10/13/00	$94.38		$
10/16/00	$94.44		$
10/20/00	$102.38		$
10/27/00	$77.25		$
11/1/00	$78.56		$
1/18/01	$60.31		$

Defendant Muller

Column 1	Column 1a	Column 2	Column 3
Date	Market Price Per Share on Date	Used Material, Non-Public Information?	Dollar Inflation on Date of Sale
5/22/00	$85.31		$
5/30/00	$91.38		$
7/31/00	$118.13		$
8/1/00	$116.88		$
8/2/00	$112.63		$
8/4/00	$115.94		$
8/7/00	$121.19		$
8/8/00	$119.88		$
8/11/00	$117.75		$
8/14/00	$120.25		$

Defendant Straus

Column 1	Column 1a	Column 2	Column 3
Date	Market Price Per Share on Date	Used Material, Non-Public Information?	Dollar Inflation on Date of Sale
8/1/00	$116.88		$
8/4/00	$115.94		$
8/7/00	$121.19		$
*	$55.81	11/30/00	2/1/01 $
*	$28.00	11/30/00	3/6/01 $

*You must determine whether Defendant Straus used material, non-public information on November 30, 2000 in deciding whether he is liable for insider trading based on these sales. However, the damages must be calculated as of the actual date of the sales.

Case 1:23-cv-06693-ASW Document 125-8 Filed 07/16/25 Page 181 of 191

16. If you selected "Percentage Inflation" in Question 7, please complete the table below for any Defendant who you found sold JDSU stock using material, non-public information.

a. Enter "Yes" in Column 2 for the date of any stock sale which you find the Individual Defendant made while using material, non-public information about the company.

b. For every date on which you answered "Yes", please enter the percentage by which the price of JDSU stock was inflated because the public did not have this material information.

Then sign, date and return your verdict.

Percentage Inflation Tables

Defendant Abbe

Column 1	Column 2	Column 3
Date	Used Material, Non-Public Information?	Percentage Inflation on Date of Sale
8/1/00		%
8/11/00		%
2/26/01		%
2/27/01		%
8/1/00		%

Defendant Kalkhoven

Date	Used Material, Non-Public Information?	Percentage Inflation on Date of Sale
5/22/00		%
5/24/00		%
7/31/00		%
8/4/00		%
8/7/00		%
8/21/00		%
8/22/00		%
8/31/00		%
9/1/00		%
9/7/00		%
9/12/00		%
9/13/00		%
9/18/00		%
9/19/00		%
9/20/00		%
9/22/00		%

9/25/00		%
10/4/00		%
10/5/00		%
10/11/00		%
10/13/00		%
10/16/00		%
10/20/00		%
10/27/00		%
11/1/00		%
1/18/01		%

Defendant Muller

Date	Used Material, Non-Public Information?	Percentage Inflation on Date of Sale
5/22/00		%
5/30/00		%
7/31/00		%
8/1/00		%
8/2/00		%
8/4/00		%
8/7/00		%
8/8/00		%
8/11/00		%
8/14/00		%

United States District Court
For the Northern District of California

United States District Court
For the Northern District of California

Defendant Straus

Date	Used Material, Non-Public Information?	Percentage Inflation on Date of Sale
8/1/00		%
8/4/00		%
8/7/00		%
*	11/30/00	2/1/01 %
*	11/30/00	3/6/01 %

*You must determine whether Defendant Straus used material, non-public information on November 30, in deciding whether he is liable for insider trading based on these sales. However, the damages must be calculated as of the actual date of the sales.

Please sign, date and return this form.

Dated:

Jury Foreperson

11/27/07. 1515 HRS.

[illegible]

VERDICT TABLE

	Quest. No. 1	Quest. No. 2	Quest. No. 3				Quest. No. 4a				Quest. No. 4b				Quest. No. 5	Quest. No. 6			
	Materially False or Misleading	Lacks Cautionary Language	Person(s) Making Statement				Actual Knowledge				Reckless Disregard				Caused Loss	Controlling Person			
			Abbe	Kalkhoven	Muller	Straus	Abbe	Kalkhoven	Muller	Straus	Abbe	Kalkhoven	Muller	Straus		Abbe	Kalkhoven	Muller	Straus
Statement No. 1 ". . . the market is exceeding, you know, our ability to ramp up . . ."	11/20 NO					Yes													
Statement No. 2 "In all of these markets, the demand for bandwidth technology and components remains incredibly strong, and I believe we will see this demand accelerated."	11/20 NO			Yes															
Statement No. 3 "Two-and-a-half-gigabit modulators continue to demonstrate strong growth . . ."	11/21 NO					Yes													
(Goodwill) Statement No. 4 JDSU's intangible assets at June 30, 2000, were $22.3 billion, including goodwill of $21.3 billion.	11/27 NO				Yes														
(Goodwill) Statement No. 5 JDSU's intangible assets, including goodwill, were $22.3 billion at June 30, 2000.	11/27 NO				Yes	Yes													
Statement No. 6 ". . . we still are . . . capacity constrained . . ."	11/21 NO		Yes																
Statement No. 7 "These results reflect . . . our substantial progress in expanding capacity to enable us to meet customer demand and serve the needs of our markets."	11/21 NO				Yes														
(Goodwill) Statement No. 8 JDSU's intangible assets at June 30, 2000, were $22.3 billion, including goodwill of $21.3 billion.	11/26 NO				Yes	Yes													
(Goodwill) Statement No. 9 JDSU's goodwill was "21.1 [billion]" at September 30, 2000.	11/29 NO				Yes														

	Quest. No. 1	Quest. No. 2	Quest. No. 3				Quest. No. 4a				Quest. No. 4b				Quest. No. 5	Quest. No. 6			
	Materially False or Misleading	Lacks Cautionary Language	Person(s) Making Statement				Actual Knowledge				Reckless Disregard				Caused Loss	Controlling Person			
			Abbe	Kalkhoven	Muller	Straus	Abbe	Kalkhoven	Muller	Straus	Abbe	Kalkhoven	Muller	Straus		Abbe	Kalkhoven	Muller	Straus
(Goodwill) <u>Statement No. 10</u> • JDSU's intangible assets at June 30, 2000, were $22.3 billion, including goodwill of $21.3 billion. • JDSU's goodwill was "$21.1 [billion]" at September 30, 2000.	11/6 NO				Yes	Yes													
<u>Statement No. 11</u> "We don't expect lead times to come down in the near-term because our demand is so strong."	NO		Yes																
<u>Statement No. 12</u> "Our backlog . . . is enormous . . ."	NO		Yes																
<u>Statement No. 13</u> "For the year, we expect earnings-per-share to be at 82 cents . . ."	NO				Yes														
<u>Statement No. 14</u> "We anticipate sales in the March quarter to be 7 percent to 10 percent above sales for the quarter ended December 30."	11/27 NO				Yes														
(Inventory) <u>Statement No. 15</u> JDSU's inventories balance at December 30, 2000, was "[$]493.9 [million]."	11/20 NO																		
(Goodwill) <u>Statement No. 16</u> • JDSU's intangible assets at June 30, 2000, were $22.3 billion, including goodwill of $21.3 billion. • JDSU's goodwill was "$21.1 [billion]" at September 30, 2000.	11/29 NO				Yes	Yes													
<u>Statement No. 17</u> "The Company expects sales in the quarter ending March 31 to be at or slightly above $1 billion with earnings per share of $0.17."	11/26 NO																		
(Inventory) <u>Statement No. 18</u> JDSU's inventories balance was "[$]493.9 [million]" at December 30, 2000.	11/26 NO				Yes														
(Goodwill) <u>Statement No. 19</u> JDSU's goodwill was $21.2 billion at December 30, 2000.	11/25 NO				Yes														

	Quest. No. 1	Quest. No. 2	Quest. No. 3				Quest. No. 4a				Quest. No. 4b				Quest. No. 5	Quest. No. 6			
	Materially False or Misleading	Lacks Cautionary Language	Person(s) Making Statement				Actual Knowledge				Reckless Disregard				Caused Loss	Controlling Person			
			Abbe	Kalkhoven	Muller	Straus	Abbe	Kalkhoven	Muller	Straus	Abbe	Kalkhoven	Muller	Straus		Abbe	Kalkhoven	Muller	Straus
(Goodwill) <u>Statement No. 20</u> JDSU and SDL's combined *pro forma* intangible assets, including goodwill, were $60.2 billion at December 30, 2000.	11/27 NO				Yes														
(Inventory) <u>Statement No. 21</u> JDSU's inventories balance was $493.9 million at December 30, 2000.	11/26 NO				Yes														
(Inventory) <u>Statement No. 22</u> • "Our third quarter results were . . . pro forma earnings of 14 cents per share." • "Pro forma gross margin was 48.6 percent of sales for the quarter."	11/26 NO				Yes	Yes													
(Inventory) <u>Statement No. 23</u> JDSU's gross profits were $425.9 million for the quarter ended March 31, 2001, and $1,251.0 million for the nine months ended March 31, 2001.	11/26 NO																		
(Inventory) <u>Statement No. 24</u> JDSU's inventories balance was "[$]672.9 [million]" at March 31, 2001.	11/26 NO				Yes														

~~THE JURY FIND UNANIMOUSLY, FIND THAT ALL DEFENDANTS IN FAVOR OF THE DEFENSE DEFENDANT. ON ALL COURTS. NO DAMAGES FINANCIAL AWARDS. FINANCIAL~~

The jury find unamiously in favor of the defense on all counts. No financial damages awarded.

TAB 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE JPMORGAN PRECIOUS METALS SPOOFING LITIGATION	Case No.: 1:18-cv-10356
THIS DOCUMENT RELATES TO: ALL ACTIONS	Hon. Gregory H. Woods

MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF EXPENSES AND CLASS PLAINTIFFS' REQUEST FOR INCENTIVE AWARDS

TABLE OF CONTENTS

Case 1:23-cv-10650-... Document 1-10 Filed ... Page 319 of 311

TABLE OF AUTHORITIES

Cases

Case 1:18-cv-09936-LGS Document 199 Filed 01/06/26 Page 20 of 311

<u>Other Authorities</u>

Lowey Dannenberg, P.C. ("Class Counsel") prosecuted the Action[1] on behalf of Class Plaintiffs[2] and negotiated the Settlement with JPMorgan that, if approved, will create a Settlement Fund of $60,000,000 for the benefit of the Settlement Class. Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Class Counsel respectfully submit this motion for an award of one-third of the Settlement Fund ($20,000,000) as attorneys' fees, and payment of $400,078.86 in litigation costs and expenses, plus interest at the same rate as earned by the Settlement Fund. The requested awards are based on the high quality and effective representation provided to Class Plaintiffs and the Settlement Class and are supported by Plaintiffs' Counsel's[3] expenses and time incurred in litigating this Action from inception (November 2018) through March 31, 2022.[4] The eleven Class Plaintiffs also seek $110,000 as Incentive Awards for their service in the Action.

INTRODUCTION

Class Counsel shouldered considerable litigation risk in bringing this Action. Only a handful of private Commodity Exchange Act ("CEA") manipulation class actions have been pursued based on alleged spoofing in commodity futures markets. When the Action commenced in November 2018, the spoofing case law was (and remains) in its infancy.

Despite this uncertainty, Class Counsel invested considerable time and resources to investigate JPMorgan's alleged misconduct and develop the factual and legal arguments to support

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[1] Unless otherwise defined herein, all capitalized terms, have the same meaning as set out in the Stipulation and Agreements of Settlement with JPMorgan (ECF No. 79-1) ("Agreement" or "Settlement Agreement"). Unless otherwise noted, internal citations are omitted, and emphasis is added.

[2] "Class Plaintiffs" are Dominick Cognata, Melissinos Trading, LLC, Casey Sterk, Kevin Maher, Kenneth Ryan, Robert Charles Class A, L.P., Robert L. Teel, Mark Serri, Yuri Alishaev, Abraham Jeremias, and Morris Jeremias.

[3] "Plaintiffs' Counsel" means Class Counsel, together with Girard Sharp LLP ("Girard Sharp"), Scott+Scott Attorneys at Law LLP ("Scott+Scott"), Hausfeld LLP ("Hausfeld"), Robins Kaplan LLP ("Robins Kaplan"), Weiss Law LLP ("Weiss Law"), and Nussbaum Law Group, P.C. ("Nussbaum"). Girard Sharp, Scott+Scott, Hausfeld, Robins Kaplan, Weiss Law, and Nussbaum are collectively referred herein as "Supporting Counsel."

[4] In light of the Settlement with JPMorgan, Supporting Counsel submitted time and expenses through December 20, 2021, when the Settlement was preliminarily approved. In addition, Class Counsel submitted their time through March 31, 2022, and its expenses through May 5, 2022.

Class Plaintiffs' claims. These efforts began shortly after Defendant John Edmonds ("Edmonds"), a former JPMorgan precious metals trader, was charged and pled guilty to, among other things, commodities price manipulation and spoofing.[5] Immediately after the unsealing of the charges and the plea in November 2018, Class Counsel worked to understand the scope of the alleged manipulation of the Precious Metals Futures market, including the characteristics of the market that could make it susceptible to manipulation and the techniques that could be used to move the market. Class Counsel analyzed their client's Precious Metals Futures data and quickly advanced their investigation. One day after the unsealing of Edmonds' plea, Class Counsel filed the first complaint against JPMorgan and Edmonds on behalf of Plaintiff Dominick Cognata. Subsequently, other plaintiffs filed similar actions concerning these same allegations, and on February 5, 2019, the Court consolidated all related cases. *See* ECF Nos. 18, 34.

On February 21, 2019, the U.S. Department of Justice ("DOJ") intervened in the case and requested a stay of the action in light of ongoing related criminal prosecutions, which the Court granted. While the case was stayed, Class Counsel, assisted by Supporting Counsel, continued to investigate the Precious Metals Futures market and work with their experts to analyze the impact of JPMorgan's alleged spoofing and develop arguments that would be used once the stay was lifted. This work and preparation in anticipation of the end of the stay inured to the Settlement Class' benefit when, just over a year after the Court stayed this action, Class Plaintiffs and JPMorgan began discussing the possibility of a settlement. Based on the information Class Counsel had developed, they were well prepared to advocate and achieve this exceptional Settlement for Class Plaintiffs and the Settlement Class.

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[5] Plea Agreement and Findings and Recommendations, *U.S. v. Edmonds*, No. 18 CR 239, (D. Conn. Oct. 9, 2018), ECF Nos. 7-8.

The success of the settlement negotiations is directly attributable to the high-quality efforts of Class Counsel, with the assistance of Supporting Counsel, to build a case that would succeed despite the still-developing case law involving spoofing manipulation. The Settlement is even more significant given that, for some Class Members, it likely provides an additional source of recovery beyond the victim compensation payment amount ("VCPA") established in connection with the DOJ and USAOC's Deferred Prosecution Agreement (the "DPA"). To Class Counsel's knowledge, this Settlement is one of only a few private class action settlements in CEA spoofing cases.

As further described herein, the efforts of Class Counsel and the result secured for the Settlement Class support an award of one-third of the Settlement Fund. The fee percentage is objectively fair and reasonable based on Plaintiffs' Counsel's investment of time and resources, the complexity of the litigation, the risks Class Counsel assumed, and the quality of the representation. The fee request is within the range of reasonableness when compared to awards granted in similarly complex class actions and is consistent with public policy. In addition, the lodestar cross-check further confirms that the requested award is not a windfall. Plaintiffs' Counsel's litigation costs and expenses, as described herein and in the declarations of Plaintiffs' Counsel,[6] were reasonably incurred to advance this litigation and should be awarded as well. Finally, in light of their involvement and cooperation in this case, the eleven Class Plaintiffs ask for Incentive Awards totaling $110,000, to be shared among them equally.

[6] Plaintiffs' Counsel have submitted declarations that reflect each firm's respective expenses and lodestar calculations based on current billing rates for contingent (and if applicable non-contingent) matters. *See* Declaration of Vincent Briganti, dated May 6, 2022, on behalf of Lowey Dannenberg, P.C. in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses ("Briganti Fee Decl."); Declaration of Daryl F. Scott, dated May 6, 2022 ("Scott Decl.") (on behalf of Scott+Scott); Declaration of Timothy S. Kearns, dated May 6, 2022 ("Kearns Decl.") (on behalf of Hausfeld); Declaration of Kellie Lerner, dated May 6, 2022 ("Lerner Decl.") (on behalf of Robins Kaplan); Declaration of Daniel C. Girard, dated May 6, 2022 ("Girard Decl.") (on behalf of Girard Sharp); Declaration of Mark D. Smilow, dated May 4, 2022 ("Smilow Decl.") (on behalf of Weiss Law); Declaration of Linda P. Nussbaum, dated May 6, 2022 ("Nussbaum Decl.") (on behalf of Nussbaum).

ARGUMENT

I. THE ATTORNEYS' FEE REQUEST IS FAIR AND REASONABLE

In common fund cases, the lawyers that secure a recovery for the class are "entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 406 (S.D.N.Y. 2019).

Courts "may award attorneys' fees in common fund cases under either the 'lodestar' method or the 'percentage of the fund' method," although "[t]he trend in this Circuit is toward the percentage method." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005). The percentage method is preferred as it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Grice*, 363 F. Supp. 3d at 406 (quoting *Wal-Mart Stores*, 396 F.3d at 121); MANUAL FOR COMPLEX LITIGATION (FOURTH) §14.121 (2004) ("Indeed, one purpose of the percentage method is to encourage early settlements by not penalizing efficient counsel, thus ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation.").

Class Counsel seek a fee of one-third of the $60,000,000 Settlement Fund, or $20,000,000, to be allocated among Plaintiffs' Counsel in proportion to their contributions to the case. *See In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 216, 223 (2d Cir. 1987) (recognizing class counsel may distribute a fee award in "some relationship to the services rendered"). Given the speedy resolution achieved in this Action, the percentage of the fund method is particularly appropriate for evaluating the fee request and, under that framework, the one-third fee request is reasonable.

A. The *Goldberger* Factors Support Awarding 33 1/3% Attorneys' Fees

Courts evaluating whether a fee is "reasonable" must consider: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement;

and (6) public policy considerations." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000).

1. Plaintiffs' Counsel Invested Substantial Time, Labor, and Resources

Plaintiffs' Counsel have devoted 9,440 hours of attorney and staff time since the inception of the case to prosecute this Action on behalf of Class Plaintiffs and the Settlement Class. *See* Briganti Fee Decl.; Girard Decl.; Scott Decl.; Kearns Decl.; Lerner Decl.; Smilow Decl.; Nussbaum Decl. This time does not include any time associated with preparing this motion. Class Counsel contributed the majority of those hours (5,615.85 hours). Briganti Fee Decl. ¶¶ 9-10. Below is a summary of the work performed and the resources devoted to prosecuting this Action.

a. Initial Investigation and Pre-Filing Work

On November 6, 2018, the United States District Court for the District of Connecticut unsealed the guilty plea by Edmonds to one count of conspiracy to defraud the market and manipulate the prices of NYMEX and COMEX precious metals futures contracts and one count of commodities fraud. Class Counsel immediately launched an investigation into this manipulative trading and the impact that it had on the firm's clients—including Plaintiff Dominick Cognata ("Cognata"), who was heavily engaged in trading Precious Metals Futures during the time of JPMorgan's alleged manipulation. Class Counsel analyzed Cognata's Precious Metals Futures and Options on Precious Metals Futures transactions and identified trades occurring on the same day of the spoofing activity identified by the DOJ in the plea agreement.

b. The Initial Complaint and Efforts During the Stay

As a result of Class Counsel's investigation, Cognata filed the initial complaint against JPMorgan, Edmonds and "John Doe Nos. 1-10" on November 7, 2018 alleging that JPMorgan violated the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq*. ("CEA"), and common law by intentionally manipulating the prices of Precious Metals Futures and Options on Precious Metals Futures during the Class Period.[7] ECF No. 1.

Plaintiff Cognata alleged that JPMorgan intentionally manipulated the prices of Precious Metals Futures and Options on Precious Metals Futures through a technique called "spoofing," which is the intentional placing of orders with the intent to cancel prior to execution to send false and illegitimate supply and demand signals to an otherwise efficient market. Plaintiff Cognata alleged that JPMorgan's spoofing practices caused Precious Metals Futures and Options on Precious Metals Futures prices to be artificial throughout the Class Period to benefit JPMorgan's trading positions financially, at the expense of other investors.

Supporting Counsel prepared and filed related actions in this District. On February 5, 2019, all actions were consolidated into this action, and Lowey was appointed as interim lead class counsel. *See* ECF Nos. 18, 34.

