

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE MINDBODY, INC. SECURITIES
LITIGATION

Civil Action No. 1:19-cv-08331-VEC

**DECLARATION OF CAROL C. VILLEGAS IN SUPPORT OF CO-LEAD PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND
PLAN OF ALLOCATION AND LEAD COUNSEL'S MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND PAYMENT OF EXPENSES**

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

1. I am a member of the law firm of Labaton Sucharow LLP (“Labaton Sucharow”), which serves as court-appointed Lead Counsel for Co-Lead Plaintiffs Walleye Trading LLC and Walleye Opportunities Master Fund Ltd. (“Co-Lead Plaintiffs”).¹ I have been actively involved throughout the prosecution and resolution of the Action, am familiar with its proceedings, and have personal knowledge of the matters set forth below based upon my close supervision of the material aspects of the Action.

2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, I submit this declaration in support of Co-Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation, as well as Lead Counsel’s Motion for an Award of Attorneys’ Fees and Payment of Expenses. Both motions have the full support of Co-Lead Plaintiffs. *See* Declaration of Andrew Carney on behalf of Co-Lead Plaintiffs (the “Carney Decl.”), dated September 26, 2022, attached as Exhibit 1.² To date, there have been no objections to any aspect of the Settlement.

I. PRELIMINARY STATEMENT

3. Co-Lead Plaintiffs have succeeded in obtaining a favorable recovery for the Settlement Class in the amount of \$9,750,000 in cash. As set forth in the Stipulation, in exchange for this payment, the proposed Settlement resolves all claims asserted in the Action by Co-Lead

¹ All capitalized terms not otherwise defined below have the same meaning as in the Stipulation and Agreement of Settlement, dated as of March 3, 2022 (the “Stipulation”, ECF No. 118-1).

² Citations to “Exhibit” or “Ex. ___” refer to exhibits to this Declaration. For clarity, exhibits that themselves have attached exhibits will be referenced as “Ex. __-__.” The first numerical reference is to the designation of the entire exhibit and the second alphabetical reference is to the exhibit designation within the exhibit itself.

Plaintiffs and the Settlement Class and related claims against the Released Defendant Parties. ECF No. 118-1.

4. This case was vigorously litigated over the course of more than two years. The Settlement was achieved only after Lead Counsel, *inter alia*, and as detailed below: (i) conducted a wide-ranging investigation concerning the allegedly fraudulent misrepresentations and omissions; (ii) prepared and filed two detailed amended class action complaints; (iii) researched and drafted an opposition to Defendants' comprehensive motion to dismiss the amended complaint, after which the Court entered an Order partially granting and partially denying the motion; (iv) moved for class certification, which was accompanied by an expert report on market efficiency and an expert report on corporate valuation; (v) engaged in extensive and thorough fact discovery, including participating in the depositions of 17 witnesses (and was preparing for the depositions of additional witnesses at the time the Parties settled), and analyzing more than 400,000 pages of documents produced by Defendants and third-parties; (vi) filed petitions in Delaware Court of Chancery challenging the confidential treatment of certain documents in the action *In re Mindbody Stockholder Litigation*, C.A. No. 2019-0442-KSJM (Del. Ch.) (the "*Luxor Action*"), a class action and appraisal proceeding challenging the acquisition of Mindbody by Vista Equity Partners ("Vista"), resulting in a partial unsealing of documents relevant to the claims in the Action; (vii) engaged in expert discovery, including retaining professionals with expertise in (a) materiality, loss causation, and damages, (b) corporate valuation and appraisal rights, and (c) the software as a service (or SaaS) industry; and (viii) objected to the proposed settlement of *Philip Ryan Jr. v. Mindbody, Inc.*, C.A. No. 2019-0061-KSJM (Del. Ch), a case seeking to invalidate the Merger (the "*225 Action*"), as overly broad to the extent it would impact the class and claims in

the Action without providing any consideration. At the time the Settlement was reached, Lead Counsel had a thorough understanding of the strengths and weaknesses of the Action.

5. As discussed in detail below, maximum aggregate damages in the Action depended upon which claims Co-Lead Plaintiffs were able to establish and a factual determination of the value of the Mindbody shares sold by class members. Estimated damages ranged from \$133 million to \$453 million. However, loss causation and damages were expected to be especially contested issues in this case, and there was a substantial risk that Co-Lead Plaintiffs would not have succeeded at establishing even the low end of this estimate (\$133 million), even if Co-Lead Plaintiffs succeeded in establishing that Defendants made materially false statements or omissions with the requisite mental state.

6. The \$9,750,000 Settlement, therefore, represents a recovery of approximately 2.2% to 7.3% of the estimated range — a favorable recovery that is well within the range of reasonableness, particularly in light of the countervailing legal and factual arguments tenaciously pursued by Defendants and the attendant litigation risks. *See* Section V, below, and the accompanying Memorandum of Law in Support of Co-Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation (“Settlement Brief”).

7. In deciding to settle, Co-Lead Plaintiffs and Lead Counsel took into consideration the significant risks associated with advancing the claims alleged in the operative complaint, the risks of certifying a class for the full Class Period, and the complexity of the then-upcoming proceedings, including *Daubert* motions directed at experts, summary judgment motions, and trial. The Settlement was achieved in the face of staunch opposition by Defendants who would have, had the Settlement not been reached, continued to raise serious challenges to each of the elements

of Co-Lead Plaintiffs' claims. The Settlement eliminates these risks while providing a guaranteed recovery to the Settlement Class in a timely manner.

8. In addition to seeking approval of the Settlement, Co-Lead Plaintiffs also seek approval of the proposed Plan of Allocation for distributing the proceeds of the Settlement. As discussed in further detail below and in the Settlement Brief, the proposed Plan of Allocation was developed by Lead Counsel with the assistance of Co-Lead Plaintiffs' damages expert, reflects the theory of the case, and will provide for the fair and equitable distribution of the Net Settlement Fund to Settlement Class Members who submit Claim Forms that are approved for payment.

9. With respect to the Fee and Expense Application, as discussed in Lead Counsel's Memorandum of Law in Support of Motion for an Award of Attorneys' Fees and Payment of Expenses ("Fee Brief"), the requested fee of 30% of the Settlement Fund would be fair to the Settlement Class, and warrants the Court's approval. This fee request is within the range of fee percentages frequently awarded in this type of action and would provide no multiplier on Lead Counsel's lodestar to date. Lead Counsel also seeks Litigation Expenses totaling \$560,715.36 and an award to Co-Lead Plaintiffs, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4(a)(4), in the amount of \$8,000 — which, when combined, are less than the cap on expenses of \$800,000 provided for in the Notice.

II. SUMMARY OF CO-LEAD PLAINTIFFS' CLAIMS

10. Mindbody, Inc. was a publicly traded company providing business management software for the wellness services industry and a rapidly growing marketplace for wellness services. ECF No. 22, ¶2. This lawsuit alleged that Mindbody issued 4Q18 guidance that was lower than Mindbody's true expectations, allegedly to lower its stock price and tee up a takeover by Vista Equity Partners ("Vista"). *Id.* ¶¶1-32. As the deal proceeded, the lawsuit alleged, Defendants issued misleading information about the deal, including denying that Defendant

Stollmeyer had engaged in any discussions with Vista about post-merger employment, and allegedly omitted to disclose that the Company's 4Q18 results had exceeded the guidance they had previously issued. *Id.*

11. The First Amended Complaint asserted violations of Sections 10(b), 14(a), and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder by Mindbody, Richard L. Stollmeyer, Brett White, and Eric Liaw. ECF No. 22.

12. Defendants filed a motion to dismiss the First Amended Complaint, which after fulsome briefing (including sur-replies), resulted in the Court sustaining only certain claims related to misstatements and omissions after the merger was announced, and dismissing claims relating to the 4Q18 guidance. ECF No. 52. The parties then began formal discovery, and Co-Lead Plaintiffs uncovered additional facts that they believed supported their allegation that the 4Q18 guidance was actionable and misleading. As a result, Co-Lead Plaintiffs filed a motion to amend the complaint to add allegations related to those additional facts. After thorough briefing, the Court granted the motion to amend. ECF No. 93.

13. Co-Lead Plaintiffs' core theory of the case was that Defendants' statements and omissions defrauded Mindbody investors into selling their shares at less than fair value.

III. RELEVANT PROCEDURAL HISTORY

A. Commencement of the Action and Appointment of Co-Lead Plaintiffs and Lead Counsel

14. The Action was commenced on September 6, 2019, with the filing of a putative securities class action in this Court by one of the two Co-Lead Plaintiffs. ECF No. 1. On November 5, 2019, consistent with the PSLRA, Co-Lead Plaintiffs moved for appointment as Lead Plaintiff and Lead Counsel moved for appointment as Lead Counsel. ECF Nos. 12-15. No other

plaintiff or firm moved for such appointment. On November 7, 2019, the Court granted Co-Lead Plaintiffs' Motion. ECF No. 16.

B. The First Amended Complaint

15. On December 20, 2019, Co-Lead Plaintiffs filed the first Amended Complaint asserting claims against Defendants Mindbody, Richard L. Stollmeyer, Brett White, and Eric Liaw under Sections 10(b), 14(a), and 20(a) of the Exchange Act. ECF No. 22.

16. Co-Lead Plaintiffs engaged in a thorough investigation for the purpose of drafting the comprehensive Amended Complaint so that it would survive the strictures of the PSLRA. The Amended Complaint was the result of a significant effort by Lead Counsel that included, among other things, a review of Securities and Exchange Commission ("SEC") filings by Mindbody, conference call transcripts, news articles, press releases and other public statements by the Company, analyst reports about the Company, secondary sources about typical M&A practices, other publicly available sources, interviews with 25 former Mindbody employees, and consultation with individuals with expertise in damages.

17. As part of their investigation, Co-Lead Plaintiffs successfully contested the confidential status of documents filed in *In re Mindbody Inc. Stockholder Litigation*, No. 2019-0442-KSJM (Del. Ch.), which resulted in documents from that action being made available to the public. Co-Lead Plaintiffs were able to review those documents and utilize the information in them to bolster their pleadings.

18. Lead Counsel's preparation of the thorough Amended Complaint required many meetings to discuss strategy and a high degree of partner and senior associate-level involvement, given the complexities of the case. The litigation of the claims required an understanding of both the securities laws, Mindbody's business, and its dealmaking process, including the ways the

process would have involved discrete decisions that Co-Lead Plaintiffs believed could bolster the allegations.

C. Defendants' Motion to Dismiss the Amended Complaint

19. On January 17, 2020, Defendants sought leave to file an oversized motion to dismiss, given the “complexity” of the case. ECF No. 29. The Court granted their unopposed motion for oversized briefing. ECF No. 30.

20. On February 18, 2020, Defendants filed their motion to dismiss. ECF Nos. 35-36. Defendants argued, among other things, that Co-Lead Plaintiffs failed to: (i) allege with the required specificity why any of the alleged misstatements were false, or why Defendants' purported omissions were actionable; or (ii) plead the highly particularized allegations of scienter required by Rule 9(b) of the Federal Rules of Civil Procedure and the PSLRA.

21. Regarding the falsity of statements or omissions, Defendants divided up the statements and omissions into ten categories and argued none were actionable. With respect to scienter, Defendants argued that management was incentivized to seek the highest deal price such that the theory of the fraud did not make sense, and that the allegations of recklessness or knowledge were insufficiently strong to meet the PSLRA's pleading burden.

22. Co-Lead Plaintiffs filed an opposition to Defendants' motion to dismiss the Complaint on April 3, 2020. ECF No. 39. Co-Lead Plaintiffs argued that they had sufficiently alleged that Defendants made materially false and misleading statements and omissions. Co-Lead Plaintiffs also identified a critical well pled allegation that Defendants failed to address, regarding a Delaware law duty to disclose material information before the Merger, which Co-Lead Plaintiffs alleged could support an allegation of an “omission” under federal securities law.

23. With respect to scienter, Co-Lead Plaintiffs detailed how the alleged fraud served Defendants' incentives, such as by allowing much needed immediate liquidity, and because of the specific dynamics of post-private equity acquisition compensation of retained managers.

24. On May 4, 2020, Defendants filed a reply brief in further support of their motion to dismiss the Amended Complaint. ECF No. 42.

25. Co-Lead Plaintiffs filed a letter on May 6, 2020 requesting leave to file a sur-reply to address arguments, raised by Defendants for the first time in reply, regarding the alleged omissions in violation of Delaware law duties. ECF No. 43. The Court granted leave to file a sur-reply but permitted Defendants their own sur-sur reply. ECF Nos. 44, 48.

26. On August 24, 2020, Defendants filed a letter regarding purported supplemental authority (ECF No. 50) and Co-Lead Plaintiffs filed a response the following day (ECF No. 51).

27. Altogether (including the supplemental authority letters), there was 136 pages of briefing on the motion to dismiss, far more than is typical even in securities class action cases, demonstrating the complexity of the case and the vigor of the litigation.

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

28. On September 25, 2020, the Court issued a detailed Order and Opinion partially denying Defendants' motion to dismiss. ECF No. 52 (reported as *In re Mindbody Inc., Securities Litigation*, 489 F. Supp. 3d 188 (S.D.N.Y. 2020)). The Court found that statements regarding the Merger premium and the absence of pre-merger employment discussions found in the merger proxies was adequately pled as materially misleading. The Court also found that scienter was adequately pled as to these claims.

29. Additionally, the Court found that Defendants' failure to disclose the known 4Q18 results constituted an actionable material omission, based upon the affirmative duty to disclose non-public information prior to a Merger owed by Defendants under Delaware law. While Co-

Lead Plaintiffs pled this omissions theory based upon a strong belief that it was legally and factually valid (which was ultimately credited by the Court), it is a good example of the complex and innovative legal work that resulted in the success of this case, as Co-Lead Plaintiffs developed this case theory based on a careful reading of the history of “omissions” cases and an understanding of both federal securities law and Delaware fiduciary law.

30. However, the Court also found that several of the claims were not adequately alleged to be false and misleading. Most notably, the Court found that the 4Q18 guidance statements and statements concerning the rationale for that guidance were insufficient, because Co-Lead Plaintiffs did not have sufficient support that the public guidance was lower than true expectations within the Company. With this ruling, the actionable class period was shortened to a period from December 26, 2018 to February 14, 2019. However, as referenced below, the full Class Period was restored in the second amended complaint with the amended allegations concerning the 4Q18 guidance.

31. On October 30, 2020, Defendants filed their Answer to the Amended Complaint, denying the Amended Complaint’s substantive allegations and raising 21 affirmative defenses. ECF No. 61.

E. Discovery

32. After the Court’s order partially denying the motion to dismiss, the Parties quickly went to work on discovery. From the beginning, discovery was hard fought. The Parties attempted to work collaboratively to agree upon a case management schedule, but ultimately reached an impasse on the issue of whether discovery should be “bifurcated,” with Defendants contending that a motion for class certification should come early and all discovery should be limited to class certification issues until they motion was decided. The Parties submitted competing proposals to the Court and the Court held a hearing on the issue, before ultimately deciding in Co-Lead

Plaintiffs' favor that class certification should occur after sufficient discovery to determine the contours of the case that would be tried. ECF Nos. 57, 58.

33. Following that ruling, the Parties again worked collaboratively to determine an efficient discovery schedule. In particular, the Parties negotiated a protocol that would allow Co-Lead Plaintiffs in this Action to participate in depositions scheduled in the ongoing *Luxor Action*, which would avoid the waste of resources and duplication of work while still allowing Co-Lead Plaintiffs to fully develop their claims.

34. As described in more detail in Section IV, below, the discovery in this case was extremely fulsome. The Parties negotiated a protective order and ESI protocol, exchanged document requests and interrogatories, participated in the depositions of 17 witnesses (some of which were multiple days), exchanged voluminous amounts of documents, and worked productively to resolve discovery disputes without the need for Court involvement. Co-Lead Plaintiffs also sought discovery from relevant non-parties through more than 22 subpoenas, negotiated productions pursuant to those subpoenas, and ultimately received more than 64,000 party and non-party documents, which were subject to an efficient review process. Additionally, as detailed below, this case required substantial assistance from experts, requiring Co-Lead Plaintiffs to interview many prospective experts and ultimately retain experts in the fields of damages and market efficiency, corporate valuation, and software companies. Before settlement, Co-Lead Plaintiffs' experts prepared reports in connection with class certification on damages, valuation, and market efficiency.

F. Co-Lead Plaintiffs' Motion to Amend

35. In early 2020, Co-Lead Plaintiffs faced a complex strategic choice. The deadline for class certification was fast approaching, and Co-Lead Plaintiffs were eager to secure certification for the class, however evidence produced in discovery had, in Co-Lead Plaintiffs'

view, substantially strengthened the claims regarding the 4Q18 guidance that the Court had previously found to be insufficiently pled, as well as additional evidence that Co-Lead Plaintiffs believed strengthened the allegations concerning Defendants' motives with respect to those claims. Furthermore, any motion for class certification would require complex analysis of how best to position the potential class for success, and the answer to that question could depend on whether the Court granted Co-Lead Plaintiffs leave to amend.

36. Co-Lead Plaintiffs determined that the best path forward would be to amend the complaint and to postpone the class certification motion, but doing so required Co-Lead Plaintiffs to continue working to prepare for class certification to ensure a motion would be ready if the extension were denied and, moreover, if the Court quickly denied the motion to amend.

37. After several, unsuccessful, conferences with Defendants' Counsel concerning a consented to schedule for amending the complaint and filing a motion for class certification, Co-Lead Plaintiffs moved for an extension of the deadline for a class certification motion and a schedule for a motion to amend on February 19, 2021, ECF No. 68, which the Court granted the following day, ECF No. 69.

38. While the motion to amend was being prepared, an additional complexity arose. The case was in the middle of discovery, and in light of the PSLRA the Court had ordered discovery stayed while the motion to amend was pending. However, the Parties had previously agreed to a discovery protocol wherein Co-Lead Plaintiffs would participate in depositions noticed in the *Luxor Action*, which would be disrupted if discovery was halted. As such, the Parties worked to negotiate a resolution that would be mutually acceptable, while avoiding any burden to the Court, and proposed a limited ability to continue discovery while the motion to amend was pending, ECF No. 78, which the Court granted on March 3, 2021, ECF No. 79.

39. Co-Lead Plaintiffs then prepared the motion to amend, highlighting the new evidence supporting their claims and, on February 24, 2021, filed a letter motion discussing why leave to amend was appropriate. ECF No. 71. Defendants filed a full opposition brief arguing both the merits of the proposed amended complaint (raising complex issues about the application of the PSLRA safe harbor to guidance statements) and claiming the amendment was barred by the prior decision on the motion to dismiss. ECF No. 86. Co-Lead Plaintiffs then filed a reply, carefully analyzing the law regarding whether the prior motion to dismiss opinion barred further amendment to renew the 4Q18 guidance. Additionally, Co-Lead Plaintiffs carefully analyzed the PSLRA issues and the factual theory Defendants advanced, *i.e.*, that issuing guidance below true expectations is normal and not fraudulent, which among other things, required a detailed review of secondary sources to fully understand corporate practices and the merits of this defense.

40. The briefing on the motion to amend was further complicated by the fact that the amendment was partially predicated on information obtained in discovery and marked confidential. Thus, Co-Lead Plaintiffs worked expeditiously and efficiently to simultaneously, ensure the motion for class certification would be ready when needed, continue with the approved of discovery efforts, draft the proposed amended complaint, litigate merits and procedural issues about that motion to amend, collaborate with Defendants on the treatment of potentially confidential information, and move the Court for confidential treatment of information at Defendants request. *See* ECF Nos. 80, 84.

41. On August 9, 2021, the Court granted Co-Lead Plaintiffs motion to amend finding that Co-Lead Plaintiffs' new allegations sufficiently pled falsity and scienter as to the 4Q18 guidance statements. ECF No. 92-93. On August 18, 2021, Co-Lead Plaintiffs promptly filed the

second amended complaint (the “SAC”). ECF No. 95. On August 27, 2021, Defendants promptly filed an answer to the SAC. ECF No. 98.

G. Motion for Class Certification

42. On October 15, 2021, Co-Lead Plaintiffs moved for certification of the class, appointment as class representatives pursuant to Rules 23(a) and 23(b)(3), and appointment of Labaton Sucharow LLP as Lead Counsel. ECF Nos. 105-08.

43. In connection with this motion, Co-Lead Plaintiffs filed an expert report on market efficiency by Mr. Coffman, CFA. ECF No. 107-1. Mr. Coffman conducted a detailed event study concerning: (i) the average weekly trading volume of Mindbody’s stock, (ii) the number of securities analysts following and reporting on Mindbody, (iii) the extent to which market makers traded in Mindbody’s stock, (iv) Mindbody’s eligibility to file an SEC registration Form S–3, and (v) the demonstration of a cause and effect relationship between unexpected, material disclosures and changes in Mindbody’s stock’s price. Mr. Coffman concluded that the market for Mindbody’s stock was efficient throughout the Class Period. This analysis included a consideration of the market conditions unique to Mindbody’s status for a portion of the Class Period as a company subject to an ongoing proposed acquisition.

44. Additionally, Co-Lead Plaintiffs submitted an expert report from Benjamin Sacks, a leading expert on corporate valuation at the Brattle Group, on the subject of valuation. ECF No. 107-2. The efforts to determine the correct approach to valuation were substantial. Unlike most securities fraud cases, there was not a simple “corrective event” through which damages could be measured. Co-Lead Plaintiffs believed, and believe, that a correct measure of damages in a seller case is to determine the fair value of the stock at the time of the sale and subtract from that the price received upon selling.

45. Establishing valuation in this context was complicated due to the interplay of Co-Lead Plaintiffs' views that: (i) the market price of Mindbody shares was artificially low throughout the Class Period because of Defendants' allegedly misleading 4Q18 guidance; (ii) the additional misrepresentations and omissions also resulted in shareholders receiving less than fair value upon selling both their shares in the open market and their shares into the Merger; (iii) the omissions were "continuing," such that every subsequent day that Defendants failed to disclose required information, they defrauded those who sold shares after that omission; (iv) the touted premium was misleading, but the Merger was at a price at or around the price before the issuance of the 4Q18 guidance; (v) Mindbody's stock price had traded in a range far above that price as recently as a month prior to the 4Q18 guidance; (vi) Vista had indicated a willingness to pay a "substantial premium" to that higher trading price; and (vii) non-public information supporting a higher valuation existed, in addition to the information that Co-Lead Plaintiffs had pled was misrepresented or fraudulently omitted..

46. As discussed below, before Defendants filed their opposition to class certification, the Parties reached an agreement to settle.

H. Mediation

47. At various points during the litigation, counsel for the Parties conferred about the possibility of a pre-trial resolution of the Action. The Parties agreed to engage in mediation and retained Michelle Yoshida of Phillips ADR ("Mediator") to act as mediator in the Action.

48. On May 12, 2021, the Parties participated in a full-day mediation session before the Mediator. In advance of the session, the Parties provided detailed mediation statements and exhibits to the Mediator, which addressed issues of liability, class certification, and damages. However, no agreement was reached during the mediation.

49. The Parties continued to actively discuss a potential settlement with the assistance of the Mediator over the course of the next several months. On November 30, 2021, the Mediator made a formal mediator's proposal recommending that the Parties agree to settle the case for \$9,750,000. On December 2, 2021, the Parties accepted the mediator's proposal, which was memorialized in a binding term sheet executed and finalized on December 22, 2021 (the "Term Sheet"), subject to the execution of a "customary long form" stipulation and agreement of settlement and related papers. On December 22, 2021, the Parties notified the Court of the Settlement and requested a stay of the Action, which was ordered on December 23, 2021. ECF No. 112.

50. The Parties subsequently negotiated and executed the Stipulation, which sets forth the final terms and conditions of the Settlement, including, among other things, a release of all claims asserted against Defendants in the Action and related claims ("Released Plaintiff's Claims"). Once the Settlement reaches its Effective Date, the Released Plaintiff's Claims against Defendants and the other Released Defendant Parties will be forever dismissed with prejudice.

51. In exchange for these releases, Mindbody has caused the payment of \$9,750,000 for the benefit of the Settlement Class.

IV. DISCOVERY

52. As explained below, Co-Lead Plaintiffs: (i) prepared and served detailed discovery requests on Defendants, including Requests for Production of Documents, Interrogatories, and Requests for Admission; (ii) met and conferred with Defense Counsel remotely on numerous occasions concerning the discovery; (iii) prepared and served 22 subpoenas on non-parties and negotiated the production of information pursuant to many of those subpoenas; (iv) received approximately 400,000 pages of production documents; (v) participated in 19 remote depositions (for the depositions of 17 different people); (vi) negotiated and resolved myriad discovery disputes;

and (vii) engaged and consulted frequently with several experts, who were preparing expert reports before the Parties reached a settlement.

53. Prior to document production by the Parties, Lead Counsel and Defendants' Counsel negotiated a comprehensive confidentiality agreement, detailing two levels of confidentiality. The protective order was So Ordered by the Court on November 24, 2020. ECF No. 67.

54. During discovery, Lead Counsel operated efficiently and flexibly, altering the size of the litigation team to fit the needs of the case and designating sub-teams to handle the many different aspects of discovery, such as Co-Lead Plaintiffs' document production, Defendants' production, non-party productions, and deposition preparation.

A. Discovery Propounded on Defendants

55. Co-Lead Plaintiffs served their first set of document requests on Defendants on November 10, 2020. Thereafter, Co-Lead Plaintiffs served their second set of document requests on Defendants on November 23, 2020. Co-Lead Plaintiffs served their first set of interrogatories on Defendants on December 2, 2020.

56. The Parties engaged in numerous remote meet-and-confer conferences and exchanged multiple meet and confer letters and emails, as to the scope and manner of the requested document productions, privilege logs, interrogatories, and alleged discovery deficiencies. Through this comprehensive effort, the Parties were able to reach an understanding as to the scope of Defendants' discovery, and reached many compromises without having to request the Court's assistance.

57. Co-Lead Plaintiffs conducted an efficient review of the documents produced in discovery. Defendants began a rolling production of documents on December 8, 2020. To

facilitate an economical and time-efficient document review process, all of the documents were placed in an electronic database, using a platform called Relativity to organize the data.

58. A small team of three experienced Labaton Sucharow attorneys reviewed and analyzed the production. These document review attorneys have all worked on multiple securities cases while at Labaton, specialize in securities and/or corporate governance litigation, and are experienced in utilizing the latest technology with respect to document review. Each were W-2 employees of Labaton, which means that the firm paid FICA and Medicare taxes on their behalf, along with state and federal unemployment taxes. Once certain eligibility requirements were met, these attorneys had access to the firm's 401(k) program and were eligible to receive year-end bonuses.

59. The review began in December 2020 and peaked in March 2021 with three reviewers. These attorneys were integral to the litigation team and focused on reviewing Defendants' and third-parties' document productions for the purpose of preparing for class certification, fact depositions, expert reports and depositions, as well as a large volume of Co-Lead Plaintiffs' discovery to prepare for production pursuant to Defendants' Requests for Production.

60. To efficiently focus on the most relevant documents, these attorneys used the document platform's software tools to analyze and search the data. The team used a variety of methods to conduct targeted searches. The attorneys culled documents based on legal issues, custodians, and relevant time periods, in order to narrow the scope of the review universe.

61. The document review attorneys did not only review documents. They also participated in frequent meetings with more senior attorneys to discuss important documents, deposition preparation efforts, and case strategy. The document review attorneys also: (i) assisted

in selecting relevant documents for expert review; and (ii) assisted in the preparation of deposition binders.

B. Fact Depositions

62. Lead Counsel participated in the depositions of seventeen fact witnesses. The fact depositions took place via electronic methods due to COVID restrictions and for the convenience of the parties. The fact depositions were of:

- (a) Gail Goodman (Director on Mindbody's Board) on December 18, 2020
- (b) Graham Smith (Director on Mindbody's Board) on January 15, 2021
- (c) Cipora Herman (Director on Mindbody's Board) on January 18, 2021
- (d) Dominic Calvani (UBS Private Wealth Advisor) on February 5, 2021
- (e) Court Cunningham (Director on Mindbody's Board) on March 2, 2021
- (f) Derek Klomhaus (Vista Equity Partners, Vice President) on March 29, 2021
- (g) Craig Heinle (Mindbody, Sr. Director of Finance) on April 2, 2021
- (h) Monti Saroya (Vista Equity Partners, Principal) on April 8, 2021
- (i) Defendant Brett White (Mindbody, Chief Financial Officer) on April 13, 2021 and April 16, 2021
- (j) David Handler (Centerview Partners LP, Partner) on April 14, 2021
- (k) Former Defendant Eric Liaw (Director on Mindbody's Board) on April 27, 2021
- (l) Defendant Richard Stollmeyer (Mindbody, Chief Executive Officer) on May 4-5, 2021.
- (m) Brian Sheth (Vista Equity Partners, President) May 17, 2021
- (n) Michael Mansbach (Mindbody, President) May 18, 2021

- (o) Kimberly Lytikainen (Mindbody, General Counsel) May 20, 2021
- (p) Jeffrey Chang (Qatalyst Partners, Partner) May 21, 2021
- (q) Nicholas Stahl (Vista Equity Partners, President) May 24, 2021

63. Collectively, the depositions provided substantial evidence and insight into events during the Class Period, including the process of setting Mindbody's public guidance, Mindbody's financial planning and analysis function, the deal process leading to the Merger, and the public disclosures during the pendency of the Merger. While Co-Lead Plaintiffs believe that the depositions confirmed many of their allegations, they also revealed that Defendants would have arguments in response regarding the motivations for reducing Mindbody's 4Q18 guidance and the reasons for not disclosing Mindbody's 4Q18 results.

64. The Parties were in the process of arranging and preparing for additional fact depositions at the time they reached the Settlement.

C. Discovery Propounded on Co-Lead Plaintiffs

65. Defendants also aggressively sought discovery from Co-Lead Plaintiffs. Defendants' discovery requests led to: (i) the production of approximately 1,130 documents; (ii) a 30(b)(6) deposition notice on Co-Lead Plaintiffs; (iii) multiple meet-and-confer sessions to discuss the scope of Co-Lead Plaintiffs' production, and (iv) a contentious letter writing campaign.

66. While the total number of documents produced was not unusually large, Co-Lead Plaintiffs' document collection was far reaching. Co-Lead Plaintiffs processed approximately 7 terabytes of data as part of the collection process. The nature of Co-Lead Plaintiffs' investment in Mindbody required a broad collection across both identified custodians and shared files. Upon review of the collected information, there was very little correspondence related to Mindbody – a fact Co-Lead Plaintiffs did not believe would have a significant bearing on their ability to demonstrate reliance through the fraud on the market presumption. However, Defendants sought

additional information regarding Co-Lead Plaintiffs trading and how the trading fit into Walleye's overall investment strategy. Through meet and confers the Parties were able to resolve these disputes without court intervention.