On February 21, 2019, the DOJ intervened and moved to stay this Action due to the ongoing criminal investigation against JPMorgan, which relief the Court granted and subsequently extended through December 15, 2021. *See* ECF Nos. 26, 29, 36, 40, 43, 55, 63, 70, 71.

During the pendency of the stay, Class Counsel, assisted by Supporting Counsel, continued their thorough investigation of the underlying allegations and claims in this Action by analyzing (1) the Precious Metals Futures markets, generally; (2) publicly available press releases, news articles, and other media reports related to regulatory and law enforcement investigations into Precious Metals Futures manipulation; (3) publicly available documents concerning JPMorgan's business practices, formal regulatory investigations and enforcement proceedings, including by the DOJ and Commodity Futures Trading Commission ("CFTC"); (4) JPMorgan's Securities and

[7] The initial proposed class period was January 1, 2009 through December 31, 2015. ECF No. 1 ¶ 1. The Class Period under the Settlement is from March 1, 2008 through August 31, 2016.

Exchange Commission filings and other public reports; and (5) consulted with experts and market participants about the foregoing.

Class Counsel worked closely with Cognata to understand his experience in the Precious Metals Futures market at this time of the alleged manipulation. In anticipation of filing a consolidated amended complaint and addressing class certification and damages issues that would arise in the case, Class Counsel also engaged economic consultants to assist in their examination of Defendants' alleged manipulation and to develop a proprietary model to identify instances of spoofing in the CME Order Book data and determine Class Members' damages. The damages model initially relied on publicly available information including approximately 3.8 billion records of Precious Metal Futures transactions from CME Order Book data and certain assumptions Class Counsel and Plaintiffs' economic experts developed during their investigation.

c. JPMorgan Settlement Negotiations

While the stay was pending, in March 2020 Class Plaintiffs and JPMorgan discussed the possibility of settlement. *See* Declaration of Vincent Briganti in Support of (A) Class Plaintiffs' Motion for Final Approval of Class Action Settlement With Defendant JPMorgan Chase & Co.; (B) Class Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses, dated May 6, 2022 ("Briganti Decl.") at ¶ 25. The Parties agreed to mediate and in May 2020 selected a respected and experienced mediator, the Honorable Diane M. Welsh (Ret.). *Id.* ¶ 26. Prior to the mediation, Class Counsel negotiated the production of certain Mediation Information by JPMorgan, which included Precious Metals Futures or Options on Precious Metals Futures trade data for JPMorgan's orders and transactions, totaling approximately 1.7 GB (containing 7.5 million lines) of data, for the full duration of the Class Period. The Mediation Information was produced to Class Plaintiffs in August 2020. *Id.* ¶ 27.

Upon receiving the Mediation Information, the data was screened and analyzed to determine the total number of alleged spoofing events and the impact of those events on the Precious Metals Futures and Options on Precious Metals Futures markets. With the Mediation Information and while working closely with consulting experts, Class Counsel identified thousands of instances of JPMorgan's alleged manipulation throughout the Class Period. Class Counsel and their experts developed a damage model that calculated the number and impact of the alleged manipulative events on the Precious Metals Futures and Options on Precious Metals Futures. Briganti Decl. ¶ 29. Based on the analysis, Class Counsel concluded that likely thousands of market participants had been harmed by JPMorgan's alleged spoofing, resulting in a preliminary class-wide damages estimate of $915 million, assuming Class Plaintiffs prevailed in full on all issues. *Id.* ¶ 33.

Around the same time, on September 29, 2020, JPMorgan entered into the DPA with the DOJ Criminal Division, Fraud Section, and the United States Attorney's Office for the District of Connecticut ("USAOC") to resolve criminal charges, including wire fraud charges relating to a scheme to defraud market participants in thousands of episodes of unlawful trading in the Precious Metals Futures market between at least April 2008 and January 2016.[8] The CFTC also issued an order (the "CFTC Order") finding JPMorgan engaged in manipulative and deceptive conduct and spoofing that spanned at least 2008 through 2016 and involved thousands of spoof orders in Precious Metals futures and Options on Precious Metals futures contracts traded on the COMEX and NYMEX.[9] Plaintiffs' Counsel analyzed the admitted facts in detail, combining the findings

[8] Deferred Prosecution Agreement, *U.S. v. JPMorgan Chase & Co.*, No. 20-cr-00175 (D. Conn. Sep. 29, 2020), ECF No. 11; *see also* Information, *U.S. v. JPMorgan Chase & Co.*, No. 20-cr-00175 (D. Conn. Sep. 29, 2020) (the "Information"), ECF No. 1.

[9] Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions, *In the Matter of JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., and J.P.*

from regulators with information they had already developed in collaboration with their experts to understand the impact of JPMorgan's manipulation.

Using the information developed by their experts and from their ongoing investigation, Class Counsel prepared and exchanged a detailed mediation statement with Judge Welsh and JPMorgan on November 17, 2021, and prepared a comprehensive presentation for the mediation. Briganti Decl. ¶ 30.

On November 23, 2020 and December 9, 2020, the Parties participated in day-long Zoom mediation sessions with Judge Welsh that included robust presentations of the Parties' respective litigation risks—including the existence and import of the government settlements—and presentations of each Party's damages analysis, followed by questions and critiques from the opposing Party. During the mediation and settlement negotiations, JPMorgan vigorously contested Plaintiffs' damages theory and methodology. JPMorgan believed that the VCPA was well above the maximum damages suffered by the Class and presented a counter damages methodology to show that the Class was not entitled to any further monetary relief from JPMorgan. These mediation sessions concluded with the Parties unable to reach a settlement. The Parties continued their negotiations through Judge Welsh. On February 19, 2021, Judge Welsh presented the Parties with a mediator's proposal for a $60 million settlement that also included further exchange of Mediation Information. Each Party accepted the proposal. *Id.* ¶ 31.

After accepting Judge Welsh's proposal, Class Counsel and JPMorgan negotiated the provisions for a binding settlement term sheet ("Term Sheet"). Briganti Decl. ¶ 32. After several weeks of negotiations, the Parties executed the Term Sheet on May 20, 2021. As memorialized by the Term Sheet, JPMorgan produced additional Mediation Information, including 170,330

Morgan Securities LLC, Commodity Futures Trading Commission, No. 20-69 (Sept. 29, 2020), *available at*: https://www.cftc.gov/media/4826/enfjpmorganchaseorder092920/download.

documents consisting of 2,621,654 pages and at least 100,000 e-mails and Bloomberg chats that occurred throughout the relevant time period. *Id*., ¶ 32. Plaintiffs' Counsel analyzed the additional Mediation Information for several months, to verify relevant representations made during settlement negotiation and to confirm that the proposed settlement amount was reasonably supported. *Id*., ¶ 32-33.

While reviewing the Mediation Information, Class Counsel and JPMorgan continued to negotiate the terms of the Settlement Agreement. After Plaintiffs' Counsel completed their review of the Mediation Information, and after agreement had been reached on key settlement provisions, the Parties executed the Settlement Agreement on September 1, 2021. *Id*., ¶¶ 33-36. Assisted by Supporting Counsel, Class Counsel then prepared the motion for preliminary approval of the Settlement, which they filed on November 19, 2021. *Id*., ¶ 40.

On November 22, 2021, the Court held a telephonic conference concerning Class Plaintiffs' motion for Preliminary Approval of Class Action Settlement. *Id*., ¶ 41. The Court ordered Class Counsel to submit additional briefing concerning the Court's jurisdiction over absent class members and the Court's authority to issue a bar order, as well as amendments to the preliminary approval order and distribution plan, discovery from potential objections, and documents from Class Members who may seek to opt out. Class Counsel, after conducting additional research and consulting with their experts and the Settlement Administrator, prepared a Letter containing Class Plaintiffs' Supplemental Submission that addressed each of the issues raised by the Court, which was filed on December 17, 2021. ECF No. 90. *Id*., ¶ 42.

After the Settlement was preliminarily approved, Class Counsel coordinated with the Settlement Administrator, A.B. Data, to implement the approved Class Notice plan and respond to inquiries from potential Class Members regarding the Settlement. Once the Class Notice plan was implemented, Class Counsel then prepared Class Plaintiffs' motion for final approval.[10]

The amount of time and effort invested in prosecuting this Action demonstrates that the first *Goldberger* supports the reasonableness of Class Counsel's fee request.

2. The Magnitude and Complexity of the Action

A greater fee award is warranted for counsel prosecuting complex class action cases. *See In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 379 (S.D.N.Y. 2013) ("The upshot is that the magnitude and complexity of the litigation also weigh in favor of a significant award."); *see also In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) ("*NASDAQ III*") ("[C]lass actions have a well deserved reputation as being most complex"). Complex cases require a greater level of investment, in terms of effort, expertise, and resources, by counsel to competently litigate the claims and issues at stake on behalf of plaintiffs and the class. Litigation involving commodity futures markets is regarded as challenging because the issues that can arise are often technical and complex. *See*, *e.g.*, *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 395 (S.D.N.Y. 1999) (detailing the "immense task undertaken and the complexity" of the commodities futures litigation brought under the CEA); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 356 (1982) (commodity futures markets are "esoteric"); *Arenson v. Bd. of Trade of City of Chi.*, 372 F. Supp. 1349, 1352 (N.D. Ill. 1974) ("It would be difficult to imagine litigation presenting issues of greater subtlety and complexity" than those involving commodity futures markets). This class action is among the most challenging, and such complexity supports a one-third fee award.

[10] Class Counsel's fee declarations do not include any time spent in April and May 2022 preparing the motion for final approval.

To successfully prosecute Class Plaintiffs' claims, Class Counsel needed to build upon their extensive experience in the complex commodities futures market that JPMorgan allegedly manipulated, as well as in the various cutting-edge algorithmic trading strategies that traders used to manipulate the market. Class Plaintiffs' allegations concerned thousands of instances of manipulation by JPMorgan traders that caused the prices of Precious Metals Futures and Options on Precious Metals Futures to be artificial. In cases requiring similar expertise, courts have acknowledged that commodities class actions present complex legal and factual issues. *See*, *e.g.*, *In re Sumitomo Copper Litig*., 74 F. Supp. 2d at 395 ("[p]etitioners undertook this complex and difficult litigation on a contingent fee basis …, in circumstances of high risks and almost overwhelming magnitude and complexity," in that claims under the CEA "have been notoriously difficult to prove, [and] this case was initially greeted with widespread skepticism in the financial community"); *In re London Silver Fixing, Ltd. Antitrust Litig*., No. 14-MD-02573 (VEC), 2021 WL 3159810, at *1 (S.D.N.Y. June 15, 2021) (noting that "the Action involves numerous complex factual and legal issues and was actively litigated and, in the absence of a settlement, would have involved lengthy proceedings with uncertain resolution of the numerous complex factual and legal issues"); *see also In re GSE Bonds Antitrust Litig.*, No. 19 Civ. 1704 (JSR), 2020 WL 3250593, at *4 (S.D.N.Y. June 16, 2020) (finding "complexity [is] present [where] plaintiffs claimed that the defendants colluded in the GSE Bond market over more than seven years, involving thousands of bond issuances, and implicating sixteen defendants").

To prosecute the Action, Plaintiffs' Counsel developed a deep understanding of the complex Precious Metals Futures market through a substantial investigation, including consultations with industry insiders and assistance in the form of expert analysis. To advance the litigation, Plaintiffs' Counsel engaged experts to prepare detailed analyses of Precious Metals

Futures and Options on Precious Metals Futures, creating sophisticated damages models, and reviewing years of available documents and data in the process. Briganti Decl. ¶¶ 7, 19, 28-29, 33. Plaintiffs' Counsel collaborated with their experts to evaluate very large futures and options data sets and other information to identify the effects of Defendants' alleged manipulation and the market-wide damages. *Id*.

The complexities described above provide a sufficient basis to support a fee award of one-third. Additionally, had the Action continued beyond the pleadings, significant fact and expert discovery would have been involved. *See Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07 Civ. 2207(JGK), 2010 WL 3119374, at *6 (S.D.N.Y. Aug. 6, 2010) (describing the work undertaken by class counsel in a "complicated and difficult class action" that involved "significant discovery [and] complicated statistical analysis"). Moreover, JPMorgan is represented by high quality, sophisticated counsel with significant resources at their disposal, and class and merits issues would have been hotly contested. *See In re Gen. Motors LLC Ignition Switch Litig*. No. 14-MD-2543 (JMF), 2020 WL 7481292, at *2 (S.D.N.Y. Dec. 18, 2020) (litigating against sophisticated opposing counsel with a well-funded defendant are "the hallmarks of a challenging case."). But for this Settlement, the case would have grown not only in complexity but in its magnitude as well, which supports the reasonableness of a one-third fee award.

3. The Fee Request is Warranted Based on the Level of Risk Undertaken by Class Counsel

Courts in the Second Circuit have described assessing "risk of the litigation" as "perhaps the foremost factor to be considered in determining" a reasonable fee award. *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 129 (S.D.N.Y. 2009); *see also In re AOL Time Warner, Inc. Sec. and "ERISA" Litig.*, No. 02 Civ. 5575 (SWK), MDL 1500, 2006 WL 3057232, at *15 (S.D.N.Y. Oct. 25, 2006) (the judiciary's focus is on "fashioning a fee" that encourages lawyers to "undertake future risks for the public good"). The risk of undertaking litigation is "measured as of when the case is filed." *Goldberger*, 209 F.3d at 55.

Class Counsel took this case on a fully contingent basis and invested considerable time, money, and resources to advance the Action. *See City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132, 2014 WL 1883494, at *14 (S.D.N.Y. May 9, 2014) ("The Second Circuit has recognized that the risk associated with a case undertaken on a contingent basis is an important factor in determining an appropriate fee award."). This risk was more significant because Class Plaintiffs sued a global financial institution represented by a highly regarded and sophisticated international law firm that has the resources to litigate for years at the trial and appellate levels. *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015) (noting "substantial risk" where counsel bore the "risk of defeat").

As described in the Final Approval Mem. and the Briganti Decl., Class Plaintiffs faced significant *ex ante* litigation risks in proving liability, class-wide impact, and damages. *See In re Platinum and Palladium Commodities Litig.*, No. 10 Civ. 3617 (WHP), 2014 WL 3500655, at *12 (S.D.N.Y. July 15, 2014) ("[I]n any market manipulation or antitrust case, [p]laintiffs face significant challenges in establishing liability and damages."). At all times during the litigation, Class Plaintiffs faced uncertainty in their ability to establish JPMorgan's liability related to the alleged spoofing of Precious Metals Futures and Options on Precious Metals Futures on the NYMEX and COMEX. Briganti Decl. ¶¶ 25, 30, 52. When the Action commenced, private CEA class actions related to spoofing were (and still are) relatively novel. As a result, the dearth of case law clearly outlining the viability and scope of actions, such as this one, increased the risk of non-recovery. Had the Action continued, Class Counsel would first have to demonstrate that Class Plaintiffs stated a claim for relief under the CEA, a hurdle that, in at least one other instance, was not overcome. *See, e.g.*, *In re Merrill, BofA, & Morgan Stanley Spoofing Litig.*, No. 19 Civ. 6002 (LJL), 2021 WL 827190 (S.D.N.Y. Mar. 4, 2021) (dismissing CEA spoofing claims pursuant to Rule 12(b)(6)), *appeal docketed,* No. 21-853 (2d Cir. April 2, 2021).

Had Class Plaintiffs' claims moved passed the pleadings stage, the risks would only increase. At class certification, Class Counsel would have to demonstrate, supported by expert testimony, that JPMorgan's manipulation of the Precious Metals Futures market caused a class-wide impact, and the impact of such harm can be determined on a common formulaic basis. JPMorgan would likely counter Class Plaintiffs' arguments with expert opinions of its own, further heightening the uncertainty of certifying a class in this Action.

If Class Plaintiffs were to prevail on certifying a litigation class, they would still need to prove liability and actual damages at trial. A successful *Daubert* challenge or effective cross-examination at trial could result in a significantly reduced verdict even if Class Plaintiffs proved liability. Even where regulators or law enforcement agencies have secured a guilty plea, civil juries have found no damages. *See, e.g.*, Special Verdict on Indirect Purchases, *In re TFT-LCD (Flat Panel) Antitrust Litig*., No. 07 MDL 01827 (N.D. Cal. Sept. 3, 2013), ECF No. 8562. Thus, the one-third fee request is appropriate given the enormous risks Class Counsel undertook to litigate the Action on behalf of the Class Plaintiffs.

4. Class Counsel Provided High-Quality Representation

"[T]he quality of representation is [also] best measured by results," *Goldberger*, 209 F.3d at 55, which are evaluated in light of "the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 141 (S.D.N.Y. 2008). Class Counsel's efforts led directly to the $60,000,000 recovery for the Class. Based on the damages analysis performed by Class Plaintiffs' experts, the Settlement represents approximately 6.6% of recoverable class wide damages, without considering any potential restitution award available from the DOJ. *See* Briganti Decl. ¶ 30. Collectively, the Settlement and the portion of the VCPA attributable to Precious Metals Futures and Options on Precious Metals Futures represent approximately 28.4% of estimated class wide damages caused by JPMorgan. *Id.* ¶¶ 4, 21, 30. The Settlement provides certain recovery for the Settlement Class generally and augments the recovery any Class Member may have received from the VCPA. The value of the Settlement secured from JPMorgan cannot be understated given the caliber of defense counsel in this Action. *See Meredith Corp.*, 87 F. Supp. 3d at 670 (noting that counsel's achievement in "obtaining valuable recompense . . . for its clients is particularly noteworthy given the caliber and vigor of its adversaries"); *NASDAQ III*, 187 F.R.D. at 488 (approving attorneys' fee award where defendants were represented by "the nation's biggest and most highly regarded defense law firms").

The Settlement Class includes institutional investors, such as Class Plaintiffs, with the sophistication and resources to object to the Settlement or opt out to pursue their own claims. While the deadline to object or opt out has not yet passed, it is notable that, so far, not a single Class Member has objected, and only one Class Member has opted out of the Settlement. *See* Ewashko Decl. ¶¶ 24, 26. The lack of objections and the submission of only one exclusion request is a sign of the Settlement Class's approval of the Settlement and a further indication of Class Counsel's skillful prosecution of this Action.[11]

Class Counsel's decades of experience prosecuting class action cases, including some of the largest class action recoveries under the commodities and antitrust laws, was a critical component of achieving successful settlement results with JPMorgan. The skill and quality of

[11] Should any objections be received, Class Counsel will address them in their reply papers, due on July 1, 2022.

Class Counsel's representation in this Action further support their requested one-third attorneys' fee award.

5. Class Counsel's Fee Request is on Par with Awards Granted in Similarly Complex Litigation

Comparable cases serve as guideposts against which a court may determine whether a fee request is reasonable. *Grice*, 363 F. Supp. 3d at 406. For settlements involving the most complex claims, including antitrust, securities, and commodity class actions, as is the case here, courts in this district routinely grant fee requests above 30%. *See, e.g., Velez v. Novartis Pharms. Corp*., No. 04 Civ. 09194 (CM), 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010) (noting that fees in complex class actions case can range up to "50 percent of the gross settlement benefit"); *In re Warner Commc'n. Secs Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985) (same).

Consistent with the authorities cited above, one-third fee awards have been granted in numerous complex class actions in this District where the settlement amount has been under $75 million. *See, e.g., In re J.P. Morgan Stable Value Fund ERISA Litig.*, No. 12-CV-2548 (VSB), 2019 WL 4734396, at *2 (S.D.N.Y. Sept. 23, 2019) (awarding one-third fee from $75 million settlement fund); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146 (S.D.N.Y. 2010) (awarding 33.33% of the $35 million gross settlement fund as attorneys' fees); Order, *In re Perrigo Company PLC Securities Litig.*, No. 19-cv-70 (DLC) (S.D.N.Y. Feb. 18, 2022), ECF No. 331 (awarding one-third fee from $31.9 million settlement); *In re Deutsche Bank AG Sec. Litig*., No. 1:09-CV-01714 (GHW), 2020 WL 3162980, at *1 (S.D.N.Y. June 11, 2020) (awarding one-third fee from $18.5 million settlement); Order, *Skiadas v. Acer Therapeutics Inc. et al.*, No. 1:19-cv-06137 (GHW), (S.D.N.Y. Jan. 7, 2022), ECF No. 136 (awarding one-third fee from $8.35 million settlement).[12]

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[12] *See also* Order Awarding Attorney's Fees, at 2, *In re London Silver Fixing, Ltd. Antitrust Litig.*, Nos. 14-MD-02573, 14-MC-02573 (S.D.N.Y. Jun. 15, 2021), ECF No. 534 (awarding 30% of the gross $38,000,000 Settlement Fund as attorneys' fees); *In re Amaranth Nat. Gas Commodities Litig.,* No. 07 Civ. 6377 (SAS), 2012 WL 2149094, at *2

Moreover, in similar complex commodities manipulation cases, courts routinely grant one-third fee awards. *See, e.g.*, Order, *Boutchard, et al. v. Gandhi*, No. 1:18 Civ. 07041 (JJT) (N.D. Ill. July 30, 2021), ECF No. 154 (awarding attorneys' fee of 33% from gross settlement fund of $15 million); Order, *In re Nat. Gas Commodities Litig.*, No. 03 Civ. 6186 (VM) (S.D.N.Y. May 26, 2006), ECF No. 445 (awarding attorneys' fee of one-third of gross common fund of $72,762,500), Revised Order (Jun. 22, 2007), ECF No. 507 (awarding one-third of $28,087,500 gross settlement as attorneys' fees); *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 862 (N.D. Ill. 2015) (granting fee petition seeking one-third of $46 million common fund). In sum, Class Counsel's request falls in line with the observed attorneys' fees in this District and others, further confirming its reasonableness.