67. Defendants also served two sets of interrogatories on Co-Lead Plaintiffs. The first set was served on December 23, 2020. Co-Lead Plaintiffs served their responses and objections on January 25, 2021. Defendants served their second set of interrogatories on October 22, 2021. Co-Lead Plaintiffs were in the process of preparing detailed responses and objections at the time the Parties reached the Settlement.

68. Defendants served a 30(b)(6) deposition notice on Co-Lead Plaintiffs on November 14, 2021. Co-Lead Plaintiffs were in the process of preparing for that deposition at the time of settlement.

D. Non-Party Discovery

69. In addition to the documents collected from Defendants, Lead Counsel also served 22 subpoenas for the production of documents on third-parties that Lead Counsel believed had documentary evidence relevant to the claims in the Action. For example, Co-Lead Plaintiffs sought documents from securities analysts that followed Mindbody during the relevant period of time and on parties that had been contacted as part of the "go shop" portion of the Merger process, wherein other potential acquirors were invited to consider purchasing Mindbody. Additionally, Co-Lead Plaintiffs received documents from Vista (the acquirer), Qatalyst Partners (the investment bank working on the Merger) and UBS (private wealth advisors to Defendants).

70. Defendants served third party subpoenas on three entities (Jet Capital Investors, LP; Provenire Capital LLC; and 4Alphas Capital LLC) that traded securities on Co-Lead Plaintiffs behalf (the "sub advisors") and received documents in response to these subpoenas. Defendants

had given notice of their intent to depose these sub advisors, but depositions had not yet been taken at the time the Settlement was reached.

E. Expert Discovery

71. Co-Lead Plaintiffs worked with three experts during the course of fact discovery and in connection with class certification: (i) Mr. Sacks, to opine on the value of Mindbody's shares; (ii) Mr. Coffman, to opine on market efficiency, loss causation and damages; and (iii) Edward Mallen, to opine on issues related to Mindbody's performance within the context of the Software as a Service industry. At the time the Parties agreed to settle the Action, Mr. Coffman and Mr. Sacks had prepared expert reports in support of Co-Lead Plaintiffs' motion for class certification and were preparing to draft reports on the merits, and Mr. Mallen was preparing to begin drafting his expert report.

72. The experts provided valuable assistance to Lead Counsel and were key with respect to framing arguments and rebuttals to Defendants' challenges.

V. RISKS FACED BY CO-LEAD PLAINTIFFS IN THE ACTION

73. Based on publicly available information and documents obtained through counsel's investigation and the extensive fact and expert discovery conducted in the Action, Lead Counsel believes that it had adduced substantial evidence to support Co-Lead Plaintiffs' and the Settlement Class's claims and was prepared to proceed to trial. However, Lead Counsel also recognized that Co-Lead Plaintiffs and the Settlement Class faced significant risks and defenses in continuing to litigate. If any of the risks materialized, Co-Lead Plaintiffs' and the Settlement Class's potential recovery could be seriously jeopardized. These risks were made apparent through document discovery, depositions, and class certification briefing. Co-Lead Plaintiffs and Lead Counsel carefully considered these risks during the months and weeks leading up to the Settlement and throughout the settlement discussions with Defendants.

74. In agreeing to settle, Co-Lead Plaintiffs and Lead Counsel weighed, among other things, the substantial certain cash benefit to Settlement Class Members against: (i) the uncertainty of certifying a class covering the full Class Period; (ii) the uncertainties of surviving Defendants' upcoming summary judgment motion, which could result in the termination of the Action, no recovery for the Settlement Class, and a lengthy appellate process; (iii) the difficulties and challenges involved in proving falsity, scienter, loss causation, reliance, materiality, and damages at trial; (iv) the fact that, even if Co-Lead Plaintiffs prevailed at summary judgment and trial, any monetary recovery could have been less than the Settlement Amount; and (v) the delays that would follow even a favorable jury finding, including a contested claims process and appeals to the Second Circuit and beyond.

A. Risks at Class Certification

75. At the time the Settlement was reached, Co-Lead Plaintiffs had filed their motion to certify the class and accompanying expert reports, but Defendants had not yet filed their opposition. However, Co-Lead Plaintiffs understood that Defendants would have tenaciously contested Co-Lead Plaintiffs' efforts to certify the class, by arguing, among other things, that: (i) the fraud on the market presumption of reliance could not be applied due to the effect of the Merger on the market for Mindbody's stock; (ii) that Co-Lead Plaintiffs' theory of class-wide damages – which alleged that investors suffered a loss when selling at below the fair value of the stock – was either legally deficient or insufficiently supported; and (iii) Co-Lead Plaintiffs could not serve as a class representative, due to the complexity of their Class Period trading, which included short selling the stock from time to time.

76. As to the fraud on the market presumption, Co-Lead Plaintiffs anticipated that Defendants would argue that the market price for Mindbody stock no longer traded efficiently once the Merger was announced, because the Merger price substantially controlled Mindbody's

stock price from that point going forward. Mr. Coffman prepared an expert report showing that Mindbody's stock did trade efficiently, and Co-Lead Plaintiffs were prepared to defend the economic logic of why market efficiency continues even after a proposed Merger substantially affects a company's trading price. However, this is a complex issue, and posed meaningful risks to Co-Lead Plaintiffs.

77. As to damages, Defendants were likely to challenge the overall theory of damages by arguing that the fair price of Mindbody stock did not exceed the Merger price or trading prices during the Class Period. Co-Lead Plaintiffs were confident that they would prevail on these arguments at the class certification stage, especially because the issue of fair value is a fact issue. However, Defendants would likely have also challenged the ability to model damages (and valuation) throughout the Class Period, by demonstrating complexities with respect to differences in Mindbody's valuation and the effect of the alleged misstatements and omissions throughout the Class Period.

B. Risks in Proving Liability and Damages

78. Beyond class certification challenges, there were significant risks that: (i) the Court would find that Co-Lead Plaintiffs failed to establish falsity, scienter, loss causation, reliance, materiality, or damages as a matter of law at summary judgment; (ii) Defendants would ultimately succeed in their *Daubert* challenges to Co-Lead Plaintiff's experts' analyses; or (iii)—if the Court were to permit the claims to proceed to trial—that a jury (or appeals court) would rule against Co-Lead Plaintiffs on liability and/or damages grounds. While Co-Lead Plaintiffs and Lead Counsel believe they would have advanced strong arguments and evidence on the merits, they nonetheless acknowledge that Defendants' arguments and counter evidence posed very credible threats to Co-Lead Plaintiffs' ability to ultimately succeed. Furthermore, if the Court or a jury were to find that

any of the alleged corrective disclosures identified in the SAC were not actionable, the potential recovery for the class would be significantly diminished.

79. Even beyond these substantial challenges, Defendants would hold Co-Lead Plaintiffs to their burden of proof on each of the elements of securities fraud, and establishing the class's claims would require the jury to make complicated assessments of credibility in several complex and hotly contested factual disputes.

1. Risks in Proving Falsity

80. At summary judgment and trial, Defendants would likely argue that Co-Lead Plaintiffs simply failed to establish that Defendants' statements were false and misleading. For example, Co-Lead Plaintiffs would seek to establish that Mindbody's reduced 4Q18 guidance was misleading, and Defendants would likely have argued that while the number was conservative, it was a fair assessment of where they believed guidance should be set. Defendants would have argued that setting guidance below internal expectations is common practice, and a jury may have credited this argument. On the omission of the 4Q18 results, Defendants would similarly have explained a counter-story as to why they did not disclose those results. As to the employment discussion claims, Defendants would have argued that there was no documentary evidence of such discussions.

81. While the Court credited Co-Lead Plaintiffs' falsity theory in connection with the motion to dismiss, discovery to date was mixed, yielding evidence that was supportive of each sides' arguments—resulting in the possibility that Co-Lead Plaintiffs' claims would be unable to survive summary judgment or presentation to a jury.

2. Risks in Proving Scienter

82. Co-Lead Plaintiffs also faced significant challenges in establishing that Defendants had an intent to deceive or otherwise acted with recklessness nearing such intent.

83. First, Defendants had a persuasive argument that they were motivated to maximize the value of Mindbody stock, and that Co-Lead Plaintiffs' theory that they intentionally reduced the price to further the Merger process was contrary to Defendants' interests. Co-Lead Plaintiffs had a strong explanation of why Defendants were motivated to decrease the stock price, and why they were willing to accept a suboptimal Merger price for greater certainty that a Merger would occur, but this issue would have been factually contentious.

84. Second, while Co-Lead Plaintiffs believe they could have established that Defendants were aware of the true information regarding the disparity between Mindbody's internal forecasts and public guidance, they would have faced strong arguments from Defendants that the statements they made about that guidance were not intended to mislead, but instead were merely an act of appropriate conservative guidance setting.

85. Third, while Co-Lead Plaintiffs also believe they could have shown that Defendants were aware of the 4Q18 results that they omitted to disclose, Defendants would have responded that they believed not publishing the results was the responsible course – and not aimed at misleading. Specifically, Defendants would have argued that the complete financial results for the quarter were complex and the Company had not yet determined the overall effect of those results on its view of future performance, such that any disclosure would have been premature and perhaps given investors an inaccurately optimistic view of the Company. Co-Lead Plaintiffs believe they have responses to these arguments, including documents that Co-Lead Plaintiffs believe spoke to Defendants' true motivations for not disclosing these results, but the issue would have been factually contentious.

3. Risks in Proving Reliance

86. As discussed above, in opposing class certification, Defendants would likely have made strong arguments challenging the applicability of the fraud on the market presumption of

reliance--due to, among other arguments, the effect of the Merger on the market for Mindbody's stock. While Co-Lead Plaintiffs are confident that they ultimately would have prevailed in establishing the applicability of the presumption, there was substantial risk of trying the issue.

87. Co-Lead Plaintiffs also alleged that reliance as to the omission claims could be supported under the "*Affiliated Ute*" presumption of reliance that applies to omissions. Defendants likely would have argued that the *Affiliated Ute* doctrine cannot apply unless the *case* primarily alleged omissions rather than misstatements, and then would have pointed to the alleged false statements (concerning the premium and the guidance) to challenge application of *Affiliated Ute*. Co-Lead Plaintiffs believe that *Affiliated Ute* applies whenever an affirmative duty requires disclosure or whenever the challenged omission is not merely the inverse of a false statement, but the issue would likely have been the subject of substantial legal dispute.

88. Even if Co-Lead Plaintiffs were appointed as the class representatives and the class was certified, Defendants likely would have reasserted these same arguments at summary judgment and at trial—this time, arguing that Co-Lead Plaintiffs had not met their burden to establish an actionable claim, including the element of reliance.

4. Risks in Proving Materiality

89. Defendants also would have likely strenuously challenged materiality. As to the guidance claim, Defendants likely would not have argued that the guidance itself was immaterial, but instead would have argued that to the extent that the failure to disclose the internal forecasts was improper, a proper and fulsome statement about the results would still have included a pessimistic gloss (consistent with their arguments as to why they lowered guidance altogether) that would have offset the significance of the undisclosed information.

90. As to the 4Q18 results, Defendants would have argued that a fulsome disclosure of the results would have also included pessimistic forecasts for the following year that would have

offset the alleged positive results. Furthermore, Defendants would have argued that the results themselves were not overwhelmingly positive, because – while Mindbody’s revenue was good – the quarterly results were more mixed.

91. How a jury would have weighed the competing evidence was far from known.

5. Risks in Proving Loss Causation and Damages

92. Co-Lead Plaintiffs would have also confronted significant challenges in proving loss causation and damages. Proving that the fair value of Mindbody stock was higher than the prices class members received when they sold Mindbody stock would be very difficult, and would have been hotly contested by the Parties’ experts. Although Co-Lead Plaintiffs have retained a well-respected expert to explain why the Company’s fair value exceeded the prices members of the class sold their shares for during the Class Period, Defendants would have put forth their own experts who would argue to the contrary. Ultimately, the fair value of the shares would be the subject of a complex “battle of the experts” and up to a jury to decide.

93. With respect to loss causation, Defendants would have likely argued that the alleged misstatements did not cause Mindbody’s stock price to drop. Among other things, Defendants would argue that to recover damages, Co-Lead Plaintiffs would need to prove that had the 4Q18 results been disclosed, Mindbody’s stock would have actually traded at a higher price. If such a requirement were imposed, proving an alternative price reaction would have been hotly contested by both sides’ experts and could have been viewed by the jury as highly speculative. Regarding the employment statements, Defendants would likely argue that Co-Lead Plaintiffs could not prove the employment statements artificially deflated Mindbody’s stock because, as an initial matter, no such conversations actually took place and, even if they did, there was no evidence that the statements had any impact on Mindbody’s stock price given that the stock price hardly moved on

the days when the statements were made. If such arguments were accepted by the Court or a jury, in whole or part, they would have dramatically limited any recovery for the class.

94. Co-Lead Plaintiffs alleged damages based on the difference between the fair value of Mindbody's common stock and the price received by class members upon selling. The ultimate matter of proving the fair value of Mindbody's stock would have also been a highly contested issue for the fact finder at trial, with the Parties putting forth widely diverging and complex expert evidence.

95. Although a comprehensive appraisal of Mindbody's value had not been completed given the stage of the litigation, Lead Counsel, with the assistance of Co-Lead Plaintiffs' experts, has estimated classwide damages of approximately \$453 million,³ if liability were established with respect to all of the allegedly false statements/omissions alleged in the SAC during the Class Period. However, if Co-Lead Plaintiffs only prevailed on the claims alleging that Mindbody's 4Q18 guidance was false and misleading, estimated classwide damages would decrease to approximately \$299 million.⁴ Additionally, if Co-Lead Plaintiffs only prevailed on the claims alleging Defendants failed to disclose Mindbody's 4Q18 results, estimated classwide damages would decrease to approximately \$133 million.⁵

³ This figure is calculated using an estimated fair value of \$41.25 to \$49.50 per share (based on the price Co-Lead Plaintiffs allege Vista implied it was willing to pay when it offered to pay a "substantial premium" to Mindbody's trading range on October 16, 2018, SAC ¶116), an estimate of approximately 38 million shares sold during the Class Period, and a volume-weighted average sale price of \$33.41 per share. The midpoint of the resulting range is \$453 million.

⁴ This figure is calculated using an estimated fair value of \$41.25 to \$49.50 per share, an estimate of approximately 22 million shares sold during the Class Period, and a volume-weighted average sale price of \$31.13 per share. The midpoint of the resulting range is \$299 million.

⁵ This figure is calculated using an estimated fair value of \$41.25 to \$49.50 per share, an estimate of approximately 16 million shares sold during the Class Period at a volume-weighted average sale price of \$36.53 per share. The midpoint of the resulting range is \$133 million.

96. Here, the lower end of the damages range was a real possibility given, among other reasons: (i) these damage estimates are premised on proving Mindbody's fair value was in the range of \$41.25 to \$49.50 per share, but a reasonable fact finder could have determined that the fair value was lower; and (ii) as the Court expressed during the September 9, 2021 status conference, there was a substantial risk that Co-Lead Plaintiffs would fail to recover on the claim that the 4Q18 guidance was actionable and materially misleading or fraudulent.⁶

C. Risks Attendant at Trial

97. In addition to the specific liability risks discussed above and the typical uncertainties attendant to placing complex securities fraud issues before a jury, a trial of this case presented its own unique hurdles. Given the complexity of the issues involved in this case, including the process of setting corporate guidance, the intricacies of the M&A process and the motives of actors therein, and the valuation of Mindbody's stock, persuasively presenting the case to a jury would have been very challenging.

98. More broadly, in presenting the claims and the documentary and deposition evidence supporting the falsity of the statements, Defendants' scienter, and materiality of the allegedly withheld information, Co-Lead Plaintiffs intended to rely heavily on witnesses aligned with the Defendants and experts who would certainly have been countered by highly credible experts presented by Defendants.

99. Further, at the time the Settlement was reached, the Parties had not yet filed *Daubert* motions, where Defendants would undoubtedly seek to exclude all or most of the

⁶ See, e.g., Hr'g. Tr. Sept. 9, 2019 at 6, Ex. 2 ("Well, I mean, again, I let you amend the complaint but it was barely -- and I let you amend it because I felt like there were fact questions that could only be resolved at summary judgment. But that does not mean that you should think that all of a sudden this case has become a lot more valuable because I am not at all convinced that's [] going to work.").

testimony that Co-Lead Plaintiffs intended to offer through their experts. Had Defendants prevailed in excluding any of this testimony, the presentation of many aspects of Co-Lead Plaintiffs' case would have been decimated.

100. Lastly, even if Co-Lead Plaintiffs were successful in obtaining a jury verdict on all or part of their claims, it was a foregone certainty that a jury verdict would have been just the beginning of a long and arduous post-trial and appellate process. Given the novelty of the issues concerning falsity, scienter, materiality, reliance, and the duties attendant under Section 10(b), an appellate process, with the possibility of reversal, presented a very real hurdle to obtaining a recovery for the class.

VI. SETTLEMENT NEGOTIATIONS

101. The settlement discussions were at all times arm's-length and under the purview of an experienced mediator. Co-Lead Plaintiffs do not believe that a better outcome could have been secured through a negotiated settlement.

102. As discussed above, the settlement negotiations began with a full-day mediation before the Mediator on May 12, 2021. In advance of that mediation, the Parties exchanged detailed mediation statements and exhibits. That initial session was highly substantive. The Parties discussed their respective views regarding liability, class certification, and damages with the Mediator. However, the session did not result in any agreement.

103. The Parties continued to discuss a potential settlement with the assistance of the Mediator over the course of the next several months. On November 30, 2021, the Mediator made a formal mediator's proposal recommending that the Parties agree to settle the case for \$9,750,000. On December 2, 2021, the Parties accepted the Mediator's proposal, subject to the negotiation of a formal settlement agreement. After reaching an agreement on the settlement amount, the Parties worked to draft the Term Sheet.

104. The Parties subsequently negotiated the Stipulation, which sets forth the final terms and conditions of the Settlement, including, among other things, a release of all claims asserted against Defendants in the Action and related claims (Released Plaintiff's Claims). Defendants have agreed to release all Released Defendants' Claims, concerning the prosecution and settlement of the Action, against Co-Lead Plaintiffs and the other members of the Settlement Class. Once the Settlement reaches its Effective Date, the Released Plaintiff's Claims against the Released Defendant Parties and the Released Defendants' Claims against Co-Lead Plaintiffs and the Settlement Class will be forever dismissed with prejudice.

105. Co-Lead Plaintiffs were careful to negotiate release language that would not prevent Settlement Class Members from recovering in the Delaware *Luxor Action*, if any recovery is achieved in that suit.

106. The Parties spent significant time drafting and conferring on, and ultimately memorializing, the terms of the Settlement in the Stipulation, and its associated exhibits, which was filed with the Court on March 3, 2022 (ECF No. 118-1), along with Co-Lead Plaintiff's unopposed motion and supporting memorandum of law seeking preliminary approval of the proposed Settlement (ECF Nos. 117).⁷

⁷ Contemporaneous with executing the Stipulation, as referenced in ¶42, the Parties also executed a Confidential Supplemental Agreement Regarding Requests for Exclusion ("Supplemental Agreement"), which governs the circumstances under which Defendants can terminate the Settlement if a certain threshold of exclusion requests is received. It is typical to keep such agreements confidential so that potential opt outs do not use them to leverage additional recoveries for themselves, at the expense of the class. The Supplemental Agreement was filed with the Court under seal. If the termination threshold is ultimately reached, notice will be filed with the Court before the Settlement Hearing. The term sheet, Stipulation, and Supplemental Agreement are the only agreements between the Parties in connection with the Settlement.

VII. CO-LEAD PLAINTIFFS' COMPLIANCE WITH THE PRELIMINARY APPROVAL ORDER AND THE REACTION OF THE SETTLEMENT CLASS

107. On June 3, 2022, the Court granted Co-Lead Plaintiffs' unopposed motion for preliminary approval of the Settlement (the "Preliminary Approval Order"). ECF No. 130. Pursuant to the Preliminary Approval Order, the Court: (i) preliminarily approved the Settlement; (ii) approved the forms and manner of notice to the Settlement Class; and (iii) preliminarily certified, for Settlement purposes only, the Settlement Class and appointed Co-Lead Plaintiffs as Class Representatives and Labaton Sucharow LLP as Class Counsel for the Settlement Class. *Id.*

108. Pursuant to the Preliminary Approval Order, the Court appointed Strategic Claims Services ("SCS") as the Claims Administrator and instructed SCS to disseminate copies of the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses and Proof of Claim (collectively the "Notice Packet") and to publish the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses. Prior to selecting SCS, Lead Counsel received bids from other highly regarded and experienced claims administration firms and ultimately selected SCS based on its fee proposal and familiarity with "seller" cases.

109. The Notice, attached as Exhibit A to the Declaration of Josephine Bravata Concerning (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion and Objections Received to Date, dated September 30, 2022 (the "Mailing Declaration", Ex. 3), provides potential Settlement Class Members with information about the terms of the Settlement and, among other things: their right to opt-out of the Settlement Class; their right to object to any aspect of the Settlement, the Plan of Allocation, or the Fee and Expense Application; and the manner for submitting a Claim Form to be eligible for a payment from the net proceeds of the Settlement. The Notice also informs Settlement Class

Members of Lead Counsel's intention to apply for an award of attorneys' fees of no more than 30% of the Settlement Fund and for payment of Litigation Expenses in an amount not to exceed \$800,000.

110. As detailed in the Mailing Declaration, on June 7, 2022, SCS began mailing Notice Packets to potential Settlement Class Members as well as banks, brokerage firms, and other third party nominees whose clients may be Settlement Class Members. Ex. 3 at ¶¶3-8. In total, to date, SCS has mailed 22,387 Notice Packets to potential Settlement Class Members and nominees by first-class mail, postage prepaid. *Id.* at ¶8.

111. On June 27, 2022, SCS caused the Summary Notice to be published in *The Wall Street Journal* and on July 1, 2022 to be transmitted over the *PR Newswire* for dissemination across the internet. *Id.* at ¶10 and Exhibit B attached thereto.

112. SCS also maintains and posts information regarding the Settlement on its website, www.StrategicClaims.net/mindbody/, to provide Settlement Class Members with information, including downloadable copies of the Notice Packet and the Stipulation, and an online claim portal. *Id.* at ¶12. The web page for Mindbody has been viewed by 3,277 unique users more than 11,000 times. *Id.*

113. The Notice informed Settlement Class Members that in order to qualify for a payment from the Net Settlement Fund, a Claim Form must be timely filed either online at www.strategicclaims.net/mindbody/ or by mail, with a postmark of no later than September 27, 2022. To date, SCS has received 5,135 claims. Out of the 5,135 claims received, 4,861 were filed by institutions and 274 were filed by individuals/entities by mail or online filing. *Id.* ¶15. Additional Claim Forms will be submitted as many filers submit claims right at the deadline. SCS is currently processing the Claim Forms received and will provide additional information

regarding the claims submitted in its supplemental declaration, which will be filed with the Court on October 20, 2022, after the exclusion deadline has passed.

114. Pursuant to the terms of the Preliminary Approval Order, the deadline for Settlement Class Members to submit objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application is October 14, 2022, and the deadline to request exclusion from the Settlement Class was September 27, 2022. To date, no objections to the Settlement have been received and the Claims Administrator has only received one invalid request for exclusion. *Id.* at ¶13, Ex. C.

115. Lead Counsel will respond to any future objections and exclusion requests and report additional claim information in its reply papers, which are due on October 20, 2022.

VIII. PLAN OF ALLOCATION

116. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Settlement Class Members who wish to participate in a distribution of the Settlement proceeds must submit a valid Claim Form, including all required information, no later than September 27, 2022. As provided in the Notice, after the deduction of Court-awarded attorneys' fees and expenses, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court, the balance of the Settlement Fund (the "Net Settlement Fund") will be distributed to eligible claimants by the Claims Administrator according to the plan of allocation approved by the Court (the "Plan of Allocation" or "Plan").

117. The proposed Plan of Allocation, which was set forth in full in the Notice (Ex. 3-A at ¶¶55-68), is designed to achieve an equitable and rational distribution of the Net Settlement Fund. The Plan was prepared by Lead Counsel with the assistance of Co-Lead Plaintiffs' damages expert and is consistent with Co-Lead Plaintiffs' theories of damages in the case. All Settlement Class Members that were allegedly harmed as a result of the alleged fraud, and that have an eligible

claim, will receive their *pro rata* share of the Net Settlement Fund. Notice at ¶¶56-57. Lead Counsel believes that the Plan provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants.

118. The Plan of Allocation provides for distribution of the Net Settlement Fund among Authorized Claimants on a *pro rata* basis based on their “Recognized Loss Amounts,” calculated according to the Plan’s formulas. Recognized Loss Amounts are derived from the number of shares held and sold during one of three periods of time. The three periods of time are: (A) shares held just before the release of the 4Q18 guidance and sold before the Merger was announced; (B) shares held just before the Merger was announced and sold before Defendants’ learned of the 4Q18 results (C) shares held just before Defendants learned the 4Q18 results and sold before the Merger closed. Shares both purchased and sold within these time periods, *i.e.* shares that were “in and out”, have no recognized losses under the Plan, as is standard in plans of allocation because such shares were similarly impacted at both their purchase and sale.

119. Eligible shares sold within these three periods will have Recognized Loss Amounts equal to the difference between Co-Lead Plaintiffs’ estimate of the nominal “fair value” of Mindbody stock of \$49.50 and the price at which the shares were sold. The nominal fair value was set based on an estimate of what Vista had once indicated it was willing to pay. It is not a factual determination of the actual fair value of Mindbody’s stock, which would have been hotly contested at trial.

120. For example, under the proposed Plan of Allocation, a shareholder who owned 100 shares before the allegedly false 4Q18 guidance, and who sold those shares for \$26.18 per share on November 7, 2019, would have a Recognized Loss Amount of \$2,332 ($(\$49.50 - \$26.18) \times 100$).

121. The sum of a claimant's Recognized Loss Amounts will be the claimant's "Recognized Claim." If the aggregate amount of all Recognized Claims of all Authorized Claimants is greater than the Net Settlement Fund, which is likely given that the Settlement does not recover 100% of alleged damages, each Authorized Claimant will receive a payment equal to their *pro rata* share of the Net Settlement Fund, assuming that their payment would be \$10.00 or greater.⁸

122. The Court-approved Claims Administrator, under Lead Counsel's direction, will calculate claimants' Recognized Loss Amounts using the transactional information provided in their Claim Forms. Claims may be submitted to the Claims Administrator through the mail, online using the case webpage or, for large investors with thousands of transactions, through email to SCS's electronic filing team. (Neither the Parties nor the Claims Administrator independently have claimants' transactional information.) Co-Lead Plaintiffs' losses will be calculated in the same manner.

123. After the Effective Date of the Settlement, in accordance with the terms of the Stipulation, the Plan of Allocation, any such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund will be distributed to Authorized Claimants. After the distribution, if there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of the distribution, the Claims Administrator will, if feasible and economical after payment of any outstanding Notice and Administration Expenses, and Taxes redistribute the balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion. There may be multiple re-distributions. Once it is no longer economical

⁸ \$10.00 is a standard "*de minimis*" figure for payments given the costs associated with issuing payments and to lessen the number of uncashed checks.

to make further distributions, any balance that still remains in the Net Settlement Fund after re-distribution(s) and after payment of any outstanding Notice and Administration Expenses, and Taxes, if any, will be contributed to a private, non-profit, non-sectarian 501(c)(3) organization designated by Co-Lead Plaintiffs and approved by the Court.

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

125. In sum, the proposed Plan of Allocation was designed to fairly and rationally allocate the Net Settlement Fund among Authorized Claimants. Accordingly, Lead Counsel respectfully submits that the proposed Plan of Allocation is fair, reasonable, and adequate and should be approved.

IX. LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES

126. For its significant efforts on behalf of Co-Lead Plaintiffs and the Settlement Class, Lead Counsel is applying for compensation from the Settlement Fund on a percentage basis. As explained in Lead Counsel's Fee Brief, courts within the Second Circuit recognize that the percentage method is the appropriate method of fee recovery and the prevailing method of determining attorneys' fees in the Second Circuit.

127. Consistent with the Notice, Lead Counsel seeks a fee award of 30% of the Settlement Fund, *i.e.*, \$2,925,000, plus accrued interest, if any. Lead Counsel also requests payment of its expenses incurred in connection with the prosecution of the Action from the Settlement Fund in the amount of \$560,715.36, plus Co-Lead Plaintiffs' request for \$8,000, pursuant to the PSLRA. Lead Counsel submits that, for the reasons discussed below and in the accompanying Fee Brief, such awards would be reasonable and appropriate under the circumstances before the Court.

A. Co-Lead Plaintiffs Support the Fee and Expense Application

128. Co-Lead Plaintiffs are sophisticated institutional investors that played a central role in monitoring and participating in the Action by, among other things, (i) regularly communicating with Lead Counsel regarding the posture and progress of the Action; (ii) reviewing and/or discussing significant pleadings, motions, and briefs filed in the Action; (iii) assisting with responses to Defendants' discovery requests (including the search for and production of documents); (iv) monitoring and participating in settlement discussions; and (v) evaluating and approving the proposed Settlement. *See Ex. 1.*

129. Co-Lead Plaintiffs evaluated and fully support the Fee and Expense Application. *See Ex. 1.* In coming to this conclusion, Co-Lead Plaintiffs considered the efficient prosecution of the action, the amount and quality of the work performed, and the recovery obtained for the Settlement Class. Co-Lead Plaintiffs agreed to allow Lead Counsel to apply for 30% of the Settlement Fund. *See id* at 6.

B. The Favorable Settlement Achieved

130. Here, as described above, the \$9.75 million Settlement is a favorable result, particularly when considered in view of the substantial risks and obstacles to recovery if the Action were to continue through decisions on class certification and summary judgment, to trial, and through likely post-trial motions and appeals.

131. As set forth in detail above, the recovery obtained for the Settlement Class was the result of thorough and diligent investigative and prosecutorial efforts, complicated motion practice, and extensive discovery efforts. As a result of this Settlement, thousands of Settlement Class Members will benefit and receive compensation for their losses and avoid the very substantial risk of no recovery (or significantly less recovery) in the absence of a settlement.