6. Public Policy Supports Approval of the Fee Request

Public policy encourages enforcement of the commodities laws through private civil suits as a deterrent to corporate malfeasance. *See Leist v. Simplot*, 638 F.2d 283, 311 (2d Cir. 1980) ("The 1974 Congress repeatedly expressed its view that the changes [to the CEA] were designed to strengthen commodity futures regulation, a goal that would be ill-served by abolishing the private right of action that everyone had thought to exist."), *aff'd sub nom. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353 (1982) (citing CEA legislative history); *Cange v. Stotler & Co., Inc.*, 826 F.2d 581, 584 (7th Cir. 1987) (explaining that Congress depends on the "critical" role of additional private suits to deter violations of the CEA); *see also Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983) ("This Court has emphasized the importance of the private action as a means of furthering the policy goals of certain federal regulatory statutes . . . .").

(S.D.N.Y. June 11, 2012) (awarding a 30% fee from a $77.1 million settlement fund); *In re DDAVP Direct Purchaser Antitrust Litig.*, No. 05 Civ. 2237 (CS), 2011 WL 12627961, at *5 (S.D.N.Y. Nov. 28, 2011) (awarding 33 1/3% in fees on a $20 million gross settlement, plus interest); *Strougo v. Bassini*, 258 F. Supp. 2d 254, 262 (S.D.N.Y. 2003) (33.33%).

Awarding a reasonable percentage of the common fund "provid[es] lawyers with sufficient incentive to bring common fund cases that serve the public interest." *Goldberger*, 209 F.3d at 51. If attorneys' fees are routinely set too low, particularly in instances where counsel effectively and efficiently litigate a matter, they will be deterred from bringing meritorious cases in the future. *See In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 352 (S.D.N.Y. 2014).

Class Counsel's decision to take on the risk of this lawsuit serves the vital interest of advancing the enforcement of private commodities manipulation suits and protecting market participants who might otherwise be without recourse. *See Espinal v. Victor's Café 52nd St., Inc.*, No. 16 Civ. 8057 (VEC), 2019 WL 5425475, at *3 (S.D.N.Y. Oct. 23, 2019) ("The Second Circuit and courts in this District have taken into account the 'social and economic value of class actions, and the need to encourage experienced and able counsel to undertake such litigation' as a basis for increasing the percentage of the fund awarded to Class Counsel.") (citations omitted).

Private CEA claims based on spoofing manipulation remain novel and are difficult to litigate. However, without lawyers to pursue such claims on behalf of private individuals, such misconduct could continue without an effective deterrent. Private litigation discourages market manipulation by ensuring that the harm suffered by class members is shifted back onto the offending party in addition to any regulatory fines or punishments that may be instituted. Awarding a reasonable fee will encourage other counsel to further investigate and bring to light misconduct in financial markets, which will promote more scrupulous industry practices, increased supervision to prevent misconduct, and ultimately lead to a fairer and more efficient market for all participants.

B. The Lodestar Cross-Check Confirms the Reasonableness of the Fee Request

When using the percentage method, courts in this Circuit use the lodestar calculation "as a sanity check to ensure that an otherwise reasonable percentage fee would not lead to a windfall..."

Colgate-Palmolive, 36 F. Supp. 3d at 353.[13] Courts compare the resulting award to the reasonable time and labor expended to confirm that the fee award is reasonable. *Grice*, 363 F. Supp. 3d at 406; *see also Montalvo v. Flywheel Sports, Inc.*, No. 16-cv-6269 (PAE), 2018 WL 7825362, at *6 (S.D.N.Y. July 27, 2018) (approving 33% fee and noting that "courts in this district will often approve lodestar multipliers between two and four times…"). Courts in the Second Circuit routinely approve fee awards that result in multiplier between 2 and 6. *See, e.g.*, *Wal-Mart*, 396 F.3d at 123 (upholding a multiplier of 3.5 as reasonable and observing that "multipliers of between 3 and 4.5 have become common"); *Carlson v. Xerox Corp.*, 355 F. App'x 523, 526 (2d Cir. 2009) ("the resulting multiplier would be 3.59, still below the 3.6 average and in line with the 3.1 median for similar cases"); *In re Fab Universal Corp. S'holder Derivative Litig.*, 148 F. Supp. 3d 277, 283 (S.D.N.Y. 2015) ("In shareholder [class] litigation, courts typically apply a multiplier of 3 to 5 to compensate counsel for the risk of contingent representation.").[14]

The cross-check here confirms that there is no windfall. Class Counsel imposed limits to control certain time and hourly rates by, for example, capping first-level document review to $400 per hour. In addition to the direction provided by Class Counsel, all Plaintiffs' Counsel removed any time spent working on this motion. As a result, Plaintiffs' Counsel report spending 9,440 hours litigating the Action through March 31, 2022, resulting in a total lodestar amount of $6,154,295.75. Briganti Decl. ¶ 56. The number of hours spent on this Action are reasonable, particularly in light of the level of independent investigation conducted by Class Counsel and

[13] Lodestar is calculated by "multipl[ying] the reasonable hours billed by a reasonable hourly rate." *Colgate-Palmolive*, 36 F. Supp. 3d at 347. Courts use "prevailing market rates" and current rates, rather than historical rates, to calculate the lodestar figure to account for the delay in payment. *LeBlanc-Sternberg v. Fletcher,* 143 F.3d 748, 764 (2d Cir. 1998) (citing *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283-84 (1989)). When used as a cross-check, "the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50.

[14] *See also Bekker v. Neuberger Berman Group 401 (K) Plan Inv. Committee*, 504 F. Supp. 3d 265, 271 (S.D.N.Y. 2020) (finding 5.85 is within the range of acceptable multipliers in context of lodestar cross-check); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 185 (S.D.N.Y. 2011) (approving multiplier of 5.3, finding it is "not atypical for similar fee-awards," and collecting cases).

Supporting Counsel to develop this case; the time and effort invested in negotiating the Settlement, including the drafting of the mediation statement, preparation of damages analysis and settlement presentation, review of the Mediation Information, and the drafting of the Term Sheet and Settlement Agreement; the work Class Counsel performed to prepare the motions for preliminary approval of the Settlement; and the time Class Counsel spent to oversee the Class Notice process and coordinate with A.B. Data regarding settlement administration process. Class Counsel actively managed the case to ensure that resources were adequately and appropriately utilized, audited all time and expenses, and communicated with Supporting Counsel about the reasonableness of their time and expenses.

The billing rates used to develop the lodestar are also reasonable. The hourly billing rates for attorneys working on this case ranged from $365 to $1,295. *See* Briganti Fee Decl. ¶ 9 (schedule listing attorney rates from $365-$1,295); Girard Decl. ¶ 9 (schedule listing attorney rates from $425-$1,025); Scott Decl. ¶ 8 (schedule listing attorney rates from $400-$1,295); Kearns Decl. ¶ 9 (schedule listing attorney rates from $425-$800); Lerner Decl. ¶ 9 (schedule listing attorney rates from $400-$990); Smilow Decl. ¶ 8 (schedule listing attorney rates from $385-$1,175); Nussbaum Decl. ¶ 9 (schedule listing attorney rates from $425-$995). Billing rates in the same range have been previously approved as reflective of market rates in New York for work of comparable size and complexity. *See*, *e.g.*, *GSE Bonds*, 2020 WL 3250593, at *1 (granting fee award using partner rates of $675 to $980 and associate rates of $365 to $820), *see also* Decl. in Support of Award for Attorney's Fees and Expenses, *GSE Bonds* (S.D.N.Y. Apr. 13, 2020), ECF No. 393.[15]

[15] *See also In re Foreign Exchange Benchmark Rates Antitrust Litig*., No. 13 Civ. 7789 (LGS), 2018 WL 5839691 (S.D.N.Y. Nov. 8, 2018) (granting fee award using partner rates up to $1,375 and associate rates of $350 to $700), *see also* Decl. in Support of Award for Attorney's Fees and Expenses, *In re Foreign Exchange* (S.D.N.Y. Jan. 12, 2018), ECF No. 939; *In re Credit Default Swaps Antitrust Litig*., No. 13-md-2476 (DLC), 2016 WL 2731524, at *17

Once the lodestar figure is determined, courts typically enhance it by a positive multiplier "to reflect consideration of a number of factors, including the contingent nature of success and the quality of the attorney's work." *Maley v. Del Global Tech. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002). Here, a fee award of one-third of the Settlement Fund represents a multiplier of approximately 3.24 and is squarely within the range awarded by courts in this District, as well as across the country, in complex litigation. *See*, *e.g.*, *GSE Bonds,* 2020 WL 3250593, at *5 (awarding $77.3 million in fees, representing a 4.09 multiplier on the lodestar); *CDS*, 2016 WL 2731524, at *18 (approving fees totaling over $253 million, which was "equivalent to a lodestar multiple of just over 6"); Order, *Bhatia v. McKinsey & Co.*, No. 19-cv-01466 (GHW) (S.D.N.Y. Feb. 17, 2021), ECF No. 111 (awarding $7.9 million fee, representing a multiplier of 7.61).[16] Accordingly, the results of a lodestar cross-check further supports Class Counsel's fee request.

II. THE REQUEST FOR PAYMENT OF LITIGATION EXPENSES IS REASONABLE AND SHOULD BE GRANTED

The attorneys whose work leads to the creation of "a common settlement fund for a class are entitled to reimbursement of [reasonable] expenses that they advance to a class." *Meredith Corp*., 87 F. Supp. 3d at 671; *see also In re Arakis Energy Corp. Sec. Litig.*, No. 95 Civ. 3431, 2001 WL 1590512, at *17 n.12 (E.D.N.Y. Oct. 31, 2001) ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course."). Such costs are "compensable if they are of the type normally billed by attorneys to paying clients." *Guevoura Fund Ltd. v. Sillerman*, No. 1:15 Civ. 07192-CM, 2019 WL 6889901, at *22 (S.D.N.Y. Dec. 18,

(S.D.N.Y. Apr. 26, 2017) ("*CDS*") (granting fee award using partner rates of $834 to $1,125 and associate rates of $411 to $714; *see* ECF No. 482).

[16] *See also Beckman*, 293 F.R.D. at 481-82 ("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."); *Asare v. Change Grp. of N.Y., Inc.*, No. 12-cv-3371 (CM), 2013 WL 6144764, at *19 (S.D.N.Y. Nov. 18, 2013) ("Typically, courts use multipliers of 2 to 6 times the lodestar."); *City of Providence,* 2014 WL 1883494, at *13 (noting that "lodestar multiples of over 4 are awarded by this Court"); *Maley*, 186 F. Supp. 2d at 371 (approving a fee award that represented a 4.65 multiplier); *In re RJR Nabisco, Inc. Sec. Litig*., No. 88 Civ. 7905 (MBM), 1992 WL 210138, at *6-8 (S.D.N.Y. Aug. 24, 1992) (awarding multiplier of 6).

2019). When "a class plaintiff successfully recovers a common fund for the benefit of a class, the costs of litigation should be spread among the fund's beneficiaries." *Maley*, 186 F. Supp. 2d at 369. In cases where a large amount of the expenses was paid to experts, courts routinely approve those disbursements. *See*, *e.g.*, *CDS*, 2016 WL 2731524, at *18 (approving $10 million in expenses where "[m]ost of these expenses were incurred in connection with retention of experts").

As detailed in Plaintiffs' Counsel's individual declarations filed concurrently herewith, Plaintiffs' Counsel incurred litigation expenses in this Action totaling $400,078.86. *See* Briganti Fee Decl. ¶ 13; Girard Decl. ¶ 13; Scott Decl. ¶ 12; Kearns Decl. ¶ 9; Lerner Decl. ¶ 13; Smilow Decl. ¶ 12; and Nussbaum Decl. ¶ 13. Approximately 85% or $339,810.15 of these costs were spent on expert work. Briganti Decl. ¶¶ 59-60 (listing expenses paid to experts/consultants). As described above, the expert work was critical in assisting Class Counsel with the identification of JPMorgan's alleged spoofing and in assessing the impact of the misconduct on Class Plaintiffs and the Settlement Class. As the expert work helped to both identify and crystallize Class Plaintiffs' claims and to assess the magnitude of the damages which led to reaching the Settlement, this work was unquestionably "critically important" to the prosecution of this Action, and of the type of reimbursement that "[c]ourts routinely award." *Colgate-Palmolive*, 36 F. Supp. 3d at 353; *CDS*, 2016 WL 2731524, at *18. Plaintiffs' Counsel incurred $7,098.71 in costs relating to data, legal, and financial computer research. Briganti Decl. ¶ 60. Other categories of expenses incurred by Plaintiffs' Counsel include, court costs (filing fees), document production/discovery, mediation fees, process servers, in-house photocopying, telephone, and FedEx/UPS shipping. *Id.* In complex class actions, costs related to initial investigations and research, testifying and consultant experts, discovery expenses, travel, postage and mailing, and copying costs are considered reasonable and necessary expenses. *Meredith Corp.*, 87 F. Supp. 3d at 671; *see also Guevoura*, 2019 WL

6889901, at *22. The litigation expenses and costs incurred by Plaintiffs' Counsel are therefore appropriately paid for from the Settlement Fund.

III. CLASS PLAINTIFFS' REQUESTED INCENTIVE AWARDS ARE REASONABLE AND SHOULD BE GRANTED

Class Plaintiffs respectfully request that the Court award them a total of $110,000 to be shared equally among each of the eleven Class Plaintiffs for their service as class representatives in this Action. Incentive Awards are granted at the discretion of the Court to "compensate class representatives for their services to the class and simultaneously serve to incentivize them to perform this function." WILLIAM B. RUBENSTEIN, 5 NEWBERG ON CLASS ACTIONS § 17:1 (5th ed. 2011); *see also In re Gen. Motors LLC,* 2020 WL 7481292, at *4 ("In the Second Circuit, Plaintiff incentive awards are common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by plaintiffs."). In deciding whether to grant such awards, a court considers "'the personal risk (if any) incurred by the plaintiff-applicant in becoming and continuing as a litigant, the time and effort expended by that plaintiff in assisting in the prosecution of the litigation or in bringing to bear added value (*e.g.*, factual expertise), any other burdens sustained by that plaintiff . . . and, of course, the ultimate recovery.'" *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 439 (S.D.N.Y. 2016) (quoting *Roberts v. Texaco*, 979 F. Supp. 185, 200 (S.D.N.Y. 1997)); *see also Anwar v. Fairfield Greenwich Ltd.*, No. 09 Civ. 118 (VM), 2012 WL 1981505, at *3 (S.D.N.Y. June 1, 2012) ("Courts consistently approve awards in class action lawsuits to compensate named plaintiffs for the services they provide and burdens they endure during litigation."); *Beckman v. Keybank, N.A.*, 293 F.R.D. 467, 483 (S.D.N.Y. 2013) ("It is important to compensate plaintiffs for the time they spend and the risks they take.").

Class Plaintiffs were essential to the successful prosecution of this case. They willingly took on the risk of participating in this Action knowing that private CEA suits alleging spoofing in futures and options markets were rare. Class Plaintiffs immediately provided access to their data and their knowledge of the market and market conditions at the time their transactions occurred. Class Plaintiffs reviewed their individual complaints to confirm the accuracy and provide feedback as to the allegations and claims. Plaintiffs' Counsel were in regular communication with Class Plaintiffs, and after consulting with their respective counsel, each Class Plaintiff signed off on the Settlement, finding it fair, reasonable, and adequate.

The requested Incentive Awards are in line or below awards granted by courts in this District and others. *See, e.g.*, *In re Deutsche Bank*, 2020 WL 3162980, at *2 (awarding incentive awards of $10,000 per plaintiff); Order at ¶ 3, *Skiadas*, No. 1:19-cv-06137 (GHW), ECF No. 136 (awarding incentive awards of $10,000 per plaintiff); Order at ¶ 7, *Boutchard,* No. 1:18-cv-07041, ECF No. 154, (granting incentive awards of $12,500 and $17,500 to two named plaintiffs in CEA case). Further, as a percentage of the Settlement Fund, the Incentive Awards here would represent less than 0.1% of the Settlement, on par with awards made in other actions. *See In re Deutsche Bank*, 2020 WL 3162980, at *2 (incentive award represented less than 0.1% of settlement fund); Order at ¶ 3, *Skiadas,* No. 1:19-cv-06137 (GHW), ECF No. 136 (incentive award represented less than 0.1% of settlement fund). The Incentive Awards should be granted in light of their reasonable size and Class Plaintiffs' efforts in this case.

CONCLUSION

For the foregoing reasons, Class Counsel respectfully request the Court approve their motion for attorneys' fees and payment of litigation costs and expenses, and Class Plaintiffs' request for Incentive Awards, in the amounts set forth above.

Dated: May 6, 2022
White Plains, New York

Respectfully submitted,

LOWEY DANNENBERG, P.C.

/s/ Vincent Briganti

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Supporting Counsel

TAB 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE JPMORGAN PRECIOUS METALS SPOOFING LITIGATION

THIS DOCUMENT RELATES TO:
ALL ACTIONS

Case No.: 1:18-cv-10356

Hon. Gregory H. Woods

ORDER AWARDING ATTORNEYS' FEES, PAYMENT OF EXPENSES, AND INCENTIVE AWARDS TO CLASS PLAINTIFFS

This matter came before this Court for a duly noticed hearing on July 7, 2022 (the "Fairness Hearing"), upon Class Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses and Class Plaintiffs' Request for Incentive Awards (the "Fee and Expense Application") in the above-captioned action ("Action"). The Court has considered the Fee and Expense Application and all supporting and other related materials, including the matters presented at the Fairness Hearing. Due and adequate notice of the Stipulation and Agreement of Settlement with JPMorgan Chase & Co. ("JPMorgan") entered into on September 1, 2021 ("Settlement Agreement")[1] (ECF No. 79-1), having been given to the Class Members; the Fairness Hearing having been held; and the Court having considered all papers filed and proceedings conducted herein, having found the Settlement of the Action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

[1] Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings set forth and defined in the Settlement Agreement.

1. This Court has personal jurisdiction over Class Plaintiffs, JPMorgan, and all Class Members who have not timely and validly requested exclusion and subject matter jurisdiction over the Action to approve the Settlement Agreement and all exhibits attached thereto.

2. Notice of the Fee and Expense Application was provided to potential Class Members in a reasonable manner, and such notice complies with Rule 23(h)(1) of the Federal Rules of Civil Procedure and due process requirements.

3. The Court hereby awards Class Counsel attorneys' fees of 33.3% of the Settlement Fund (or $ 20 million), and litigation expenses of $ 400,078.86, together with interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid.

4. Class Counsel are hereby authorized to allocate the attorneys' fees award among Plaintiffs' Counsel in a manner in which, in Class Counsel's good faith judgment, reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.

5. In making this award of attorneys' fees and payment of litigation expenses, the Court has considered and found that:

a. the Settlement Agreement with JPMorgan has created a fund of $60,000,000 in cash that JPMorgan has paid into escrow pursuant to the terms of the Settlement Agreement;

b. Class Members who or which submit valid Proofs of Claim and Release will benefit from settlement reached because of the efforts of Class Counsel;

c. Class Counsel have prosecuted the Action and achieved the Settlement with skill, perseverance, and diligent advocacy;

d. The Action involves numerous complex factual and legal issues and was actively litigated;

e. Had Class Counsel not achieved the Settlement with JPMorgan, there would remain a significant risk that Class Plaintiffs and the Settlement Class may have recovered less or nothing from JPMorgan;

f. The contingent nature, risks and complexity of the Action favor the fee percentage awarded above;

g. Public policy considerations support the requested fee, as only a small number of firms have the requisite expertise and resources to successfully prosecute cases such as the Action;

h. Notice was disseminated to members of the Settlement Class stating that Class Counsel would be moving for an award of attorneys' fees in an amount up to one-third (33 1/3%) of the Settlement Fund and payment of litigation expenses and costs not to exceed $750,000, plus interest; and

i. The amount of attorneys' fees awarded and expenses to be paid from the Settlement Fund are fair and reasonable in view of the applicable legal principles and the particular facts and circumstances of the Action.