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

132. This Action presented substantial challenges from the outset of the case. The specific complexities and risks Co-Lead Plaintiffs faced in proving Defendants' liability and damages are detailed in Section V. above. These case-specific risks, which were made evident to Lead Counsel and Co-Lead Plaintiffs as the case advanced in discovery and through class certification briefing, are in addition to the more typical risks accompanying securities class action litigation, such as the fact that this Action is governed by stringent PSLRA requirements and case law interpreting the federal securities laws and was undertaken on a contingent basis. Here, there was no restatement, no Company admissions, and no parallel governmental or criminal proceedings, which would have aided Co-Lead Plaintiffs or Lead Counsel in proving elements of the case, like materiality and scienter.

133. From the outset, Lead Counsel understood that it was embarking on a complex and expensive litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, Lead Counsel was obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, and that funds were available to compensate staff and cover the considerable costs that a case such as this requires. With no promise of recovery, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Lead Counsel received no compensation during the course of the Action but has dedicated 6,535.8 hours of time with a lodestar value of \$3,254,648.50 and has incurred \$560,715.36 in expenses in prosecuting the Action for the benefit of the Settlement Class. *See* Declaration of Carol C. Villegas on Behalf of Labaton Sucharow LLP, Ex. 4.

134. Even with the most vigorous and competent of efforts, success in contingent-fee litigation, such as this, is never assured. Lead Counsel knows from experience that the

commencement of a class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint, win at trial, or convince sophisticated defendants to engage in serious settlement negotiations at meaningful levels. Lead Counsel is aware of many hard-fought lawsuits in which, because of the discovery of facts unknown when the case was commenced—like that existed in the Action—or changes in the law during the pendency of the case, or a decision of a judge or jury following a trial on the merits, excellent professional efforts of members of plaintiff's bar produced no fee for counsel.

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

136. Even successfully certifying a class and successfully opposing a motion for summary judgment would not guarantee that Co-Lead Plaintiffs would prevail at trial. Indeed, while only a few securities class actions have been tried before a jury, several have been lost in their entirety, such as *In re JDS Uniphase Securities Litigation*, Case No. C-02-1486 CW (EDL), slip op. (N.D. Cal. Nov. 27, 2007), litigated by Lead Counsel, or partially lost, such as *In re Clarent Corp. Securities Litigation*, Case No. C-01-3361 CRB, slip op. (N.D. Cal. Feb. 16, 2005).

137. Even plaintiffs who succeed at trial may find their verdict overturned. *See, e.g., In re BankAtlantic Bancorp, Inc.*, No. 07-cv-61542 (S.D. Fla. 2010) (in case tried by Lead Counsel, after plaintiff's jury verdict, court granted defendants' motion for judgment as a matter of law on loss causation grounds), *aff'd*, 688 F. 3d 713 (11th Cir. 2012) (trial court erred, but defendants entitled to judgment as matter of law for lack of loss causation); *Glickenhau & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of \$2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction under *Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011)); *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1998) (reversing plaintiff's jury verdict for securities fraud); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing \$81 million jury verdict and dismissing case with prejudice); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiff's verdict obtained after two decades of litigation). And, the path to maintaining a favorable jury verdict can be arduous and time consuming. *See, e.g., In re Apollo Grp., Inc. Sec. Litig.*, No. CV-04-2147-PHX-JAT, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008), *rev'd*, No. 08-16971, 2010 WL 5927988 (9th Cir. June 23, 2010) (trial court tossing unanimous verdict for plaintiffs, which was later reinstated by the Ninth Circuit Court of Appeals) and judgment re-entered (*id.*) after denial by the Supreme Court of the United States of defendants' Petition for Writ of Certiorari (*Apollo Grp. Inc. v. Police Annuity & Benefit Fund*, 131 S. Ct. 1602 (2011)).

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

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

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

D. The Time and Labor of Lead Counsel

141. The work undertaken by Lead Counsel in investigating and prosecuting this case and arriving at the present Settlement in the face of serious hurdles, has been time-consuming and challenging. As explained above, counsel conducted a robust investigation into the class's claims; researched and prepared a comprehensive amended complaint in less than a month from when the Walleye Funds were appointed Co-Lead Plaintiffs; briefed a thorough opposition to Defendants' motions to dismiss the Amended Complaint; prepared for and participated in a motion to dismiss hearing; moved to amend the complaint and filed a second amended complaint; moved for certification of the class; engaged in extremely thorough discovery efforts that led to obtaining

more than approximately 400,000 pages of documents from Defendants and third-parties; conducted weekly (or often more frequent) meetings during discovery to discuss the continued investigation, Defendants' document production, Co-Lead Plaintiffs' document production, third party subpoenas, depositions, interrogatories, requests for admissions, class certification, and numerous other issues; engaged in numerous phone meet and confers with Defendants' Counsel and exchanged numerous emails with counsel regarding discovery issues; participated in the depositions of 17 witnesses, and prepared for several others; retained and had numerous meetings with several experts; and prepared for the mediation, including formulating detailed mediation submissions.

142. Attached as Exhibit 4 is the Villegas Declaration detailing Lead Counsel's time and expenses. Included with this declaration is a schedule that reports the amount of time spent by the attorneys and professional staff of Labaton Sucharow and the "lodestar" calculations, *i.e.*, their hours multiplied by their 2021 hourly rates.⁹ *See* Ex. 4-A. Exhibit B is a breakdown of Lead Counsel's time organized by category of work. As explained in the declaration, it was prepared from records regularly prepared and maintained by Lead Counsel. *Id.* ¶3.

143. At all times throughout the pendency of the Action, Lead Counsel's efforts were driven and focused on advancing the litigation to bring about the most successful outcome for the class, whether through settlement or trial, by the most efficient means possible. Lead Counsel carefully and efficiently staffed the Action from the beginning, and litigated the case with just one main partner, Carol Villegas. Other partners were involved, but only at particular stages of the case, such as lead plaintiff appointment or settlement, consistent with their areas of expertise. The

⁹ Although courts regularly approve the use of current rates in class action fee applications, we are using Labaton Sucharow's 2021 rates given that the agreement in principle to settle was reached in 2021.

result of this staffing by Lead Counsel was that associates and of counsel with lower hourly rates handled the case on a day-to-day basis, as opposed to more expensive partners.

144. The hourly rates of Lead Counsel here range from \$800 to \$1,150 for partners, \$500 to \$800 for of counsels, \$400 to \$550 for associates, and \$355 to \$375 for paralegals. *See* Ex. 4-A. The rates for the staff attorneys, who focused on document review and deposition preparation, ranged from \$335 to \$435. *Id.* It is respectfully submitted that the hourly rates for Lead Counsel included in this schedule are reasonable and customary for this type of complex commercial litigation. A table of hourly rates for defense firms compiled by Labaton Sucharow from fee applications submitted by such firms nationwide in bankruptcy proceedings in 2021 is attached as Exhibit 5. The analysis shows that across all types of attorneys, Lead Counsel's rates are consistent with, or lower than, the firms surveyed.

145. Lead Counsel has expended 6,535.8 hours in the prosecution and investigation of the Action through September 26, 2022. *See* Ex. 4-A. The resulting lodestar is \$3,254,648.50, which does not include any time that will necessarily be spent from this date forward administering the Settlement, preparing for and attending the Settlement Hearing, and assisting Settlement Class Members. *Id.* Pursuant to a lodestar "cross-check," applied within the Second Circuit, the requested fee of 30% of the Settlement Fund (or \$2,925,000) results in a negative "multiplier" of 0.90 on the lodestar – meaning that Lead Counsel is seeking less than its lodestar in fees.

E. The Skill Required and Quality of the Work

146. Lead Counsel Labaton Sucharow is among the most experienced and skilled securities litigation law firms in the field. The expertise and experience of its attorneys are described in Exhibit 4-D.

147. Since the passage of the PSLRA, Labaton Sucharow has been approved by courts to serve as lead counsel in numerous notable securities class actions throughout the United States,

and has taken three of the approximately 21 post-PSLRA securities class actions to trial. Here, Labaton Sucharow attorneys have devoted considerable time and effort to this case, thereby bringing to bear many years of collective experience. For example, Labaton Sucharow has served as lead counsel in a number of high profile matters: *In re Am. Int'l Grp, Inc. Sec. Litig.*, No. 04-8141 (S.D.N.Y.) (representing the Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension Fund and reaching settlements of \$1 billion); *In re HealthSouth Corp. Sec. Litig.*, No. 03-1500 (N.D. Ala.) (representing the State of Michigan Retirement System, New Mexico State Investment Council, and the New Mexico Educational Retirement Board and securing settlements of more than \$600 million); *In re Countrywide Sec. Litig.*, No. 07-5295 (C.D. Cal.) (representing the New York State and New York City Pension Funds and reaching settlements of more than \$600 million); *In re Schering-Plough Corp. / ENHANCE Sec. Litig.*, No. 08-397 (D.N.J.) (representing Massachusetts Pension Reserves Investment Management Board and reaching a settlement of \$473 million). *See* Ex. 4-D.

F. Standing and Caliber of Defendants' Counsel

148. The quality of the work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Here, Defendants were represented Kirkland & Ellis LLP and Cooley LLP, two prestigious and experienced defense firms, which vigorously represent their clients. In the face of this experienced, formidable, and well-financed opposition, Lead Counsel was nonetheless able to persuade Defendants to settle the case on terms favorable to the Settlement Class.

X. LEAD COUNSEL'S REQUEST FOR LITIGATION EXPENSES

149. Lead Counsel seeks payment from the Settlement Fund of \$560,715.36 in Litigation Expenses reasonably and necessarily incurred in connection with prosecuting the claims against Defendants. *See* Ex. 4-C. The Notice informs the Settlement Class that Lead Counsel will

apply for payment of Litigation Expenses of no more than \$800,000, which would include Co-Lead Plaintiffs' request for expenses directly related to their representation of the Settlement Class, pursuant to the PSLRA. *See* Ex. 3-A at ¶¶4, 42. The amount requested is below this cap. To date, no objection to Lead Counsel's request for expenses has been raised.

150. As attested to, Lead Counsel's expenses are reflected on the books and records maintained by Labaton Sucharow. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. Lead Counsel's declaration identifies the specific category of expense – *e.g.*, expert fees, deposition transcription fees, document management and storage fees, electronic financial and factual research, service of process fees, travel costs, duplicating, and overnight delivery expenses.

151. A significant component of Lead Counsel's expenses is the cost of experts, which totals \$140,661.25 or approximately 25% of its total expenses. *See* Ex. 4 ¶6. As explained above, Lead Counsel retained three experts: (i) Mr. Sacks, to opine on the value of Mindbody's shares; (ii) Mr. Coffman, to opine on materiality, loss causation and damages; and (iii) Edward Mallen, to opine on issues related to Mindbody's performance within the context of the Software as a Service industry. It is highly likely that each expert would have been deposed and would have assisted with crafting arguments countering the Defendants' experts. Lead Counsel spent numerous hours meeting, albeit virtually, with each of the retained experts. These professionals were essential to the prosecution of the Action.

152. Costs related to discovery comprise a sizable amount of the litigation expenses, totaling \$359,121.73, or approximately 64% of all expenses. Ex. 4-C. These costs include \$59,121.73 in court reporting fees related to the 19 depositions taken by the Parties (*id.* ¶6(g)), as well as \$300,000.00 in litigation support e-discovery vendor fees to forensically gather Co-Lead

Plaintiffs' documents and data and to host and review the electronic documents produced by Defendants, third parties, and Co-Lead Plaintiffs, *id.* ¶6(f). This case involved thousands of complex trades by the Co-Lead Plaintiffs and in order for Co-Lead Plaintiffs to appropriately respond to Defendants' discovery requests regarding the same, the e-discovery vendor performed a thorough collection of their documents and data, which involved processing over 7 terabytes of the collected data.¹⁰ *Id.*

153. The expenses also include \$33,265.48 in professional fees paid to counsel for five potential witnesses in the case, who were former employees of Mindbody or sub-advisors for the Co-Lead Plaintiffs. These witnesses were subpoenaed by Defendants and asked to produce documents and appear for depositions. *Id.* ¶6(e).

154. Because of the COVID-19 pandemic, travel expenses were significantly less than in a typical securities case that was in the midst of fact and expert discovery. However, costs totaling \$408.42 were incurred in connection with train travel to Wilmington, Delaware to attend a court hearing in *Philip Ryan Jr. v. Mindbody, Inc.*, C.A. No. 2019-0061-KSJM (Del. Ch), an action related to the same merger at issue in this Action. *Id.* ¶6(c).

155. Co-Lead Plaintiffs' share of the fees of Phillips ADR Enterprises totaled \$9,140.00. Mediator Michelle Yoshida oversaw the formal mediation session that the Parties participated in and she facilitated ongoing negotiations between the Parties, which ultimately resulted in the settlement of the litigation. *Id.* ¶6(h).

156. Computerized electronic research totaled \$3,010.63 or approximately 5% of aggregate expenses. *Id.* ¶6(j). These are the charges of vendors such as BNA and Pacer. These

¹⁰ The total e-discovery vendor expense for collecting, processing, and hosting the electronic discovery in the case exceeded \$300,000, however Lead Counsel is only seeking reimbursement of \$300,000, which is consistent with amounts reimbursed in other complex securities cases.

resources were used to obtain access to SEC filings, court filings, and factual and financial information. The costs for these vendors vary depending upon the type of services requested and usage is tracked using a case or administrative client-matter code. (Given the Court's practices, we have not included costs related to legal research conducted using Westlaw or Lexis/Nexis, which totaled approximately \$23,000.)

157. The other expenses for which Lead Counsel seeks payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients who pay by the hour. These expenses include, among others, duplicating/printing costs, service and filing fees, and overnight delivery expenses.

158. All of the Litigation Expenses incurred, which total \$560,715.36, were necessary to the successful prosecution and resolution of the claims against Defendants.

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

XI. CO-LEAD PLAINTIFFS' REIMBURSEMENT PURSUANT TO THE PSLRA

160. Additionally, in accordance with 15 U.S.C. § 78u-4(a)(4), Co-Lead Plaintiffs Walleye Trading LLC and Walleye Opportunities Master Fund collectively seek reimbursement for the time they dedicated to the representation of the Settlement Class in the aggregate amount of \$8,000, which, when included with Lead Counsel's expenses, is below the \$800,000 that the Notice informed the Settlement Class would be the cap on expenses. The amount of time and effort devoted to this Action by Co-Lead Plaintiffs is detailed in the accompanying Declaration of Andrew Carney, Chief Executive Officer of Walleye Capital LLC, which manages and advises Walleye Trading and Walleye Opportunities Master Fund, attached as Exhibit 1. Lead Counsel

respectfully submits that the amount requested by Co-Lead Plaintiffs is consistent with Congress's intent, as expressed in the PSLRA, of encouraging institutional investors to take an active role in commencing and supervising private securities litigation.

161. As discussed in the Fee Brief and in Co-Lead Plaintiffs' supporting declaration, Co-Lead Plaintiffs have been committed to pursuing the class's claims since they became involved in the litigation. As large institutional investors, Co-Lead Plaintiffs actively and effectively fulfilled their obligations as representatives of the class, complying with all of the many demands placed upon them during the litigation and settlement of the Action. For instance, Mr. Carney, the CEO of Walleye Capital (i) regularly communicated with Lead Counsel regarding the posture and progress of the Action; (ii) reviewed pleadings and motions filed in the Action; (iii) coordinated and assisted with Co-Lead Plaintiffs' production of documents and written discovery responses to Defendants; and (v) discussed mediation strategy and evaluated settlement proposals. Ex. 1 at ¶¶4, 9-10.

162. More specifically, Mr. Carney and Jim Moeller, Chief Legal Officer and General Counsel of Walleye Capital, collectively dedicated at least 20 hours to the Action on behalf of the Co-Lead Plaintiffs. *Id.* at ¶10. This was time that they did not spend conducting the usual business of the Co-Lead Plaintiffs, which represents a cost to them. Mr. Carney and Mr. Moeller's respective effective hourly rates, based on their annual compensation, exceed \$400 per hour. *Id.* The total cost of their time at the reduced rate of \$400 per hour is \$8,000.

163. The efforts expended by Co-Lead Plaintiffs during the course of the Action are precisely the types of activities courts have found support reimbursement to class representatives, and support Co-Lead Plaintiffs' request.

XII. THE REACTION OF THE SETTLEMENT CLASS TO THE FEE AND EXPENSE APPLICATION

164. As mentioned above, consistent with the Preliminary Approval Order, to date a total of 22,387 Notices have been mailed to potential Settlement Class Members advising them that Lead Counsel would seek an award of attorneys' fees not to exceed 30% of the Settlement Fund, and payment of expenses in an amount not greater than \$800,000, which includes Co-Lead Plaintiffs' reimbursement of expenses directly related to their representation of the Settlement Class. *See* Ex. 3 at ¶8 and Ex. A. Additionally, the Summary Notice was published in *The Wall Street Journal* and transmitted over *PR Newswire*. *Id.* at ¶10. The Notice has also been available on the case webpage maintained by the Claims Administrator (*id.* at ¶12) and on Labaton Sucharow's website.¹¹

165. While the deadline set by the Court for Settlement Class Members to object to the requested fees and expenses has not yet passed, to date no one has objected to the fee or expense request. Lead Counsel will respond to any objections that may be received in its reply papers.

XIII. MISCELLANEOUS EXHIBITS

166. Attached as Exhibit 6 is a true and correct copy of Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review* (NERA 2021).

167. Attached as Exhibit 7 is a true and correct copy of Laarni T. Bulan and Laura E. Simmons, *Securities Class Action Settlements – 2021 Review and Analysis* (Cornerstone Research 2022).

¹¹ Co-Lead Plaintiffs' motion for approval of the Settlement and Lead Counsel's motion for an award of attorneys' fees and expenses will also be posted on the Settlement webpage and Labaton Sucharow's website.

168. Attached as Exhibit 8 is a compendium of unreported cases, in alphabetical order, cited in the accompanying memoranda of law.

XIV. CONCLUSION

169. In view of the significant recovery for the Settlement Class and the substantial risks of this litigation, as described above and in the accompanying memorandum of law, Co-Lead Plaintiffs and Lead Counsel respectfully submit that the Settlement should be approved as fair, reasonable, and adequate, and that the proposed Plan of Allocation should likewise be approved as fair, reasonable, and adequate. In view of the significant recovery in the face of substantial risks; the quality, efficiency, and amount of work performed; the contingent nature of the fee; and the standing and experience of Lead Counsel, as described above and in the accompanying memorandum of law, Lead Counsel respectfully submits that a fee in the amount of 30% of the Settlement Fund be awarded, that its expenses in the amount of \$560,715.36 be paid, and that Co-Lead Plaintiffs be reimbursed \$8,000, pursuant to the PSLRA.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 4, 2022.

/s/ Carol C. Villegas
CAROL C. VILLEGAS

Exhibit 1

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE MINDBODY, INC. SECURITIES
LITIGATION

Civil Action No. 1:19-cv-08331-VEC

**DECLARATION ON BEHALF OF CO-LEAD PLAINTIFFS WALLEYE TRADING LLC
AND WALLEYE OPPORTUNITIES MASTER FUND LTD.
IN SUPPORT OF CO-LEAD PLAINTIFFS' MOTION FOR APPROVAL OF CLASS
ACTION SETTLEMENT AND MOTION FOR ATTORNEYS' FEES AND EXPENSES**

I, Andrew Carney, declare as follows pursuant to 28 U.S.C. § 1746:

1. I serve as Chief Executive Officer of Walleye Capital LLC (“Walleye Capital”). Walleye Capital is a multi-strategy platform hedge fund adviser headquartered in Minnesota. The firm manages over \$4 billion of investor capital. The Court-appointed Co-Lead Plaintiffs — Walleye Trading LLC and Walleye Opportunities Master Fund LTD (together the “Co-Lead Plaintiffs”) — are both funds managed and advised by Walleye Capital.

2. I respectfully submit this declaration in support of final approval of the proposed settlement of this action (the “Settlement”) and the application of Court-appointed Lead Counsel for attorneys’ fees and payment of expenses. I have personal knowledge of the matters testified to herein.

3. The Co-Lead Plaintiffs understand that the Private Securities Litigation Reform Act of 1995 was intended to encourage institutional investors with large losses to seek to manage and direct securities fraud class actions. Walleye Capital is a large, sophisticated institutional investor that, through the Co-Lead Plaintiffs, committed itself to vigorously prosecuting this litigation, through trial if necessary. In seeking appointment as Co-Lead Plaintiffs in the case, the Co-Lead

Plaintiffs understood their fiduciary duties to serve the interests of the class by participating in the management and prosecution of the case.

4. At all times during this litigation, the Co-Lead Plaintiffs have endeavored to fully discharge their obligations to the class as Co-Lead Plaintiffs. To that end, the Co-Lead Plaintiffs, through the principals at Walleye Capital (a) had in-person, telephonic, and written communications with Lead Counsel concerning this action; (b) remained fully informed regarding case developments; (c) reviewed pleadings and motions filed in the action; (d) participated in discovery, and (e) closely monitored and participated in settlement discussions, ultimately agreeing to accept the mediator's settlement recommendation, subject to the Court's approval.

5. Based on their involvement in the litigation and settlement negotiations in this action, the Co-Lead Plaintiffs believe that the proposed Settlement is fair, reasonable, and adequate to the Settlement Class. The Co-Lead Plaintiffs also believe that the proposed Settlement represents a favorable recovery, in light of the substantial risks of success in continued litigation of the claims. Therefore, the Co-Lead Plaintiffs endorse approval of the Settlement by the Court.

6. The Co-Lead Plaintiffs also believe that Lead Counsel's request for an award of attorneys' fees in the amount of thirty percent (30%) of the Settlement Fund is fair and reasonable under the particular circumstances of this case. The Co-Lead Plaintiffs have evaluated the fee request by considering the efficient prosecution of the action, the amount and quality of the work performed, and the recovery obtained for the Settlement Class. The Co-Lead Plaintiffs understand that Lead Counsel will also devote additional time in the future to administering the Settlement, without requesting additional compensation.

7. The Co-Lead Plaintiffs further believe that the litigation expenses being requested are reasonable and represent costs and expenses necessary for the prosecution and resolution of

the claims. Based on the foregoing, and consistent with its obligation to the Settlement Class to obtain the best result at a reasonable cost, the Co-Lead Plaintiffs support Lead Counsel's application for an award of attorneys' fees and payment of litigation expenses.

8. In addition, the Co-Lead Plaintiffs understand that reimbursement of a lead plaintiff's reasonable costs and expenses, including lost wages, is authorized under the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(4). Consequently, in connection with Lead Counsel's request for payment of litigation expenses, the Co-Lead Plaintiffs seek reimbursement in the amount of \$8,000, which represents the cost of the 20 hours that the Co-Lead Plaintiffs conservatively estimate were devoted to supervising and participating in the litigation over the course more than two and a half years.

9. From the inception of the litigation, I, Andrew Carney, CEO of Walleye Capital and Jim Moeller, Chief Legal Officer and General Counsel of Walleye Capital were the primary points of contact between the Co-Lead Plaintiffs and Lead Counsel Labaton Sucharow LLP. Mr. Moeller and I consulted with Lead Counsel throughout the course of the litigation. Mr. Moeller and I also reviewed court filings, assisted with responses to discovery requests (including the search for and production of documents), and participated in discussions about a potential negotiated resolution of the action.

10. In total, Mr. Moeller and I collectively dedicated at least 20 hours to this action on behalf of the Co-Lead Plaintiffs. This was time that we did not spend conducting the usual business of the Co-Lead Plaintiffs, which represents a cost to them. Our respective effective hourly rates exceed \$400 per hour.¹ The total cost of our time at the rate of \$400 per hour is \$8,000.

¹ While both my and Mr. Moeller's compensation fluctuates annually depending on the success of Walleye Capital and its funds, at all times during the Class Period (November 6, 2018 through February 15, 2019) and at all times that the Co-Lead Plaintiffs, through Walleye Capital,

11. In the aggregate, the Co-Lead Plaintiffs request reimbursement for their costs in the amount of \$8,000.

12. In conclusion, the Co-Lead Plaintiffs endorse the Settlement as fair, reasonable, and adequate, and believe it represents a favorable recovery for the Settlement Class in light of the significant risks of continued litigation. The Co-Lead Plaintiffs further support Lead Counsel's attorneys' fee and litigation expense request and believe that it represents fair and reasonable compensation for Lead Counsel in light of the extensive work performed, the recovery obtained for the Settlement Class, and the attendant litigation risks. Finally, the Co-Lead Plaintiffs request reimbursement for their costs in the amount of \$8,000. Accordingly, the Co-Lead Plaintiffs respectfully request that the Court approve the motion for final approval of the proposed Settlement, the motion for an award of attorneys' fees and payment of litigation expenses, and Co-Lead Plaintiffs' request for reimbursement of their costs.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. Executed this 26th day of September, 2022.


Andrew Carney

have been involved in this litigation (November 2019 through the Present), our respective compensation has exceeded \$400 per hour. In the interests of fairly representing the Settlement Class, I am requesting that the Court reimburse the Walleye Funds for its time at the reduced rate of \$400 per hour.

Exhibit 2

L99AAMINC

Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 IN RE: MINDBODY INC. v. SECURITIES LITIGATION,

4 19 CV 8331 (VEC)

5 -----x

New York, N.Y.
6 September 9, 2021
7 4:40 p.m.

8 Before:

9 HON. VALERIE E. CAPRONI,

District Judge

10 APPEARANCES

11 LABATON SUCHAROW LLP
12 Attorney for Plaintiffs
13 BY: CAROL VILLEGAS
14 JAKE BISSEL-LINSK
DAVID SALDAMANDO

15 KIRKLAND & ELLIS LLP
16 Attorneys for Defendants
17 BY: MATTHEW SOLUM
18 JOHN DEL MONACO
19 HALEY STERN

20 COOLEY LLP
21 Attorneys for Defendant
22 BY: SARAH LIGHTDALE
23
24
25

L99AAMINC

Conference

1 (Case called)

2 MS. VILLEGAS: Good afternoon, your Honor.

3 Carol Villegas, from Labaton Sucharow, on behalf of
4 the plaintiff and the class.

5 THE COURT: Good afternoon.

6 MR. BISSEL-LINSK: I'm Jake Bissel-Linsk, on behalf of
7 plaintiffs.

8 THE COURT: Good afternoon.

9 MR. SALDAMANDO: Good afternoon, your Honor.
10 David Saldamando, on behalf of --

11 THE COURT: Good afternoon.

12 The front table should sit down.

13 MR. SOLUM: Good afternoon, your Honor.

14 Matt Solum, for Kirkland Ellis, on behalf of
15 defendants other than Eric Liaw.

16 THE COURT: Defendants, except the individual. Okay.

17 MS. LIGHTDALE: Good afternoon, your Honor.

18 Sarah Lightdale, from Cooley, on behalf of defendant
19 Eric Liaw.

20 And Mr. Solum does represent the two other individual
21 defendants.

22 THE COURT: Okay. Got it.

23 MR. DEL MONACO: Good afternoon, your Honor.

24 John Del Monaco, from Kirkland & Ellis. I represent
25 MindBody, Mr. Stollmeyer and Mr. White.

L99AAMINC

Conference

1 MS. STERN: Good afternoon, your Honor.

2 Haley Stern, from Kirkland Ellis.

3 THE COURT: I'm sorry. I didn't hear anything after
4 "Haley Stern".

5 MS. STERN: Haley Stern, from Kirkland & Ellis.

6 THE COURT: Thanks. Please, sit down.

7 Okay. I called you in. I realized that one, it's
8 going to be the first time any of you have been in a courtroom
9 for 18 months. So, welcome back. But mostly because I don't
10 think I've seen you at all. I think this whole case has been
11 done via telephone. So, I thought it might be useful to
12 actually lay eyes on you.

13 So, I've read the joint letter. Both sides are
14 suggesting that you are going to make a motion for summary
15 judgment at some point, but it also appears that everybody
16 agrees that the right way to stage this is to do class
17 certifications and then summary judgment; correct?

18 MS. VILLEGAS: Yes, your Honor.

19 MR. SOLUM: Yes, your Honor.

20 THE COURT: I see nods all the way around. Good.

21 Okay. So, you are scheduled, your proposed schedule
22 does not account for the possibility that one side or the other
23 is going to make a Daubert motion direct that an expert that
24 you are relying on for purposes either of class certification
25 or opposing class certification.

L99AAMINC

Conference

1 And I guess the question is, was that intentional or
2 not?

3 MR. SOLUM: Your Honor, this is Matt Solum.

4 THE COURT: When you are in person you actually don't
5 have to identify yourself. The reporter's smart and she's got
6 a seating chart.

7 MR. SOLUM: Wonderful.

8 It wasn't intentional in the sense that we've been
9 through class cert on other cases and securities cases. And
10 often Daubert motions, as this Court may know, get filed in
11 those but it wasn't. We have not made a steady judgment not to
12 file one. We just haven't seen their expert report yet. So,
13 we haven't made a decision. We're happy to build a schedule
14 because, again, as this Court may know, they often do get
15 filed.

16 THE COURT: Exactly. So, what I would like to do is
17 build that into your schedule. So, for example, it's actually
18 pretty easy to do when the defendant responds, for example,
19 using your schedule. So, on December the 2nd, when the
20 defendant opposes class certification, at the same time the
21 Daubert motion is due to exclude the plaintiff's expert. So,
22 what we'll do is we've got your schedule. We will build those
23 dates in in the order that we'll enter so that that will be
24 laid out as we go so we'll know when all those are due.

25 MR. SOLUM: Great.

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Conference

1 THE COURT: I will then enter a schedule that will
2 have all this in it. It'll have a lot of intermediate dates
3 just as you've laid out. You can change any intermediate date
4 on agreement between the parties without bothering me, except
5 for the last one.

6 MR. SOLUM: Got it.

7 THE COURT: Okay. So, as long as everything's done on
8 the same date, I don't care.

9 MR. SOLUM: Got it. Understood.

10 THE COURT: Terrific. So, that's what we'll do.

11 MS. VILLEGAS: Your Honor, I have a question.

12 THE COURT: Yes.

13 MS. VILLEGAS: So, we'll be able to submit an
14 opposition to the Daubert on when our reply is due?

15 THE COURT: Yeah. There'll be a whole schedule that
16 lays out when -- if they make a motion -- when your response is
17 due, when your motion will be due to their expert, et cetera.
18 So, I'll just build all those dates into what you've already
19 proposed. Okay?