6. The Court hereby awards Class Plaintiffs Incentive Awards totaling $ 110,000, to be shared equally among the eleven (11) Class Plaintiffs, for their service as class representatives in this Action.

7. Without affecting the finality of this Order in any way, this Court hereby retains continuing jurisdiction over the Parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation, or enforcement of this Order.

8. In the event that the Settlement is terminated or the Effective Date does not occur in accordance with the terms of the Settlement, this Order shall be null and void, of no further

force or effect, and without prejudice to any of the Parties, and may not be introduced as evidence or used in any actions or proceedings by any Person against the Parties.

9. Pursuant to the Settlement Agreement, the attorneys' fees, expenses award and incentive awards are independent of the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement and is also independent of the Court's consideration of the Distribution Plan.

10. The attorneys' fees, payment of expenses, and Incentive Awards awarded herein 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 Settlement Agreement which terms, conditions, and obligations are incorporated herein.

SO ORDERED.

Dated: July 7, 2022
New York, New York

GREGORY H. WOODS
United States District Judge

TAB 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LANDMEN PARTNERS INC., Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. THE BLACKSTONE GROUP L.P., et al., Defendants.	Civil Action No. 08-cv-03601-HB-FM CLASS ACTION FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

This matter came before the Court for hearing pursuant to the Order Preliminarily Approving Settlement and Providing for Notice to the Class ("Notice Order") dated August 30, 2013, on the unopposed application of Lead Plaintiffs for approval of the Settlement set forth in the Settlement Agreement, dated August 28, 2013 ("Stipulation"), and following a hearing on December 18, 2013. Due and adequate notice having been given to the Class as required in said Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Final Judgment incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation, unless otherwise set forth herein.

2. This Court has jurisdiction over the subject matter of the Action and over all Settling Parties to the Action, including all members of the Class.

3. For purposes of this Judgment, as certified by the Court's August 13, 2013 Order, the Class is defined as all Persons who purchased the common units of The Blackstone Group L.P. ("Blackstone") in Blackstone's initial public offering ("IPO") or in the open market on the New

York Stock Exchange between June 21, 2007 and March 12, 2008, inclusive, and who sustained compensable damages in connection with any such purchase of Blackstone units pursuant to Sections 11 and 15 of the Securities Act of 1933.

Excluded from the Class are: (i) the persons who submitted valid and timely requests for exclusion from the Class, who are listed on Exhibit A hereto; (ii) Defendants; (iii) members of the immediate family of each of the Defendants; (iv) any Person that acted as an underwriter of the IPO; (v) any natural Person who sold Blackstone common units to the public in the IPO or who serves or served as an officer or director of Blackstone or as a partner of any predecessor to Blackstone, the members of the immediate families of any such persons, and any entity in which any of Defendants have or had a controlling interest; and (vi) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded Person (collectively, "Excluded Persons").

For the avoidance of doubt, the Excluded Persons are excluded from the Class only to the extent they purchased Blackstone common units in the IPO for their own account and not for or on behalf of a third-party customer or for resale to customers. Further, to the extent that any of the Excluded Persons was a statutory "seller" who resold the Blackstone common units to a third-party customer, client, account, fund, trust, or employee benefit plan that otherwise falls within the Class, or purchased Blackstone common units in a fiduciary capacity or otherwise on behalf of any third-party customer, client, account, fund, trust, or employee benefit plan that falls within the Class, the Excluded Person is excluded from the Class but the third-party customer, client, account, fund, trust, or employee benefit plan is not excluded from the Class with respect to such purchases of Blackstone common units.

4. For purposes of this Judgment, as certified by the Court's August 13, 2013 Order, Lead Plaintiffs Martin Litwin and Francis Brady are Class Representatives, and Lead Counsel

Robbins Geller Rudman & Dowd LLP and Brower Piven, A Professional Corporation, are Class Counsel.

5. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby approves the Settlement set forth in the Stipulation and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Class. There are no objections to the proposed Settlement.

6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Stipulation and Settlement are fair, reasonable, and adequate as to each of the Settling Parties, and that the Stipulation and Settlement are hereby finally approved in all respects, and the Settling Parties are hereby directed to perform its terms.

7. Accordingly, the Court authorizes and directs implementation of all the terms and provisions of the Stipulation, as well as the terms and provisions hereof. The Court hereby dismisses, as to Defendants, the Action and all Released Claims of the Class with prejudice, without costs as to any Settling Party, except as and to the extent provided in the Stipulation and herein.

8. Upon the Effective Date hereof, and as provided in the Stipulation, Lead Plaintiffs shall, and each of the Class Members shall, be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons, whether or not such Class Member executes and delivers the Proof of Claim and Release.

9. Upon the Effective Date hereof, and as provided in the Stipulation, each of the Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged Lead Plaintiffs, each and all of the Class Members, Lead Counsel and Abraham Fruchter & Twersky LLP from all claims (including, without

limitation, Unknown Claims) arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement, or resolution of the Action.

10. Upon the Effective Date hereof, and as provided in the Stipulation, Lead Plaintiffs and each of the Class Members who have not validly opted out of the Class, and their respective predecessors, successors, agents, representatives, attorneys, and affiliates, and the respective heirs, executors, administrators, successors, and assigns of each of them, directly or indirectly, individually, derivatively, representatively, or in any other capacity, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged against the Released Persons (whether or not such Class Members execute and deliver the Proof of Claim and Release forms) any and all Released Claims (including, without limitation, Unknown Claims), as well as any claims arising out of, relating to, or in connection with, the defense, settlement, or resolution of the Action or the Released Claims.

11. Upon the Effective Date, Lead Plaintiffs and each of the Class Members who have not validly opted out of the Class, and their respective predecessors, successors, agents, representatives, attorneys, and affiliates, and the respective heirs, executors, administrators, successors, and assigns of each of them, directly or indirectly, individually, derivatively, representatively, or in any other capacity, shall be permanently barred and enjoined from the assertion, institution, maintenance, prosecution, or enforcement against any Released Person, in any state or federal court or arbitral forum, or in the court of any foreign jurisdiction, of any and all Released Claims (including, without limitation, Unknown Claims), as well as any claims arising out of, relating to, or in connection with, the defense, settlement, or resolution of the Action or the Released Claims.

Case 1:08-cv-05447-HB Document 15 Filed 12/18/13 Page 5 of 9

12. The Notice of Proposed Settlement of Class Action ("Notice") given to the Class in accordance with the Notice Order, entered on August 30, 2013, was the best notice practicable under the circumstances, including the individual notice to all members of the Class who could be identified through reasonable effort, of the proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Stipulation, the proposed Plan of Distribution of the proceeds of the Settlement set forth in the Notice, Lead Counsel's application for attorneys' fees and reimbursement of expenses, and Lead Plaintiffs' request for an award of reasonable costs and expenses relating to their representation of the Class, and said Notice and notice procedures fully satisfied the requirements of Federal Rule of Civil Procedure 23, the Private Securities Litigation Reform Act of 1995, and the requirements of due process. There are no objections to the Notice and/or notice procedures.

13. The Court hereby approves the Plan of Distribution as set forth in the Notice as fair and equitable. The Court directs Lead Counsel to proceed with processing Proofs of Claim and the administration of the Settlement pursuant to the terms of the Plan of Distribution and, upon completion of the claims processing procedure, to present to this Court a proposed final distribution order for the distribution of the Net Settlement Fund to eligible Class Members, as provided in the Stipulation and the Plan of Distribution. There are no objections to the Plan of Distribution.

14. The Court hereby awards Lead Counsel attorneys' fees equal to 33.33% percent of the Settlement Fund (including interest accrued thereon), and litigation expenses in the amount of $1,047,005.77, with interest to accrue thereon at the same rate and for the same periods as has accrued by the Settlement Fund from the date of this Judgment to the date of actual payment of said attorneys' fees and expenses to Lead Counsel as provided in the Stipulation. The Court finds the amount of attorneys' fees awarded herein are fair and reasonable based on: (a) the work performed

and costs incurred by Lead Counsel; (b) the complexity of the case; (c) the risks undertaken by Lead Counsel and the contingent nature of their employment; (d) the quality of the work performed by Lead Counsel in this Action and their standing and experience in prosecuting similar class action securities litigation; (e) awards to successful plaintiffs' counsel in other, similar litigation; (f) the benefits achieved for Class Members through the Settlement; and (g) the absence of any objections from any Class Members to either the application for an award of attorneys' fees or expenses to Lead Counsel.

15. The Court also finds that the requested expenses are proper as the expenses incurred by Lead Counsel, including the costs of experts, were reasonable and necessary in the prosecution of this Action on behalf of Class Members. There are no objections to Lead Counsel's application for reimbursement of their expenses.

16. The Court approves payment of $15,000.00 to Lead Plaintiff Martin Litwin for his reasonable time and expenses (including lost wages) relating to their representation of the Class. Such payment shall be paid out of the Settlement Fund. There are no objections to Lead Plaintiff Litwin's application for reimbursement of his costs and expenses.

17. All fees and expenses awarded or allowed in this Judgment shall, except as otherwise expressly provided in the Stipulation, be paid from the Settlement Fund.

18. Lead Counsel may apply, from time to time, for any fees and/or expenses incurred by them solely in connection with the administration of the Settlement and distribution of the Net Settlement Fund to Class Members which, except as expressly provided in the Stipulation, shall be paid from the Settlement Fund.

19. Neither appellate review nor modification of the Plan of Distribution set forth in the Notice, nor any action in regard to the motion by Lead Counsel for attorneys' fees and/or expenses

and the award of costs and expenses to Lead Plaintiffs, shall affect the finality of any other portion of this Judgment, nor delay the Effective Date of the Stipulation, and each shall be considered separate for the purposes of appellate review of this Judgment.

20. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Persons, or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants or the Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Defendants and/or the Released Persons may file the Stipulation and/or this Judgment from this Action in any other action in which they are parties or that may be brought against them in order to support a defense, claim, or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

21. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing exclusive jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, interest, and expenses in the Action; (d) payment of taxes by the Settlement Fund; (e) all Settling Parties hereto for the purpose of construing, enforcing, and administering the Stipulation; and (f) any other matters related to finalizing the Settlement and distribution of proceeds of the Settlement.

22. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, or the Effective Date does not occur, or in the event that the Settlement

Fund, or any portion thereof, is returned to Defendants, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

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

24. The Court finds that during the course of the Action, the Settling Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

25. The Court directs immediate entry of this Final Judgment by the Clerk of the Court.

IT IS SO ORDERED

DATED: Dec 18, 2013

THE HONORABLE HAROLD BAER, JR.
UNITED STATES DISTRICT JUDGE

EXHIBIT A
BLACKSTONE: LIST OF EXCLUSIONS

	Name	City	St	Country	Zip
1	LINA HU	OSHAWA	ON	CA	LIJ 7C6
2	ESTATE OF ANTHONY J FABEC	WILLOUGHBY HILLS	OH	US	44094
3	WILLIAM PATTERSON	KINGS MOUNTAIN	NC	US	28086
4	MARY ANN SHOTWELL	VIRGILINA	VA	US	24598
5	RICHARD A LEWIS	BULLARD	TX	US	75757
6	JOHN MERCADENTE, JR.	READING	PA	US	19606
7	DOUGLAS BARHORST	SIDNEY	OH	US	45365
8	PATRICIA G NORMAN	KEARNEY	NE	US	68845
9	ESTATE OF RICHARD A NORMAN	KEARNEY	NE	US	68845
10	ROBERT W DUER	ALTA LOMA	CA	US	91701
11	ANIBAL MARRERO	CORAL GABLES	FL	US	33134
12	RUSS D SONNIER	NEW YORK	NY	US	10150
13	MARCUS E & JOANNE R NORTH	VICTORIA	TX	US	77905
14	SUZANNE EMETAROM	WALNUT CREEK	CA	US	94595
15	WILLIAM W & FRANCES E MAIN	ROBERTS	MT	US	59070
16	ANTHONY BRIENZA	COLD SPRING HARBOR	NY	US	11724
17	SHU HAO HUANG	SNOHOMISH	WA	US	98296
18	KENNETH O PARRIS	ATHENS	GA	US	30604
19	DUFF S MCEVERS	LAGUNA NIGUEL	CA	US	92677
20	SHERRIE L FRANTZ	EUGENE	OR	US	97404
21	DEBBIE CRINK	OMAHA	NE	US	68138
22	MARK A SUMMERS	MINNETRISTA	MN	US	55364
23	PAULINE MEYEROWITZ	FT LAUDERDALE	FL	US	33308
24	ANDREW WAHL	SAN FRANCISCO	CA	US	94115

TAB 13

Case 1:07-cv-01358-KBF Document 422-2 Filed 06/07/18 Page 1 of 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GEOFFREY OSBERG	:	
On behalf of himself and on behalf of all others similarly situated,	:	
Plaintiff,	:	**Case No.: 07 CV 1358 (KBF)**
- against -	:	
FOOT LOCKER, INC.,	:	
FOOT LOCKER RETIREMENT PLAN,	:	
Defendants.	:	

~~[PROPOSED]~~ ORDER AWARDING ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS FOR PLAINTIFF AND TESTIFYING CLASS MEMBERS

This matter came on for hearing on June 8, 2018 on Class Counsel's motion for attorneys' fees and expenses from the common fund created by this Court's October 2015 judgment (Dkt. 399) and for approval of service awards to Mr. Osberg and the eight Class members who were deposed by Defendants and testified at the July 2015 trial, to be paid out of Class Counsel's fee award.

Now, the Court, having heard argument and having reviewed all of the evidence and other submissions presented with respect to the motion and the record of all proceedings in this case, enters the following findings:

1. On or about April 10, 2018, the Notice Administrator caused the Notice to be mailed via first-class mail to the last known address of each individual identified as a Class member, as evidenced by the Notice Administrator's June 1, 2018 filed proof of mailing (Dkt.

415). In addition, follow-up efforts were made to send the Notice to individuals whose original notice was returned as undeliverable, as the Notice Administrator has attested. *Id.* at 2.

2. The Court finds that the Notice gave Class members notice "in a reasonable manner" of Class Counsel's motion for attorneys' fees and expenses and approval of service awards for Plaintiffs and the testifying Class members, and properly informed them of their right to comment or object in accordance with Fed. R. Civ. P. 23(h).

3. In response to the Notice, no Class member submitted an objection.

4. As reflected in the jointly proposed Class Notice, Dkt. 407-1, the parties have stipulated and their actuaries agree that the estimated value of the Class's total recovery as of June 1, 2018 is $290 million.

5. Class Counsel have sought an award of attorneys' fees equal to 33% of this $290 common fund, net of the $1,520,057 in out-of-pocket expenses incurred during the litigation of this matter for which Counsel seek reimbursement. Hence, the fee award sought is 33% of $288,479,943, which equals $95,198,381.

6. Under *Goldberger v. Integrated Resources Inc.*, 209 F.3d 43 (2d Cir. 2000), "the traditional criteria in determining a reasonable common fund fee, includ[e]: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the [recovery]; and (6) public policy considerations." *Id.* at 50. In addition to the criteria set forth in *Goldberger*, courts in the Second Circuit consider the reaction of the class to the fee request in deciding how large a fee to award. *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *18 (S.D.N.Y. Dec. 19, 2014). The Court finds, consistent with "'a jealous regard to the rights of those who are interested in the fund,'" *id.* at 53, that all six *Goldberger* factors, and the

Case 1:07-cv-01358-KBF Document 422-2 Filed 06/07/18 Page 3 of 5

absence of any objection from even a single member of the Class, weigh in favor of a 33% award, and Class Counsel's requested fee award is hereby approved.

7. The Court finds that the requested 33% fee is fair and reasonable in light of the following facts and circumstances:

(a) **Quality of Representation**. Class Counsel took this case to trial and prevailed, and then successfully defended the Court's judgment on appeal and in opposition to Defendants' petition for *certiorari* in the United States Supreme Court;

(b) **Extraordinary 100% Recovery**. Counsel thereby achieved an exceptional, perhaps unprecedented 100% recovery of the Class's maximum possible damages claim against a formidable opponent represented by first-rate legal counsel;

(c) **Risk.** Counsel faced very high risks of non-recovery from the inception of the case in 2007 through the denial of *certiorari* in 2018, including very high merits risk, very high statute of limitations risk, and very high class-certification risk that could have easily resulted in zero recovery for the Class and Class Counsel—as is confirmed by the fact that this Court dismissed this case in its entirety with prejudice on multiple grounds in 2012;

(d) **Scope and Magnitude**. The case was exceedingly difficult and complex and of considerable scope and extraordinarily long duration;

(e) **Time and Effort**. Class Counsel expended very significant time and resources in prosecuting this action, all with no guarantee of payment;

(f) **Awards in Other Cases**. The requested award compares very favorably to awards in other successful class cases tried to verdict, *see* Rubenstein Decl. ¶¶ 9, 19, Dkt. 461-1, *Krakauer v. Dish Network*, No. 14-333 (M.D.N.C. May 7, 2018) (36% on average), as well as awards in settled cases involving large ($100 million-plus) "mega-funds" where courts, including many within this Circuit, have awarded attorneys' fees that equal or exceed the 33% fee sought here, in circumstances that do not approach the efficacy and value that Class Counsel's tenacity and commitment—and assumption of great financial risk by litigating the case to judgment—created for the Class here;

(g) **Public Policy**. As a matter of public policy, the requested 33% common fund is necessary to ensure that counsel in future meritorious cases will not hesitate to be equally persistent and press forward as Class Counsel did here to achieve maximum recovery for their clients despite the complications, difficulties, and risk.

(h) **The Class's Reaction**. Under the circumstances here, the Class's lack of objection should be taken to mean that the Class consents to Counsel's request and finds it reasonable. *See In re Kentucky Grilled Chicken Coupon Marketing & Sales Practices Litig.*, 280 F.R.D. 364, 380 (N.D. Ill. 2011) ("the day has long since passed when class members simply accepted the amount of proposed fees"). Here, the notice campaign was unusually successful, with only a very small number of notices returned as undeliverable. Yet not a single Class member objected. Had Class members found the requested one-third fee unreasonable, they could have easily registered an objection—and had every incentive to do so since, as the notice made clear, they stood to gain material additional benefits if the Court agreed with their objection.

8. When a percentage-of-the-fund approach is used, the Court may also use a lodestar "cross-check" based on a summary of hours to test the reasonableness of the percentage. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 (2d Cir. 2005). Applying the lodestar method as a cross check, this Court finds that the fee Class Counsel seeks is reasonable. Based on Class Counsel's reported lodestar, the requested 33% award equates to an implied

Case 1:07-cv-01358-KBF Document 422-2 Filed 06/07/18 Page 5 of 5

multiplier of 4.8, which is in line with implied multipliers approved in other comparable cases in this Circuit and elsewhere.

9. The Court finds that the $1,520,057 in requested out-of-pocket litigation expenses and costs incurred have been adequately documented, were reasonably incurred in connection with the prosecution of the action, and are reasonable for a case of this complexity, scope, and duration. Reimbursement of the requested amount is also hereby approved.

10. The Court directs the Foot Locker Qualified Settlement Trust (the "Fund") – a $150 million trust fund established by Foot Locker with the intent it be utilized in the first instance to satisfy the Court's award of attorneys' fees and expenses – to disburse, within 7 business days of this Order, the attorneys' fees and expenses approved in ¶¶ 5-9 above in accordance with Class Counsel's payment instructions.

11. The Court finds that the service awards requested for Plaintiff Geoffrey Osberg in the amount of $50,000 and for the eight Class members who were deposed and testified at trial—Ada Cardona, Russell Howard, Rita Welz, Ralph Campuzano, Doris Albright, Richard Schaeffer, Michael Steven and Ellen Glickfield—in the amount of $15,000 each, are well-deserved, appropriate, and in line with those awarded in other cases. The Court authorizes and directs Class Counsel to pay these awards within 10 business days of this Order.

SO ORDERED.

Dated: New York, New York
6/8, 2018.