20 MS. VILLEGAS: Okay. Thank you.

21 THE COURT: Have the parties talked settlement?

22 MS. VILLEGAS: We have, your Honor. We're working on
23 it.

24 THE COURT: All right. So, for what it's worth, in my
25 humble opinion, without seeing a lot of evidence in this case,

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1 you know what I've seen in this case. I think the defendant
2 has a problem with the proxy statement. I think the
3 plaintiff's argument on fourth quarter, you got passed. I let
4 you amend the complaint, but I think your theory is out there.
5 And in terms of whether it's going to work as a motion, which
6 is a very long-winded way of saying, you both got risks. That
7 is usually the perfect case to settle before you spend a whole
8 lot more money on briefing class certification.

9 Yes.

10 MR. SOLUM: I was just going to amplify, I don't want
11 to disclose any settlement conversation, of course, but we were
12 close and then we got your ruling and I think the parties are
13 now far apart again.

14 THE COURT: Uh-oh. Oh, darn.

15 MR. SOLUM: We had the same reaction.

16 MS. VILLEGAS: We did not.

17 THE COURT: Well, I mean, again, I let you amend the
18 complaint but it was barely -- and I let you amend it because I
19 felt like there were fact questions that could only be resolved
20 at summary judgment. But that does not mean that you should
21 think that all of a sudden this case has become a lot more
22 valuable because I am not at all convinced that's not going to
23 work.

24 But again, I don't know any facts. So, I say that for
25 what it's worth. Again, I don't think I've ever seen y'all but

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Conference

1 I am sure I said this when you were on the phone. Your
2 magistrate judge is Magistrate Judge Parker. If you want the
3 help of our magistrate judge, I can give you referral to her.
4 I don't know if you were talking, if you have your own mediator
5 or what.

6 MR. SOLUM: We were working with a mediator. She is
7 very good, and nothing against Judge Parker.

8 THE COURT: That's fine. It makes more sense, if
9 you've got your own, to use her or him.

10 Anything further from the plaintiff?

11 MS. VILLEGAS: Respectfully, your Honor, I would just
12 say that there are lots and lots of documents we didn't include
13 in the amended complaint. So, I hear exactly what you are
14 saying and we will go back and we will discuss it.

15 THE COURT: Okay. Look, I am giving you my two cents
16 for what it's worth from what I've seen. I would just say --
17 and this was why I was concerned about it -- there are lots of
18 reasons. I get your theory on why you can't lowball your
19 quarterly estimates so that you get a beep. On the other hand,
20 if I had been on the honor committee of that company I would
21 have been very skeptical of the memos the CFO was giving me
22 because they had not yet made a single estimate. So, you know,
23 again, I don't know what the documents show, but there would be
24 reasons why rational management could say, we're not really
25 sure that's going to happen. And that could be enough that you

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Conference

1 are not going to get a quarter. I don't know what any of this
2 does to your damages but that was sort of my thought is that
3 it's the sort of thing that strikes me as there's lots of
4 explanations kind of beyond the one that the defendant gave in
5 the briefing for why rational people could have said, we just
6 don't think we're going to make that number. I don't care what
7 those CFOs said. That's all.

8 So, again, this is just my two cents for what it's
9 worth before you guys all spend a whole lot more money and
10 create a whole lot more work for me.

11 Anything further from the defendant?

12 MR. SOLUM: Nothing further, your Honor.

13 THE COURT: How about from the other defendants?

14 MS. VILLEGAS: Your Honor, on behalf of my client, I
15 thank you for that observation, but I have nothing further.

16 THE COURT: Yes. Okay. Anything further?

17 MR. DEL MONACO: Nothing further, your Honor.

18 Thanks, everybody. Thanks for coming to court. It's
19 a wonderful place. Come more often.

20 (Adjourned)

21
22
23
24
25

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MINDBODY, INC. SECURITIES
LITIGATION

Civil Action No. 1:19-cv-08331-VEC

**DECLARATION OF JOSEPHINE BRAVATA CONCERNING
(A) MAILING OF THE NOTICE AND CLAIM FORM; (B) PUBLICATION
OF THE SUMMARY NOTICE; AND (C) REPORT ON REQUESTS FOR
EXCLUSION AND OBJECTIONS RECEIVED TO DATE**

I, Josephine Bravata, declare as follows:

1. I am the Quality Assurance Manager of Strategic Claims Services (“SCS”), a nationally recognized class action administration firm. I have over twenty years of experience specializing in the administration of class action cases. SCS was established in April 1999 and has administered over five hundred twenty-five (525) class action cases since its inception. I have personal knowledge of the facts set forth herein and, if called on to do so, I could and would testify competently thereto.

MAILING OF THE NOTICE AND CLAIM FORM

2. Pursuant to the Court’s Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, dated June 3, 2022 (ECF No. 130, the “Preliminary Approval Order”), the Court approved the retention of SCS as the Claims Administrator in connection with the Settlement¹ of the above-captioned Action.

¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated as of March 3, 2022 (ECF No. 118-1, the “Stipulation”).

3. To provide actual notice to those who sold publicly traded Class A common stock of Mindbody, Inc. (“Mindbody”) during the period from November 6, 2018 through February 15, 2019, inclusive (“Class Period”), SCS, pursuant to the Preliminary Approval Order, printed and mailed the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (“Notice”) and Proof of Claim and Release (“Claim Form”) (collectively, the “Notice and Claim Form”) to potential members of the Settlement Class. A true and correct copy of the Notice and Claim Form is attached as **Exhibit A**.

4. More specifically, SCS mailed, by First-Class mail, postage prepaid, the Notice and Claim Form to ten individuals and organizations identified in Mindbody’s transfer records provided to SCS by Lead Counsel on June 7, 2022. These records reflect those who sold shares of Mindbody publicly traded Class A common stock for their own account, or for the account(s) of their clients, during the Class Period. The transfer record mailing was completed on June 15, 2022.

5. As in most class actions of this nature, the large majority of potential Settlement Class Members are anticipated to be beneficial purchasers whose securities are held in “street name” — *i.e.*, the securities are purchased/sold by brokerage firms, banks, institutions and other third-party nominees in the name of the nominee, on behalf of the beneficial purchasers. The names and addresses of these beneficial purchasers are known only to the nominees. SCS maintains a proprietary master list consisting of 877 banks and brokerage companies (“Nominee Account Holders”), as well as 1,047 mutual funds, insurance companies, pension funds, and money managers (“Institutional Groups”). On June 14, 2022, SCS caused a letter to be mailed or e-mailed to the 1,924 Nominee Account Holders and Institutional Groups contained in the SCS master mailing list. The letter notified recipients of the Settlement and requested that they,

within ten (10) calendar days from the date of the letter, either mail a Notice and Claim Form to their customers who may be beneficial purchasers/owners or provide SCS with a list of the email addresses (if available) and names and addresses of such beneficial purchasers/owners so that SCS could promptly email and mail the Notice and Claim Form directly to them.

6. On June 14, 2022, SCS also sent the Depository Trust Company (“DTC”) a Notice and Claim Form to publish on its Legal Notice System (“LENS”). LENS provides DTC participants the ability to search and download legal notices as well as receive email alerts based on particular notices or particular CUSIPs once a legal notice is posted.

7. Following these mailings, SCS received additional names and addresses of potential Settlement Class Members from individuals or nominees requesting that a Notice and Claim Form be mailed by SCS, as well as requests from nominees for Notice and Claim Forms, in bulk, so that the nominees could forward them to their customers directly. SCS has promptly responded to each of these notice requests.

8. To date, SCS has mailed 22,387 Notice and Claim Forms to potential Settlement Class Members and nominees.

9. Out of the 22,387 Notice and Claim Forms mailed by SCS, 962 were returned as undeliverable. Of the 962 returned, 59 were returned with a forwarding address provided by United States Postal Service, and SCS immediately remailed another Notice and Claim Form. A skip trace address search was run using Experian for the remaining 903 returned Notice and Claim Forms to obtain updated addresses. SCS obtained 503 updated addresses from the skip trace efforts and mailed out another Notice and Claim Form to the updated addresses.

PUBLICATION OF THE SUMMARY NOTICE

10. Pursuant to the Court’s Preliminary Approval Order, the Summary Notice of Pendency and Proposed Settlement of Class Action and Motion for Attorneys’ Fees and Expenses (“Summary Notice”) was published in *The Wall Street Journal* on June 27, 2022, and transmitted over *PR Newswire* on July 1, 2022, as shown in the confirmations of publication attached hereto as **Exhibit B**.

TOLL-FREE PHONE LINE

11. SCS maintains a toll-free telephone number (1-866-274-4004) for Settlement Class Members to call and obtain information about the Settlement. SCS has promptly responded to each telephone inquiry received and will continue to address Settlement Class Member inquiries.

WEBSITE

12. On June 14, 2022, SCS’s website, www.strategicclaims.net/mindbody/, was updated to include a specific webpage for this Settlement. The webpage contains the current status of the case, important Settlement-related deadlines, an online claim filing link, and downloadable copies of the Notice and Claim Form, the Preliminary Approval Order, and the Stipulation. To date, there have been 11,550 pageviews by 3,277 unique users.

REPORT ON EXCLUSIONS AND OBJECTIONS RECEIVED TO DATE

13. The Notice informs potential Settlement Class Members that written requests for exclusion are to be mailed to SCS such that they are received no later than September 27, 2022. SCS has been monitoring all mail received for this case. As of the date of this Declaration, SCS has received one request for exclusion. The exclusion request did not provide the required transaction information and documentation to be valid; therefore, SCS sent a letter requesting

this information. SCS has not received a response to the letter. **Exhibit C** is a copy of the exclusion request and SCS letter.

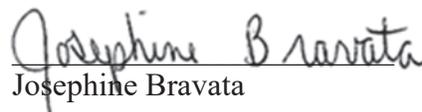
14. According to the Notice, Settlement Class Members seeking to object to the Settlement or any of its terms, the proposed Plan of Allocation of the Net Settlement Fund, and/or Lead Counsel's Fee and Expense application are required to submit their objection in writing such that the objection is received by Lead Counsel and Defendants' Counsel, as well as filed with the Clerk of the Court, no later than October 14, 2022. As of the date of this Declaration, SCS has not received any misdirected objections.

CLAIM FORM FILING STATUS

15. The Notice also informed Settlement Class Members that in order to qualify for a payment of the Net Settlement Fund, a Claim Form must be timely filed either online at www.strategicclaims.net/mindbody/ or by mail, with a postmark of no later than September 27, 2022. To date, SCS has received 5,135 claims. Out of the 5,135 claims received, 4,861 were filed by institutions and 274 were filed by individuals/entities by mail or online filing. SCS is currently processing the Claim Forms received and will provide additional information regarding the claims submitted in our supplemental declaration, which will be filed with the Court on October 20, 2022, after the exclusion deadline has passed.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 30th day of September 2022, in Media, Pennsylvania.



Josephine Bravata

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MINDBODY, INC. SECURITIES
LITIGATION

Civil Action No. 1:19-cv-08331-VEC

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

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

NOTICE OF PENDENCY OF CLASS ACTION: Your rights may be affected by the above-captioned securities class action (“Action”) pending in the United States District Court for the Southern District of New York (“Court”) if, during the period from November 6, 2018 through February 15, 2019, inclusive (“Class Period”), you sold the publicly traded Class A common stock of MINDBODY, Inc. (“Mindbody” or the “Company”) (Ticker: MB) and were allegedly damaged thereby.

NOTICE OF SETTLEMENT: Court-appointed Co-Lead Plaintiffs, Walleye Trading LLC and Walleye Opportunities Master Fund Ltd. (“Co-Lead Plaintiffs”), on behalf of themselves and the Settlement Class (as defined in ¶12 below), and Defendants have reached a proposed settlement of the Action for \$9,750,000 in cash that, if approved, will resolve all claims in the Action and related claims (“Settlement”). The terms and provisions of the Settlement are contained in the Stipulation and Agreement of Settlement, dated March 3, 2022 (“Stipulation”).¹

PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, and what steps you must take if you wish to receive a payment from the Settlement of this securities class action, wish to object, or wish to be excluded from the Settlement Class. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act. RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER.

¹ The Stipulation can be viewed at www.strategicclaims.net/mindbody/. All capitalized terms not defined in this Notice have the same meanings as defined in the Stipulation.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY SEPTEMBER 27, 2022	The <u>only</u> way to get a payment. <i>See</i> Question 8 for details.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SEPTEMBER 27, 2022	Get no payment. This is the only option that, assuming your claim is timely brought, might allow you to ever bring or be part of any other lawsuit against Defendants and/or the other Released Defendant Parties concerning the Released Plaintiff's Claims. <i>See</i> Question 10 for details.
OBJECT BY OCTOBER 14, 2022	Write to the Court about why you do not like the Settlement, the Plan of Allocation for distributing the proceeds of the Settlement, and/or Lead Counsel's Fee and Expense Application. If you object, you will still be in the Settlement Class. <i>See</i> Question 14 for details.
PARTICIPATE IN A HEARING ON OCTOBER 27, 2022 AND FILE A NOTICE OF INTENTION TO APPEAR BY OCTOBER 18, 2022	Ask to speak to the Court at the Settlement Hearing about the Settlement. <i>See</i> Question 18 for details.
DO NOTHING	Get no payment. Give up rights. Still be bound by the terms of the Settlement.

- These rights and options—and the deadlines to exercise them—are explained below.
- The Court in charge of this case still has to decide whether to approve the proposed Settlement. Payments will be made to all Settlement Class Members who timely submit valid Claim Forms, if the Court approves the Settlement and after any appeals are resolved.

SUMMARY OF THE NOTICE

Statement of the Settlement Class's Recovery

1. Subject to Court approval, Co-Lead Plaintiffs, on behalf of the Settlement Class, have agreed to settle the Action in exchange for a payment of \$9,750,000 in cash (the "Settlement Amount"), which will be deposited into an Escrow Account (the "Settlement Fund"). Based on Co-Lead Plaintiffs' estimate of the number of shares of Mindbody publicly traded Class A common stock eligible to participate in the Settlement, and assuming that all investors eligible to participate in the Settlement do so, it is estimated that the average recovery, before deduction of any Court-approved fees and expenses, such as attorneys' fees, Litigation Expenses, Taxes, and Notice and Administration Expenses, would be approximately \$0.26 per allegedly damaged share.² If the Court approves Lead Counsel's Fee and Expense Application (discussed below), the average recovery would be approximately \$0.16 per allegedly damaged share. **These average recovery amounts are only estimates and Settlement Class Members may recover more or less than these estimates.** A Settlement Class Member's actual recovery will depend on, for example: (i) the number of claims submitted; (ii) the amount of the Net Settlement Fund; (iii) how many shares of Mindbody publicly traded Class A common stock the Settlement Class Member sold during the Class Period and when; and (iv) the total Recognized Claims of all valid Claim Forms. *See* the Plan of Allocation beginning on page 11 for information on the calculation of your Recognized Claim.

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

2. The Parties disagree about both liability and damages and do not agree about the amount of damages that would be recoverable if Co-Lead Plaintiffs were to prevail on their claims. The issues that the Parties disagree about include, for example: (i) whether Defendants made any statements or omitted any facts that were materially false or misleading, or otherwise actionable under the federal securities laws; (ii) whether any such

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

statements or omissions were made with the requisite level of intent or recklessness; and (iii) the fair value of Mindbody's Class A common stock at the time Co-Lead Plaintiffs and class members sold the stock and the correct measure of damages.

3. Defendants have denied and continue to deny any and all allegations of wrongdoing or fault asserted in the Action, deny that they have committed any act or omission giving rise to any liability or violation of law, and deny that Co-Lead Plaintiffs and the Settlement Class have suffered any loss attributable to Defendants' actions or omissions.

Statement of Attorneys' Fees and Expenses Sought

4. Lead Counsel will apply to the Court for attorneys' fees from the Settlement Fund in an amount not to exceed 30% of the Settlement Fund, which includes any accrued interest, or \$2,925,000, plus accrued interest. Lead Counsel will also apply for payment of Litigation Expenses incurred in prosecuting the Action in an amount not to exceed \$800,000, plus accrued interest, which may include an application pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA") for the reasonable costs and expenses (including lost wages) of Co-Lead Plaintiffs directly related to their representation of the Settlement Class. If the Court approves Lead Counsel's Fee and Expense Application in full, the average amount of fees and expenses is estimated to be approximately \$0.10 per allegedly damaged share of Mindbody publicly traded Class A common stock. A copy of the Fee and Expense Application will be posted on www.strategicclaims.net/mindbody/ after it has been filed with the Court.

Reasons for the Settlement

5. For Co-Lead Plaintiffs, the principal reason for the Settlement is the guaranteed cash benefit to the Settlement Class. This benefit must be compared to the uncertainty of being able to prove the allegations in the Second Amended Class Action Complaint for Violations of the Federal Securities Laws ("SAC"); the risk that the Court may not certify a class or that the class would be de-certified as the case progressed; that the Court may grant some or all of the anticipated summary judgment motions to be filed by Defendants; the uncertainty of a greater recovery after a trial and appeals; and the difficulties and delays inherent in such litigation.

6. For Defendants, who deny all allegations of wrongdoing or liability whatsoever and deny that Settlement Class Members were damaged, the principal reasons for entering into the Settlement are to end the burden, expense, uncertainty, and risk of further litigation.

Identification of Representatives

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

8. Further information regarding the Action, the Settlement, and this Notice may be obtained by contacting the Claims Administrator: *Mindbody Securities Litigation*, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 205, Media, PA 19063, (866) 274-4004, www.strategicclaims.net/mindbody/.

Do Not Call the Court with Questions About the Settlement.

BASIC INFORMATION

1. Why did I get this Notice?

9. The Court authorized that this Notice be sent to you because you or someone in your family may have sold Mindbody publicly traded Class A common stock during the period from November 6, 2018 through February 15, 2019, inclusive. **Receipt of this Notice does not mean that you are a Member of the Settlement Class or that you will be entitled to receive a payment. The Parties do not have access to your individual investment information. If you wish to be eligible for a payment, you are required to submit the Claim Form that is being distributed with this Notice. See Question 8 below.**

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

11. The Court in charge of the Action is the United States District Court for the Southern District of New York, and the case is known as *In re Mindbody Inc. Securities Litigation*, Civil Action No. 1:19-cv-08331-VEC. The Action is assigned to the Honorable Valerie E. Caproni, United States District Judge.

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

12. The Court directed, for purposes of the proposed Settlement, that everyone who fits the following description is a Settlement Class Member and subject to the Settlement unless they are an excluded person (*see* Question 3 below) or take steps to exclude themselves from the Settlement Class (*see* Question 10 below):

All persons and entities who or which sold shares of the publicly traded Class A common stock of Mindbody (Ticker: MB) during the period from November 6, 2018 through February 15, 2019, inclusive, and were allegedly damaged thereby.

13. If one of your mutual funds sold Mindbody publicly traded Class A common stock during the Class Period, that does not make you a Settlement Class Member, although your mutual fund may be. You are a Settlement Class Member only if you individually sold Mindbody publicly traded Class A common stock during the Class Period. Shares tendered on February 15, 2019 do not count as sales and are not eligible for a recovery. Check your investment records or contact your broker to see if you have any eligible sales. ***The Parties do not independently have access to your trading information.***

3. Are there exceptions to being included?

14. Yes. There are some individuals and entities that are excluded from the Settlement Class by definition. Excluded from the Settlement Class are: (i) Defendants; (ii) members of the Immediate Family of any Individual Defendant; (iii) any person who was an officer or director of Mindbody during the Class Period; (iv) any firm or entity in which any Defendant has or had a controlling interest; (v) parents, affiliates, or subsidiaries of Mindbody; and (vi) the legal representatives, agents, heirs, beneficiaries, successors-in-interest, or assigns of any excluded person or entity, in their respective capacity as such. Also excluded from the Settlement Class is anyone who timely and validly seeks exclusion from the Settlement Class in accordance with the procedures described in Question 10 below.

4. Why is this a class action?

15. In a class action, one or more persons or entities (in this case, Co-Lead Plaintiffs), sue on behalf of people and entities who have similar claims. Together, these people and entities are a “class,” and each is a “class member.” A class action allows one court to resolve, in a single case, many similar claims that, if brought separately by individual people, might be too small economically to litigate. One court resolves the issues for all class members at the same time, except for those who exclude themselves, or “opt-out,” from the class. In this Action, the Court has appointed Walleye Trading LLC and Walleye Opportunities Master Fund Ltd. to serve as Co-Lead Plaintiffs and has appointed Labaton Sucharow LLP to serve as Lead Counsel.

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

16. Mindbody provides software that assists health, wellness, and beauty businesses (*e.g.*, gyms, yoga studios, salons, and spas) in their operations. It provides a mobile phone application that consumers use to reserve services or classes, as well as tools for payment processing, marketing, and business analytics. In 2018, Mindbody made two acquisitions that expanded the number of businesses served by Mindbody and expanded the services that Mindbody could provide. The SAC alleges that defendants Mindbody, Richard L. Stollmeyer, Brett White, and Eric Liaw made materially false and misleading statements and/or omissions in connection with Mindbody’s acquisition by Vista (the “Merger”) and in connection with Mindbody’s Fourth Quarter 2018 revenue guidance. Co-Lead Plaintiffs further allege that the price of Mindbody publicly traded Class A common stock was artificially deflated during the Class Period as a result of Defendants’ allegedly material misrepresentations and omissions, causing Co-Lead Plaintiffs and Settlement Class Members to sell their Mindbody stock at prices less than they would have absent the artificial deflation.

17. In September 2019, Co-Lead Plaintiffs filed an initial securities class action complaint in the United States District Court for the Southern District of New York alleging violations of the federal securities laws. The complaint alleged violations by all Defendants under Sections 10(b) and 14(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. On November 7, 2019, the Court appointed Walleye Trading LLC and Walleye Opportunities Master Fund Ltd. as Co-Lead Plaintiffs and Labaton Sucharow as Lead Counsel.

18. Beginning on November 14, 2019, Co-Lead Plaintiffs filed petitions, pursuant to Delaware Court of Chancery Rule 5.1(f) and the First Amendment to the Constitution of the United States, challenging the confidential treatment of certain documents in the action *In re Mindbody Stockholder Litigation*, C.A. No. 2019-0442-KSJM (Del. Ch.) (the “Luxor Action”), a class action and appraisal proceeding challenging the Merger. Those petitions and subsequent negotiations with the parties to the Luxor Action resulted in a partial unsealing of documents relevant to the claims in the Action.

19. On December 20, 2019, Co-Lead Plaintiffs filed an Amended Class Action Complaint for Violations of the Federal Securities Laws (the “Amended Complaint”). The Amended Complaint asserted the same claims as stated in the initial complaint, but added additional purported factual allegations.

20. On February 18, 2020, Defendants filed a motion to dismiss the Amended Complaint, and on April 3, 2020 Co-Lead Plaintiffs filed their memorandum of law in opposition to the motion to dismiss. On May 4, 2020, Defendants filed their reply memorandum of law and, on May 22, 2020, with leave of the Court, Co-Lead Plaintiffs filed a sur-reply in opposition to the motion to dismiss. Defendants, with leave of the Court, filed a sur-reply in further support of their motion to dismiss on June 6, 2020. On September 25, 2020, the Court partially granted and partially denied Defendants’ motion to dismiss. On October 30, 2020, Defendants filed their Answer to the Amended Complaint.

21. Following the Court’s order on the motion to dismiss, the Parties engaged in an extensive discovery process. Throughout the course of discovery, Co-Lead Plaintiffs received over 400,000 pages of document discovery and participated in over 13 depositions. Co-Lead Plaintiffs also produced documents in response to Defendants’ document requests.

22. On February 24, 2021, Co-Lead Plaintiffs sought leave to file a second amended complaint, which sought to replead certain previously dismissed claims. Following briefing on Co-Lead Plaintiffs’ motion for leave to amend, the Court granted the motion and Co-Lead Plaintiffs filed the SAC on August 18, 2021. Defendants filed their Answer to the SAC on August 27, 2021.

23. On October 15, 2021, Co-Lead Plaintiffs filed their motion for class certification and appointment of class counsel, which was accompanied by a report from Co-Lead Plaintiffs’ expert on market efficiency and the calculation of damages and a report from their expert on corporate valuation.

24. Overall, before agreeing to a settlement, Co-Lead Plaintiffs, through Lead Counsel, and Defendants conducted extensive fact discovery relating to the claims, defenses, and underlying events and transactions that are the subject of the Action. The Parties’ formal discovery included, among other things, Lead Counsel’s receipt of more than 400,000 pages of documents produced by Defendants and taking or defending 13 depositions.

25. Co-Lead Plaintiffs and Defendants engaged Michelle Yoshida of Phillips ADR (the “Mediator”), a well-respected and experienced mediator, to assist them in exploring a potential negotiated resolution of the Action. The Parties first met with the Mediator in a full-day mediation session on May 12, 2021. In advance of the session, the Parties submitted detailed mediation statements to the Mediator, together with numerous supporting exhibits, which addressed issues of liability, class certification, and damages. No agreement was reached during the mediation.

26. Settlement discussions continued and on November 30, 2021, the Mediator made a formal mediator’s proposal, which was accepted by the Parties on December 2, 2021. The Parties executed a Term Sheet on December 22, 2021 and, following additional negotiations regarding the specific terms of the agreement, the Parties executed the Stipulation on March 3, 2022. The Stipulation, which sets forth the final terms and conditions of the Settlement, can be found at www.strategicclaims.net/mindbody/.

27. By Order entered June 6, 2022, the Court preliminarily approved the Settlement, authorized this Notice to be disseminated to potential Settlement Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval of the Settlement.

6. What are the reasons for the Settlement?

28. The Court did not finally decide in favor of Co-Lead Plaintiffs or Defendants. Instead, both sides agreed to a settlement. Co-Lead Plaintiffs and Lead Counsel believe that the claims asserted in the Action have merit. They recognize, however, the expense and length of continued proceedings needed to pursue the claims through trial and appeals, as well as the difficulties in establishing liability. Assuming the claims proceeded to trial, the Parties would present factual and expert testimony on each of the disputed issues, and there is risk that the Court

or jury would resolve these issues unfavorably against Co-Lead Plaintiffs and the class. In light of the Settlement and the guaranteed cash recovery to the Settlement Class, Co-Lead Plaintiffs and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

29. Defendants have denied and continue to deny each and every one of the claims alleged in the Action, including all claims in the complaint, and specifically deny any wrongdoing and that they have committed any act or omission giving rise to any liability or violation of law. Defendants deny the allegations that they knowingly, or otherwise, made any material misstatements or omissions; that any Settlement Class Member has suffered damages; that the prices of Mindbody's publicly traded Class A common stock were artificially deflated by reason of the alleged misrepresentations, omissions, or otherwise; or that Settlement Class Members were harmed by the conduct alleged. Nonetheless, Defendants have concluded that continuation of the Action would be protracted and expensive, and have taken into account the uncertainty and risks inherent in any litigation, especially a complex case like this Action.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

30. In exchange for the Settlement and the release of the Released Plaintiff's Claims against the Released Defendant Parties (*see* Question 9 below), Mindbody has agreed to cause a \$9.75 million cash payment to be made, which, along with any interest earned, will be distributed after deduction of Court-awarded attorneys' fees and Litigation Expenses, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court (the "Net Settlement Fund"), to Settlement Class Members who submit valid and timely Claim Forms and are found to be eligible to receive a distribution from the Net Settlement Fund.

8. How can I receive a payment?

31. To qualify for a payment from the Net Settlement Fund, you must submit a timely and valid Claim Form. A Claim Form is included with this Notice. You may also obtain one from the Claims Administrator's website: www.strategicclaims.net/mindbody/, or from Lead Counsel's website: www.labaton.com, or submit a claim online at www.strategicclaims.net/mindbody/. You can also request that a Claim Form be mailed to you by calling the Claims Administrator toll-free at (866) 274-4004.

32. Please read the instructions contained in the Claim Form carefully, fill it out, include all the documents the form requests, sign it, and mail or submit it to the Claims Administrator so that it is **postmarked or received no later than September 27, 2022**:

Mindbody Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson Street, Suite 205
Media, PA 19063
Fax: (610) 565-7985
www.strategicclaims.net/mindbody/
info@strategicclaims.net

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

33. If you are a Settlement Class Member and do not timely and validly exclude yourself from the Settlement Class, you will remain in the Settlement Class and that means that, upon the "Effective Date" of the Settlement, you will release all "Released Plaintiff's Claims" against the "Released Defendant Parties." All of the Court's orders about the Settlement, whether favorable or unfavorable, will apply to you and legally bind you.

(a) **"Released Plaintiff's Claims"** means any and all rights, liabilities, suits, debts, obligations, demands, damages, losses, judgments, matters, issues, claims, and causes of action of any nature and description whatsoever, whether known or Unknown Claims (defined below), contingent or absolute, mature or not mature, liquidated or unliquidated, accrued or not accrued, concealed or hidden, direct or indirect, regardless of legal or equitable theory and whether arising under federal, state, statutory, common, or foreign law, or any other law, rule, or regulation, whether class and/or individual in nature, that Co-Lead Plaintiffs and any other member of the Settlement Class: (a) asserted in the Action, or (b) could have asserted in the Action or in any forum that arise out

of, are based upon, or relate to, both (i) the allegations, transactions, facts, events, matters, occurrences, representations, or omissions involved, set forth, or referred to, in any of the complaints filed in the Action and (ii) the sale of Mindbody publicly traded Class A common stock during the Class Period. For the avoidance of doubt, Released Plaintiff's Claims do not include: (i) claims relating to the enforcement of the Settlement; or (ii) any claims pending before the Delaware Court of Chancery in the consolidated action captioned *In re Mindbody, Inc. Stockholder Litigation*, Cons. C.A. No. 2019-0442-KSJM (the "Delaware Merger Litigation") as those claims are set forth in the Second Amended Complaint in that action, dated July 27, 2021, any claims asserted in any subsequently amended complaint filed in the Delaware Merger Litigation, or any claims of plaintiffs in the Delaware Merger Litigation to conform to the evidence and record at trial in the Delaware Merger Litigation.

(b) **"Released Defendant Parties"** means Defendants and the officers and directors of Mindbody, and each of their respective predecessors, successors, parent corporations, sister corporations, past, present or future subsidiaries, affiliates, principals, assigns, assignors, legatees, devisees, executors, administrators, estates, receivers and trustees, beneficiaries, members, shareholders, employees, independent contractors, agents, partners, insurers, reinsurers, representatives, attorneys, auditors, and accountants, in their capacities as such; the spouses, Immediate Families, representatives, and heirs of the Individual Defendants, as well as any trust of which any Individual Defendant is the settlor or which is for the benefit of any of their Immediate Family members; and any firm, trust, corporation, or entity in which any Defendant has a controlling interest.

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

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

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

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

35. Upon the "Effective Date," Defendants will also provide a release of any claims against Co-Lead Plaintiffs and the Settlement Class arising out of or related to the institution, prosecution, or settlement of the claims in the Action.

EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS

36. If you want to keep any right you may have to sue or continue to sue Defendants and the other Released Defendant Parties on your own concerning the Released Plaintiff's Claims, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself or "opting out." **Please note:** If you

decide to exclude yourself from the Settlement Class, there is a risk that any lawsuit you may file to pursue claims alleged in the Action may be dismissed, including because the suit is not filed within the applicable time periods required for filing suit. Defendants have the option to terminate the Settlement if a certain amount of Settlement Class Members request exclusion.

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

37. To exclude yourself from the Settlement Class, you must mail a signed letter stating that you request to be “excluded from the Settlement Class in *In re Mindbody Inc. Securities Litigation*, Civil Action No. 1:19-cv-08331-VEC (S.D.N.Y.)” You cannot exclude yourself by telephone or e-mail. Each request for exclusion must also: (i) state the name, address, and telephone number of the person or entity requesting exclusion and, in the case of entities, the name and telephone number of the appropriate contact person; (ii) state the number of shares of Mindbody publicly traded Class A common stock the person or entity sold during the Class Period, as well as the dates and prices of each such sale; and (iii) be signed by the Person requesting exclusion or an authorized representative. A request for exclusion must be mailed so that it is **received no later than September 27, 2022** at:

Mindbody Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson Street, Suite 205
Media, PA 19063

38. This information is needed to determine whether you are a member of the Settlement Class. Your exclusion request must comply with these requirements in order to be valid.

39. If you ask to be excluded, do not submit a Claim Form because you cannot receive any payment from the Net Settlement Fund. Also, you cannot object to the Settlement because you will not be a Settlement Class Member and the Settlement will not affect you. If you submit a valid exclusion request, you will not be legally bound by anything that happens in the Action, and you may be able to sue (or continue to sue) Defendants and the other Released Defendant Parties in the future.

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

40. No. Unless you properly exclude yourself, you will give up any rights to sue Defendants and the other Released Defendant Parties for any and all Released Plaintiff’s Claims. If you have a pending lawsuit against any of the Released Defendant Parties, **speak to your lawyer in that case immediately**. You must exclude yourself from this Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **September 27, 2022**.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?

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

13. How will the lawyers be paid?

42. Lead Counsel has been prosecuting the Action on a contingent basis and has not been paid for any of its work. Lead Counsel will seek an attorneys’ fee award of no more than 30% of the Settlement Fund, or \$2,925,000, plus accrued interest. Lead Counsel will also seek payment of Litigation Expenses incurred in the prosecution of the Action of no more than \$800,000, plus accrued interest, which may include an application in accordance with the PSLRA for the reasonable costs and expenses (including lost wages) of the Co-Lead Plaintiffs directly related to their representation of the Settlement Class. Any attorneys’ fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

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

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

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

44. To object, you must send a signed letter stating that you object to the proposed Settlement, the Plan of Allocation, and/or the Fee and Expense Application in "*In re Mindbody Inc. Securities Litigation*, Civil Action No. 1:19-cv-08331-VEC (S.D.N.Y.)." The objection must also: (i) state the name, address, telephone number, and e-mail address of the objector and must be signed by the objector; (ii) contain a statement of the Settlement Class Member's objection or objections and the specific reasons for the objection, including whether it applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class, and any legal and evidentiary support (including witnesses) the Settlement Class Member wishes to bring to the Court's attention; and (iii) include documents sufficient to show the objector's membership in the Settlement Class, including the number of shares of publicly traded Class A common stock of Mindbody sold during the Class Period, as well as the dates and prices of each such sale. Unless otherwise ordered by the Court, any Settlement Class Member who does not object in the manner described in this Notice will be deemed to have waived any objection and will be foreclosed from making any objection to the proposed Settlement, the Plan of Allocation, and/or Lead Counsel's Fee and Expense Application. Your objection must be filed with the Court **no later than October 14, 2022** and be mailed or delivered to the following counsel so that it is **received no later than October 14, 2022**:

<p><u>Court</u> Clerk of the Court United States District Court Southern District of New York Thurgood Marshall U.S. Courthouse 40 Foley Square New York, NY 10007</p>	<p><u>Lead Counsel</u> Labaton Sucharow LLP Carol C. Villegas, Esq. 140 Broadway New York, NY 10005</p>	<p><u>Defendants' Counsel</u> Kirkland & Ellis LLP Matthew Solum, P.C., Esq. 601 Lexington Avenue New York, NY 10022</p>
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45. You do not need to attend the Settlement Hearing to have your written objection considered by the Court. However, any Settlement Class Member who has complied with the procedures described in this Question 14 and below in Question 18 may participate at the Settlement Hearing and be heard, to the extent allowed by the Court. An objector may participate on their own or arrange, at his, her, or its own expense, for a lawyer to represent him, her, or it at the Settlement Hearing.

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

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

THE SETTLEMENT HEARING

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

47. The Court will hold the Settlement Hearing on **October 27, 2022 at 2:30 p.m.** in Courtroom 443 at the United States District Court for the Southern District of New York, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007.

48. At this hearing, the Honorable Valerie E. Caproni will consider whether: (i) the Settlement is fair, reasonable, adequate, and should be approved; (ii) the Plan of Allocation is fair and reasonable, and should be

approved; and (iii) the application of Lead Counsel for an award of attorneys' fees and payment of Litigation Expenses is reasonable and should be approved. The Court will take into consideration any written objections filed in accordance with the instructions in Question 14 above. We do not know how long it will take the Court to make these decisions.

49. The Court may change the date and time of the Settlement Hearing without another individual notice being sent to Settlement Class Members. If you want to attend the hearing, you should check with Lead Counsel beforehand to be sure that the date and/or time has not changed, or periodically check the Claims Administrator's website at www.strategicclaims.net/mindbody/ to see if the Settlement Hearing stays as scheduled or is changed.

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

50. No. Lead Counsel will answer any questions the Court may have. But, you are welcome to participate at your own expense. If you submit a valid and timely objection, the Court will consider it and you do not have to participate in the Settlement Hearing to discuss it. You may have your own lawyer participate (at your own expense), but it is not required. If you do hire your own lawyer, he or she must file and serve a Notice of Appearance in the manner described in the answer to Question 18 below **no later than October 18, 2022**.

18. May I speak at the Settlement Hearing?

51. You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must, **no later than October 18, 2022**, submit a Notice of Appearance stating that you, or your attorney, intend to appear in "*In re Mindbody Inc. Securities Litigation*, Civil Action No. 1:19-cv-08331-VEC (S.D.N.Y.)." Your notice must be filed with the Court and delivered or mailed to Lead Counsel and Defendants' Counsel so that it is received **on or before October 18, 2022** at the addresses listed in paragraph 44, above. If you intend to present evidence at the Settlement Hearing, you must also include in your Notice of Appearance the identities of any witnesses you may wish to call to testify and any exhibits you intend to introduce into evidence at the Settlement Hearing to support your objection (prepared and submitted according to the answer to Question 14 above). You may not speak at the Settlement Hearing if you exclude yourself from the Settlement Class or if you have not provided written notice of your intention to appear at the Settlement Hearing in accordance with the procedures described in this Question 18.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

52. If you do nothing and you are a member of the Settlement Class, you will receive no money from this Settlement and you will be precluded from starting a lawsuit, continuing with a lawsuit, or being part of any other lawsuit against Defendants and the other Released Defendant Parties concerning the Released Plaintiff's Claims. To share in the Net Settlement Fund, you must submit a Claim Form (*see* Question 8 above). To start, continue, or be a part of any other lawsuit against Defendants and the other Released Defendant Parties concerning the Released Plaintiff's Claims, you must exclude yourself from the Settlement Class (*see* Question 10 above).

GETTING MORE INFORMATION

20. Are there more details about the Settlement?

53. This Notice summarizes the proposed Settlement. More details are contained in the Stipulation. You may review the Stipulation filed with the Court or other documents in the case during business hours at the Office of the Clerk of the United States District Court, Southern District of New York, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007. (Please check the Court's website, www.nysd.uscourts.gov, for information about Court closures before visiting.) Subscribers to PACER, a fee-based service, can also view the papers filed publicly in the Action through the Court's on-line Case Management/Electronic Case Files System at <https://www.pacer.gov>.

54. You can also get a copy of the Stipulation, and other documents related to the Settlement, as well as information about the Settlement, by visiting the Claims Administrator's website, www.strategicclaims.net/mindbody/, or the website of Lead Counsel, www.labaton.com. You may also call the Claims Administrator toll free at (866) 274-4004 or write to the Claims Administrator at *Mindbody Securities*

Litigation, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 205, Media, PA 19063. **Do not call the Court with questions about the Settlement.**

PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

21. How will my claim be calculated?

55. The Plan of Allocation set forth below is the plan for calculating claims and distributing the proceeds of the Settlement that is being proposed by Co-Lead Plaintiffs and Lead Counsel to the Court for approval. The Court may approve this Plan of Allocation or modify it without additional individual notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the Claims Administrator's website www.strategicclaims.net/mindbody/ and at www.labaton.com.

56. As noted above, the Settlement Amount and the interest it earns is the Settlement Fund. The Settlement Fund, after deduction of Court-approved attorneys' fees and Litigation Expenses, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court is the Net Settlement Fund. The Net Settlement Fund will be distributed to members of the Settlement Class who timely submit valid Claim Forms that show a "Recognized Claim" according to the proposed Plan of Allocation (or any other plan of allocation approved by the Court). Settlement Class Members who do not timely submit valid Claim Forms will not share in the Net Settlement Fund, but will still be bound by the Settlement.

57. The objective of the Plan of Allocation is to distribute the Net Settlement Fund among those Settlement Class Members who allegedly suffered economic losses as a result of the alleged wrongdoing. To design the Plan, Lead Counsel conferred with Co-Lead Plaintiffs' damages expert. This Plan is intended to be generally consistent with an assessment of, among other things, the damages that Co-Lead Plaintiffs and Lead Counsel believe were recoverable in the Action. The Plan of Allocation, however, is not a formal damages analysis and the calculations made pursuant to the Plan are not intended to be estimates of, nor indicative of, the losses or corresponding damages that Settlement Class Members suffered or might have been able to recover after a trial. The calculations pursuant to the Plan of Allocation are also not estimates of the amounts that will be paid to Authorized Claimants. An individual Settlement Class Member's recovery will depend on, for example: (i) the total number and value of claims submitted; and (ii) when the claimant purchased and sold Mindbody publicly traded Class A common stock. Shares tendered on February 15, 2019 do not count as sales and are not eligible for a recovery. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund. The Claims Administrator will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's "Recognized Claim."

58. Mindbody publicly traded Class A common stock (Ticker: MB) is the only security eligible for recovery under the Plan of Allocation.

CALCULATION OF RECOGNIZED LOSS AMOUNTS

59. For purposes of determining whether a claimant has a Recognized Claim, purchases, acquisitions, and sales of Mindbody's publicly traded Class A common stock will first be matched on a First In/First Out ("FIFO") basis. Class Period sales will be matched first against any holdings as of the close of trading on November 6, 2018, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

60. A "Recognized Loss Amount"³ will be calculated as set forth below for each share of Mindbody Class A common stock sold during the period from November 6, 2018 through February 15, 2019, both dates inclusive, that is listed in the Claim Form and for which adequate documentation is provided:

- A. For shares of Mindbody Class A common stock held as of the close of trading on November 6, 2018, for each such share sold from November 6, 2018 after 4:15 p.m. (EST) through December 23, 2018, inclusive, the Recognized Loss Amount per share will be calculated as \$49.50 (which is Co-Lead Plaintiffs' estimate

³ Recognized Loss Amounts are not an assessment of, or determination of, any claimant's alleged or actual losses or corresponding damages from the alleged wrongdoing that is the subject of the Action.

of the nominal fair value of such share⁴) minus the price at which the share was sold (excluding all fees, taxes, and commissions).

- B. For shares of Mindbody Class A common stock held as of the opening of trading on December 24, 2018, for each such share sold from December 24, 2018 through January 3, 2019, inclusive, the Recognized Loss Amount per share will be calculated as \$49.50 (which is Co-Lead Plaintiffs' estimate of the nominal fair value of such share⁵) minus the price at which the share was sold (excluding all fees, taxes, and commissions).
- C. For shares of Mindbody Class A common stock held as of the opening of trading on January 4, 2019, for each such share sold from January 4, 2019 through February 15, 2019, inclusive, the Recognized Loss Amount per share will be calculated as \$49.50 (which is Co-Lead Plaintiffs' estimate of the nominal fair value of such share⁶) minus the price at which the share was sold (excluding all fees, taxes, and commissions).
- D. Shares of Mindbody Class A common stock purchased and sold from November 6, 2018 after 4:15 p.m. (EST) through December 23, 2018, from December 24, 2018 through January 3, 2019, and/or from January 4, 2019 through February 15, 2019 have a Recognized Loss Amount of \$0 per share because they were purchased and sold within the same allegedly deflationary period.

ADDITIONAL PROVISIONS OF THE PLAN OF ALLOCATION

61. For purposes of counting shares sold on November 6, 2018, only shares sold after 4:15 p.m. (EST) will be counted. Any share sold on November 6, 2018 at a price of \$33.50 or less will be assumed to be a share sold on that date after 4:15 p.m. (EST), given the prices that shares traded at before 4:15 p.m. (EST). Shares tendered on February 15, 2019 do not count as sales and are not eligible for a recovery.

62. The sum of a claimant's Recognized Loss Amounts will be the claimant's "Recognized Claim."

63. If the sum total of Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro rata* share will 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. If the Net Settlement Fund exceeds the sum total amount of the Recognized Claims of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund will be distributed *pro rata* to all Authorized Claimants entitled to receive payment.

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

65. The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is \$10.00 or greater. Because of the administrative costs associated with making payments, if the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

⁴ Defendants do not agree that the value of Mindbody Class A common stock was different from the price at which that stock traded on the public market.

⁵ Defendants do not agree that the value of Mindbody Class A common stock was different from the price at which that stock traded on the public market.

⁶ Defendants do not agree that the value of Mindbody Class A common stock was different from the price at which that stock traded on the public market.

66. Distributions will be made to eligible Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise) after at least six (6) months from the date of initial distribution of the Net Settlement Fund, the Claims Administrator will, if feasible and economical after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, redistribute such balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion. Once it is no longer feasible or economical to make further distributions, any balance that still remains in the Net Settlement Fund after re-distribution(s) and after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall be contributed to a private, non-profit, non-sectarian 501(c)(3) organization, to be designated by Co-Lead Plaintiffs and approved by the Court.

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

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

SPECIAL NOTICE TO SECURITIES BROKERS AND NOMINEES

69. If you *sold* Mindbody publicly traded Class A common stock (Ticker: MB) during the period from November 6, 2018 through February 15, 2019, inclusive, for the beneficial interest of a person or entity other than yourself, the Court has directed that **WITHIN TEN (10) CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE, YOU MUST EITHER:** (a) provide a list of the names and addresses of all such beneficial owners to the Claims Administrator and the Claims Administrator is ordered to send the Notice promptly to such identified beneficial owners; or (b) request additional copies of this Notice and the Claim Form from the Claims Administrator, which will be provided to you free of charge, and **WITHIN TEN (10) CALENDAR DAYS** of receipt, mail the Notice and Claim Form directly to all the beneficial owners of those securities. If you choose to follow procedure (b), the Court has also directed that, upon making that mailing, **YOU MUST SEND A STATEMENT** to the Claims Administrator confirming that the mailing was made as directed and keep a record of the names and mailing addresses used. Nominees shall also provide email addresses for all such beneficial owners to the Claims Administrator, to the extent they are available. You are entitled to reimbursement from the Settlement Fund of your reasonable out-of-pocket expenses actually incurred in connection with the foregoing of up to: \$0.15 per Notice, plus postage at the current pre-sort rate used by the Claims Administrator, for Notices mailed by nominees; or \$0.05 per mailing record and email address provided to the Claims Administrator.

70. Expenses will be paid upon request and submission of appropriate supporting documentation and timely compliance with the above directives. All communications concerning the foregoing should be addressed to the Claims Administrator:

Mindbody Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson Street, Suite 205
Media, PA 19063
www.strategicclaims.net/mindbody/
(866) 274-4004

Dated: June 20, 2022

BY ORDER OF THE UNITED STATES
DISTRICT COURT SOUTHERN
DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MINDBODY, INC. SECURITIES
LITIGATION

Civil Action No. 1:19-cv-08331-VEC

PROOF OF CLAIM AND RELEASE

A. GENERAL INSTRUCTIONS

1. To recover as a member of the Settlement Class based on your claims in the class action entitled *In re Mindbody, Inc. Securities Litigation*, Civil Action No. 1:19-cv-08331-VEC (S.D.N.Y.) (the “Action”), you must complete and, on page 18 below, sign this Proof of Claim and Release form (“Claim Form”). If you fail to submit a timely and properly addressed (as explained in paragraph 3 below) Claim Form, your claim may be rejected and you may not receive any recovery from the Net Settlement Fund created in connection with the proposed Settlement.

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

3. **THIS CLAIM FORM MUST BE SUBMITTED ONLINE AT WWW.STRATEGICCLAIMS.NET/MINDBODY/ NO LATER THAN SEPTEMBER 27, 2022 OR, IF MAILED, BE POSTMARKED OR RECEIVED NO LATER THAN SEPTEMBER 27, 2022, ADDRESSED AS FOLLOWS:**

Mindbody Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson Street, Suite 205
Media, PA 19063
www.strategicclaims.net/mindbody/

If you are a member of the Settlement Class, and you do not timely request exclusion from the Settlement Class, you are bound by the terms of any judgment entered in the Action, including the releases provided therein, **WHETHER OR NOT YOU SUBMIT A CLAIM FORM OR RECEIVE A PAYMENT. RECEIPT OF THIS CLAIM FORM DOES NOT MEAN YOU ARE A MEMBER OF THE SETTLEMENT CLASS.**

B. CLAIMANT IDENTIFICATION

1. If you sold shares of the publicly traded Class A common stock of Mindbody, Inc. (“Mindbody”) (Ticker: MB) during the period from November 6, 2018 through February 15, 2019, both dates inclusive (the “Class Period”) and held the stock in your name, you were the beneficial owner as well as the record owner. If, however, you sold Mindbody shares during the Class Period through a third party, such as a brokerage firm, you were the beneficial owner and the third party was the record owner.

2. Use Part I of this form entitled “Claimant Information” to identify each beneficial owner of Mindbody publicly traded Class A common stock that forms the basis of this claim. **THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL OWNER(S) OR THE LEGAL REPRESENTATIVE OF SUCH OWNER(S).** All joint owners must sign this claim.

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

C. IDENTIFICATION OF TRANSACTIONS

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

2. On the schedules, provide all of the requested information with respect to: (i) all of your holdings of Mindbody shares as of the close of trading on November 6, 2018; (ii) all of your purchases, acquisitions, and sales of Mindbody shares from November 6, 2018 (after close of trading) through February 15, 2019, both dates inclusive; and (iii) all of your holdings in Mindbody shares at the close of trading on February 15, 2019, whether such purchases, acquisitions, sales or transactions resulted in a profit or a loss. Failure to report all such transactions may result in the rejection of your claim. Shares tendered on February 15, 2019 do not count as sales and are not eligible for a recovery.

3. Copies of broker confirmations or other documentation of your transactions in Mindbody publicly traded Class A common stock must be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim. **THE PARTIES DO NOT HAVE INFORMATION ABOUT YOUR TRANSACTIONS IN MINDBODY SHARES.**

4. NOTICE REGARDING ELECTRONIC FILING: Certain claimants with large numbers of transactions may request, either personally or through a legal representative (“Representative Filers”), to submit information regarding their transactions in electronic files. This is different than submitting your claim online using the Claim Administrator website. All such claimants MUST submit a manually signed paper Claim Form whether or not they also submit electronic copies. If you wish to file your claim electronically, you must contact the Claims Administrator at (866) 274-4004 or efile@strategicclaims.net to obtain the required file layout. The Claims Administrator may also request that claimants with a large number of transactions file their claims electronically. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the claimant a written acknowledgment of receipt and acceptance of electronically submitted data.

5. NOTICE REGARDING ONLINE FILING: Claimants who are not Representative Filers may submit their claims online using the electronic version of the Claim Form hosted at www.strategicclaims.net/mindbody/. If you are not acting as a Representative Filer, you do not need to contact the Claims Administrator prior to filing. After filing, you will receive an automated e-mail confirming receipt once your Claim Form has been submitted. If you are unsure if you should submit your claim as a Representative Filer, please contact the Claims Administrator at info@strategicclaims.net or (866) 274-4004. If you are not a Representative Filer, but your claim contains a large number of transactions, the Claims Administrator may request that you also submit an electronic spreadsheet reporting your transactions together with your Claim Form.

MINDBODY

PART I – CLAIMANT INFORMATION

The Claims Administrator will use this information for all communications regarding this Claim Form. If this information changes, you MUST notify the Claims Administrator in writing at the address above. Complete names of all persons and entities must be provided.

Beneficial Owner Name		
Co-Beneficial Owner Name		
Address 1 (Street Name and Number)		
Address 2 (apartment, unit, or box number)		
City	State	ZIP
Foreign Province	Foreign Country	
Telephone Number (home)	Telephone Number (work)	
Email Address		
Account Number (if filing for multiple accounts, file a separate Claim Form for each account)		
Last Four Digits of Social Security Number (for individuals):	OR	Last Four Digits of Taxpayer Identification Number (for estates, trusts, corporations, etc.):

Claimant Account Type (check appropriate box):

- | | | |
|---|---|--------------------------------|
| <input type="checkbox"/> Individual (includes joint owner accounts) | <input type="checkbox"/> Pension Plan | <input type="checkbox"/> Trust |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Estate | |
| <input type="checkbox"/> IRA/401K | <input type="checkbox"/> Other _____ (please specify) | |

MINDBODY

**PART II – SCHEDULE OF TRANSACTIONS IN MINDBODY
PUBLICLY TRADED CLASS A COMMON STOCK**

1. HOLDINGS AS OF CLOSE OF TRADING ON NOVEMBER 6, 2018 – State the total number of shares of Mindbody Class A common stock held as of the close of trading on November 6, 2018. (Must be documented.) If none, write “zero” or “0.” _____	Confirm Proof of Position Enclosed <input type="checkbox"/>
--	--

2. PURCHASES/ACQUISITIONS FROM NOVEMBER 6, 2018 (AFTER CLOSE OF TRADING) THROUGH FEBRUARY 15, 2019. Separately list each and every purchase/acquisition of Mindbody Class A common stock from after the close of trading on November 6, 2018 through and including the close of trading on February 15, 2019. (Must be documented.)

Date of Purchase/ Acquisition (List Chronologically) (Month/Day/Year)	Number of Shares Purchased/ Acquired	Purchase/ Acquisition Price Per Share	Total Purchase/ Acquisition Price (excluding taxes, commissions, and fees)	Confirm Proof of Purchase/ Acquisition Enclosed
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>

3. SALES FROM NOVEMBER 6, 2018 (AFTER CLOSE OF TRADING) THROUGH FEBRUARY 15, 2019 – Separately list each and every sale of Mindbody Class A common stock from after the close of trading on November 6, 2018 through and including the close of trading on February 15, 2019. (Must be documented.)	IF NONE, CHECK HERE <input type="checkbox"/>
--	--

Date of Sale (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (excluding taxes, commissions, and fees)	Confirm Proof of Sale Enclosed
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>

4. HOLDINGS AS OF THE CLOSE OF TRADING ON FEBRUARY 15, 2019 – State the total number of shares of Mindbody Class A common stock held as of the close of trading on February 15, 2019. (Must be documented.) If none, write “zero” or “0.” _____	Confirm Proof of Position Enclosed <input type="checkbox"/>
--	--

IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS, PLEASE PHOTOCOPY THIS PAGE, WRITE YOUR NAME, AND CHECK THIS BOX:

MINDBODY

**PART III – SUBMISSION TO JURISDICTION OF COURT
AND ACKNOWLEDGMENTS**

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

1. I (We) submit this Claim Form under the terms of the Stipulation and Agreement of Settlement, dated March 3, 2022 (the “Stipulation”) described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Southern District of New York, with respect to my (our) claim as a Settlement Class Member(s) and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Action. I (We) agree to furnish additional information to the Claims Administrator to support this claim (including transactions in other Mindbody securities) if requested to do so. I (We) have not submitted any other claim in the Action covering the same sales of Mindbody Class A common stock during the Class Period and know of no other person having done so on my (our) behalf.

2. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and forever settle, release, and discharge from the Released Plaintiff’s Claims each and all of the Released Defendant Parties, both as defined in the accompanying Notice. This release shall be of no force or effect unless and until the Court approves the Settlement and the Settlement becomes effective on the Effective Date (as defined in the Stipulation).

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

4. I (We) hereby warrant and represent that I (we) have included the information requested about all of my (our) transactions in Mindbody Class A common stock which are the subject of this claim, as well as the opening and closing positions in such securities held by me (us) on the dates requested in this Claim Form.

5. I (We) certify that I am (we are) not subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code. (Note: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the prior sentence.)

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

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

Signature of Claimant

Signature of Joint Claimant, if any

Print Name of Claimant

Print Name of Joint Claimant, if any

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

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

Reminder Checklist

1. Please sign the above release and acknowledgement.
2. If this claim is being made on behalf of Joint Claimants, then both must sign.
3. Remember to attach copies of supporting documentation, if available.
4. **Do not send** originals of certificates.
5. Keep a copy of your Claim Form and all supporting documentation for your records.
6. If you desire an acknowledgment of receipt of your Claim Form, please send it Certified Mail, Return Receipt Requested.
7. If you move, please send your new address to:
Mindbody Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson Street, Suite 205
Media, PA 19063
www.strategicclaims.net/mindbody/
(866) 274-4004
8. **Do not use red pen or highlighter** on the Claim Form or supporting documentation.

Mindbody Securities Litigation
c/o Strategic Claims Services
600 N. Jackson Street, Suite 205
Media, PA 19063

IMPORTANT LEGAL NOTICE – PLEASE FORWARD

EXHIBIT B

AFFIDAVIT

STATE OF NEW JERSEY)
) ss:
CITY OF MONMOUTH JUNCTION, in the COUNTY OF MIDDLESEX)

I, Wayne Sidor, being duly sworn, depose and say that I am the Advertising Clerk of the Publisher of THE WALL STREET JOURNAL, a daily national newspaper of general circulation throughout the United States, and that the notice attached to this Affidavit has been regularly published in THE WALL STREET JOURNAL for National distribution for

1 insertion(s) on the following date(s): 6/27/2022

ADVERTISER: Mindbody, Inc.

and that the foregoing statements are true and correct to the best of my knowledge.

Wayne Sidor

Sworn to
before me this
27th day of
June 2022

[Handwritten Signature]

Notary Public



mrcraig@strategicclaims.net

From: phhubs@prnewswire.com
Sent: Friday, July 1, 2022 9:00 AM
To: jbravata@strategicclaims.net; mrcraig@strategicclaims.net
Subject: PR Newswire: Press Release Distribution Confirmation for Labaton Sucharow LLP. ID# 3566848-1-1

Hello

Your press release was successfully distributed at: 01-Jul-2022 09:00:00 AM ET

Release headline: Labaton Sucharow LLP Announces Proposed Class Action Settlement on Behalf of Sellers of MINDBODY, Inc. Publicly Traded Class A Common Stock

Word Count: 756

Product Selections:

US1

Visibility Reports Email

Complimentary Press Release Optimization

PR Newswire ID: 3566848-1-1

View your release:* https://www.prnewswire.com/news-releases/labaton-sucharow-llp-announces-proposed-class-action-settlement-on-behalf-of-sellers-of-mindbody-inc-publicly-traded-class-a-common-stock-301575003.html?tc=eml_cleartime

Thank you for choosing PR Newswire!

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US Members, find audience, engagement and other key metrics for your release by accessing your complimentary Visibility Reports in the Online Member Center: <https://portal.prnewswire.com/Login.aspx>

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

EXHIBIT C

Mindbody – Exclusion Request No. 1

September 9, 2022

To: Mindbody Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
Media, PA 19063

To whom it may concern:

I, Chico Ochi, wish to be
excluded from the Settlement Class
In re Mindbody Inc. Securities
Litigation, Civil Action No.
1:19-cv-08331-VEC (S.D.N.Y.)

I have no knowledge of number
of shares I had or how I purchased
them. Signed,
Chico

contact: Chico Ochi

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MINDBODY, INC. SECURITIES
LITIGATION

Civil Action No. 1:19-cv-08331-VEC

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

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

NOTICE OF PENDENCY OF CLASS ACTION: Your rights may be affected by the above-captioned securities class action (“Action”) pending in the United States District Court for the Southern District of New York (“Court”) if, during the period from November 6, 2018 through February 15, 2019, inclusive (“Class Period”), you sold the publicly traded Class A common stock of MINDBODY, Inc. (“Mindbody” or the “Company”) (Ticker: MB) and were allegedly damaged thereby.

NOTICE OF SETTLEMENT: Court-appointed Co-Lead Plaintiffs, Walleye Trading LLC and Walleye Opportunities Master Fund Ltd. (“Co-Lead Plaintiffs”), on behalf of themselves and the Settlement Class (as defined in ¶12 below), and Defendants have reached a proposed settlement of the Action for \$9,750,000 in cash that, if approved, will resolve all claims in the Action and related claims (“Settlement”). The terms and provisions of the Settlement are contained in the Stipulation and Agreement of Settlement, dated March 3, 2022 (“Stipulation”).¹

PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, and what steps you must take if you wish to receive a payment from the Settlement of this securities class action, wish to object, or wish to be excluded from the Settlement Class. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act. **RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER.**

¹ The Stipulation can be viewed at www.strategicclaims.net/mindbody/. All capitalized terms not defined in this Notice have the same meanings as defined in the Stipulation.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY SEPTEMBER 27, 2022	The <u>only</u> way to get a payment. <i>See</i> Question 8 for details.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SEPTEMBER 27, 2022	Get no payment. This is the only option that, assuming your claim is timely brought, might allow you to ever bring or be part of any other lawsuit against Defendants and/or the other Released Defendant Parties concerning the Released Plaintiff's Claims. <i>See</i> Question 10 for details.
OBJECT BY OCTOBER 14, 2022	Write to the Court about why you do not like the Settlement, the Plan of Allocation for distributing the proceeds of the Settlement, and/or Lead Counsel's Fee and Expense Application. If you object, you will still be in the Settlement Class. <i>See</i> Question 14 for details.
PARTICIPATE IN A HEARING ON OCTOBER 27, 2022 AND FILE A NOTICE OF INTENTION TO APPEAR BY OCTOBER 18, 2022	Ask to speak to the Court at the Settlement Hearing about the Settlement. <i>See</i> Question 18 for details.
DO NOTHING	Get no payment. Give up rights. Still be bound by the terms of the Settlement.