KBF

KATHERINE B. FORREST
United States District Judge

TAB 14

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

ST. CLAIR COUNTY EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. ACADIA HEALTHCARE COMPANY, INC., et al., Defendants.	Civil Action No. 3:18-cv-00988 <u>CLASS ACTION</u> Chief District Judge William L. Campbell, Jr. Magistrate Judge Alistair E. Newbern ORDER AWARDING ATTORNEYS' FEES AND EXPENSES AND AWARD TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

This matter having come before the Court on April 29, 2026, on Lead Counsel's motion for an award of attorneys' fees and expenses incurred in this action, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement, dated November 24, 2025 (the "Stipulation"). ECF 533.

2. This Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all Class Members.

3. The Court hereby awards Lead Counsel attorneys' fees of one-third of the Settlement Amount, and litigation expenses in the amount of $5,080,745.07, together with the interest earned thereon for the same time period at the same rate as that earned on the Settlement Fund until paid.

Said fees and expenses shall be allocated amongst Lead Plaintiffs' Counsel in a manner which, in Lead Counsel's good faith judgment, reflects each such counsel's contribution to the institution, prosecution, and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method considering, among other things, the following: the favorable result achieved for the Class; the contingent nature of Lead Counsel's representation; Lead Counsel's diligent prosecution of the Litigation; the quality of legal services provided by Lead Counsel that produced the Settlement; that the Lead Plaintiffs appointed by the Court to represent the Class support the requested fee; the reaction of the Class to the fee request; and that the awarded fee is in accord with Sixth Circuit precedent.

4. The awarded attorneys' fees and expenses shall be paid to Lead Counsel immediately after the Court executes the Judgment and this Order is executed subject to the terms, conditions, and obligations of the Stipulation and in particular ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

5. Pursuant to 15 U.S.C. §78u-4(a)(4), Lead Plaintiff Chicago & Vicinity Laborers' District Council Pension Fund is awarded $23,335.00 and Lead Plaintiff New York Hotel Trades Council & Hotel Association of New York City, Inc. Pension Fund is awarded $12,033.00 as payment for their time and expenses representing the Class.

IT IS SO ORDERED.

DATED: 4/29/2026

William L. Campbell Jr.

THE HONORABLE WILLIAM L. CAMPBELL, JR.
CHIEF UNITED STATES DISTRICT JUDGE

TAB 15

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE TESLA INC., SECURITIES LITIGATION

Case No. 18-cv-04865-EMC

VERDICT FORM

VERDICT FORM

A. RULE 10B-5 CLAIM: LIABILITY

Statement No. 1: "Am considering taking Tesla private at $420. Funding secured."

1. Has Plaintiff proved their Rule 10b-5 Claim against Elon Musk for Statement No. 1 identified above?

Yes: _____ No: X

2. Has Plaintiff proved their Rule 10b-5 Claim against Tesla Inc. for Statement No. 1 identified above?

Yes: _____ No: X

PLEASE PROCEED TO THE NEXT PAGE.

Statement No. 2: "Investor support is confirmed. Only reason why this is not certain is that it's continent on a shareholder vote."

3. Has Plaintiff proved their Rule 10b-5 Claim against Elon Musk for Statement No. 2 identified above?

Yes: _____ No: X

4. Has Plaintiff proved their Rule 10b-5 Claim against Tesla Inc. for Statement No. 2 identified above?

Yes: _____ No: X

IF YOU CHECKED "YES" FOR ONE OR MORE QUESTIONS IN STATEMENT NOS. 1 OR 2, PLEASE PROCEED TO THE NEXT PAGE.

IF YOU CHECKED "NO" FOR EVERY QUESTION IN STATEMENT NOS. 1 AND 2, PLEASE PROCEED TO SECTION E.

United States District Court
Northern District of California

B. RULE 10B-5 CLAIM: DAMAGES

1. Determine the amount of artificial inflation per share of Tesla stock proved by Plaintiff on each date during the Class Period and write it in the table below. If you find that Plaintiff did not prove artificial inflation on any particular day or days, please leave that date blank.

	07-Aug	08-Aug	09-Aug	10-Aug	13-Aug	14-Aug	15-Aug	16-Aug	17-Aug
($/share)	$__.__	$__.__	$__.__	$__.__	$__.__	$__.__	$__.__	$__.__	$__.__

PLEASE PROCEED TO THE NEXT PAGE.

United States District Court
Northern District of California

2. Determine the "but for" implied volatility percentages proved by Plaintiff for each option contract maturity date during the Class Period and write it in the table below. If you find that Plaintiff did not prove "but-for" implied volatility for any particular option contract or for any particular date, please leave that date and/or option contract maturity date blank.

		Day of Class Period at Close of Market							
		07-Aug	08-Aug	09-Aug	10-Aug	13-Aug	14-Aug	15-Aug	16-Aug
Maturity Date	Aug 10, 2018	____%	____%	____%	NA	NA	NA	NA	NA
	Aug 17, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Aug 24, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Aug 31, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Sep 7, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Sep 14, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Sep 21, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Sep 28, 2018	NA	NA	____%	____%	____%	____%	____%	____%
	Oct 19, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Nov 16, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Dec 21, 2018	____%	____%	____%	____%	____%	____%	____%	____%
	Jan 18, 2019	____%	____%	____%	____%	____%	____%	____%	____%
	Feb 15, 2019	____%	____%	____%	____%	____%	____%	____%	____%
	Mar 15, 2019	____%	____%	____%	____%	____%	____%	____%	____%
	Jun 21, 2019	____%	____%	____%	____%	____%	____%	____%	____%
	Aug 16, 2019	____%	____%	____%	____%	____%	____%	____%	____%
	Jan 17, 2020	____%	____%	____%	____%	____%	____%	____%	____%

United States District Court
Northern District of California

3. Determine the amount of artificial inflation per Tesla corporate bond proved by Plaintiff on each date during the Class Period and write it in the table below. If you find that Plaintiff did not prove artificial inflation on any particular day or days, please leave that date blank.

	07-Aug	08-Aug	09-Aug	10-Aug	13-Aug	14-Aug	15-Aug	16-Aug	17-Aug
2019 Note									
2021 Note									
2022 Note									

PLEASE PROCEED TO THE NEXT PAGE.

Case 3:18-cv-04865-EMC Document 625-1 Filed 01/26/23 Page 7 of 11

United States District Court
Northern District of California

C. **SECTION 20(A) CLAIM: LIABLITY**

If you answered "Yes" to one or more questions in Section A, please answer the following questions.

1. Has Plaintiff proved the Section 20(a) Claim as to any of the Tesla Director Defendants (check all that apply):

Brad W. Buss:	Yes: _____	No: _____
Robyn Denholm:	Yes: _____	No: _____
Ira Ehrenpreis:	Yes: _____	No: _____
Antonio J. Gracias:	Yes: _____	No: _____
James Murdoch:	Yes: _____	No: _____
Kimbal Musk:	Yes: _____	No: _____
Linda Johnson Rice:	Yes: _____	No: _____

2. If you answered "Yes" in response to Question No. 1 as to any Defendant, have Defendants proved a Good Faith Defense as to that Defendant (check all that apply):

Brad W. Buss:	Yes: _____	No: _____
Robyn Denholm:	Yes: _____	No: _____
Ira Ehrenpreis:	Yes: _____	No: _____
Antonio J. Gracias:	Yes: _____	No: _____
James Murdoch:	Yes: _____	No: _____
Kimbal Musk:	Yes: _____	No: _____
Linda Johnson Rice:	Yes: _____	No: _____

D. ALLOCATION OF RESPONSIBILITY

1. For any Defendant whom you found liable, did that Defendant commit a knowing violation of the federal securities laws? Only answer this question as to the Defendants against whom you found that Plaintiff proved a claim.

Elon Musk:	Yes: _____	No: _____
Tesla:	Yes: _____	No: _____
Brad W. Buss:	Yes: _____	No: _____
Robyn Denholm:	Yes: _____	No: _____
Ira Ehrenpreis:	Yes: _____	No: _____
Antonio J. Gracias:	Yes: _____	No: _____
James Murdoch:	Yes: _____	No: _____
Kimbal Musk:	Yes: _____	No: _____
Linda Johnson Rice:	Yes: _____	No: _____

PLEASE PROCEED TO THE NEXT PAGE.

2. Please decide each Defendant's share of responsibility for Plaintiff's losses. Only assign a percentage of responsibility to those Defendants whom you found liable, including those who acted recklessly. The total must add up to 100%.

Elon Musk: _____%

Tesla: _____%

Brad W. Buss: _____%

Robyn Denholm: _____%

Ira Ehrenpreis: _____%

Antonio J. Gracias: _____%

James Murdoch: _____%

Kimbal Musk: _____%

Linda Johnson Rice: _____%

PLEASE PROCEED TO THE NEXT PAGE.

E. RETURN OF VERDICT

Once the form is completed, the foreperson for the jury must sign and date it below.

Dated: FEBRUARY 3, 2023 Signed: ____________________
Jury Foreperson

United States District Court
Northern District of California

TAB 16

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION	:	No. 3:17-cv-00558 (SRU)
	:	
THIS DOCUMENT RELATES TO:	:	All Class Actions
	:	

MEMORANDUM OF LAW IN SUPPORT OF CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Class Representatives Ontario Teachers' Pension Plan Board and Anchorage Police & Fire Retirement System (together, "Class Representatives"), on behalf of themselves and each member of the Settlement Class, respectfully submit this memorandum of law in support of their motion for (1) final approval of the proposed settlement, and (2) approval of the Plan of Allocation for distribution of the Net Settlement Fund.[1]

PRELIMINARY STATEMENT

After years of vigorous litigation in this Court and a protracted mediation under the auspices of former District Judge Layn R. Phillips, the parties have agreed to settle this action for $420 million in cash, which has been deposited into escrow accounts.

Class Representatives and Class Counsel respectfully submit that the proposed settlement is an outstanding result for the Settlement Class and warrants the Court's final approval.[2] By Class Counsel's calculation, the proposed settlement (if approved) would be the second-largest class settlement in this District. (Fonti Decl. ¶4.) It would also be the fourth-largest securities settlement in the Second Circuit that does not involve a financial restatement or arise from the

[1] Additional support for this motion is provided in the accompanying Declaration of Joseph A. Fonti in Support of (I) Class Representatives' Motion for Final Approval of Class Settlement and Approval of Plan of Allocation and (II) Lead Counsel's Motion for Awards of Attorneys' Fees, Litigation Expenses, and Reasonable Costs and Expenses to Class Representatives (the "Fonti Decl."); the Declaration of Jeffrey Davis (the "Davis Decl."); the Declaration of Edward Jarvis (the "Jarvis Decl."); and the Declaration of Layn R. Phillips (the "Phillips Decl."). References to "Ex.__" are to the exhibits to the Fonti Declaration. Capitalized terms not defined herein shall have the meanings specified in the Fonti Declaration or the Stipulation of Settlement, dated January 18, 2022, filed with the Court (ECF 919-2). Emphasis is added, and citations and internal quotation marks are omitted, unless otherwise stated.

[2] "Class Counsel" are Bleichmar Fonti & Auld LLP; Bleichmar Fonti & Auld Canada; The Law Offices of Susan R. Podolsky; and Carmody Torrance Sandak & Hennessey LLP.

2008-09 financial crisis, circumstances that reduce plaintiffs' burden and risk and have resulted in some of the largest securities settlements. (*Id.*)

The proposed settlement provides prompt relief, maximizes the recovery from Teva and its insurance carriers, and achieves valuable certainty for the Settlement Class—particularly important here given Teva's publicly disclosed financial constraints and exposure to other material, outstanding litigation. Indeed, this action is the first to obtain any meaningful recovery based on Teva's generic drug price increases, with the antitrust *Generics MDL* and criminal action years behind.

The Court should grant final approval because the proposed settlement is "fair, reasonable, and adequate" under Rule 23(e)(2) and satisfies all of the traditional factors from *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974).

First, Rule 23(e)(2)(A) and (B) are satisfied because Class Representatives and Class Counsel "have adequately represented the class," and the proposed settlement "was negotiated at arm's length" over a protracted period. Both Class Representatives are sophisticated institutional investors with substantial experience leading PSLRA class actions and significant financial stakes in this litigation. Class Representatives carefully oversaw Class Counsel's work, were integrally involved in every step of the mediation, and fully support the proposed settlement.

Class Counsel have also vigorously pursued the interests of the Settlement Class. As detailed in the accompanying Fonti Declaration, Class Counsel devoted over five years of intense effort to this case and completed voluminous fact and expert discovery, including taking or defending 40 depositions (generating over 7,000 pages of testimony from 23 fact witnesses alone) and exchanging 17 merits expert reports. Class Counsel also achieved class certification over Defendants' vigorous opposition, including the exchange of six expert reports and a

Rule 23(f) petition to the Second Circuit. By obtaining class certification, completing discovery, litigating this case to the brink of summary judgment and *Daubert* motions, and demonstrating the strength of the merits to Defendants and their insurance carriers, Class Counsel's efforts set the stage to obtain the best possible result for the Settlement Class.

The proposed settlement was achieved through contentious, arm's-length negotiations, including three full-day mediation sessions with Judge Phillips in July 2020 and September 2021. The July 2020 session—conducted before any depositions and the majority of Defendants' document production—was unsuccessful, confirming the need for Class Counsel to continue their substantial investment of time and resources to fully develop the merits and advance the case toward summary judgment and trial. By September 2021, fact and expert discovery were complete, ensuring that the parties were fully apprised of the strengths and weaknesses of the merits. Nonetheless, the parties' positions remained significantly apart, and protracted further negotiation followed. On November 14, 2021, Judge Phillips issued a recommendation to settle the action for $420 million. After the deadline to respond was extended several times, the parties finally agreed to the settlement just hours before summary judgment and *Daubert* motions were due on December 2, 2021.

<u>Second</u>, the proposed settlement provides adequate relief and satisfies Rule 23(e)(2)(C), particularly given the "costs, risks, and delay of trial and appeal." Fed. R. Civ. P. 23(e)(2)(C)(i).

While Class Counsel invested significant effort to develop a strong case, if litigation had continued, it was far from clear that this action would have generated any recovery. Proving liability and damages, and obtaining a recovery from Defendants after trial, would be exceptionally expensive, risky, and protracted. To prove liability, Class Representatives would be required to demonstrate that certain price increases within Teva's portfolio of hundreds of generic drugs caused Defendants' public statements regarding the sources of Teva's profits, generic drug pricing, and competition to be materially false or misleading and/or resulted in material omissions. To recover the vast majority of damages, Class Representatives would also need to prove Defendants' scienter and that the alleged misstatements and omissions caused losses on the Teva Securities. Moreover, Class Representatives would need to overcome several significant defenses—including Defendants' "truth on the market" argument that Teva's price increases and their role in Teva's profits were publicly disclosed—and arguments that threatened to severely reduce damages or eliminate liability. In short, absent the proposed settlement, there was a real risk of recovering nothing.

Beyond these significant risks, to litigate through summary judgment and prevail at trial, the inevitable appeal, and any further proceedings would consume years and continue to deplete Teva's insurance coverage. Even then, as a practical matter, Teva's financial condition would significantly constrain any recovery: With over $20 billion in outstanding long-term debt and numerous other litigation exposures, including thousands of opioids cases (which Teva has been intent on taking to trial), there is a serious risk that Teva would be unable to pay a judgment in excess of the proposed settlement. Indeed, Teva's financial condition materially worsened through the first several years of this litigation. Moreover, Teva's financial condition would be further impaired if the civil or criminal antitrust actions succeeded. Even apart from these serious financial constraints, the proposed settlement is substantial relative to other large securities cases and well within the range of reasonableness.

Class Representatives and Class Counsel carefully evaluated and considered these and other factors in making a fully informed decision to enter the proposed settlement on behalf of the Settlement Class. Given Class Representatives' status as institutional investors, their significant experience leading PSLRA actions and financial stake in this action, and their diligent oversight and full involvement in the settlement negotiations, their support for the proposed settlement strongly favors final approval. The overall Settlement Class's reaction should be considered as well: while the exclusion and objection deadlines (May 2 and May 12, respectively) have not yet passed, to date, no Settlement Class Members have objected and only 39 potential requests for exclusion have been received.

The proposed Plan of Allocation, developed with expert assistance, should also be approved as fair, reasonable, and adequate. It provides for each Authorized Claimant to receive their *pro rata* share of the Net Settlement Fund based on the size of their Recognized Claim, thereby ensuring equitable treatment of Settlement Class Members under Rule 23(e)(2)(D).

Finally, the Court-approved notice program—comprised of individual mailing to all Settlement Class Members who could be identified with reasonable effort, publication in the U.S. and Israel, a case-specific website, and dedicated telephone numbers—was effective and satisfies the requirements of Rule 23, due process, and the PSLRA.

For the reasons herein, Class Representatives respectfully request that the Court grant final approval of the proposed settlement and approve the Plan of Allocation.

I. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

Under Rule 23(e)(2) of the Federal Rules of Civil Procedure, a proposed class settlement should be approved upon finding that it is "fair, reasonable, and adequate."

To evaluate proposed class settlements, courts in this Circuit have considered the nine factors from *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), which are:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of

reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

While the proposed settlement here satisfies each factor, not every factor must be satisfied to warrant final approval. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 86-87 (2d Cir. 2001).

In addition, Rule 23(e)(2) (as amended in 2018) provides that courts should determine whether a class settlement is "fair, reasonable, and adequate after considering whether":

> (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). The "goal" of this amendment was "not to displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Rule 23, Advisory Committee Notes to 2018 Amendment.

As a result, the following discussion addresses both the *Grinnell* and Rule 23(e)(2) factors. *See Kennedy v. Whitley*, 539 F. Supp. 3d 261, 267 (D. Conn. 2021) (Haight, J.) ("Given this history, and the guidance furnished by the Advisory Committee's Notes, in the case at bar I will consider both sets of factors . . . in analyzing whether the proposed settlement is fair, reasonable, and adequate, and should accordingly be granted final approval . . . .").

A. The Proposed Settlement Is Procedurally Fair under Rule 23(e)(2)(A)-(B)

Rule 23(e)(2)(A) and (B) require that "the class representatives and class counsel have adequately represented the class" and that "the proposal was negotiated at arm's length." Adequate representation and arm's-length negotiation are amply present here.

Case 1:23-cv-10655-SRU Document 125-50-1 Filed 07/18/22 Page 17 of 34

1. Class Representatives and Class Counsel Have Adequately Represented the Settlement Class

"Adequacy 'entails inquiry as to whether: 1) plaintiff's interests are antagonistic to the interest of other members of the class and 2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation.'" *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009). Class Representatives and Class Counsel's unrelenting prosecution of this action demonstrates their adequacy and satisfies Rule 23(e)(2)(A).

To begin, in granting class certification, the Court found that Ontario Teachers' and Anchorage are adequate class representatives. *In re Teva Sec. Litig.*, No. 3:17-cv-00558, 2021 WL 872156, at *12 (D. Conn. Mar. 9, 2021). Indeed, both Class Representatives are sophisticated institutional investors who have together recovered over $2.6 billion for investors in this and prior securities class actions and have significant financial stakes here. (*See* Ex. 3 (Davis Decl.) ¶¶5, 9; Ex. 4 (Jarvis Decl.) ¶¶5, 9.) Class Representatives actively supervised Class Counsel, fully participated in the mediation sessions and negotiations, and have carefully evaluated and authorized the proposed settlement on behalf of the Settlement Class. (Ex. 3 (Davis Decl.) ¶¶4-25; Ex. 4 (Jarvis Decl.) ¶¶4-25.)

The Court has also recognized that Class Counsel are "qualified, experienced and able to conduct the litigation." *Teva*, 2021 WL 872156 at *12; *see also* Ex. 7-A (BFA Firm Resume), Ex. 8-A (Carmody Firm Litigation Resume), and Ex. 9-A (Podolsky Firm Resume). The Fonti Declaration details Class Counsel's skilled and efficient work to achieve the best possible result in this complex case. (Fonti Decl. ¶¶22-251, 313-333.) Over five years, Class Counsel investigated and pleaded multiple complaints, overcame Defendants' motions to dismiss, secured exhaustive fact discovery (including over 8.2 million pages of documents from Defendants and numerous third parties), completed comprehensive expert discovery (including the exchange of 17 merits expert reports), conducted 40 fact and expert depositions, achieved class certification (including the exchange of six expert reports and defeating Defendants' Rule 23(f) petition seeking to appeal this Court's ruling to the Second Circuit), and completed summary judgment and *Daubert* motions that were ready to be filed at the time of settlement. (Fonti Decl. ¶¶28-251.) In doing so, Class Counsel expended over 77,000 hours of work. (*Id.* ¶¶370-381.)

As a result of this effort, Class Representatives and Class Counsel "were well informed about the strengths and weaknesses of the case before reaching the agreement to settle." *In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-cv-06728, 2020 WL 4196468, at *3 (S.D.N.Y. July 21, 2020).

2. The Proposed Settlement Was Reached After Protracted Arm's-Length Negotiation, Led by Sophisticated Investors as Class Representatives, under the Auspices of an Experienced Mediator

Rule 23(e)(2)(B) is satisfied because the proposed settlement "was negotiated at arm's length" over a protracted period. The Second Circuit has indicated that a "presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005). Further, an even greater presumption of reasonableness attaches to a settlement reached "under the supervision and with the endorsement of a sophisticated institutional investor." *Signet*, 2020 WL 4196468 at *3 (quoting *In re Veeco Instruments Inc. Sec. Litig.*, No. 05-MDL-01695 (CM), 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007)).

Class Representatives—both sophisticated institutional investors and experienced PSLRA class representatives—unquestionably fit that bill, as both carefully supervised all aspects of the mediation, considered and authorized the proposed settlement, and fully support its approval. (Ex. 3 (Davis Decl.) ¶¶9-25; Ex. 4 (Jarvis Decl.) ¶¶9-25.)

As set forth in the Phillips, Fonti, Davis, and Jarvis Declarations (Ex. 1 ¶¶6-17; Fonti Decl. ¶¶313-332; Ex. 3 ¶¶11-25; and Ex. 4 ¶¶11-25, respectively), the proposed settlement was reached after intense negotiations during three full-day mediation sessions and numerous additional conferences between Class Counsel and Judge Phillips, which occurred over a period of sixteen months and ultimately resulted in Judge Phillips's recommendation of a $420 million settlement. *See Signet*, 2020 WL 4196468 at *3 (settlement "was reached only after months of arm's-length negotiations between experienced counsel, which included three full-day mediation sessions under the guidance of Judge Phillips," and was "the product of a mediator's recommendation by Judge Phillips"); *D'Amato*, 236 F.3d at 85 ("mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure").

Judge Phillips observed that "[o]verall, this was among the most complex and challenging mediations [he has] handled in nearly thirty years of dispute resolution work." (Ex. 1 (Phillips Decl.) ¶17.) The parties' hard-fought negotiations were complicated by Teva's financial limitations, the involvement of numerous insurance carriers, and outstanding civil and criminal litigations against Teva involving generic drug price-fixing and opioids, among other factors. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 461-62 (S.D.N.Y. 2004) ("The negotiations among the settling parties and GX's insurers were protracted, adversarial, and intensive, continuing over a 14-month period.").

With Class Representatives' full involvement, the mediation process unfolded over a lengthy period. The initial mediation session in July 2020 was unsuccessful, and no settlement demands or offers were exchanged. (Fonti Decl. ¶317; Ex. 1 (Phillips Decl.) ¶9.) At the time, Defendants had yet to produce the majority of their documents, and no depositions had occurred; Class Representatives and Class Counsel concluded that a meaningful consensual resolution could not be reached without this discovery and the opportunity to delve deeply into the merits of the claims. (*See* Fonti Decl. ¶317.) To that end, Class Counsel continued to invest heavily in time and resources to achieve class certification, extract and analyze Defendants' and third parties' key documents, conduct 40 depositions, complete expert discovery, and prepare for summary judgment and trial. (*See id.* ¶¶317, 84-251.)

When mediation resumed fourteen months later in September 2021, the Court had granted class certification, and fact and expert discovery were complete.[3] This full development of the merits ensured that the parties and their counsel were well informed of the strengths, weaknesses, and risks of the case, and that Class Counsel were prepared to drive the case to trial. The two full-day sessions on September 17 and 27, 2021—which respectively concluded after 8:30 PM and 10:30 PM in New York—were productive, although the parties remained significantly apart. (Ex. 1 (Phillips Decl.) ¶¶10-14; Fonti Decl. ¶¶318-323.)

In parallel to the September 2021 mediation, drawing on the extensive proof amassed in fact and expert discovery, Class Counsel continued to develop a summary judgment motion and *Daubert* motions to exclude Defendants' merits experts. (Fonti Decl. ¶¶242-251.) Class Counsel did not assume that any consensual resolution was forthcoming, and thus prepared to file these motions to heighten Defendants' risk and advance the case toward trial.

After the September 27, 2021 mediation session did not yield an agreement, intense negotiations continued throughout October and the first half of November 2021 under Judge Phillips's guidance, with Class Representatives actively involved at every step. (Ex. 1 (Phillips Decl.) ¶15; Fonti Decl. ¶¶324-325; Ex. 3 (Davis Decl.) ¶20; and Ex. 4 (Jarvis Decl.) ¶20.)

[3] (Fonti Decl. ¶318.) The parties served reply expert reports on September 20, 2021, between the September 17 and September 27 mediation sessions. (*See id.*)

These strenuous negotiations involved the exchange of 11 further rounds of settlement demands and offers. (Ex. 1 (Phillips Decl.) ¶15.)

On November 14, 2021—nearly two months after the parties had resumed mediating on September 17—Judge Phillips issued a mediator's recommendation to settle the action for $420 million. (Ex. 1 (Phillips Decl.) ¶16; Fonti Decl. ¶326.) Even then, however, it was far from clear that the parties would agree to any resolution, and the deadline to respond was extended several times. (Fonti Decl. ¶¶327-328.) The summary judgment and *Daubert* deadline was extended in parallel, and Class Counsel completed and prepared to file Class Representatives' papers. (*Id.* ¶328.)

Finally, Judge Phillips advised that all parties had accepted the mediator's recommendation just hours before summary judgment and *Daubert* motions were to be filed on December 2, 2021. The subsequent Stipulation of Settlement required weeks of further negotiation. (*Id.* ¶¶329-332.)

Class Representatives' full participation and support, and the fact that the proposed settlement is the result of Judge Phillips's recommendation after an arduous, arm's-length mediation process, confirm that the proposed settlement is procedurally fair.

B. The Proposed Settlement Provides Adequate Relief under Rule 23(e)(2)(C) and Satisfies the *Grinnell* Factors

Rule 23(e)(2)(C)(i) provides that the adequacy of relief should be assessed "taking into account . . . the costs, risks, and delay of trial and appeal," overlapping with several *Grinnell* factors. Here, Rule 23(e)(2)(C) and each *Grinnell* factor is satisfied. As detailed in the Fonti Declaration and below, the all-cash settlement of $420 million is an outstanding result, particularly given the costs, risks, complexity, and delay of continued litigation, as well as Teva's financial constraints and uncertain ability to withstand a larger judgment.

1. The Complexity, Expense and Likely Duration of the Litigation

"Securities litigation is unpredictable because it involves complex issues of fact and law," and this case is no exception. *Christine Asia Co., Ltd., et al., v. Jack Yun Ma, et al.*, No. 1:15-md-02631, 2019 WL 5257534, at *11 (S.D.N.Y. Oct. 16, 2019).

Here, Class Representatives and Class Counsel faced an unusually high degree of complexity, evidenced in part by the fact that Class Counsel incurred over $9.7 million in expenses, including $7.2 million in expert expenses alone. (Fonti Decl. ¶¶397-400.) This action centers on price increases in Teva's portfolio of hundreds of generic drugs, each with fluctuating and customer-specific prices, sales volumes, and profits over time, as well as Teva's price erosion rates and alleged involvement in collusive conduct. (*See, e.g.*, *id.* ¶¶20, 97-102, 145, 223.) Time-consuming, meticulous, data-intensive expert analysis was required to identify specific price increases, quantify their impact on Teva's publicly reported financial performance over a multi-year period, and assess whether Defendants violated applicable disclosure requirements. (*Id.* ¶¶206-208, 220-233.) Thoroughly investigating collusive conduct and possible spoliation of evidence added further complexity and required careful analysis of thousands of pages of detailed phone records and other evidence of interfirm communications. (*Id.* ¶¶145-171.)

Beyond the challenges of proving liability, proving loss causation and damages entailed the complex task of quantifying and demonstrating the effect of Defendants' alleged misstatements and omissions (and the eventual, piecemeal disclosure of the concealed truth) on the prices of the Teva Securities at issue. To do so, Dr. Tabak performed extensive statistical analyses to isolate Teva-specific price movements (net of market and industry effects) for eight different Teva Securities. (*Id.* ¶¶211-219.)

Moreover, had litigation continued, obtaining and collecting on a judgment against Defendants would have required substantial additional time and expense. Among other things, Class Counsel would need to: (i) prevail on Defendants' anticipated summary judgment and *Daubert* motions; (ii) complete extensive pre-trial work, including *in limine* motions; (iii) conduct and prevail at a jury trial involving testimony from numerous fact and expert witnesses; (iv) resolve any post-trial motions; (v) prevail on a lengthy appeal; and (vi) address any individualized issues pursuant to the Court's bifurcation order (ECF 796), including Defendants' challenges to individual claims for recovery before those claims are paid. This process would consume years, exposing the Settlement Class to serious "costs, risks, and delay," Rule 23(e)(2)(C)(i), including the risk that Teva's financial condition could continue to decline over this lengthy period.

Thus, while the delay of protracted litigation "would cause Class Members to wait years for any recovery, further reducing its value," settlement "at this juncture results in a substantial and tangible present recovery, without the attendant risk and delay of trial." *Maley v. Del Global Tech. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002).

2. The Reaction of the Settlement Class to the Proposed Settlement

"The reaction of the class to a proposed settlement is another relevant factor." *Signet*, 2020 WL 4196468 at *5. Here, as of April 27, 2022, the Court-appointed Claims Administrator (Epiq) has sent 942,255 Notices to potential Settlement Class Members and their nominees, in addition to publishing the Summary Notice in *Investor's Business Daily*, *The Wall Street Journal*, and the *Globes* business newspaper in Israel (in Hebrew), transmitting it over *PR Newswire*, establishing a case-specific website for the settlement (in English and Hebrew), and operating dedicated telephone lines to respond to potential Settlement Class Members' inquiries. (Ex. 2 (McGuinness Decl.) ¶¶3-24; Fonti Decl. ¶¶340-350.) The Notice and Summary Notice informed potential Settlement Class Members of their rights to opt out or object, as well as the deadlines to do so. (ECF 928-2 at 3-6 of 9; 928-4 at 3 of 4.)

While the May 2, 2022 deadline to seek exclusion from the Settlement Class (or for Direct Action Plaintiffs to seek inclusion) and the May 12, 2022 deadline to object have not yet passed, to date, no Settlement Class Members have objected and only 39 have submitted potential requests for exclusion. (Ex. 2 (McGuinness Decl.) ¶¶30, 32.) Class Representatives will address any objections and provide further information regarding requests for exclusion in their reply papers due on May 19, 2022.

3. The Stage of the Proceedings and the Amount of Discovery Completed

"When considering this *Grinnell* factor, the question is whether the parties['] . . . counsel possessed a record sufficient to permit evaluation of the merits of Plaintiffs' claims, the strengths of the defenses asserted by Defendants, and the value of Plaintiffs' causes of action for purposes of settlement." *Signet*, 2020 WL 4196468 at *7.

Here, the advanced stage of the proceedings and completion of fact and expert discovery satisfy this factor and strongly support the proposed settlement's adequacy. As indicated above, Class Counsel secured over 8.2 million pages of documents from Defendants and 23 third parties; the parties conducted 40 depositions, yielding thousands of pages of testimony on key elements of the Class's claims; and the parties exchanged 23 expert reports on class certification and merits issues. Class Counsel's efforts ensured an ample, thoroughly analyzed factual record at the time of settlement. Indeed, by achieving class certification, completing fact and expert discovery, and reaching the verge of summary judgment, Class Counsel prosecuted this action further than the vast majority of securities class actions. (*See* Fonti Decl. ¶¶261-62, 267.)

4. The Risks of Establishing Liability

As courts in this Circuit have recognized, securities litigation "is notably difficult and notoriously uncertain." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400, 2010 WL 4537550, at *15 (S.D.N.Y. Nov. 8, 2010); *see also In re Priceline.com, Inc. Sec. Litig.*, No. 3:00-

Case 1:23-cv-10665-AS Document 125-10 Filed 04/18/25 Page 23 of 34

cv-1884 (AVC), 2007 WL 2115592, at *3 (D. Conn. July 20, 2007) ("*Priceline*") (noting "risks of establishing liability" through "complex and fact-intensive analysis of accounting and fraud issues"); *Signet*, 2020 WL 4196468 at *7 (noting "several significant risks" that "created serious doubt as to whether the Class would ultimately succeed at trial").

From the outset, this action faced substantial risks. To begin, there was a serious risk of outright dismissal; recent research has found that in securities class actions, 56% of motions to dismiss are granted with prejudice. (Fonti Decl. ¶¶259-60.) Even those cases that survive motions to dismiss may nonetheless be lost at class certification, summary judgment, trial, or on appeal. (*Id.* ¶¶261-268.) Here, the risks of proving liability were especially acute given the case's complexity, Defendants' steadfast refusal to acknowledge any wrongdoing, and Teva's combative nature. Specific liability risks are detailed below.

Risks of Proving Falsity and Materiality: Because both falsity and materiality are required elements of the Exchange Act and Securities Act claims, if Defendants defeated either element, the entire case would be lost. (*Id.* ¶¶272-278.)

These risks were heightened because Teva did not issue a financial restatement or face an SEC enforcement action challenging its public disclosures. (*Id.* ¶¶256, 270.) In securities cases, restatements are highly significant—and effectively establish the Exchange Act and Securities Act elements of falsity and materiality—because "under Generally Accepted Accounting Principles . . . a restatement issues only when errors are material." *SEC v. Kelly*, 663 F. Supp. 2d 276, 285 (S.D.N.Y. 2009). For example, *Carlson v. Xerox*, 392 F. Supp. 2d 267, 277-278 (D. Conn. 2005), involved two restatements and an SEC enforcement action, greatly reducing the risk for the plaintiffs in that case. Indeed, in *Xerox,* the defendants did not even challenge falsity and materiality in their motions to dismiss. *See id.* at 283-92. By contrast, Class Representatives and Class Counsel faced heightened risk in proving the entire case from scratch.

Most notably, Defendants would assert a "truth on the market" defense arguing that Teva's generics price increases and related profits were disclosed and publicly known. (Fonti Decl. ¶274.) Defendants advanced this argument through multiple experts. (*Id.*) While Class Representatives defeated this argument at class certification, Defendants were certain to raise it again at summary judgment and trial.

Further, Defendants were expected to contest falsity on multiple grounds, including that Teva's disclosed sources of financial performance (such as new product launches) were larger contributors than any impact from generic drug price increases; that Teva in fact earned the revenues and profits it publicly reported; and that Teva's independent auditor approved its SEC filings. (*Id.* ¶¶275-276.) Moreover, Defendants likely would argue that the regulations forming the basis for the Class's omissions claims—Item 303 of SEC Regulation S-K and Item 5 of SEC Form 20-F—did not require disclosure, threatening to eliminate any omissions-based claims. (*Id.* ¶278.)

As to materiality, in addition to their "truth on the market" argument, Defendants likely would further argue that any financial impact from Teva's price increases was simply too small to be material, and that Teva's overall generic drug portfolio had declining prices. (*Id.* ¶277.)

While Class Representatives had strong responses to these arguments, any finding that Defendants' statements were non-actionable or immaterial would negate liability entirely.

Risks of Proving Scienter: The element of scienter—necessary for the Exchange Act claims and the majority of overall damages—also posed significant risks. (*Id.* ¶¶279-282.)

Defendants vigorously disputed scienter, and would likely argue at summary judgment and trial that every Teva executive who was deposed categorically denied making any intentional false statements. (*Id.* ¶280.) In addition, Defendants likely would argue that price increases on certain generic drugs were understood to be an ordinary business activity that merely offset declining prices on other drugs. (*Id.*) Further, the Individual Defendants likely would argue that they did not focus on U.S. generic drug pricing or know of any alleged non-competitive activity. (*Id.*) Finally, Defendants likely would argue that the challenged public statements were reviewed and approved by in-house and outside counsel, as well as Teva's outside auditor. (*Id.*)

Again, while Class Representatives had strong responses, it was far from certain how scienter would have been resolved at summary judgment or trial, and any finding that scienter was absent would foreclose Exchange Act liability and eliminate the majority of damages. (*Id.* ¶¶281-282.)

Risks of Proving Collusion: Other key risks relate to proving Defendants' awareness and/or participation in collusive conduct concerning generic drug pricing. In this regard, many key Teva witnesses were unlikely to be available to testify, while Defendants were likely to argue that circumstantial evidence, such as phone records, is inadmissible. (*Id.* ¶¶283-286.) Defendants' expert Dr. Gaier also offered purported economic justifications for Teva's pricing. (*Id.* ¶287.) While Class Representatives vigorously developed the available proof, there was a risk that the Court or a jury could conclude that Teva was not involved in collusive activity. Class Representatives also faced risks associated with DOJ's intervention, which threatened to impede depositions and potentially disrupt the trial schedule. (*Id.* ¶¶299-302.)

Jury and *Daubert* Risk: Class Representatives faced various other risks in proving liability, including the absence of a single "star witness" (such as a whistleblower); the complex

Case 3:17-cv-00558-SRU Document 1195-1 Filed 07/18/22 Page 23 of 34

and highly technical subject matter of the claims, which demanded heavy reliance on experts; Defendants' likely *Daubert* motions against Class Representatives' experts; and Defendants' four competing experts who would opine that Teva's statements and conduct were justified and truthful. As a result, Class Representatives would likely be presenting their case-in-chief through experts and hostile fact witnesses, all of which would create a greater trial risk. (*Id.* ¶¶288-291.)

5. The Risks of Establishing Damages

Class Representatives faced numerous risks in proving loss causation and damages. These risks threatened to eliminate any recovery under the Exchange Act and substantially reduce any Securities Act damages. (*See infra* at 21.)

Specifically, as to the Exchange Act—which accounts for the majority of overall damages—Defendants vigorously disputed whether Class Representatives' expert Dr. Tabak adequately demonstrated loss causation or damages. (Fonti Decl. ¶¶292-296.) For example, Defendants' expert Dr. James contested Dr. Tabak's methodologies, argued that none of the eight corrective events that Dr. Tabak utilized were corrective, and asserted that each event included so-called "confounding" (non-fraud-related) information, and/or was the materialization of previously disclosed (rather than concealed) risks. (*Id.* ¶¶293-294.) Defendants were also likely to move to exclude Dr. Tabak's opinions in full, which could be fatal to the Exchange Act claims. (*See id.* ¶¶296 & 250 (citing *In re Pfizer Inc. Sec. Litig.*, 819 F.3d 642, 645 (2d Cir. 2016)).)

As to the Securities Act, Defendants have invoked a statutory negative causation defense. 15 U.S.C. § 77k(e); *see also* 15 U.S.C. § 77l(b). Their expert Dr. James submitted nearly 900 pages of expert reports (including exhibits) arguing that the price declines in the offered ADS, Preferred Shares, and Notes were largely caused by factors other than the alleged misstatements. (Fonti Decl. ¶297.) If these arguments were accepted, Securities Act damages could be reduced dramatically. (*See id.* ¶¶354-355.)

6. The Risks of Maintaining a Class Action Through Trial

The Court certified the Class, and Class Representatives defeated Defendants' Rule 23(f) petition. (Fonti Decl. ¶¶195-197.) Nonetheless, class certification was vigorously contested, and Defendants could seek to de-certify the Class at any time "before final judgment." Fed. R. Civ. P. 23(c)(1)(C). *See Priceline*, 2007 WL 2115592 at *3 ("[A]lthough the court has certified the class in this case, the prospects of decertification certainly exist in light of the defendants' vigorous opposition to the plaintiffs' motions for certification and the defendants' defeat of one of the plaintiffs' motions for appointment of a lead plaintiff as a class representative.").

7. Defendants' Ability to Withstand a Greater Judgment

An important consideration in the settlement calculus here has been the serious risk that Teva would be unable to satisfy a greater judgment after trial.