- These rights and options—and the deadlines to exercise them—are explained below.
- The Court in charge of this case still has to decide whether to approve the proposed Settlement. Payments will be made to all Settlement Class Members who timely submit valid Claim Forms, if the Court approves the Settlement and after any appeals are resolved.

SUMMARY OF THE NOTICE

Statement of the Settlement Class's Recovery

1. Subject to Court approval, Co-Lead Plaintiffs, on behalf of the Settlement Class, have agreed to settle the Action in exchange for a payment of \$9,750,000 in cash (the "Settlement Amount"), which will be deposited into an Escrow Account (the "Settlement Fund"). Based on Co-Lead Plaintiffs' estimate of the number of shares of Mindbody publicly traded Class A common stock eligible to participate in the Settlement, and assuming that all investors eligible to participate in the Settlement do so, it is estimated that the average recovery, before deduction of any Court-approved fees and expenses, such as attorneys' fees, Litigation Expenses, Taxes, and Notice and Administration Expenses, would be approximately \$0.26 per allegedly damaged share.² If the Court approves Lead Counsel's Fee and Expense Application (discussed below), the average recovery would be approximately \$0.16 per allegedly damaged share. **These average recovery amounts are only estimates and Settlement Class Members may recover more or less than these estimates.** A Settlement Class Member's actual recovery will depend on, for example: (i) the number of claims submitted; (ii) the amount of the Net Settlement Fund; (iii) how many shares of Mindbody publicly traded Class A common stock the Settlement Class Member sold during the Class Period and when; and (iv) the total Recognized Claims of all valid Claim Forms. *See* the Plan of Allocation beginning on page 11 for information on the calculation of your Recognized Claim.

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

2. The Parties disagree about both liability and damages and do not agree about the amount of damages that would be recoverable if Co-Lead Plaintiffs were to prevail on their claims. The issues that the Parties disagree about include, for example: (i) whether Defendants made any statements or omitted any facts that were materially false or misleading, or otherwise actionable under the federal securities laws; (ii) whether any such

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



10 SEP 2022 PM 2:41

SEP 13 2022

Mindbody Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson St. Ste 205
Media PA 19063

49083-256455

Mindbody, Inc. Securities Litigation
c/o Strategic Claims Services
600 N. Jackson Street – Suite 205
Media, PA 19063

Phone: (866) 274-4004
Fax: (610) 565-7985
Email: info@strategicclaims.net

September 13, 2022

Chico M. Ochi

Re: *In re Mindbody, Inc. Securities Litigation*

Chico M. Ochi,

We received your request for exclusion from the Settlement Class in *In re Mindbody, Inc. Securities Litigation*, Civil Action No. 1:19-cv-08331-VEC (S.D.N.Y). However, for your request to be valid, it needed to include all of the following information:

- State the number of shares of Mindbody Class A common stock owned at the close of trading on November 6, 2018; all purchases and sales from November 6, 2018 (after close of trading) through the close of trading on February 15, 2019; and the number of shares held at the close of trading on February 15, 2019, as well as the dates and prices of each such purchase and sale; and
- Supporting documentation for all transactions in Mindbody Class A common stock would be copies of broker confirmation slips or monthly brokerage account statements.

Your request did not include any information about your trading in Mindbody Class A common stock or documentation of your trading. This information is needed to show that you are a member of the Class. For your request to be honored, we must receive the missing information no later than **September 27, 2022**. **You can either mail or e-mail the missing information using the contact info above.**

If you wish to be removed from the mailing list or have any questions, please contact me at your earliest convenience.

Regards,

Margery Craig
Project Manager
Strategic Claims Services

Exhibit 4

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE MINDBODY, INC. SECURITIES
LITIGATION

Civil Action No. 1:19-cv-08331-VEC

**DECLARATION OF CAROL C. VILLEGAS FILED ON BEHALF OF
LABATON SUCHAROW LLP IN SUPPORT OF APPLICATION FOR
AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

I, CAROL C. VILLEGAS, declare as follows:

1. I am a partner in the law firm of Labaton Sucharow LLP (“Labaton Sucharow” or the “Firm”). I am submitting this declaration in support of the Firm’s application for an award of attorneys’ fees and expenses in connection with services rendered in the above-entitled action (the “Action”).

2. My Firm, which has served as Court-appointed Lead Counsel in the Action, was involved in all aspects of its prosecution and settlement, which are described in detail in the accompanying Declaration of Carol C. Villegas in Support of Co-Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation and Lead Counsel’s Motion for an Award of Attorneys’ Fees and Payment of Expenses.

3. The information in this declaration regarding the Firm’s time and expenses is taken from time and expense reports and supporting documentation prepared and/or maintained by the Firm in the ordinary course of business. I am the partner who oversaw the day-to-day activities in the litigation and I, together with others assisting me, reviewed these reports in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. Based on this review and the adjustments made, I believe that the time reflected in the Firm’s lodestar calculation and the expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the litigation.

4. After the reductions referred to above, the number of hours spent on the litigation by my Firm is 6,535.80. A summary of the lodestar is provided in Exhibit A and a breakdown of the work associated with the lodestar, by task code, is provided in Exhibit B. The lodestar amount

for attorney/professional support staff time based on the Firm's 2021 rates is \$3,254,648.50.¹ The hourly rates shown in Exhibit A are consistent with the hourly rates submitted by the Firm in other contingent securities class action litigations. 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 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. My Firm seeks payment of \$560,715.36 in expenses incurred by Labaton Sucharow in connection with the prosecution of the Action. These expenses are summarized by category in Exhibit C.

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

(a) Filing, Witness and Other Court Fees: \$11,570.25. These expenses have been paid to attorney service firms in connection with serving subpoenas and to courts for filing fees, admission fees, and document retrieval.

(b) PSLRA Notice: \$513.00. This expense is the cost of issuing a press release concerning the filing and pendency of the Action in connection with the appointment of a lead plaintiff, as required by 15 U.S.C. §78u-4(a)(3)(A)(i).

(c) Transportation & Meals: \$408.42. Given the COVID pandemic, travel in the case was significantly reduced. However, in connection with the prosecution of the case, the Firm paid for the costs of travel to Wilmington, Delaware to attend a court hearing in *Philip Ryan Jr. v. Mindbody, Inc.*, C.A. No. 2019-0061-KSJM (Del. Ch), an action related to the same merger at issue in this Action.

¹ Although courts regularly approve the use of current rates in class action fee applications, we are using the Firm's 2021 rates given that the agreement in principle to settle was reached in 2021.

(d) Experts: \$140,661.25. Lead Counsel retained experts to provide advice throughout fact discovery and to provide expert opinions in the following areas.

(i) Market Efficiency/Loss Causation/Damages \$102,957.50. Chad Coffman of Global Economics Group was retained to evaluate damages and loss causation issues, as well as to opine on market efficiency in connection with Co-Lead Plaintiffs' class certification motion. Mr. Coffman submitted a report in connection with class certification detailing the bases for finding that Mindbody's stock traded in an efficient market. Mr. Coffman was also retained to evaluate issues of materiality, loss causation, and the amount of damages suffered by the class, as preparation for an expert report at summary judgment and to evaluate various damage scenarios in advance of mediation. Mr. Coffman also developed, in consultation with Lead Counsel, a fair and reasonable Plan of Allocation.

(ii) Valuation \$34,643.75. Lead Counsel retained Benjamin Sacks, a leading expert on corporate valuation at the Brattle Group, to opine on the subject of Mindbody's valuation. Mr. Sacks submitted an expert report in connection with class certification and was working on a merits report at the time the Settlement was reached.

(iii) Software as a Service \$3,060.00. Edward Mallen was retained to provide advice and opinion on issues related to Mindbody's performance within the context of the Software as a Service industry.

(e) Professional Fees: \$33,265.48. My Firm paid the legal fees of counsel for five potential witnesses in the case, who were former employees of Mindbody or sub-advisors for the Co-Lead Plaintiffs. These witnesses were subpoenaed by Defendants and asked to produce documents and appear for depositions.

(f) Litigation Support: \$300,000. These are the fees of the e-discovery vendor that forensically collected documents and data from Co-Lead Plaintiffs and hosted electronic

documents produced by Defendant, non-parties, and Co-Lead Plaintiffs. This case involved thousands of complex trades by the Co-Lead Plaintiffs and in order for Co-Lead Plaintiffs to appropriately respond to Defendants' discovery requests regarding the same, the e-discovery vendor performed a thorough collection of their documents and data, which involved processing over 7 terabytes of the collected data.²

(g) Deposition Reporting and Transcripts: \$59,121.73. These are the fees of videographers and court reporters in connection with the depositions of the 17 witnesses taken or defended by Lead Counsel.

(h) Mediation Fees: \$9,140.00. This is Co-Lead Plaintiffs' share of the fees of Phillips ADR Enterprises. Mediator Michelle Yoshida oversaw the formal mediation session that the Parties participated in and she facilitated ongoing negotiations between the Parties, which ultimately resulted in the settlement of the litigation.

(i) Duplicating: \$2,641.40. In connection with this case, the Firm used outside vendors to prepare and deliver courtesy copies for a total of \$895.10. The Firm also made 2,934 in-house black and white copies/print outs, which we have accounted for here at a rate of \$0.15 per page, and 4,354 in-house color copies/print outs, at \$0.30 per page, for a total of \$1,746.30. Each time an in-house copy machine or printer is used, our system requires that a case or administrative client-matter code be entered and that is how the 7,288 pages were identified as related to this case.

(j) Online Factual and Financial Research: \$3,010.63. This category includes vendors such as BNA and Pacer. These resources were used to obtain access to SEC filings, court

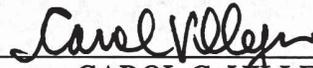
² The total e-discovery vendor expense for collecting, processing, and hosting the electronic discovery in the case exceeded \$300,000, however Lead Counsel is only seeking reimbursement of \$300,000, which is consistent with amounts reimbursed in other complex securities cases.

filings, and factual and financial information. The costs for these vendors vary depending upon the type of services requested and usage is tracked using a case or administrative client-matter code. (Given the Court's practices, we have not included costs related to legal research conducted using Westlaw or Lexis/Nexis, which totaled approximately \$23,000.)

7. The expenses pertaining to this case are reflected in the books and records of my Firm. These books and records are prepared from receipts, expense vouchers, check records and other documents and are an accurate record of the expenses.

8. The background of my Firm and its partners is attached as Exhibit D.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of October, 2022 at New York, NY.



CAROL C. VILLEGAS

Exhibit A

EXHIBIT A*In re Mindbody, Inc. Securities Litigation*
LABATON SUCHAROW LLP

Inception through September 26, 2022

<i>NAME</i>		<i>HOURS</i>	<i>2021 RATES</i>	<i>LODESTAR</i>
Keller, C.	(P)	55.0	\$1,150	\$63,250.00
Gardner, J.	(P)	32.6	\$1,100	\$35,860.00
Zeiss, N.	(P)	116.7	\$975	\$113,782.50
Villegas, C.	(P)	473.2	\$925	\$437,710.00
McConville, F.	(P)	29.5	\$800	\$23,600.00
Schwartz, D.	(P)	16.7	\$800	\$13,360.00
Rosenberg, E.	(OC)	164.5	\$800	\$131,600.00
Cividini, D.	(OC)	84.3	\$675	\$56,902.50
Farrell, D.	(OC)	21.9	\$675	\$14,782.50
Bissell-Linsk, J.	(OC)	1316.5	\$500	\$658,250.00
Vielandi, J.	(A)	19.6	\$550	\$10,780.00
Wood, C.	(A)	65.6	\$450	\$29,520.00
Farrell, C.	(A)	702.2	\$425	\$298,435.00
Accordino Jr., W.	(A)	35.1	\$425	\$14,917.50
Saldamando, D.	(A)	198.3	\$400	\$79,320.00
Gopie, N.	(SA)	1161.6	\$435	\$505,296.00
Gill, C.	(SA)	528.0	\$410	\$216,480.00
Barrett, T.	(SA)	46.3	\$360	\$16,668.00
Hussain, U.	(SA)	530.0	\$335	\$177,550.00
Greenbaum, A.	(I)	78.5	\$550	\$43,175.00
Clark, J.	(I)	77.1	\$425	\$32,767.50
Stroock, A.	(I)	31.5	\$150	\$4,725.00
Donlon, N.	(PL)	429.7	\$375	\$161,137.50
Pina, E.	(PL)	73.2	\$360	\$26,352.00
Boria, C.	(PL)	63.3	\$360	\$22,788.00
Malonzo, F.	(PL)	184.9	\$355	\$65,639.50
TOTAL		6,535.8		\$3,254,648.50

(P) Partner
(OC) Of Counsel
(A) Associate
(SA) Staff Attorney

(I) Investigator
(PL) Paralegal

Exhibit B

EXHIBIT B*In re Mindbody, Inc. Securities Litigation*
LABATON SUCHAROW LLP

Inception through September 26, 2022

Task Codes:

- | | | |
|--------------------------------|--------------------------|---------------------------------------|
| (1) Factual Investigation | (6) Court Appearances | (11) Litigation Strategy and Analysis |
| (2) Pleadings | (7) Experts/Consultants | |
| (3) Discovery | (8) Mediation | |
| (4) Case Management | (9) Settlement | |
| (5) Motions and Legal Research | (10) Class Certification | |

Name	Position	1	2	3	4	5	6	7	8	9	10	11	Total Hours	Lodestar at 2021 Rates
Keller, C.	(P)	55.00											55.00	\$63,250.00
Gardner, J.	(P)	0.30		1.00					16.80		0.40	14.10	32.60	\$35,860.00
Zeiss, N.	(P)					8.00				108.70			116.70	\$113,782.50
Villegas, C.	(P)	8.30	62.10	107.30	23.10	72.60	44.30	18.10	34.10	21.90	62.40	19.00	473.20	\$437,710.00
McConville, F.	(P)	3.50	11.50			14.50							29.50	\$23,600.00
Schwartz, D.	(P)		4.30	5.60								6.80	16.70	\$13,360.00
Rosenberg, E.	(OC)									164.50			164.50	\$131,600.00
Cividini, D.	(OC)			83.20					1.10				84.30	\$56,902.50
Farrell, D.	(OC)		0.40	0.60		20.10	0.80						21.90	\$14,782.50
Bissell-Linsk, J.	(OC)	9.80	257.60	290.60	48.60	429.70	35.90	39.10	42.70	39.80	43.60	79.10	1,316.50	\$658,250.00
Vielandi, J.	(A)		6.50			8.50	4.60						19.60	\$10,780.00
Wood, C.	(A)	20.00	22.00			22.90	0.70						65.60	\$29,520.00
Farrell, C.	(A)	166.50	140.60	91.40	5.90	194.20	5.20	16.90	55.40	5.90	5.70	14.50	702.20	\$298,435.00

Exhibit C

EXHIBIT C*In re Mindbody, Inc. Securities Litigation*
LABATON SUCHAROW LLP

Inception through September 26, 2022

<i>CATEGORY</i>		<i>AMOUNT</i>
Filing, Witness and Other Court Fees		\$11,570.25
PSLRA Notice		\$513.00
Transportation & Meals		\$408.42
Long Distance Telephone/Wifi/Conference Calling		\$49.95
Messenger, Overnight Delivery		\$333.25
Experts		\$140,661.25
Market Efficiency/Damages/Loss Causation	\$102,957.50	
Valuation	\$34,643.75	
Software	\$3,060.00	
Professional Fees (Counsel for Potential Witnesses)		\$33,265.48
Litigation Support		\$300,000.00
Court Reporting/Deposition Transcription		\$59,121.73
Mediation		\$9,140.00
Duplicating		\$2,641.40
B&W: (2,934 copies at \$0.15 per page)	\$440.10	
Color: (4,354 copies at \$0.30 per page)	\$1,306.20	
External	\$895.10	
Online Factual and Financial Research		\$3,010.63
<i>TOTAL</i>		<i>\$560,715.36</i>

Exhibit D

EXHIBIT D

FIRM RESUME

**Labaton
Sucharow**

Labaton Sucharow Credentials

2022



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ABOUT THE FIRM

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

Founded in 1963, Labaton Sucharow LLP has earned a reputation as one of the leading plaintiffs' firms in the United States. For more than half a century, Labaton 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 data privacy and cybersecurity litigation, as well as whistleblower representation. 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 250 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 \$2.5 trillion. We are equipped to deliver results due to our robust infrastructure of more than 70 full-time attorneys, a dynamic professional staff, and innovative technological resources. Labaton Sucharow attorneys are skilled in every stage of business litigation and have challenged corporations from every sector of the financial 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.



WITH OFFICES IN **NEW YORK,**
DELAWARE, AND **WASHINGTON, D.C.,**
 LABATON SUCHAROW IS ON THE
 GROUND IN KEY JURISDICTIONS FOR
 PROTECTING INVESTORS



SECURITIES LITIGATION: As a leader in the securities litigation field, the Firm is a trusted advisor to more than 250 institutional investors with collective assets under management in excess of \$2.5 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 \$18 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 one of the largest derivative settlements ever achieved in the Court of Chancery, a \$153.75 million settlement on behalf of shareholders in *In re Freeport-McMoRan Copper & Gold Inc. Derivative Litigation*.

CONSUMER, CYBERSECURITY, AND DATA PRIVACY PRACTICE: Labaton 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, Cybersecurity, and Data Privacy Practice 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).

WHISTLEBLOWER LITIGATION: Our Whistleblower Representation Practice leverages the Firm's securities litigation expertise to protect and advocate for individuals who report violations of the federal securities laws.

"Labaton 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



SECURITIES CLASS ACTION LITIGATION

Labaton Sucharow is a leader in securities litigation and a trusted advisor to more than 250 institutional investors. Since the passage of the Private Securities Litigation Reform Act of 1995 (PSLRA), the Firm has recovered more than \$18 billion in the aggregate for injured investors through securities class actions prosecuted throughout the United States and against numerous public corporations and other corporate wrongdoers.

These notable recoveries would not be possible without our exhaustive case evaluation process. The Firm has developed a proprietary system for portfolio monitoring and reporting on domestic and international securities litigation, and currently provides these services to more than 250 institutional investors, which manage collective assets of more than \$2.5 trillion. The Firm's in-house investigators also gather crucial details to support our cases, whereas other firms rely on outside vendors or fail to conduct any confidential investigation at all.

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

NOTABLE SUCCESSES

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

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

In one of the most complex and challenging securities cases in history, Labaton Sucharow secured more than **\$1 billion** in recoveries on behalf of 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), \$97.5 million settlement with AIG's auditors, \$115 million settlement with former AIG officers and related defendants, and an additional \$72 million settlement with General Reinsurance Corporation, which was approved by the Second Circuit on September 11, 2013.

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

Labaton Sucharow, as lead counsel for the New York State Common Retirement Fund and the five New York City public pension funds, sued one of the nation's largest issuers of mortgage loans for credit risk misrepresentations. The Firm's focused investigation and discovery efforts uncovered incriminating evidence that led to a \$624 million settlement for investors. On February 25, 2011,



the court granted final approval to the settlement, which is one of the top 20 securities class action settlements in the history of the PSLRA.

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

Labaton Sucharow served as co-lead counsel to New Mexico State Investment Council in a case stemming from one of the largest frauds ever perpetrated in the healthcare industry. Recovering \$671 million for the class, the settlement is one of the top 15 securities class action settlements of all time. In early 2006, lead plaintiffs negotiated a settlement of \$445 million with defendant HealthSouth. On June 12, 2009, the court also granted final approval to a \$109 million settlement with defendant Ernst & Young LLP. In addition, on July 26, 2010, the court granted final approval to a \$117 million partial settlement with the remaining principal defendants in the case—UBS AG, UBS Warburg LLC, Howard Capek, Benjamin Lorello, and William McGahan.

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

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

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

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

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

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

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

Labaton Sucharow secured a \$285 million class action settlement against the El Paso Corporation on behalf of 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. On March 6, 2007, the court approved the settlement and also commended the efficiency with which the case had been prosecuted, particularly in light of the complexity of the allegations and the legal issues.

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

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

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

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

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

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

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

Labaton Sucharow served as co-lead counsel in this matter against a regulated electric and natural gas public utility, representing the class and co-lead plaintiff West Virginia Investment Management



Board. The action alleges 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 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 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 late 2019, we secured a \$192.5 million recovery for investors—the largest securities fraud settlement in the history of the District of South Carolina.

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

Labaton Sucharow served as lead counsel representing the lead plaintiff, union-owned LongView Collective Investment Fund of the Amalgamated Bank (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 FDA expressed serious concerns about these side effects and BMS released a statement that it was withdrawing the drug's FDA application, resulting in the company's stock price falling and losing nearly 30 percent of its value in a single day. After a five-year battle, we won relief on two critical fronts. First, we secured a \$185 million recovery for shareholders, and second, we negotiated major reforms to the company's drug development process that will have a significant impact on consumers and medical professionals across the globe. Due to our advocacy, BMS must now disclose the results of clinical studies on all of its drugs marketed in any country.

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

As co-lead counsel representing co-lead plaintiff Boston Retirement System, Labaton Sucharow secured a \$170 million settlement on March 3, 2015, with Fannie Mae. 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 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, No. 06-cv-05036 (C.D. Cal.)

Labaton Sucharow served as lead counsel on behalf of lead plaintiff New Mexico State Investment Council in a case stemming from Broadcom Corp.'s \$2.2 billion restatement of its historic financial statements for 1998-2005. In August 2010, the court granted final approval of a \$160.5 million settlement with Broadcom and two individual defendants to resolve this matter. It is 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 October 2012, the court approved a \$13 million settlement with Ernst & Young.

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

Satyam 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, the Firm 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. On September 13, 2011, the court granted final approval to a settlement with Satyam of \$125 million and a settlement with the company’s auditor, PricewaterhouseCoopers, in the amount of \$25.5 million. Judge Barbara S. Jones commended lead counsel during the final approval hearing, noting the “quality of representation[,] which I found to be very high.”

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

Labaton Sucharow served as co-lead counsel on behalf of co-lead plaintiff Steamship Trade Association/International Longshoremen’s Association Pension Fund, which alleged 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. On September 25, 2008, the court granted final approval of the \$117.5 million settlement.

In Re: CannTrust Holdings Inc. Securities Litigation, No. 1:19-cv-06396-JPO (S.D.N.Y.)

As U.S. lead counsel, Labaton Sucharow represents 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. Class actions against the company were commenced in both the U.S. and Canada. The U.S. class action asserts 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. The parties reached a landmark settlement totaling CA\$129.5 million to resolve claims in both countries. The U.S. settlement was approved on December 2, 2021.

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

Labaton Sucharow served as lead counsel and represented individuals and the proposed class in two related securities class actions brought against Oppenheimer Funds, Inc., among others, and certain officers and trustees of two funds—Oppenheimer Core Bond Fund and Oppenheimer



Champion Income Fund. The lawsuits alleged that the investment policies followed by the funds resulted in investor losses when the funds suffered drops in net asset value although they were presented as safe and conservative investments to consumers. In May 2011, the Firm achieved settlements amounting to \$100 million: \$52.5 million in *In re Oppenheimer Champion Fund Securities Fraud Class Actions* and a \$47.5 million settlement in *In re Core Bond Fund*.

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

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

In re Nielsen Holdings PLC Securities Litigation, No. 18-7143 (S.D.N.Y.)

As lead counsel representing Public Employees' Retirement System of Mississippi, Labaton Sucharow achieved a \$73 million settlement (pending court approval) 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 (GDPR). On January 4, 2021, the Firm overcame defendants' motion to dismiss, and the case advanced into discovery. We mediated and ultimately reached an agreement to settle the matter for \$73 million in February 2022. The settlement was preliminarily approved by the court on April 4, 2022.

In re Resideo Technologies Inc. Securities Litigation, No. 19-cv-2863 (D. Minn.)

The Firm serves as co-lead counsel representing 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. On March 30, 2021, the Firm overcame defendants' motion to dismiss in its entirety, and discovery in the action commenced promptly. Discussion of resolving the claims began in January 2021, resulting in an agreement in principle to settle the action for \$55 million July 2021. The \$55 million settlement was granted final approval on March 24, 2022.

Public Employees' Retirement System of Mississippi v. Endo Int'l plc, et al., No. 2017-02081-MJ (Pa. Ct. of C.P. Montgomery Cty.)

Labaton Sucharow served as lead counsel in a securities class action against Endo Pharmaceuticals. The case settled for \$50 million, the largest class settlement obtained in any court pursuant to the Securities Act of 1933 in connection with a secondary public offering. 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. The court approved the settlement on December 5, 2019.

In re JELD-WEN Holding, Inc. Securities Litigation, No. 3:20-cv-00112-JAG (E.D. Va.)

Representing Public Employees' Retirement System of Mississippi, Labaton Sucharow is court-appointed co-lead counsel in a securities class action lawsuit against JELD-WEN Holding, Inc. and certain of its executives 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. The parties reached an agreement to settle the action for \$40 million in April 2021. The court granted final approval of the settlement on November 22, 2021.

City of Warren Police and Fire Retirement System v. World Wrestling Entertainment, Inc. et al., No. 20-cv-02031 (S.D.N.Y.)

Labaton Sucharow served as court-appointed lead counsel in a securities class action against World Wrestling Entertainment, Inc. (WWE). The Firm represented Firefighters Pension System of the City of Kansas City Missouri Trust in the action alleging 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 (MENA) from February 7, 2019, through February 5, 2020. 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. The parties reached an agreement to settle the action for in November 2020, and on June 30, 2021, the court granted final approval of the \$39 million settlement.

Pension Trust Fund for Operating Engineers v. DeVry Education Group, Inc., No. 16-cv-05198 (N.D. Ill.)

In a case that underscores the skill of our in-house investigative team, Labaton 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 Sucharow filed a third amended complaint on January 29, 2018, which included additional allegations based on internal documents obtained from government entities through the Freedom of Information Act 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."



Vancouver Alumni Asset Holdings Inc. v. Daimler A.G., et al., No. 16-cv-2942 (C.D. Cal)

Serving as lead counsel on behalf of Public School Retirement System of Kansas City, Missouri, Labaton Sucharow secured a \$19 million settlement in a class action against automaker Daimler AG. The action arose out of Daimler's 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 *Daimler* litigation team was able to overcome both challenges, and on May 31, 2017, the court granted in part and denied in part Defendants' motions and allowed the case to proceed to discovery. The court then stayed the action after the U.S. Department of Justice intervened. The *Daimler* litigation team worked with the DOJ and defendants to partially lift the stay in order to allow lead plaintiffs to seek limited discovery. Thereafter, in December 2019, the parties agreed to settle the action for \$19 million.

Avila v. LifeLock, Inc., No. 15-cv-1398 (D. Ariz.)

As co-lead counsel representing Oklahoma Police Pension and Retirement System and Oklahoma Firefighters Pension and Retirement System, the Firm secured a \$20 million settlement 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, in reality the timeliness of such alerts to customers did not resemble a near real-time basis. The LifeLock litigation team played a critical role in securing the \$20 million settlement. After being dismissed by the District Court twice, the LifeLock team 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. On July 22, 2020, the court issued an order granting final approval of the settlement.

In re Prothena Corporation PLC Securities Litigation, No. 18-cv-6425 (S.D.N.Y)

Labaton 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. On August 26, 2019, the parties executed a Stipulation and Agreement of Settlement for \$15.75 million. Final Judgment was entered on December 4, 2019.

In re Acuity Brands, Inc. Securities Litigation, No. 18-cv-02140 (N.D. Ga.)

Labaton Sucharow serves 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 alleges 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 in August 2019 and granted class certification in August 2020, 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 \$15.75 million settlement-in-principle in October 2021. In light of the settlement-in-principle, the Eleventh Circuit stayed the appeal and removed the case from the docket. The court preliminarily approved the settlement on December 23, 2021.

LEAD COUNSEL APPOINTMENTS IN ONGOING LITIGATION

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

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

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

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

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

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

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

Meitav Dash Provident Funds and Pension Ltd., et al. v. Spirit AeroSystems Holdings, Inc. et al., No. 20-cv-00054 (N.D. Okla.)

Labaton Sucharow represents Meitav Dash Provident Funds and Pension Ltd. in a securities class action against Spirit AeroSystems Holdings alleging misrepresentation of production rates and the effectiveness of its internal controls over financial reporting relating to production of Boeing planes.

Boston Retirement System v. Uber Technologies, Inc., et al., No. 19-cv-6361-RS (N.D. Cal.)

Labaton Sucharow serves as lead counsel in a securities class action against Uber Technologies, Inc., arising in connection with the company's more than \$8 billion IPO. The action alleges that Uber's IPO registration statement and prospectus made material misstatements and omissions in violation of Sections 11, 12(a)(2), and 15 of the Securities Act of 1933.



Oklahoma Firefighters Pension and Retirement System v. Peabody Energy Corporation et al., No. 20-cv-8024 (S.D.N.Y.)

Labaton Sucharow represents Oklahoma Firefighters Pension and Retirement System in a securities class action against Peabody Energy Corp arising from inadequate safety practices at the company's north Australian mine.

Hill v. Silver Lake Group, L.L.C. (Intelsat S.A.), No. 20-CV-2341 (N.D. Cal.)

The court appointed Labaton Sucharow as lead counsel in the *Intelsat* securities litigation, noting that the Firm "has strong experience prosecuting securities class actions and has served as lead counsel in many high-profile securities actions.

In re Allstate Corporation Securities Litigation, No. 16-cv-10510 (N.D. Ill.)

Labaton Sucharow serves 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 System in a securities case against The Allstate Corporation, the company's CEO Thomas J. Wilson, and its former President of Allstate Protection Lines Matthew E. Winter.



AWARDS AND ACCOLADES

CONSISTENTLY RANKED AS A LEADING FIRM:



The National Law Journal “2022 Elite Trial Lawyers” recognized Labaton Sucharow as the **2022 Securities Law Firm of the Year** and **2022 Shareholder Rights Litigation Firm of the Year**. The Firm was also recognized as a finalist for **2022 Class Action Litigation Firm of the Year**. Over the last three years, Labaton Sucharow has received five Elite Trial Lawyers Law Firm of the Year recognitions, including Class Action, Securities, Shareholder Rights Litigation, and Immigration.



Benchmark Litigation recognized Labaton Sucharow both nationally and regionally, in **New York** and **Delaware**, in its 2023 edition and named 8 Partners as **Litigation Stars** and **Future Stars** across the U.S. The Firm received top rankings in the **Securities** and **Dispute Resolution** categories. The publication also named the Firm a “**Top Plaintiffs Firms**” in the nation.



Labaton Sucharow is recognized by *Chambers USA 2022* among the leading plaintiffs' firms in the nation, receiving a total of three practice group rankings and eight partners ranked or recognized. *Chambers* notes that the Firm is “**top flight all-round,**” a “**very high-quality practice,**” with “**good, sensible lawyers.**” Labaton Sucharow was also recognized as a finalist for **Chambers’ D&I Awards: North America 2022** in the category of Outstanding Firm.



Labaton Sucharow has been recognized as one of the **Nation’s Best Plaintiffs’ Firms** by *The Legal 500*. In 2022, the Firm earned a **Tier 1 ranking in Securities Litigation** and was also ranked for its excellence in **M&A Litigation**. 8 Labaton Sucharow attorneys were ranked or recommended in the guide noting the Firm's “**very deep bench of strong litigators.**”



Lawdragon recognized 16 Labaton Sucharow attorneys among the **500 Leading Plaintiff Financial Lawyers** in the country in their 2022 guide. The guide recognizes attorneys that are “the best in the nation – many would say the world – at representing plaintiffs.” *Lawdragon* also included one of our Partners in their **Hall of Fame**.



Labaton Sucharow was named a **2021 Securities Group of the Year** by *Law360*. The award recognizes the attorneys behind significant litigation wins and major deals that resonated throughout the legal industry.



Labaton Sucharow was named **Diverse Women Lawyers – North America Firm of the Year** by *Euromoney’s* 2022 Women in Business Law Americas Awards. The Firm was also named a finalist in the Women in Business Law, Career Development, Gender Diversity, and United States – North East categories. *Euromoney’s* WIBL Awards recognizes firms advancing diversity in the profession.



PRO BONO AND COMMUNITY INVOLVEMENT

It is not enough to achieve the highest accolades from the bench and bar, and demand the very best of our people. At Labaton Sucharow, we believe that community service is a crucial aspect of practicing law and that pursuing justice is at the heart of our commitment to our profession and the community at large. As a result, we shine in pro bono legal representation and as public and community volunteers.

Our Firm has devoted significant resources to pro bono legal work and public and community service. In fact, our Pro Bono practice is recognized by *The National Law Journal* as winner of the “**Law Firm of the Year**” in Immigration for 2019 and 2020. We support and encourage individual attorneys to volunteer and take on leadership positions in charitable organizations, which have resulted in such honors as the Alliance for Justice’s “**Champion of Justice**” award, a tenant advocacy organization’s “**Volunteer and Leadership Award,**” and board participation for the Ovarian Cancer Research Fund.

Our continued support of charitable and nonprofit organizations, such as the Legal Aid Society, City Bar Justice Center, Public Justice Foundation, Change for Kids, Sidney Hillman Foundation, and various food banks and other organizations, embodies our longstanding commitment to fairness, equality, and opportunity for everyone in our community, which is manifest in the many programs in which we participate.

Immigration Justice Campaign

Our attorneys have scored numerous victories on behalf of asylum seekers around the world, particularly from Cuba and Uganda, as well as in reuniting children separated at the border. Our Firm also helped by providing housing, clothing, and financial assistance to those who literally came to the U.S. with only the clothes on their back.

Advocacy for the Mentally Ill

Our attorneys have provided pro bono representation to mentally ill tenants facing eviction and worked with a tenants’ advocacy organization defending the rights of city residents.

Federal Pro Se Legal Assistance Project

We represented pro se litigants who could not afford legal counsel through an Eastern District of New York clinic. We assisted those pursuing claims for racial and religious discrimination, helped navigate complex procedural issues involving allegations of a defamatory accusation made to undermine our client’s disability benefits, and assisted a small business owner allegedly sued for unpaid wages by a stranger.

New York City Bar Association Thurgood Marshall Scholar

We are involved in the Thurgood Marshall Summer Law Internship Program, which places diverse New York City public high school students with legal employers for the summer. This program runs



annually, from April through August, and is part of the City Bar's continuing efforts to enhance the diversity of the legal profession.

Diversity Fellowship Program

We provide a fellowship as a key component of the Firm's objective to recruit, retain, and advance diverse law students. Positions are offered to exceptional law students who can contribute to the diversity of our organization and the broader legal community.

Brooklyn Law School Securities Arbitration Clinic

Our Firm partnered with Brooklyn Law School to establish a securities arbitration clinic. The program, which ran for five years, assisted defrauded individual investors who could not otherwise afford to pay for legal counsel and provided students with real-world experience in securities arbitration and litigation.

Change for Kids

We support Change for Kids (CFK) as a strategic partner of P.S. 182 in East Harlem. One school at a time, CFK rallies communities to provide a broad range of essential educational opportunities at under-resourced public elementary schools, as well as enables students to discover their unique strengths and develop the requisite confidence to achieve.

Lawyers' Committee for Civil Rights Under Law

We are long-time supporters of the Lawyers' Committee for Civil Rights Under Law, a nonpartisan, nonprofit organization formed in 1963 at the request of President John F. Kennedy. The Lawyers' Committee involves the private bar in providing legal services to address racial discrimination. We have been involved at the federal level on U.S. Supreme Court nominee analyses and national voters' rights initiatives. Edward Labaton is a member of the Board of Directors.

Sidney Hillman Foundation

Our Firm supports the Sidney Hillman Foundation. Created in honor of the first president of the Amalgamated Clothing Workers of America, Sidney Hillman, the foundation supports investigative and progressive journalism by awarding monthly and yearly prizes.



COMMITMENT TO DIVERSITY, EQUITY, AND INCLUSION

Labaton Sucharow

DEI
DIVERSITY
EQUITY &
INCLUSION

“Now, more than ever, it is important to focus on our diverse talent and create opportunities for young lawyers to become our future leaders. We are proud that our DEI Committee provides a place for our diverse lawyers to expand their networks and spheres of influence, develop their skills, and find the sponsorship and mentorship necessary to rise and realize their full potential.” – *Carol C. Villegas, Partner*

Over half a century, Labaton Sucharow has earned global recognition for its success in securing historic recoveries and reforms for investors and consumers. We strive to attain the same level of achievement in promoting fairness and equality within our practice and throughout the legal profession and believe this can be realized by building and maintaining a team of professionals with a broad range of backgrounds, orientations, and interests.

As a national law firm serving a global clientele, diversity is vital to reaching the right result and provides us with distinct points of view from which to address each client’s most pressing needs and complex legal challenges. Problem solving is at the core of what we do...and equity and inclusion serve as a catalyst for understanding and leveraging the myriad strengths of our diverse workforce.

Research demonstrates that diversity in background, gender, and ethnicity leads to smarter and more informed decision-making, as well as positive social impact that addresses the imbalance in business today—leading to generations of greater returns for all. We remain committed to developing initiatives that focus on tangible diversity, equity, and inclusion goals involving recruiting, professional development, retention, and advancement of diverse and minority candidates, while also raising awareness and supporting real change inside and outside our Firm.

In recognition of our efforts, we have been named Diverse Women Lawyers – North America Firm of the Year by *Euromoney* and have been consistently shortlisted for their Women in Business Law Awards, including in the Gender Diversity Initiative, Women in Business Law, United States – North East, Career Development, and Talent Management categories. In addition, the Firm is the recipient of *The National Law Journal* “Elite Trial Lawyers” inaugural Diversity Initiative Award and has been selected as a finalist for *Chambers & Partners’* Diversity and Inclusion Awards in the Outstanding Firm and Inclusive Firm of the Year categories. Our Firm understands the importance of extending leadership positions to diverse lawyers and is committed to investing time and resources to develop the next generation of leaders and counselors. We actively recruit, mentor, and promote to partnership minority and female lawyers.





Labaton Sucharow **WOMEN'S INITIATIVE**



Women's Networking and Mentoring Initiative

Labaton Sucharow is the first securities litigation firm with a dedicated program to foster growth, leadership, and advancement of female attorneys. Established more than a decade ago, our Women's Initiative has hosted seminars, workshops, and networking events that encourage the advancement of female lawyers and staff, and bolster their participation as industry collaborators and celebrated thought innovators. We engage important women who inspire us by sharing their experience, wisdom, and lessons learned. We offer workshops on subject matter that ranges from professional development, negotiation, and public speaking, to business development and gender inequality in the law today.

Institutional Investing in Women and Minority-Led Investment Firms

Our Women's Initiative hosts an annual event on institutional investing in women and minority-led investment firms that was shortlisted for a *Chambers & Partners' Diversity & Inclusion* award. By bringing pension funds, diverse managers, hedge funds, investment consultants, and legal counsel together and elevating the voices of diverse women, we address the importance and advancement of diversity investing. Our 2018 inaugural event was shortlisted among *Euromoney's Best Gender Diversity Initiative*.

MINORITY SCHOLARSHIP AND INTERNSHIP

To take an active stance in introducing minority students to our practice and the legal profession, we established the Labaton Sucharow Minority Scholarship and Internship years ago. Annually, we present a grant and Summer Associate position to a first-year minority student from a metropolitan New York law school who has demonstrated academic excellence, community commitment, and unwavering personal integrity. Several past recipients are now full-time attorneys at the Firm. We also offer two annual summer internships to Hunter College students.

WHAT THE BENCH SAYS ABOUT US

The Honorable Judge Lewis Liman of the Southern District of New York, upon appointing Labaton Sucharow as co-lead counsel, noted the following:

"Historically, there has been a dearth of diversity within the legal profession. Although progress has been made...still just one tenth of lawyers are people of color and just over a third are women. A firm's commitment to diversity...demonstrate[s] that it shares with the courts a commitment to the values of equal justice under law...[and] is one that is able to attract, train, and retain lawyers with the most latent talent and commitment regardless of race, ethnicity, gender, or sexual orientation."

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PROFESSIONAL PROFILES

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Christopher J. Keller Chairman

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Christopher J. Keller is Chairman of Labaton Sucharow LLP and head of the Firm's Executive Committee. He is based in the Firm's New York office. Chris focuses on complex securities litigation cases and works with institutional investor clients, including some of the world's largest public and private pension funds with tens of billions of dollars under management.

Chris's distinction in the plaintiffs' bar has earned him recognition from *Lawdragon* as an "Elite Lawyer in the Legal Profession," one of the "500 Leading Lawyers in America," and one of the country's top "Plaintiff Financial Lawyers." *Chambers & Partners USA* has recognized him as a "Noted Practitioner," and he has received recommendations from *The Legal 500* for excellence in the field of securities litigation.

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

Chris has been integral in the prosecution of traditional fraud cases such as *In re Schering-Plough Corporation/ENHANCE Securities Litigation*; *In re Massey Energy Co. Securities Litigation*, where the Firm obtained a \$265 million all-cash settlement with Alpha Natural Resources, Massey's parent company; as well as *In re Satyam Computer Services, Ltd. Securities Litigation*, where the Firm obtained a settlement of more than \$150 million. Chris was also a principal litigator on the trial team of *In re Real Estate Associates Limited Partnership Litigation*. The six-week jury trial resulted in a \$185 million plaintiffs' verdict, one of the largest jury verdicts since the passage of the Private Securities Litigation Reform Act.

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

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

The logo for Labaton Sucharow, consisting of a dark blue square with the firm's name in white text.

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

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Eric J. Belfi Partner

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Eric J. Belfi is a Partner in the New York office of Labaton Sucharow LLP and a member of the Firm's Executive Committee. An accomplished litigator with a broad range of experience in commercial matters, Eric represents many of the world's leading pension funds and other institutional investors. Eric actively focuses on domestic and international securities and shareholder litigation, as well as direct actions on behalf of governmental entities. As an integral member of the Firm's Case Development Group, Eric has brought numerous high-profile domestic securities cases that resulted from the credit crisis, including the prosecution against Goldman Sachs. Along with his domestic securities litigation practice, Eric leads the Firm's Non-U.S. Securities Litigation Practice, which is dedicated exclusively to analyzing potential claims in non-U.S. jurisdictions and advising on the risks and benefits of litigation in those forums. Overseeing the Financial Products and Services Litigation Practice, Eric focuses on bringing individual actions against malfeasant investment bankers, including cases against custodial banks that allegedly committed deceptive practices relating to certain foreign currency transactions. Additionally, Eric leads the Firm's ESG Taskforce, which provides clients with tailored advice regarding corporate responsibility and environmental, social, and governmental risks and opportunities.

Eric is recognized by *Chambers & Partners USA* and *Lawdragon* has recognized him as one of the country's "500 Leading Plaintiff Financial Lawyers" as the result of their research into top verdicts and settlements, and input from "lawyers nationwide about whom they admire and would hire to seek justice for a claim that strikes a loved one."

In his work with the Case Development Group, Eric was actively involved in securing a combined settlement of \$18.4 million in *In re Colonial BancGroup, Inc. Securities Litigation*, regarding material misstatements and omissions in SEC filings by Colonial BancGroup and certain underwriters. Eric's experience includes noteworthy M&A and derivative cases such as *In re Medco Health Solutions Inc. Shareholders Litigation* in which he was integrally involved in the negotiation of the settlement that included a significant reduction in the termination fee.

Under Eric's direction, the Firm's Non-U.S. Securities Litigation Practice—one of the first of its kind—also serves as liaison counsel to institutional investors in such cases, where appropriate. Eric represents nearly 30 institutional investors in over a dozen non-U.S. cases against companies including SNC-Lavalin Group Inc. in Canada, Vivendi Universal, S.A. in France, OZ Minerals Ltd. in Australia, Lloyds Banking Group in the U.K., and Olympus Corporation in Japan. Eric's international experience also includes securing settlements on behalf of non-U.S. clients including the U.K.-based Mineworkers' Pension Scheme in *In re Satyam Computer Securities Services Ltd. Securities Litigation*, an action related to one of the largest securities frauds in India, which resulted in \$150.5 million in collective settlements. While representing two of Europe's leading pension funds, Deka Investment GmbH and Deka International S.A., Luxembourg, in *In re General Motors Corp. Securities*



Litigation, Eric was integral in securing a \$303 million settlement in relation to multiple accounting manipulations and overstatements by General Motors.

As head of the Financial Products and Services Litigation Practice, Eric represented the Commonwealth of Virginia in its False Claims Act case against Bank of New York Mellon, Inc, among other matters.

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

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

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

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Michael P. Canty is a Partner in the New York office of Labaton 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 serves as head of the Firm's Consumer Cybersecurity and Data Privacy Group. Mr. Canty's practice focuses on complex fraud cases on behalf of institutional investors and consumers.

Recommended by *The Legal 500* and *Benchmark Litigation* as an accomplished litigator, Michael has more than a decade of trial experience in matters relating to national security, white collar crime, and cybercrime. Michael has been recognized as a Plaintiffs' Trailblazer and a NY Trailblazer by the *National Law Journal* and the *New York Law Journal*, respectively, for his impact on the practice and business of law. *Lawdragon* has also recognized Michael as one of the "500 Leading Plaintiff Financial Lawyers in America," as the result of their research into the country's top verdicts and settlements, and one of the country's "Leading Plaintiff Consumer Lawyers."

Michael has successfully prosecuted a number of high-profile securities matters involving technology companies. Most notably, Michael is part of the litigation team that recently 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 consumers' biometric privacy rights under Illinois' Biometric Information Privacy Act (BIPA). Michael has also led cases against AMD, a multi-national semiconductor company, and Ubiquiti Networks, Inc., a global software company. In both cases, Michael played a pivotal role in securing favorable settlements for investors.

Prior to joining Labaton Sucharow, 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. Prior to this, 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. Michael 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.



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

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.

He is 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.

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.

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James Christie is a Partner in the New York office of Labaton Sucharow LLP. James focuses 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, such as Alexion Pharmaceuticals, GoGo, 2U, Precision Castparts, Flex, CannTrust Holdings, iQIYI, and Weatherford International. James also serves as Assistant General Counsel of the Firm.

James has been recognized as a "Rising Star of the Plaintiffs Bar" by *The National Law Journal* Elite Trial Lawyers and *Benchmark Litigation* named him to their "40 & Under List."

James was an integral part of the Firm team that helped recover \$192.5 million for investors in a settlement for *In re SCANA Corporation Securities Litigation*. James also assisted in recovering \$20 million on behalf of investors in a securities class action against LifeLock Inc., where he played a significant role in obtaining a key appellate victory in the Ninth Circuit Court of Appeals reversing the district court's order dismissing the case with prejudice. In addition, James assisted in the \$14.75 million recovery secured for investors against PTC Therapeutics Inc., a pharmaceutical manufacturer of orphan drugs, in *In re PTC Therapeutics, Inc. Securities Litigation*. He was also part of the team that represented the lead plaintiff, the Public Employees' Retirement System of Mississippi, in *Public Employees' Retirement System of Mississippi v. Sprouts Farmers Market Inc.*, which resulted in a \$9.5 million settlement against Sprouts Farmers Market and several of its senior officers and directors.

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 a member of the American Bar Association and the Federal Bar Council.

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.



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Thomas A. Dubbs is a Partner in the New York office of Labaton Sucharow LLP. Tom focuses on the representation of institutional investors in domestic and multinational securities cases. Tom serves or has served as lead or co-lead counsel in some of the most important federal securities class actions in recent years, including those against American International Group, Goldman Sachs, the Bear Stearns Companies, Facebook, Fannie Mae, Broadcom, and WellCare.

Tom is highly-regarded in his practice. He has been named a top litigator by *Chambers & Partners USA* for more than 10 consecutive years and has been consistently ranked as a Leading Lawyer in Securities Litigation by *The Legal 500*. *Law360* named him an MVP of the Year for distinction in class action litigation and he has been recognized by *The National Law Journal* and *Benchmark Litigation* for excellence in securities litigation. *Lawdragon* has recognized Tom as one of the country's "500 Leading Plaintiff Financial Lawyers" and named him to their Hall of Fame. Tom has also received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory. In addition, *The Legal 500* has inducted Tom into its Hall of Fame—an honor presented to only four plaintiffs' securities litigators "who have received constant praise by their clients for continued excellence."

Tom has played an integral role in securing significant settlements in several high-profile cases, including *In re American International Group, Inc. Securities Litigation* (settlements totaling more than \$1 billion); *In re Bear Stearns Companies, Inc. Securities Litigation* (\$275 million settlement with Bear Stearns Companies plus a \$19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditor); *In re HealthSouth Securities Litigation* (\$671 million settlement); *Eastwood Enterprises LLC v. Farha et al.* (WellCare Securities Litigation) (over \$200 million settlement); *In re Fannie Mae 2008 Securities Litigation* (\$170 million settlement); *In re Broadcom Corp. Securities Litigation* (\$160.5 million settlement with Broadcom, plus \$13 million settlement with Ernst & Young LLP, Broadcom's outside auditor); *In re St. Paul Travelers Securities Litigation* (\$144.5 million settlement); *In re Amgen Inc. Securities Litigation* (\$95 million settlement); and *In re Vesta Insurance Group, Inc. Securities Litigation* (\$78 million settlement).

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

Due to his reputation in securities law, Tom frequently lectures to institutional investors and other groups, such as the Government Finance Officers Association, the National Conference on Public Employee Retirement Systems, and the Council of Institutional Investors. He is a prolific author of articles related to his field, including "Textualism and Transnational Securities Law: A Reappraisal of



Justice Scalia's Analysis in *Morrison v. National Australia Bank*," which he penned for the *Southwestern Journal of International Law*. He has also written several columns in U.K. publications regarding securities class actions and corporate governance.

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

Tom serves as a FINRA Arbitrator and is an Advisory Board Member for the Institute for Transnational Arbitration. He is a member of the New York State Bar Association and the Association of the Bar of the City of New York, as well as a patron of the American Society of International Law. Tom is an active member of the American Law Institute and is currently an adviser on the proposed Restatement of the Law Third, Conflict of Laws; he was also a member of the Consultative Groups for the Restatement of the Law Fourth, U.S. Foreign Relations Law, and the Principles of Law, Aggregate Litigation. Tom also serves on the Board of Directors for The Sidney Hillman Foundation.

Tom earned his Juris Doctor and his bachelor's degree from the University of Wisconsin-Madison. He received his master's degree from the Fletcher School of Law and Diplomacy, Tufts University.

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Alfred L. Fatale III is a Partner in the New York office of Labaton Sucharow LLP and currently leads a team of attorneys focused on litigating securities claims arising from initial public offerings, secondary offerings, and stock-for-stock mergers.

Alfred's success in moving the needle in the legal industry has earned him recognition from *Chambers & Partners USA*, the *National Law Journal* as a "Plaintiffs' Lawyer Trailblazer," and *The American Lawyer* as a "Northeast Trailblazer." *Lawdragon* has recognized him as one of the country's "500 Leading Plaintiff Financial Lawyers" and *Benchmark Litigation* also named him to their "40 & Under List."

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 against several companies in state courts following the U.S. Supreme Court's decision in *Cyan, Inc. v. Beaver County Employees Retirement Fund*.

Alfred is also overseeing the firm's efforts in litigating several cases in federal courts. This includes a securities class action against Uber Technologies Inc. arising from the company's \$8 billion IPO.

Since joining the Firm in 2016, Alfred has lead the investigation and prosecution of several successful cases, including *In re ADT Inc. Securities Litigation*, resulting in a \$30 million recovery; *In re CPI Card Group Inc. Securities Litigation*, resulting in a \$11 million recovery; *In re BrightView Holdings, Inc. Securities Litigation*, resulting in a \$11.5 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 Labaton Sucharow, Alfred was an Associate at Fried, Frank, Harris, Shriver & Jacobson LLP, where he advised and represented financial institutions, investors, officers, and directors in a broad range of complex disputes and litigations including cases involving violations of federal securities law and business torts.

Alfred 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 also served as a Judicial Extern under the Honorable Robert C. Mulvey. He received his bachelor's degree, *summa cum laude*, from Montclair State University.

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Christine M. Fox is a Partner in the New York office of Labaton Sucharow LLP. With more than 20 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 DEI Committee.

Christine is recognized by *Lawdragon* as one of the "500 Leading Plaintiff Financial Lawyers in America."

Christine is actively involved in litigating matters against FirstCash Holdings, Hain Celestial, Oak Street Health, Peabody Energy, Super Micro Computer, and Uniti Group. 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); Nielsen, a data analytics company that provides clients with information about consumer preferences (\$73 million recovery); CVS Caremark, the nation's largest pharmacy retail chain (\$48 million recovery); Nu Skin Enterprises, a multilevel marketing company (\$47 million recovery); and 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 the Firm's pro bono immigration program and reunited a father and child separated at the border. She is currently working on their asylum application.

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).

She is a member of the American Bar Association, New York State Bar Association, and 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.


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Jonathan Gardner is a Partner in the New York office of Labaton Sucharow LLP and serves as Head of Litigation for the Firm. With more than 30 years of experience, Jonathan oversees all of the Firm's litigation matters, including prosecuting complex securities fraud cases on behalf of institutional investors.

A *Benchmark Litigation* "Star" acknowledged by his peers as "engaged and strategic," Jonathan has also been named an MVP by *Law360* for securing hard-earned successes in high-stakes litigation and complex global matters. He is ranked by *Chambers & Partners USA* describing him as "an outstanding lawyer who knows how to get results" and recommended by *The Legal 500*, whose sources remarked on Jonathan's ability to "understand the unique nature of complex securities litigation and strive for practical yet results-driven outcomes" and his "considerable expertise and litigation skill and practical experience that helps achieve terrific results for clients." Jonathan is also recognized by *Lawdragon* as one of the "500 Leading Lawyers in America" and one of the country's top "Plaintiff Financial Lawyers."

Jonathan has played an integral role in securing some of the largest class action recoveries against corporate offenders since the global financial crisis. He led the Firm's team in the investigation and prosecution of *In re Barrick Gold Securities Litigation*, which resulted in a \$140 million recovery. He has also served as the lead attorney in several cases resulting in significant recoveries for injured class members, including *In re Hewlett-Packard Company Securities Litigation* (\$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); *In re Aeropostale Inc. Securities Litigation* (\$15 million recovery); *In re Lender Processing Services Inc.* (\$13.1 million recovery); and *In re K-12, Inc. Securities Litigation* (\$6.75 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 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 member of the Federal Bar Council, New York State Bar Association, and the 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.

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Thomas G. Hoffman, Jr. is a partner in the New York office of Labaton Sucharow LLP. Thomas focuses on representing institutional investors in complex securities actions. He is currently prosecuting cases against BP and Allstate.

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

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



James W. Johnson Partner

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James W. Johnson is a Partner in the New York office of Labaton Sucharow LLP. Jim focuses on litigating complex securities fraud cases. In addition to his active caseload, Jim holds a variety of leadership positions within the Firm, including serving on the Firm's Executive Committee. He also serves as the Executive Partner overseeing firm-wide issues.

Jim is "well respected in the field," earning him recognition from *Chambers & Partners USA*, *The Legal 500*, *Benchmark Litigation*, and *Lawdragon*, who named him as one of the "500 Leading Lawyers in America" and one of the country's top "Plaintiff Financial Lawyers." He has also received a rating of AV Preeminent from the publishers of the *Martindale-Hubbell* directory.

In representing investors who have been victimized by securities fraud and breaches of fiduciary responsibility, Jim's advocacy has resulted in record recoveries for wronged investors. Currently, he is prosecuting the high-profile case against financial industry leader Goldman Sachs—*In re Goldman Sachs Group, Inc. Securities Litigation*.

A recognized leader in his field, Jim has successfully litigated a number of complex securities and RICO class actions. These include *In re HealthSouth Corp. Securities Litigation* (\$671 million settlement); *Eastwood Enterprises LLC v. Farha et al. (WellCare Securities Litigation)* (\$200 million settlement); *In re Amgen Inc. Securities Litigation* (\$95 million settlement); *In re Vesta Insurance Group, Inc. Securities Litigation* (\$79 million settlement); and *In re SCANA Securities Litigation* (\$192.5 million settlement). Other notable successes include *In re National Health Laboratories, Inc. Securities Litigation*, which resulted in a recovery of \$80 million in the federal action and a related state court derivative action, and *In re Bristol Myers Squibb Co. Securities Litigation*, in which the court approved a \$185 million settlement including significant corporate governance reforms and recognized plaintiff's counsel as "extremely skilled and efficient."

Jim also represented lead plaintiffs in *In re Bear Stearns Companies, Inc. Securities Litigation*, securing a \$275 million settlement with Bear Stearns Companies, plus a \$19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditor. In *County of Suffolk v. Long Island Lighting Co.*, Jim represented the plaintiff in a RICO class action, securing a jury verdict after a two-month trial that resulted in a \$400 million settlement. The Second Circuit quoted the trial judge, the Honorable Jack B. Weinstein, as stating, "Counsel [has] done a superb job [and] tried this case as well as I have ever seen any case tried." On behalf of the Chugach Native Americans, he also assisted in prosecuting environmental damage claims resulting from the Exxon Valdez oil spill.

Jim is a Member of the American Bar Association and the Association of the Bar of the City of New York, where he served on the Federal Courts Committee. He is also a Fellow in the Litigation Council of America and a Member of the Advisory Board of the Institute for Law and Economic Policy.



Jim earned his Juris Doctor from New York University School of Law and his bachelor's degree from Fairfield University.



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Francis P. McConville is a Partner in the New York office of Labaton Sucharow LLP. Francis focuses on prosecuting complex securities fraud cases on behalf of institutional investor clients. As a lead member of the Firm's Case Development Group, he focuses on the identification, investigation, and development of potential actions to recover investment losses resulting from violations of the federal securities laws and various actions to vindicate shareholder rights in response to corporate and fiduciary misconduct.

Francis has been named a "Rising Star" of securities litigation in *Law360's* list of attorneys under 40 whose legal accomplishments transcend their age. *Lawdragon* has recognized him as one of the country's "500 Leading Plaintiff Financial Lawyers" and *Benchmark Litigation* also 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 PG&E Corporation Securities Litigation*; *In re SCANA Securities Litigation* (\$192.5 million settlement); *Steamfitters Local 449 Pension Plan v. Skechers U.S.A., Inc.*; and *In re Nielsen Holdings PLC Securities Litigation*.

Prior to joining Labaton Sucharow, Francis was a Litigation Associate at a national law firm primarily focused on securities and consumer class action litigation. Francis has represented institutional and individual clients in federal and state court across the country in class action securities litigation and shareholder disputes, along with a variety of commercial litigation matters. He assisted in the prosecution of several matters, including *Kiken v. Lumber Liquidators Holdings, Inc.* (\$42 million recovery); *Hayes v. MagnaChip Semiconductor Corp.* (\$23.5 million recovery); and *In re Galena Biopharma, Inc. Securities Litigation* (\$20 million recovery).

Francis currently serves 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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Domenico “Nico” Minerva is a Partner in the New York office of Labaton Sucharow LLP. A former financial advisor, his work focuses on securities, antitrust, and consumer class actions and shareholder derivative litigation, representing Taft-Hartley and public pension funds across the country. 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 2 ranking in Antitrust Civil Litigation and Class Actions from *Legal 500*. *Lawdragon* has recognized Nico as one of the country’s “500 Leading Plaintiff Financial Lawyers.”

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 has also done substantial work in antitrust class actions. These include pay-for-delay or “product hopping” cases in which pharmaceutical companies allegedly obstructed generic competitors in order to preserve monopoly profits on patented drugs, such as *Mylan Pharmaceuticals Inc. v. Warner Chilcott Public Limited Co.*, *In re Lidoderm Antitrust Litigation*, *In re Solodyn (MinocyclineHydrochloride) Antitrust Litigation*, *In re Niaspan Antitrust Litigation*, *In re Aggrenox Antitrust Litigation*, and *Sergeants Benevolent Association Health & Welfare Fund et al. v. Actavis PLC et al.* In the anticompetitive matter *The Infirmary LLC vs. National Football League Inc et al.*, Nico played an instrumental part in challenging an exclusivity agreement between the NFL and DirectTV over the service’s “NFL Sunday Ticket” package. He also litigated on behalf of indirect purchasers in a case alleging that growers conspired to control and suppress the nation’s potato supply, *In re Fresh and Process Potatoes Antitrust Litigation*.

On behalf of consumers, Nico represented a plaintiff in *In Re ConAgra Foods Inc.*, over 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 also an active member of the National Association of Public Pension Plan Attorneys.



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.



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Mark D. Richardson is a Partner in the Delaware office of Labaton Sucharow LLP. Mark focuses on representing shareholders in corporate governance and transactional matters, including class action and derivative litigation. He also co-leads the Firm's ESG Taskforce, which provides clients with tailored advice regarding corporate responsibility and environmental, social, and governmental risks and opportunities.