During the first several years of this litigation, Teva's financial condition materially worsened. Teva ADS prices peaked at $72.00 per share in July 2015. (Fonti Decl. ¶303.) Following the November 3, 2016 publication of the *Bloomberg* article and the November 6, 2016 filing of the first securities action (*id.* ¶28), the Teva ADS traded at approximately $40 per share. (*Id.* ¶303.) As this litigation proceeded, however, Teva continued to announce new, negative information, including a total of $16.5 billion in permanent goodwill impairment charges disclosed in August 2017 and February 2018. By the end of the Class Period in May 2019, the price of Teva ADS had dropped to $12.23, and by the time discovery commenced on September 25, 2019, it had plummeted to $6.96. (*Id.*)

Teva has not recovered from these events. Today, Teva faces material financial limitations and exposures on numerous fronts. (*Id.* ¶¶304-312.) To begin, Teva is saddled with over $20 billion in outstanding debt (rated as "junk" given Teva's financial position), has limited growth prospects, and had a market capitalization of below $10 billion at the time the parties entered the proposed settlement, far below its Class Period peak of over $52 billion. (*Id.* ¶¶304-306.) Compounding these issues, Teva has material exposures to unresolved litigations that threaten to further weaken its financial position; these include the criminal and civil price-fixing litigations, as the Court is aware, as well as opioids litigations around the country (including an action in New York where Teva recently lost a jury trial). (*Id.* ¶¶307-312.)

There is thus a serious risk that Teva would be unable to pay a judgment in excess of the proposed settlement. Indeed, estimated Securities Act damages alone could approach one-third of Teva's market capitalization at the time of settlement and exhaust Teva's free cash flow for over a year. (*Id.* ¶361.) If Class Representatives obtained such a judgment, Teva might be forced into bankruptcy.[4] *Signet*, 2020 WL 4196468 at *12 (even if lead plaintiff had obtained judgment for maximum recoverable damages, "there is no assurance that the Company could have satisfied it, and it might have been forced into bankruptcy"); *In re Warner Communications Sec. Litig.*, 618 F. Supp. 735, 746 (S.D.N.Y. 1985) (the "prospect of a bankrupt judgment debtor down at the end of the road does not satisfy anyone involved in the use of class action procedures"). In these circumstances, the proposed settlement provides important certainty in the form of a substantial cash recovery for the Settlement Class.

Finally, even if Teva were able to pay more than the $420 million settlement amount, that "does not, standing alone, indicate that the settlement is unreasonable or inadequate." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 129 (S.D.N.Y. 1997). "This is especially true where, as here, the other *Grinnell* factors weigh heavily in favor of settlement approval."

[4] As noted in the Fonti Declaration, other pharmaceutical companies have filed for bankruptcy to address litigation exposure related to opioids. (¶308.)

Global Crossing, 225 F.R.D. at 460; *see also D'Amato*, 236 F.3d at 86 (despite defendants' ability to withstand higher judgment, settlement was fair in light of other *Grinnell* factors).

8. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and the Attendant Risks of Litigation (*Grinnell* Factors 8 & 9)

These factors consider whether the settlement fund falls within a "range of reasonableness"—a range which "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972).

Importantly, the "settlement amount's ratio to the maximum potential recovery need not be the sole, or even the dominant, consideration when assessing the settlement's fairness." *Global Crossing*, 225 F.R.D. at 460-61. Instead, courts should "consider and weigh the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable." *Grinnell*, 495 F.2d at 462; *see also In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987) (adequacy of settlement is "judged not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case"); *In re PaineWebber Litig.*, 171 F.R.D. at 130 (fairness determination "is not susceptible of a mathematical equation yielding a particularized sum").

Here, the proposed settlement is well within the range of reasonableness and represents a historic and highly favorable result for the Settlement Class.

As the Fonti Declaration explains, estimated damages would be approximately $576 million if scienter is not proven (thereby eliminating Exchange Act liability) and Defendants prevailed on their arguments about Securities Act damages; in this scenario, the proposed settlement would amount to a 73% recovery. (Fonti Decl. ¶354.) At the high end, estimated realistically provable damages would be approximately $12.22 billion if Class Representatives proved all Exchange Act elements (including scienter), demonstrated loss causation for each corrective event, and defeated Defendants' arguments about Securities Act damages—a highly uncertain scenario that would require the Class to prevail on every contested issue of liability and damages for all claims. (*Id.* ¶357.) In this scenario, the proposed settlement would amount to a 3.4% recovery. (*Id.*)

Significantly, even the 3.4% recovery is substantial relative to recoveries in other large securities cases. For example, the consulting firm NERA regularly calculates settlement value as a percentage of "NERA-Defined Investor Losses." While NERA-Defined Investor Losses are not identical to aggregative damages, for cases with $10 billion or greater in NERA-Defined Investor Losses, NERA has found historical median settlement values of 0.5%. (*Id.* ¶359.)

Moreover, the above estimates of potential damages are wholly theoretical in light of Teva's numerous financial constraints, discussed above and in the Fonti Declaration (¶¶303-312). In light of those constraints, Teva's "ability to pay was an actual and vital consideration" for the proposed settlement. *In re Lucent Techs., Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 436 (D.N.J. 2004). Indeed, in deciding to enter the proposed settlement, Class Representatives carefully considered not only merits risks, but also analysis by a consulting expert of Teva's financial risks and constraints, and the circumstances of Teva's insurance coverage, which would diminish as litigation (and Defendants' substantial legal fees) continued. (Ex. 3 (Davis Decl.) ¶¶18, 22-23; Ex. 4 (Jarvis Decl.) ¶¶18, 22-23.)

The "certainty" of the "settlement amount has to be judged in this context of the legal and practical obstacles to obtaining a large recovery," including "substantial legal obstacles," the prospect of "long and costly litigation," "a significant issue as to whether [a larger] judgment could

Case 1:23-cv-10685-ER Document 125-0-1 Filed 07/14/25 Page 384 of 411

be collected," and the fact that "the insurance coverage in this case [was] limited" and "rapidly being consumed by legal fees." *Global Crossing*, 225 F.R.D. at 461. When "judged against the realistic, rather than theoretical, potential for recovery after trial," *id.*, the proposed settlement's immediate, certain cash recovery of $420 million is a particularly exceptional result and well within the range of reasonableness.

C. All Other Rule 23(e)(2)(C) Factors Support Approval

Rule 23(e)(2)(C) also directs the Court to consider "(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." These factors also support approval.

First, the proposed notice and claims administration process are an effective method to distribute relief to the Settlement Class and reflect well-established procedures utilized in securities class actions. Based on Settlement Class Members' submission of the Proof of Claim and Release (with supporting documentation, as needed), the Claims Administrator will process claims under Class Counsel's supervision; notify claimants of any deficiencies or ineligibility and process responses; and, after making claim determinations, make distributions to Authorized Claimants. (*See* ECF 919-9 ¶¶17-18.) These procedures have commenced, with the Proof of Claim and Release due by May 17, 2022, and a number of claims already received.[5] (Ex. 2 (McGuinness Decl.) ¶¶25-26.)

[5] Lead Counsel has engaged an independent third party, The JNL Firm, LLC ("JNL"), to provide further assurance that the claims process is conducted in accordance with industry standards and consistent with the Plan of Allocation. JNL will provide a written submission to the Court concerning the results of the administration, and JNL's fees and expenses (net of a $5,000 retainer, and not to exceed $50,000 absent further Court approval) will be submitted to the Court in connection with distribution of the Net Settlement Fund. (Fonti Decl. ¶350.)

Second, as to the "terms of any proposed award of attorneys' fees, including timing of payment," Fed. R. Civ. P. 23(e)(2)(C)(iii), consistent with the terms of the Notice, Lead Counsel has made an application for fees and expenses to be paid from the Settlement Fund. While this application is separate from the Court's approval of the proposed settlement, for the reasons stated in the application and its supporting papers, the fee and expense request is reasonable. The Stipulation (filed with the Court and made available on the settlement website) provides for payment of any fee and expense award upon the Court's execution of the Judgment and entry of an order awarding such fees and expenses. (ECF 919-2 ¶6.2.)

Third, beyond the Stipulation itself, the only other "agreement required to be identified under Rule 23(e)(3)," Fed. R. Civ. P. 23(e)(2)(C)(iv), is the Supplemental Agreement, which was previously identified in Class Representatives' preliminary approval papers (ECF 919-1 at 28 of 37). As is standard in securities class actions, the Supplemental Agreement provides specified options to terminate the settlement if Settlement Class Members reach certain thresholds based on the Recognized Loss Amounts on Teva Securities subject to the settlement (*see* ECF 919-2 ¶7.4). "This type of agreement is a standard provision in securities class actions and has no negative impact on the fairness of the [s]ettlement." *Signet*, 2020 WL 4196468 at *13.

D. The Settlement Treats Class Members Equitably Relative to Each Other, Satisfying Rule 23(e)(2)(D)

Rule 23(e)(2)(D) directs the Court to evaluate whether the Proposed Settlement "treats class members equitably relative to each other." As discussed below, the Plan of Allocation satisfies this requirement by providing for each Authorized Claimant to receive their *pro rata* share of the Net Settlement Fund based on the size of their Recognized Claim. In turn, Recognized Claims are determined by an objective formula that applies equally to all Settlement Class Members, including Class Representatives.

II. THE PLAN OF ALLOCATION SHOULD BE APPROVED

The proposed Plan of Allocation, like the settlement itself, should be approved as fair, reasonable, and adequate. An "allocation formula need have only a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *In re Am. Bank Note Holographies, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001). A reasonable plan may consider the relative strength and values of different categories of claims. *In re Lloyd's Am. Trust Fund Litig.*, No. 96 Civ. 1262, 2002 WL 31663577 (S.D.N.Y. Nov. 26, 2002).

Here, the Plan of Allocation was developed by Class Counsel with Dr. Tabak's expert assistance, and provides a method for the fair, equitable, and reasonable distribution of the Net Settlement Fund to Authorized Claimants based on estimates of their recognized losses from transactions in Teva Securities during the Class Period. (Fonti Decl. ¶¶334-339.)

Specifically, transactions in Teva ADS may result in Exchange Act Recognized Loss Amounts, with the calculation depending on when the claimant purchased and/or sold the ADS and whether the claimant held the ADS through the PSLRA's 90-day look-back period after the end of the Class Period. (*Id.* ¶336.) The Exchange Act Recognized Loss Amount is generally the difference between the estimated artificial inflation on the date of purchase and the date of sale, or (if less) the difference between the actual purchase price and sale price. (*See* ECF 928-5 at 25 of 32.) The estimates of artificial inflation for the ADS are consistent with Dr. Tabak's expert opinions regarding artificial inflation during the prosecution of the action. (Fonti Decl. ¶336.)[6]

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[6] In addition, the Plan of Allocation provides for a 5% increase in Exchange Act Recognized Loss Amounts for eligible ESPP purchasers, recognizing the Securities Act and state-law claims asserted on their behalf, and that Defendants had substantial "tracing," preclusion, and other defenses to these additional claims. (*See* ECF 928-5 at 24 of 32 n.3.)

Transactions in Teva Preferred Shares and Notes (and ADS purchased in the ADS Offering) may result in Securities Act Recognized Loss Amounts. To avoid double-counting, the Plan of Allocation does not provide Exchange Act Recognized Loss Amounts for these securities, since Exchange Act damages for these transactions are subsumed by larger Securities Act damages for the same transactions. The calculation of Securities Act Recognized Loss Amounts generally reflects the Securities Act's statutory damages formula and depends on the amount paid for each of these Teva Securities and the security's price or value at the time of suit or the time of sale. (*Id.* ¶337.) This approach is consistent with Dr. Tabak's expert opinions during the prosecution of the action. (*Id.*)

Finally, a claimant's "Recognized Claim" will be the sum of the claimant's Recognized Loss Amounts. The Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims, as determined by the Claims Administrator. (*Id.* ¶338.)

These provisions appropriately allocate the Net Settlement Fund based on the various claims asserted in this case and recognize the different methods to calculate damages under the Securities Act and the Exchange Act. *See Priceline*, 2007 WL 2115592 at *4 (concluding that plan of allocation "is fair and has a 'reasonable rational basis' in light of the circumstances of this case") (quoting *Maley*, 186 F. Supp. 2d at 367); *Signet*, 2020 WL 4196468 at *14 (plan of allocation was "fair and reasonable method to allocate the Net Settlement Fund among Class Members").

III. NOTICE TO THE SETTLEMENT CLASS SATISFIED THE REQUIREMENTS OF RULE 23, DUE PROCESS, AND THE PSLRA

Finally, notice to the Settlement Class was "reasonable" under Rule 23(e)(1) and satisfied Rule 23(c)(2)(B)'s requirement to provide "the best notice that is practicable under the

Case 1:23-cv-10605-ASS Document 1-95-0-1 Filed 07/12/22 Page 39 of 34

circumstances, including individual notice to all members who can be identified through reasonable effort."

First, the Court-approved Notice contained all information required by Rule 23(c)(2)(B) and the PSLRA, 15 U.S.C. § 78u-4(a)(7), including: (i) the nature of the action and the claims asserted; (ii) the definition of the Settlement Class; (iii) that Settlement Class Members may seek exclusion, object, or enter appearances through an attorney; (iv) notice of the binding effect of a class judgment on Settlement Class Members; (v) the amount of the settlement (on an aggregate and per-security basis); (vi) the issues about which the parties disagree, including liability and the amount of damages; (vii) the maximum amount of attorneys' fees and litigation expenses that Lead Counsel would seek (including on a per-share basis); (viii) Lead Counsel's contact information; and (ix) a brief statement explaining the reasons why the parties are proposing the settlement.

Second, the method of dissemination of notice was effective. Pursuant to the Preliminary Approval Order, Epiq began mailing Notices to potential Settlement Class Members and nominees on February 16, 2022, and also caused the Notice and related materials to be published on the DTC Legal Notice System on February 21, 2022. (Ex. 2 (McGuinness Decl.) ¶¶3-6.) As of April 27, 2022, Epiq has mailed 942,255 individual Notices. (*Id.* ¶11; Fonti Decl. ¶347.) Epiq also caused the Summary Notice to be published in the U.S. and Israel (in Hebrew) and transmitted over *PR Newswire*, and established a case-specific website and telephone numbers for the settlement, as noted above. (Ex. 2 (McGuinness Decl.) ¶¶14-24.)

This combination of individual mailing to all Settlement Class Members who could be identified with reasonable effort, supplemented by multiple publications and a website, satisfies the requirements of Rule 23 and due process.[7] *See Priceline*, 2007 WL 2115592 at *3 (notice "was adequate in form and content to satisfy the requirements of the federal rules and due process," and "sufficient for class members to understand the proposed settlement and their options"); *Signet*, 2020 WL 4196468 at *14 (sufficient notice by "combination of individual mail to all Class Members who could be identified with reasonable effort, supplemented by notice in an appropriate, widely circulated publication, transmitted over the newswire, and set forth on internet websites").

CONCLUSION

Class Representatives respectfully request that the Court grant final approval of the proposed settlement and approve the Plan of Allocation.

Dated: New York, New York
April 28, 2022

Respectfully submitted,

/s/ *Joseph A. Fonti*

Joseph A. Fonti (admitted *pro hac vice*)
Javier Bleichmar (admitted *pro hac vice*)
Evan A. Kubota (admitted *pro hac vice*)
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Counsel for Class Representatives Ontario Teachers' Pension Plan Board and Anchorage Police & Fire Retirement System, and Lead Counsel for the Class

[7] In addition, on January 21, 2022, Defendants served the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715 (2005) *et seq*. (Fonti Decl. ¶348.)

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Local Counsel for Class Representatives Ontario Teachers' Pension Plan Board and Anchorage Police & Fire Retirement System, and Class Liaison Counsel

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2022, a copy of the foregoing was filed electronically with the Clerk of Court via CM/ECF. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the court's CM/ECF system.

/s/ Joseph A. Fonti
Joseph A. Fonti

TAB 17

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION :	No. 3:17-cv-00558 (SRU)
THIS DOCUMENT RELATES TO: :	All Class Actions

FINAL JUDGMENT

This matter came before the Court for hearing on June 2, 2022, pursuant to the Order Preliminarily Approving Settlement and Providing for Class Notice dated January 27, 2022 (the "Order"), on the application of the parties for approval of the settlement set forth in the Stipulation of Settlement dated January 18, 2022 (the "Stipulation"). Full and adequate notice having been given to the Settlement Class as required in the Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. This Judgment incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation, unless otherwise set forth herein.

2. This Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all Members of the Settlement Class.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Court's prior class certification order (ECF 736), the Court hereby affirms its determinations in the Order and finally certifies a Settlement Class comprised of:

(1) As to claims under the Securities Exchange Act of 1934, all persons and entities who, in domestic transactions, purchased or otherwise acquired the following securities during the Class Period, and were damaged thereby:

a. Teva American Depositary Shares ("ADS");

b. Teva 7.00% mandatory convertible preferred shares issued on or about December 3, 2015 and January 6, 2016 ("Preferred Shares");

c. The following Teva Finance U.S.-dollar-denominated senior notes issued on or about July 21, 2016:

   i. 1.400% Senior Notes due July 20, 2018 ("2018 Notes");

   ii. 1.700% Senior Notes due July 19, 2019 ("2019 Notes");

   iii. 2.200% Senior Notes due July 21, 2021 ("2021 Notes");

   iv. 2.800% Senior Notes due July 21, 2023 ("2023 Notes");

   v. 3.150% Senior Notes due October 1, 2026 ("2026 Notes"); and

   vi. 4.100% Senior Notes due October 1, 2046 ("2046 Notes") (collectively, the "Notes"); and

(2) As to claims under the Securities Act of 1933, all persons and entities who, in domestic transactions, purchased or otherwise acquired ADS, Preferred Shares, and Notes pursuant or traceable to the offerings of ADS and Preferred Shares completed on or about December 3, 2015 and January 6, 2016, or the offering of the Notes completed on or about July 21, 2016; and as to the alleged additional state-law claims, all persons and entities who purchased or otherwise acquired ADS pursuant to Teva's Employee Stock Purchase Plan for U.S. Employees ("ESPP") during the Class Period, and were damaged thereby.

Excluded from the Settlement Class are (1) Defendants and any affiliates or subsidiaries thereof; (2) present and former officers and directors of Teva, Teva Pharmaceuticals USA, Inc., and Teva Pharmaceutical Finance Netherlands III B.V., and their immediate family members (as defined in Item 404 of SEC Regulation S-K, 17 C.F.R. § 229.404, Instructions (1)(a)(iii) & (1)(b)(ii)); (3) Defendants' liability insurance carriers, and any affiliates or subsidiaries thereof; (4) any entity in which any Defendant has or has had a controlling interest; (5) Teva's employee retirement and benefit plan(s) (not including the ESPP); and (6) the legal representatives, heirs, estates, agents, successors, or assigns of any person or entity described in the preceding five categories. Also excluded from the Settlement Class are (a) any person or entity that during the Class Period purchased or otherwise acquired Teva Securities and has been promised or received a payment from or on behalf of Defendants related to or arising from litigation, or otherwise released its claims, related to its Class Period transactions in Teva Securities other than a payment of attorneys' fees or costs incurred by such person or entity; (b) the Settlement Class Members that validly and timely requested exclusion (identified in Exhibit 1 hereto); and (c) Direct Action Plaintiffs that did not timely dismiss their claims and submit Proof of Claim and Release forms (identified in Exhibit 2 attached hereto).

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Court's prior class certification order (ECF 736), the Court hereby affirms its determinations in the Order and finally appoints Ontario Teachers' Pension Plan Board and Anchorage Police & Fire Retirement System as Class Representatives for the Settlement Class, Bleichmar Fonti & Auld LLP as Class Counsel for the Settlement Class, and Carmody Torrance Sandak & Hennessey LLP as Class Liaison Counsel for the Settlement Class.

5. The Court finds that the distribution of the Notice, Long-Form Notice and Proof of Claim and Release, and Summary Notice complied with the terms of the Stipulation and the Order, and provided the best notice practicable under the circumstances of these proceedings and of the matters set forth therein, including the proposed settlement set forth in the Stipulation, to all Persons entitled to such notice, and that this notice fully satisfied the requirements of Federal Rule of Civil Procedure 23, 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, due process, and any other applicable law.

6. There have been no objections to the settlement.

7. In light of the benefits to the Settlement Class, the complexity, expense, and possible duration of further litigation against Defendants, the risks of establishing liability and

damages, and the costs of continued litigation, pursuant to Federal Rule of Civil Procedure 23, the Court hereby approves the settlement set forth in the Stipulation and finds that:

a. the Stipulation and the settlement contained therein, are, in all respects, fair, reasonable, and adequate and in the best interest of the Settlement Class;

b. there was no collusion in connection with the Stipulation;

c. the Stipulation was the product of informed, arm's-length negotiations among competent, able counsel; and

d. the record is sufficiently developed and complete to have enabled Class Representatives and the Defendants to have adequately evaluated and considered their positions.

Accordingly, the Court authorizes and directs implementation and performance of all the terms and provisions of the Stipulation, as well as the terms and provisions hereof.

8. Except as to any individual claim of (1) any Person who during the Class Period purchased or otherwise acquired Teva Securities and has been promised or received a payment from or on behalf of Defendants related to or arising from litigation, or otherwise released its claims, related to its Class Period transactions in Teva Securities other than a payment of attorneys' fees or costs incurred by such Person; (2) those Persons who have validly and timely requested exclusion from the Settlement Class (identified in Exhibit 1 attached hereto); and (3) Direct Action Plaintiffs that did not timely dismiss their claims and submit Proof of Claim and Release forms (identified in Exhibit 2 attached hereto), the Litigation and all claims contained therein, including the Released Claims, are dismissed with prejudice as to the Class Representatives, and all other Settlement Class Members, and as against the Released Defendants. The Settling Parties are to bear their own fees and costs except as otherwise

provided in the Stipulation or this Order, or any separate order with respect to the application for an award of attorneys' fees or expenses pursuant to the Stipulation.

9. Upon the Effective Date, and as provided in the Stipulation, Class Representatives shall, and each of the Settlement Class Members shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged any and all Released Claims (including Unknown Claims) against the Released Defendants, whether or not such Settlement Class Member executes and delivers the Proof of Claim and Release form or shares in the Settlement Fund. Claims relating to the enforcement of the settlement and the Stipulation are not released.

10. Class Representatives and all Settlement Class Members are hereby forever barred and enjoined from prosecuting any of the Released Claims against any of the Released Defendants.

11. Upon the Effective Date, and as provided in the Stipulation, each of the Released Defendants shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged Class Representatives, each and all of the Settlement Class Members, and Class Representatives' Counsel from all Releasing Defendants' Claims (including Unknown Claims) against the Released Plaintiff Parties. Claims relating to the enforcement of the settlement and the Stipulation are not released.

12. Except as provided in Paragraph 13 below, each Member of the Settlement Class, whether or not such Member of the Settlement Class executes and delivers a Proof of Claim and Release, is bound by this Judgment, including, without limitation, the release of claims as set forth in the Stipulation.

13. All Persons and entities whose names appear on Exhibit 1 and/or Exhibit 2 hereto are not members of the Settlement Class, are not bound by this Judgment, and may not make any claim with respect to or receive any benefit from the settlement.

14. Neither the Stipulation nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, the truth of any of the allegations in the Litigation, or of any wrongdoing, fault, or liability of the Released Defendants, or that Class Representatives or any Settlement Class Members have suffered any damages, harm, or loss, or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The Released Defendants may file the Stipulation and/or this Judgment from this action in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

15. Neither the Stipulation nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any of the Releasing Defendants' Claims, or of any wrongdoing, fault, or liability of, or damage, harm, or loss caused by, the Released Plaintiff Parties.

16. The Court hereby enters the broadest bar order permissible by law barring all future claims for contribution or indemnity (or any other claim or claim-over, however

denominated on whatsoever theory, for which the injury claimed is that person's or entity's alleged liability to Class Representatives or Settlement Class Members) among and against Class Representatives, any and all Settlement Class Members, and the Released Defendants arising out of the Litigation and Released Claims ("Bar Order"), provided, however, that the Bar Order shall not preclude either (i) the Released Defendants from seeking to enforce any rights they may have under any applicable insurance policies or (ii) any right of indemnification or contribution that the Released Defendants may have under contract or otherwise. The Bar Order shall be consistent with, and apply to the full extent of, the Private Securities Litigation Reform Act ("PSLRA").

17. Any Plan of Allocation submitted by Class Counsel or any order entered regarding any attorneys' fee and expense application shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment. Defendants have no responsibility with respect to the Plan of Allocation.

18. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, expenses, and interest in the Litigation; and (d) all parties herein for the purpose of construing, enforcing, and administering the Stipulation.

19. The Court finds that during the course of the Litigation, the Settling Parties and their respective counsel (Class Representatives' Counsel and all counsel for Defendants) at all times complied with the requirements of Federal Rule of Civil Procedure 11.

20. In the event that the settlement does not become effective in accordance with the terms of the Stipulation, or the Effective Date does not occur, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

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

22. The provisions of this Judgment constitute a full and complete adjudication of the matters considered and adjudged herein, and the Court directs immediate entry of this Judgment by the Clerk of the Court.

IT IS SO ORDERED.

Dated: June 2, 2022

Stefan R. Underhill
Stefan R. Underhill
United States District Judge
District of Connecticut

EXHIBIT 1

***In re Teva Securities Litigation*, No. 3:17-cv-00558-SRU (D. Conn.)**

List of Persons and Entities Excluded from the Settlement Class Pursuant to Request

1.	State of Wisconsin Investment Board[1]	Madison, Wisconsin
2.	Robert Ray	Dunbarton, New Hampshire
3.	Lynn Faenza	North Royalton, Ohio
4.	Amit Khanna	Weston, Florida
5.	Carolyn Lohse	Brazil, Indiana
6.	Leonard H. Simms, Janette B. Simms, & Leonard H. Simms, III IRA	Rockport, Texas
7.	John E. Johnson, CFA & Barbara Velez	Carmel, Indiana
8.	Patrick N. Strang	Vermontville, Michigan
9.	John Bohmfalk	Coulee Dam, Washington
10.	Jen-kou Tzou	Lisle, Illinois
11.	Nadine Saad	Coquitlam, British Columbia
12.	Alain Vizier	Newark, California
13.	Malta Pension Investments	St. Julians, Malta
14.	John Peterman	Hatboro, Pennsylvania
15.	Mary Lou Yindra	Ivoryton, Connecticut
16.	Carolina Munro	Delray Beach, Florida
17.	Robert H. Flowers & Irene S. Flowers	Youngstown, Ohio

[1] On January 27, 2021, State of Wisconsin Investment Board ("SWIB") intervened in this action. (ECF 695.) On January 18, 2022, Class Representatives filed their Motion for Preliminary Approval of Class Settlement (ECF 919); two days later, on January 20, 2022, SWIB filed an individual action against Defendants, *State of Wisconsin Investment Bd. v. Teva Pharm. Indus. Ltd.*, No. 3:22-cv-00106 (D. Conn. filed Jan. 20, 2022).

18.	Gregory Domsic	Erie, Pennsylvania
19.	Sharon Brittle	Sevierville, Tennessee
20.	Larry L. Hanes	Geneva, Illinois
21.	Howard Bucci and Stephanie Bucci	West Richland, Washington
22.	Yee Shin Kee	Singapore
23.	James E. Ring	Palm Coast, Florida
24.	Roderick Lin Tim Chong	Sun Valley, California
25.	Francesca Drago	Pennsville, New Jersey
26.	Thomas Cook	Hastings, Florida
27.	Peter Handal	East Hampton, New York
28.	Forest A. Benson	Glen Mills, Pennsylvania
29.	W. Wister Pilling	Bokeelia, Florida
30.	Ellen Karch	Rockville, Maryland
31.	Scott J. Gustin	Springdale, Arkansas
32.	John Fenmor-Collins	Victoria, British Columbia
33.	Eunice B. Jones, f/k/a Eunice B. Baker	Folsom, California
34.	Margaret Paterson, Angus Paterson, & Paterson Family Trust	Vancouver, British Columbia
35.	Nancy G. Fuhr	Aurora, Colorado
36.	Margarette D. Nieto	Bakersfield, California
37.	Connor Mason	Filley, Nebraska
38.	Antonius Wehrle	Hamburg, Germany
39.	Eugene Coates	Houston, Texas
40.	Geok Mui Tan	Singapore
41.	Leigh Kuecker	Watertown, South Dakota
42.	Joseph Lomonaco	Gun Barrel City, Texas

43.	Ward F. Milenski	Jackson, Tennessee
44.	Cristie Summers	North Canton, Ohio
45.	Carmen A. Allen	Kingsman, Arizona
46.	Joseph Floyd	Columbus, Georgia
47.	Miranda Stephens	Enfield, Connecticut
48.	Eros Correa	San Jose, California
49.	Taesoo Kim	Brooklyn, New York

EXHIBIT 2

***In re Teva Securities Litigation*, No. 3:17-cv-00558-SRU (D. Conn.)**

Direct Action Plaintiffs Excluded from the Settlement Class

All plaintiffs in the following individual (non-class) actions pending in the United States District Court for the District of Connecticut ("Direct Action Plaintiffs") are excluded from the Settlement Class:

1	*OZ ELS Master Fund, Ltd., et al. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:17-cv-1314
2	*Nordea Investment Mgmt. AB v. Teva Pharm. Industries Ltd., et al.*, No. 3:18-cv-1681
3	*State of Alaska Dept. of Revenue, et al. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:18-cv-1721
4	*Pacific Funds Series Trust, et al. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:18-cv-1956
5	*Public School Teachers Pension and Ret. Sys. of Chicago v. Teva Pharm. Indus., Ltd.*, No. 3:19-cv-175
6	*Schwab Capital Trust, et al. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:19-cv-192
7	*Phoenix Ins. Co., Ltd., et al. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:19-cv-449
8	*Mivtachim The Workers Social Ins. Fund Ltd., et al. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:19-cv-513
9	*Clal Ins. Co., Ltd., et al. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:19-cv-543
10	*Highfields Capital I LP, et al. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:19-cv-603
11	*Migdal Ins. Co., Ltd., et al. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:19-cv-655
12	*Harel Pension and Provident Ltd., et al. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:19-cv-656
13	*Oregon v. Teva Pharm. Indus., Ltd., et al.*, No. 3:19-cv-657
14	*Migdal Mutual Funds, Ltd. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:19-cv-923
15	*Psagot Mutual Funds, Ltd., et al. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:19-cv-1167
16	*Stichting PGGM Depositary, et al. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:19-cv-1173
17	*Internationale Kapitalanlagegesellschaft mbH v. Teva Pharm. Indus., Ltd., et al.*, No. 3:20-cv-83
18	*BH Investments Funds, LLC, et al. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:20-cv-1635
19	*Franklin Mutual Series Funds, et al. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:20-cv-1630
20	*TIAA-CREF Investment Management, LLC, et al. v. Teva Pharm. Indus., Ltd., et al.*, No. 3:21-cv-118

EXHIBIT 11

Position	Seq#	Firms	Count	Low	25th Percentile	Median	75th Percentile	High
2025								
Partners								
	1)	Akin Gump Strauss Hauer & Feld LLP	5	$2,250	$2,495	$2,495	$2,495	$2,495
	2)	Davis Polk & Wardwell LLP	11	$2,610	$2,610	$2,645	$2,645	$2,645
	3)	Jones Day	6	$1,237	$1,406	$1,620	$1,766	$1,850
	4)	Kirkland & Ellis LLP	263	$1,070	$1,665	$1,845	$2,210	$2,675
	5)	Latham & Watkins LLP	24	$1,510	$1,765	$1,846	$2,052	$2,466
	6)	Milbank LLP	24	$1,695	$1,948	$2,245	$2,348	$2,475
	7)	Morrison & Foerster LLP	19	$1,600	$1,738	$1,850	$2,050	$2,200
	8)	Paul Hastings LLP	9	$1,175	$2,010	$2,025	$2,175	$2,520
	9)	Paul, Weiss, Rifkind, Wharton & Garrison LLP	7	$2,245	$2,298	$2,350	$2,595	$2,595
	10)	Proskauer Rose LLP	8	$1,705	$1,830	$2,155	$2,346	$2,505
	11)	Quinn Emanuel Urquhart & Sullivan LLP	8	$1,525	$1,731	$1,810	$1,958	$2,115
	12)	Sidley Austin LLP	59	$1,675	$1,790	$1,870	$1,950	$2,530
	13)	Skadden, Arps, Slate, Meagher & Flom LLP	8	$1,995	$2,089	$2,120	$2,281	$2,375
	14)	Willkie Farr & Gallagher LLP	3	$1,625	$1,988	$2,350	$2,425	$2,500
Of Counsel								
	1)	Akin Gump Strauss Hauer & Feld LLP	6	$1,495	$1,556	$1,600	$1,700	$1,800
	2)	Davis Polk & Wardwell LLP	11	$1,830	$2,040	$2,040	$2,040	$2,645
	3)	Jones Day	1	$923	$923	$923	$923	$923
	4)	Kirkland & Ellis LLP	1	$1,895	$1,895	$1,895	$1,895	$1,895
	5)	Latham & Watkins LLP	6	$1,674	$1,713	$1,770	$1,798	$1,860
	6)	Milbank LLP	12	$1,575	$1,575	$1,735	$1,735	$1,975
	7)	Morrison & Foerster LLP	3	$1,425	$1,425	$1,425	$1,700	$1,975
	8)	Paul, Weiss, Rifkind, Wharton & Garrison LLP	1	$2,595	$2,595	$2,595	$2,595	$2,595
	9)	Proskauer Rose LLP	1	$1,690	$1,690	$1,690	$1,690	$1,690
	10)	Quinn Emanuel Urquhart & Sullivan LLP	4	$1,465	$1,660	$1,750	$1,786	$1,820
	11)	Sidley Austin LLP	6	$1,570	$1,570	$1,570	$1,623	$1,790
	12)	Skadden, Arps, Slate, Meagher & Flom LLP	3	$1,580	$1,688	$1,795	$2,135	$2,475
	13)	Willkie Farr & Gallagher LLP	1	$1,650	$1,650	$1,650	$1,650	$1,650
Associates								
	1)	Akin Gump Strauss Hauer & Feld LLP	8	$895	$970	$995	$1,120	$1,310
	2)	Davis Polk & Wardwell LLP	27	$965	$1,670	$1,760	$1,780	$1,780
	3)	Jones Day	9	$517	$653	$700	$850	$950
	4)	Kirkland & Ellis LLP	407	$723	$975	$1,095	$1,324	$1,625
	5)	Latham & Watkins LLP	33	$760	$975	$1,230	$1,465	$1,630
	6)	Milbank LLP	58	$575	$1,125	$1,255	$1,398	$1,735
	7)	Morrison & Foerster LLP	21	$795	$925	$1,180	$1,285	$1,330
	8)	Paul Hastings LLP	12	$895	$1,113	$1,460	$1,501	$1,590
	9)	Paul, Weiss, Rifkind, Wharton & Garrison LLP	14	$975	$1,470	$1,533	$1,690	$2,445
	10)	Proskauer Rose LLP	11	$1,045	$1,123	$1,360	$1,413	$1,560
	11)	Quinn Emanuel Urquhart & Sullivan LLP	16	$885	$1,245	$1,465	$1,560	$1,665
	12)	Sidley Austin LLP	142	$835	$835	$1,045	$1,355	$1,530
	13)	Skadden, Arps, Slate, Meagher & Flom LLP	17	$745	$1,280	$1,430	$1,560	$1,685
	14)	Willkie Farr & Gallagher LLP	3	$720	$973	$1,225	$1,363	$1,500
Paralegals								
	1)	Akin Gump Strauss Hauer & Feld LLP	6	$355	$476	$498	$515	$555
	2)	Davis Polk & Wardwell LLP	5	$505	$505	$515	$515	$515
	3)	Kirkland & Ellis LLP	62	$355	$425	$495	$525	$685
	4)	Latham & Watkins LLP	8	$400	$488	$530	$581	$615
	5)	Milbank LLP	1	$475	$475	$475	$475	$475
	6)	Morrison & Foerster LLP	4	$390	$390	$443	$518	$585
	7)	Paul Hastings LLP	2	$400	$413	$425	$438	$450
	8)	Paul, Weiss, Rifkind, Wharton & Garrison LLP	6	$490	$490	$490	$516	$560
	9)	Proskauer Rose LLP	3	$485	$490	$495	$495	$495
	10)	Quinn Emanuel Urquhart & Sullivan LLP	3	$455	$475	$495	$503	$510
	11)	Sidley Austin LLP	25	$370	$400	$525	$600	$650
	12)	Skadden, Arps, Slate, Meagher & Flom LLP	4	$550	$550	$550	$558	$580
	13)	Willkie Farr & Gallagher LLP	2	$380	$433	$485	$538	$590
Law Clerk								
	1)	Davis Polk & Wardwell LLP	7	$1,065	$1,065	$1,065	$1,065	$1,065
	2)	Quinn Emanuel Urquhart & Sullivan LLP	2	$645	$775	$905	$1,035	$1,165
	3)	Sidley Austin LLP	13	$505	$835	$835	$835	$835
	4)	Willkie Farr & Gallagher LLP	2	$625	$625	$625	$625	$625
Staff Attorney								
	1)	Akin Gump Strauss Hauer & Feld LLP	1	$850	$850	$850	$850	$850
	2)	Jones Day	1	$607	$607	$607	$607	$607
	3)	Milbank LLP	14	$350	$350	$350	$350	$350

Position	Firms	Count	Low		25th Percentile		Median		75th Percentile		High	
2025			Rate	(%Diff.)	Rate	(%Diff.)	Rate	(%Diff.)	Rate	(%Diff.)	Rate	(%Diff.)
All Partners												
	All Firms Sampled	454	$1,070	(+34%)	$1,710	(+85%)	$1,895	(+80%)	$2,245	(+102%)	$2,675	(+95%)
	Labaton Keller Sucharow LLP	**27**	**$800**		**$925**		**$1,050**		**$1,113**		**$1,375**	
Senior Partners												
	All Firms Sampled	322	$1,145	(+39%)	$1,835	(+82%)	$2,050	(+91%)	$2,295	(+104%)	$2,675	(+95%)
	Labaton Keller Sucharow LLP	**22**	**$825**		**$1,006**		**$1,075**		**$1,125**		**$1,375**	
Mid-Level Partners												
	All Firms Sampled	34	$1,555	(+88%)	$1,618	(+90%)	$1,710	(+95%)	$1,968	(+125%)	$2,610	(+198%)
	Labaton Keller Sucharow LLP	**3**	**$825**		**$850**		**$875**		**$875**		**$875**	
Junior Partners												
	All Firms Sampled	98	$1,070	(+34%)	$1,575	(+97%)	$1,695	(+112%)	$1,735	(+117%)	$2,645	(+231%)
	Labaton Keller Sucharow LLP	**2**	**$800**		**$800**		**$800**		**$800**		**$800**	
Of Counsel												
	All Firms Sampled	56	$923	(+42%)	$1,575	(+110%)	$1,735	(+117%)	$1,915	(+125%)	$2,645	(+152%)
	Labaton Keller Sucharow LLP	**13**	**$650**		**$750**		**$800**		**$850**		**$1,050**	
All Associates												
	All Firms Sampled	778	$517	(+48%)	$975	(+86%)	$1,155	(+110%)	$1,375	(+124%)	$2,445	(+249%)
	Labaton Keller Sucharow LLP	**47**	**$350**		**$525**		**$550**		**$613**		**$700**	
Senior Associates												
	All Firms Sampled	158	$720	(+25%)	$1,330	(+122%)	$1,465	(+130%)	$1,524	(+134%)	$2,445	(+249%)
	Labaton Keller Sucharow LLP	**18**	**$575**		**$600**		**$638**		**$650**		**$700**	
Mid-Level Associates												
	All Firms Sampled	157	$595	(+19%)	$1,225	(+123%)	$1,345	(+145%)	$1,375	(+150%)	$1,780	(+224%)
	Labaton Keller Sucharow LLP	**16**	**$500**		**$550**		**$550**		**$550**		**$550**	
Junior Associates												
	All Firms Sampled	415	$517	(+48%)	$880	(+151%)	$985	(+181%)	$1,095	(+109%)	$1,735	(+230%)
	Labaton Keller Sucharow LLP	**13**	**$350**		**$350**		**$350**		**$525**		**$525**	
Paralegals												
	All Firms Sampled	131	$355	(+58%)	$435	(+9%)	$495	(+24%)	$550	(+33%)	$685	(+49%)
	Labaton Keller Sucharow LLP	**20**	**$225**		**$400**		**$400**		**$415**		**$460**	
Staff Attorneys												
	All Firms Sampled	16	$350	(+1%)	$350	(-7%)	$350	(-18%)	$350	(-26%)	$850	(+70%)
	Labaton Keller Sucharow LLP	**134**	**$345**		**$375**		**$425**		**$475**		**$500**	
Investigators												
	All Firms Sampled	0	$0	(+0%)	$0	(+0%)	$0	(+0%)	$0	(+0%)	$0	(+0%)
	Labaton Keller Sucharow LLP	**8**	**$165**		**$419**		**$500**		**$506**		**$525**	
Law Clerks												
	All Firms Sampled	24	$505	(+102%)	$835	(+204%)	$835	(+204%)	$1,065	(+255%)	$1,165	(+79%)
	Labaton Keller Sucharow LLP	**14**	**$250**		**$275**		**$275**		**$300**		**$650**	