Mark is recommended by *The Legal 500* for the excellence of his work in the Delaware Court of Chancery. 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 "500 Leading Plaintiff Financial Lawyers" and *Benchmark Litigation* also named him to their "40 & Under List."

Mark is actively prosecuting, among other matters, *In re Dell Technologies Inc. Class V Stockholders Litigation*; *In re Coty Inc. Stockholder Litigation*; *In re Columbia Pipeline Group, Inc. Merger Litigation*; and *In re Straight Path Communications Inc. Consol. Stockholder Litigation*. Mark has served as lead or co-lead counsel in prominent cases against Amtrust Financial Services (\$40 million settlement), AGNC (\$35.5 million settlement), Stamps.com (\$30 million settlement), Homefed (\$15 million settlement with Court approval pending), and CytoDyn (rescission of over \$50 million in director and officer stock awards).

Prior to joining Labaton 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." 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.

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

He is actively involved in prosecuting *In re Goldman Sachs, Inc. Securities Litigation*; *Murphy v. Precision Castparts Corp.*; *In re Acuity Brands, Inc. Securities Litigation*; *In re CannTrust, Inc. Securities Litigation*; and *In re Jen-Weld Holding, Inc. Securities Litigation*.

Mike has been a member of the lead counsel teams in many successful class actions, including those against Countrywide Financial Corp. (\$624 million settlement), HealthSouth Corp. (\$671 million settlement), State Street (\$300 million settlement), SCANA Corp (\$192.5 million settlement), Mercury Interactive Corp. (\$117.5 million settlement), Computer Sciences Corp. (\$97.5 million settlement), and Virtus Investment Partners (\$20 million settlement).

Prior to joining Labaton Sucharow, Mike was an attorney at Kasowitz, Benson, Torres & Friedman LLP, where he practiced securities and antitrust litigation, representing international banking institutions bringing federal securities and other claims against major banks, auditing firms, ratings agencies and individuals in complex multidistrict litigation. He also represented an international chemical shipping firm in arbitration of antitrust and other claims against conspirator ship owners. Mike began his career as an attorney at Sullivan & Cromwell, where he was part of Microsoft's defense team in the remedies phase of the Department of Justice antitrust action against the company.

Mike earned his Juris Doctor, *magna cum laude*, from the Benjamin N. Cardozo School of Law, Yeshiva University, where he was a member of the *Cardozo Law Review*. He earned his bachelor's degree, *magna cum laude*, from Columbia University.

Mike is proficient in Spanish.

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

A highly regarded industry veteran, Ira has been recommended in securities litigation by *The Legal 500*, named a “Leading Plaintiff Financial Lawyer” by *Lawdragon* and been awarded an AV Preeminent rating, the highest distinction, from Martindale-Hubbell.

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

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

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

From 1996 through 2012, Ira served as Chairman of the Class Action Committee of the Commercial and Federal Litigation Section of the New York State Bar Association. During his tenure, he served

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on the Executive Committee of the Section and authored important papers on issues relating to class action procedure including revisions proposed by both houses of Congress and the Advisory Committee on Civil Procedure of the United States Judicial Conference. Examples include “Proposed Changes in Federal Class Action Procedure,” “Opting Out on Opting In,” and “The Interstate Class Action Jurisdiction Act of 1999.” Ira has also lectured extensively on securities litigation at seminars throughout the country.

Ira earned his Juris Doctor from Duke University School of Law and his bachelor’s degree, *summa cum laude*, from the State University of New York at Binghamton.



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David J. Schwartz is a Partner in the New York office of Labaton Sucharow LLP, focusing on event-driven and special situation litigation using legal strategies to enhance clients' investment returns.

David has been named a "Future Star" by *Benchmark Litigation* and was also selected, three years in a row, to their "40 & Under Hot List," which recognized him as one of the nation's most accomplished attorneys. *Lawdragon* has recognized him as one of the country's "500 Leading Plaintiff Financial Lawyers" and he has also been featured in *Lawdragon's* Lawyer Limelight series.

Over the last several years, David has helped secure leadership roles on behalf of his clients in some of the largest pending securities class action and SPAC litigations, including cases against Lordstown, Nikola, Alta Mesa, Paypal, and others.

David's extensive experience includes prosecuting, as well as defending against, securities and corporate governance actions for an array of domestic and international clients, including retail investors, hedge funds, merger arbitrageurs, pension funds, mutual funds, and asset management companies. He has played a pivotal role in some of the largest securities class action cases in recent years—including a milestone CA\$129.5 million settlement in *In re CannTrust, Inc. Securities Litigation* and a \$55 million settlement in *In re Resideo Securities Litigation* (one of the three largest in the Eighth Circuit). David has also done substantial work in mergers and acquisitions appraisal litigation and direct action/opt-out litigation.

Among other cases, David is currently prosecuting *In re Silver Lake Group, L.L.C. Securities Litigation*; *In re Mindbody, Inc. Securities Litigation*; and several international appraisal actions.

David earned his Juris Doctor from Fordham University School of Law, where he served on the *Urban Law Journal*. He received his bachelor's degree in economics, graduating with honors, from The University of Chicago.


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Irina Vasilchenko is a Partner in the New York office of Labaton Sucharow LLP and head of the Firm's Associate Training Program. Irina focuses on prosecuting complex securities fraud cases on behalf of institutional investors and has over a decade of experience in such litigation.

Irina is recognized as an up-and-coming litigator whose legal accomplishments transcend her age. She has been named repeatedly to *Benchmark Litigation's* "40 & Under List" and also has been recognized as a "Future Star" by *Benchmark Litigation* and a "Rising Star" by *Law360*, one of only six securities attorneys in its 2020 list. Additionally, *Lawdragon* has named her one of the "500 Leading Plaintiff Financial Lawyers in America."

Currently, Irina is involved in prosecuting the high-profile case against financial industry leader Goldman Sachs, *In re Goldman Sachs Group, Inc. Securities Litigation*, arising from its Abacus and other subprime mortgage-backed CDOs during the Financial Crisis, including defending against an appeal of the class certification order to the U.S. Supreme Court and to the Second Circuit. She is also actively prosecuting *In re Acuity Brands, Inc. Securities Litigation*; *Meitav Dash Provident Funds and Pension Ltd. v. Spirit AeroSystems Holdings, Inc.*; and *Perrelouis v. Gogo Inc.*

Recently, Irina played a pivotal role in securing a historic \$192.5 million settlement for investors in energy company SCANA Corp. over a failed nuclear reactor project in South Carolina, as well as a \$19 million settlement in a shareholders' suit against Daimler AG over its Mercedes Benz diesel emissions scandal. Since joining Labaton Sucharow, she also has been a key member of the Firm's teams that have obtained favorable settlements for investors in numerous securities cases, including *In re Massey Energy Co. Securities Litigation* (\$265 million settlement); *In re Fannie Mae 2008 Securities Litigation* (\$170 million settlement); *In re Amgen Inc. Securities Litigation* (\$95 million settlement); *In re Hewlett-Packard Company Securities Litigation* (\$57 million settlement); and *In re Extreme Networks, Inc. Securities Litigation* (\$7 million settlement).

Irina maintains a commitment to pro bono legal service, including representing an indigent defendant in a criminal appeal case before the New York First Appellate Division, in association with the Office of the Appellate Defender. As part of this representation, she argued the appeal before the First Department panel. Prior to joining Labaton Sucharow, Irina was an Associate in the general litigation practice group at Ropes & Gray LLP, where she focused on securities litigation.

She is a member of the New York State Bar Association and New York City Bar Association.

Irina received her Juris Doctor, *magna cum laude*, from Boston University School of Law, where she was an editor of the *Boston University Law Review* and was the G. Joseph Tauro Distinguished Scholar, the Paul L. Liacos Distinguished Scholar, and the Edward F. Hennessey Scholar. Irina

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earned a Bachelor of Arts in Comparative Literature, *summa cum laude* and Phi Beta Kappa, from Yale University.

Irina is fluent in Russian and proficient in Spanish.



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Carol C. Villegas is a Partner in the New York office of Labaton 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 litigation teams, she is actively overseeing litigation against AT&T, Nielsen Holdings, Mindbody, Danske Bank, Peabody Energy, Flo Health, Amazon, and Hain. 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 Networking and Mentoring Initiative, and as the Chief of Compliance. She also leads the Firm's ESG Taskforce, which provides clients with tailored advice regarding corporate responsibility and environmental, social, and corporate governance risks and opportunities.

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 from *Chambers & Partners USA*, *The National Law Journal* as a Plaintiffs' Trailblazer, and the *New York Law Journal* as a Top Woman in Law and a New York Trailblazer. *The National Law Journal* "Elite Trial Lawyers" has repeatedly recognized Carol's 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. She has also been recognized as a Future Star by *Benchmark Litigation* and a Next Generation Partner by *The Legal 500*, where clients praised her for helping them "better understand the process and how to value a case." *Lawdragon* has named her one of the 500 Leading Lawyers in America, one of the country's top Plaintiff Financial Lawyers, and Leading Plaintiff Consumer Lawyers and Crain's New York Business selected Carol to its list of Notable Women in Law. *Euromoney's* Women in Business Law Awards has also shortlisted Carol as Securities Litigator of the Year and *Chambers and Partners* named Carol a finalist for Diversity & Inclusion: Outstanding Contribution. She has also been named a Distinguished Leader honoree by the *New York Law Journal*.

Carol has played a pivotal role in securing favorable settlements for investors, including 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; Prothena, a biopharmaceutical company; and World Wrestling Entertainment, a media and entertainment 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.

Prior to joining Labaton Sucharow, Carol served as the Assistant District Attorney in the Supreme Court Bureau for the Richmond County District Attorney's office, where she took several cases to



trial. She began her career as an Associate at King & Spalding LLP, where she worked as a federal litigator.

Carol 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. She is also a member of the National Association of Public Pension Attorneys, the National Association of Women Lawyers, and the Hispanic National Bar Association. In addition, Carol previously served on *Law360's* Securities Editorial Board.

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.

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Ned Weinberger is a Partner in the Delaware office of Labaton Sucharow LLP and is Chair of the Firm's Corporate Governance and Shareholder Rights Litigation Practice. An experienced advocate of shareholder rights, Ned focuses on representing investors in corporate governance and transactional matters, including class action and derivative litigation.

Highly regarded in his practice, Ned has been recognized by *Chambers & Partners USA* in the Delaware Court of Chancery noting he is "a very good case strategist and strong oral advocate" and was named "Up and Coming" for three consecutive years—the by-product of his impressive range of practice areas. After being named a "Future Star" earlier in his career, Ned is now recognized by *Benchmark Litigation* as a "Litigation Star" and has been selected to *Benchmark's* "40 & Under List." 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." *The National Law Journal* has also named Ned a "Plaintiffs' Trailblazer." *Lawdragon* has also recognized him as one of the country's "500 Leading Plaintiff Financial Lawyers."

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

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

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

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provided numerous benefits for Clear Channel Outdoor Holdings and its shareholders, including, among other things, a \$200 million cash dividend to the company's shareholders.

Ned 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 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.

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Mark S. Willis is a Partner in the D.C. office of Labaton Sucharow LLP. With more than three decades of experience, Mark's practice focuses on domestic and international securities litigation. Mark advises leading pension funds, investment managers, and other institutional investors from around the world on their legal remedies when impacted by securities fraud and corporate governance breaches. Mark represents clients in U.S. litigation and maintains a significant practice advising clients on the pursuit of securities-related claims abroad.

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

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

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

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

In the corporate governance arena, Mark has represented both U.S. and overseas investors. In a shareholder derivative action against Abbott Laboratories' directors, he charged the defendants with mismanagement and fiduciary breaches for causing or allowing the company to engage in a 10-year off-label marketing scheme, which had resulted in a \$1.6 billion payment pursuant to a Justice



Department investigation—at the time the second largest in history for a pharmaceutical company. In the derivative action, the company agreed to implement sweeping corporate governance reforms, including an extensive compensation clawback provision going beyond the requirements under the Dodd-Frank Act, as well as the restructuring of a board committee and enhancing the role of the Lead Director. In the *Parmalat* case, known as the “Enron of Europe” due to the size and scope of the fraud, Mark represented a group of European institutions and eventually recovered nearly \$100 million and negotiated governance reforms with two large European banks who, as part of the settlement, agreed to endorse their future adherence to key corporate governance principles designed to advance investor protection and to minimize the likelihood of future deceptive transactions. Securing governance reforms from a defendant that was not an issuer was a first at that time in a shareholder fraud class action.

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

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

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

Mark earned his Juris Doctor from the Pepperdine University School of Law and his master’s degree from Georgetown University Law Center.

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Nicole M. Zeiss is a Partner in the New York office of Labaton Sucharow. A litigator with two decades of 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 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 have been damaged by fraud in the telecommunications, hedge fund, and banking industries. Over the past decade, Nicole has been actively involved in finalizing the Firm's securities class action settlements, including in cases against Massey Energy Company (\$265 million), SCANA (\$192.5 million), Fannie Mae (\$170 million), and Schering-Plough (\$473 million), among many others.

Prior to joining Labaton 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.

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Jake Bissell-Linsk is Of Counsel in the New York office of Labaton Sucharow LLP. Jake focuses his practice on securities fraud class actions.

Jake has litigated federal securities cases in jurisdictions across the country at both the District Court and Appellate Court level. He is currently litigating cases against Lucid Motors and Lordstown Motors involving de-SPAC mergers in the automotive industry; against Intelsat alleging insiders sold \$246 million in stock shortly after learning the FTC would reject a bet-the-company deal; against AT&T, citing 58 former AT&T employees, regarding misleading reports of the success of its video streaming service DirecTV Now; and against Cronos alleging it improperly booked revenue from round-trip transactions for cannabis processing.

In addition to these varied securities fraud cases, Jake has litigated a number of cases involving take-private mergers, including several cases involving Chinese-based and Cayman-incorporated firms that were delisted from U.S. exchanges.

Jake has played a pivotal role in securing favorable settlements for investors in a variety of securities class actions, including recent cases against Nielsen (\$73 million settlement), in a suit that involved allegations of inflated goodwill and the effect of the EU's GDPR on the company, and Mindbody (\$9.75 million settlement), in a suit alleging false guidance and inadequate disclosures prior to a private equity buyout.

Jake's pro bono experience includes assisting pro se parties through the Federal Pro Se Legal Assistance Project.

Jake was previously a Litigation Associate at Davis Polk & Wardwell LLP, where he worked on complex commercial litigation including contract disputes, bankruptcies, derivative suits, and securities claims. He also assisted defendants in government investigations and provided litigation advice on M&A transactions.

Jake earned his Juris Doctor, magna cum laude, from the University of Pennsylvania Law School. He served as Senior Editor of the University of Pennsylvania Law Review and Associate Editor of the East Asia Law Review. While in law school, Jake interned for Judge Melvin L. Schweitzer at the New York Supreme Court (Commercial Division). He received his bachelor's degree, magna cum laude, from Hamline University.



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Mark Bogen is Of Counsel in the New York office of Labaton 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, antitrust, and consumer class action litigation, representing Taft-Hartley and public pension funds across the country.

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

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

Mark 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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Garrett J. Bradley is Of Counsel to Labaton 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.

Garrett has been consistently named a "Super Lawyer" in securities litigation by *Super Lawyers*, a Thomson Reuters publication, and was previously named a "Rising Star." He was selected as one of "New England's 2020 Top Rated Lawyers" by *ALM Media* and *Martindale-Hubbell*. The American Trial Lawyers Association has named him one of the "Top 100 Trial Lawyers in Massachusetts." The Massachusetts Academy of Trial Attorneys gave him their "Legislator of the Year Award," and the Massachusetts Bar Association named him "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, representing the Third Plymouth District, for sixteen years.

Garrett is a Fellow of the Litigation Counsel of America, an invitation-only society of trial lawyers comprised of less than 1/2 of 1% of American lawyers. He is also a member of 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 is Of Counsel to Labaton Sucharow LLP. His practice focuses on representing investors and consumers in securities and consumer lawsuits pending in state and federal courts across the country. Guillaume's clients include a diverse array of institutional investors and high net worth individual investors in both the United States and throughout the world.

During his lengthy career, Guillaume has 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.

Guillaume is an active member of the National Association of Public Pension Attorneys, the Canadian Pension & Benefits Institute, the Michigan Association of Public Employee Retirement Systems, the National Association of Shareholder and Consumer Attorneys, and serves on the Rules Committee for the Georgia Association of Public Pension Trustees.

Guillaume received his Juris Doctor from Boston College Law School and 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 best oralists recognition. 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. He received his Bachelor of Arts, *cum laude* with departmental honors, from Brandeis University.

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

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

Hui previously served as a member of the Firm's Case Development 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, and assisted the Firm in securing a number of lead counsel appointments in several class actions.

Prior to joining Labaton Sucharow, 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 Sec. Litigation* (\$3 billion recovery).

Hui earned her Juris Doctor from the University of California, Hastings College of Law, 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 Sucharow LLP and serves as the Firm's Director of E-Discovery. Derick focuses 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.

Derick was part of the team that represented lead plaintiff City of Edinburgh Council as Administering Authority of the Lothian Pension Fund in *In re Lehman Brothers Equity/Debt Securities Litigation*, which resulted in settlements totaling \$516 million against Lehman Brothers' former officers and directors as well as most of the banks that underwrote Lehman Brothers' offerings.

Prior to joining Labaton Sucharow, Derick was a litigation attorney at Kirkland & Ellis LLP, where he practiced complex civil litigation. Earlier in his litigation career, he worked on product liability class actions with Hughes Hubbard & Reed LLP.

Derick earned his Juris Doctor and Master of Business Administration from Rutgers University and received his bachelor's degree in Finance from Boston College.

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Joseph H. Einstein is Of Counsel in the New York office of Labaton Sucharow LLP. A seasoned litigator, Joe represents clients in complex corporate disputes, employment matters, and general commercial litigation. He has litigated major cases in state and federal courts and has argued many appeals, including appearing before the U.S. Supreme Court.

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

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

Joe serves as a Mediator for the U.S. District Court for the Southern District of New York. He has served as a Commercial Arbitrator for the American Arbitration Association and currently is a FINRA Arbitrator and Mediator. Joe is a former member of the New York State Bar Association Committee on Civil Practice Law and Rules, and the Council on Judicial Administration of the Association of the Bar of the City of New York. He also is a former member of the Arbitration Committee of the Association of the Bar of the City of New York.

Joe received his Bachelor of Laws and Master of Laws from New York University School of Law. During his time at NYU, Joe was a Pomeroy and Hirschman Foundation Scholar and served as an Associate Editor of the *New York University Law Review*.

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Derrick Farrell is Of Counsel in the Delaware office of Labaton Sucharow LLP. He focuses his practice on representing shareholders in appraisal, class, and derivative actions.

Derrick has substantial trial experience as both a petitioner and a respondent on a number of high-profile matters, including *In re Appraisal of Ancestry.com, Inc.*; *IQ Holdings, Inc. v. Am. Commercial Lines Inc.*; and *In re Cogent, Inc. Shareholder Litigation*. He has also argued before the Delaware Supreme Court on multiple occasions.

Prior to joining Labaton Sucharow, Derrick practiced with Latham & Watkins LLP, where he gained substantial insight into the inner workings of corporate boards and the role of investment bankers in a sale process. Derrick started his career as a Clerk for the Honorable Donald F. Parsons, Jr., Vice Chancellor, Court of Chancery of the State of Delaware.

He has guest lectured at Harvard University and co-authored numerous articles for publications including the *Harvard Law School Forum on Corporate Governance and Financial Regulation* and *PLI*.

Derrick received his Juris Doctor, *cum laude*, from the Georgetown University Law Center. At Georgetown, he served as an advocate and coach to the Barrister's Council (Moot Court Team) and was Magister of Phi Delta Phi. He received his Bachelor of Science in Biomedical Science from Texas A&M University.

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Lara Goldstone is Of Counsel in the New York office of Labaton 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, antitrust, 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, non-U.S. actions and antitrust class actions including pay-for-delay or “product hopping” cases in which pharmaceutical companies allegedly obstructed generic competitors in order to preserve monopoly profits on patented drugs, such as *In re Generic Pharmaceuticals Pricing Antitrust Litigation*.

Before joining Labaton Sucharow, Lara worked as a Legal Intern in the Larimer County District Attorney’s Office and the Jefferson County District Attorney’s Office. She also volunteered at Crossroads Safehouse, which provided legal representation to victims of domestic violence. Prior to her legal career, Lara worked at Industrial Labs where she worked closely with Federal Drug Administration standards and regulations. In addition, she was a teacher in Irvine, California.

She is a member of the Firm’s Women’s Initiative.

Lara earned her Juris Doctor from the University of Denver Sturm College of Law, where she was a judge of the Providence Foundation of Law & Leadership Mock Trial and a competitor of the Daniel S. Hoffman Trial Advocacy Competition. She 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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David J. MacIsaac is Of Counsel in the New York office of Labaton Sucharow LLP. David represents shareholders in securities litigation and corporate governance matters.

David has successfully prosecuted cases against Versum Materials, Inc.; Stamps.com Inc.; and Expedia Group, Inc.

Prior to joining Labaton Sucharow, David was an Associate at Bernstein Litowitz Berger & Grossmann, where he focused on analyzing new matters and litigating governance cases, with a focus on breaches of fiduciary duty and transactional litigation. He was also previously an Associate at Kirkland & Ellis, where he worked on a variety of general commercial litigation matters.

David earned his Juris Doctor, *cum laude*, from Georgetown University where he was a member of *The Georgetown Journal of Law and Modern Critical Race Perspective*. He received his bachelor's degree in European History and Government from Franklin and Marshall College.



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James McGovern is Of Counsel in the New York office of Labaton Sucharow LLP. He 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 and public pension funds and other institutional investors in domestic securities actions. James also advises clients regarding potential claims tied to securities-related actions in foreign jurisdictions.

James has worked on a number of significant securities class actions, including *In re Worldcom, Inc. Securities Litigation* (\$6.1 billion recovery), the second-largest securities class action settlement since the passage of the PSLRA; *In re Parmalat Securities Litigation* (\$90 million recovery); *In re American Home Mortgage Securities Litigation* (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); *In re UICI Securities Litigation* (\$6.5 million recovery); and *In re SCANA Securities Litigation* (\$192.5 million recovery).

In the corporate governance arena, James helped bring claims against Abbott Laboratories' directors for mismanagement and breach of fiduciary duties in 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 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 and for causing tens of billions of dollars in damages.

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.

James is also an accomplished public speaker and 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, on how institutional investors can guard their assets against the risks of corporate fraud and poor corporate governance.

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James earned his Juris Doctor, *magna cum laude*, from Georgetown University Law Center. He received his bachelor's and master's degrees from American University, where he was awarded a Presidential Scholarship and graduated with high honors.

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Elizabeth Rosenberg is Of Counsel in the New York office of Labaton 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 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.

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William “Bill” Schervish is Of Counsel in the New York office of Labaton Sucharow LLP and serves as the Firm's Director of Financial Research. As a key member of the Firm's Case Development Group, Bill 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. Bill also evaluates and develops cases on behalf of confidential whistleblowers for the Securities and Exchange Commission. Bill has recently concentrated his practice on developing securities fraud cases in connection with Special Purpose Acquisition Companies (SPACs).

Bill has been practicing securities law for more than 14 years. As a complement to his legal experience, Bill is a Certified Public Accountant (CPA), a CFA® Charterholder, and a Certified Fraud Examiner (CFE) with extensive work experience in accounting and finance.

Prior to joining the Firm, Bill 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. Bill's professional background also includes positions in controllership, securities analysis, and commodity trading. He began his career as an auditor at PricewaterhouseCoopers.

Bill earned a Juris Doctor, *cum laude*, from Loyola University and received a Bachelor of Science, *cum laude*, in Business Administration from Miami University, where he was a member of the Business and Accounting Honor Societies.



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Prior to joining Labaton 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 Summer Associate at Morris, Nichols and 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 in English from the University of Delaware.

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John Vielandi is Of Counsel in the New York office of Labaton Sucharow LLP. John researches, analyzes and assesses potential new shareholder litigations with a focus on breaches of fiduciary duty and mergers and acquisitions.

John has successfully prosecuted cases against Versum Materials, Inc.; Stamps.com Inc.; and Expedia Group, Inc.

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.

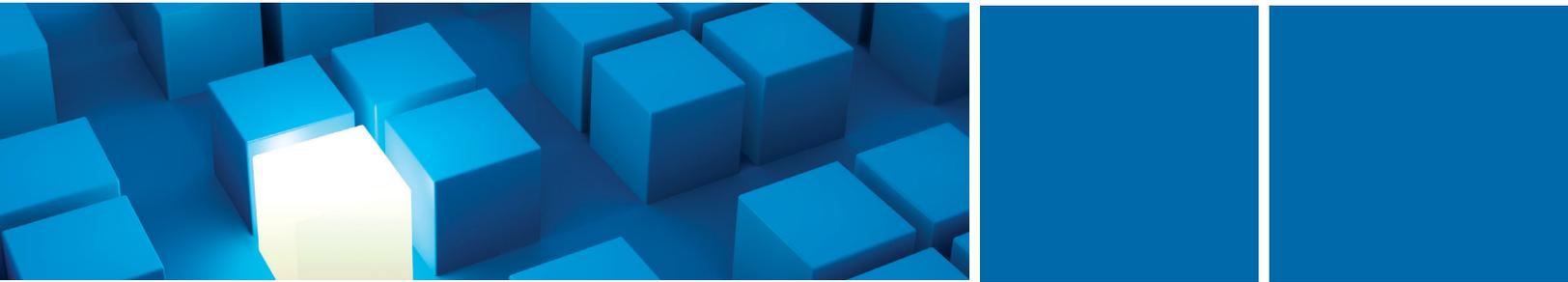
Exhibit 5

	Count	Low	25th Percentile	Median	75th Percentile	High
Partners						
1) Akin Gump Strauss Hauer & Feld LLP	18	\$1,075	\$1,320	\$1,388	\$1,595	\$1,655
2) Davis Polk & Wardwell LLP	15	\$1,530	\$1,593	\$1,685	\$1,685	\$1,983
3) Kirkland & Ellis LLP	16	\$1,135	\$1,210	\$1,380	\$1,605	\$1,845
4) Skadden, Arps, Slate, Meagher, & Flom LLP	6	\$1,425	\$1,425	\$1,495	\$1,565	\$1,565
5) Proskauer Rose LLP	25	\$1,150	\$1,325	\$1,375	\$1,575	\$1,675
6) Latham & Watkins LLP	29	\$1,080	\$1,200	\$1,325	\$1,455	\$1,680
7) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	3	\$1,825	\$1,825	\$1,825	\$1,825	\$1,825
8) Jones Day	20	\$875	\$1,019	\$1,100	\$1,156	\$1,575
9) Milbank LLP	18	\$1,215	\$1,379	\$1,615	\$1,615	\$1,695
10) Kramer Levin Naftalis & Frankel	24	\$960	\$1,208	\$1,300	\$1,400	\$1,525
11) Paul Hastings LLP	27	\$1,250	\$1,350	\$1,450	\$1,538	\$1,650
12) Quinn Emanuel Urquhart & Sullivan, LLP	10	\$1,040	\$1,200	\$1,263	\$1,595	\$1,595
13) Morrison & Foerster LLP	15	\$1,050	\$1,225	\$1,350	\$1,500	\$1,600
14) Sidley Austin LLP	12	\$1,025	\$1,144	\$1,225	\$1,350	\$1,425
15) O'Melveny & Meyers LLP	12	\$1,045	\$1,115	\$1,193	\$1,325	\$1,465
16) Kasowitz Benson Torres LLP	3	\$840	\$1,020	\$1,200	\$1,225	\$1,250
Of Counsel						
1) Akin Gump Strauss Hauer & Feld LLP	16	\$960	\$996	\$1,055	\$1,131	\$1,310
2) Skadden, Arps, Slate, Meagher, & Flom LLP	1	\$1,260	\$1,260	\$1,260	\$1,260	\$1,260
3) Davis Polk & Wardwell LLP	4	\$1,295	\$1,295	\$1,295	\$1,295	\$1,295
4) Paul Hastings LLP	11	\$905	\$1,200	\$1,300	\$1,363	\$1,550
5) Kramer Levin Naftalis & Frankel	8	\$1,050	\$1,075	\$1,105	\$1,191	\$1,420
6) Milbank LLP	9	\$1,175	\$1,175	\$1,175	\$1,175	\$1,235
7) Morrison & Foerster LLP	10	\$930	\$980	\$1,038	\$1,238	\$1,560
8) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	1	\$1,400	\$1,400	\$1,400	\$1,400	\$1,400
9) Jones Day	4	\$850	\$869	\$875	\$900	\$975
10) Latham & Watkins LLP	7	\$1,085	\$1,085	\$1,120	\$1,180	\$1,295
11) Quinn Emanuel Urquhart & Sullivan, LLP	2	\$1,015	\$1,015	\$1,016	\$1,016	\$1,016
12) Sidley Austin LLP	3	\$975	\$1,013	\$1,050	\$1,063	\$1,075
13) O'Melveny & Meyers LLP	14	\$850	\$931	\$943	\$991	\$1,480
Associates						
1) Paul Hastings LLP	45	\$690	\$765	\$855	\$955	\$1,125
2) Proskauer Rose LLP	41	\$640	\$850	\$960	\$1,075	\$1,195
3) Akin Gump Strauss Hauer & Feld LLP	16	\$535	\$641	\$775	\$869	\$945
4) Kirkland & Ellis LLP	16	\$610	\$740	\$845	\$990	\$1,105
5) Skadden, Arps, Slate, Meagher, & Flom LLP	5	\$995	\$1,065	\$1,065	\$1,120	\$1,120
6) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	3	\$965	\$965	\$965	\$1,063	\$1,160
7) Davis Polk & Wardwell LLP	43	\$690	\$738	\$990	\$1,080	\$2,017
8) Milbank LLP	24	\$475	\$625	\$870	\$995	\$1,090
9) Latham & Watkins LLP	47	\$580	\$793	\$925	\$1,040	\$1,150
10) Kramer Levin Naftalis & Frankel	32	\$615	\$715	\$893	\$1,010	\$1,090
11) Sidley Austin LLP	13	\$570	\$675	\$775	\$930	\$1,015
12) Morrison & Foerster LLP	26	\$540	\$650	\$793	\$856	\$1,070
13) Jones Day	30	\$450	\$500	\$563	\$669	\$925
14) Quinn Emanuel Urquhart & Sullivan, LLP	12	\$700	\$806	\$900	\$975	\$995
15) O'Melveny & Meyers LLP	12	\$545	\$568	\$720	\$813	\$895
16) Kasowitz Benson Torres LLP	9	\$445	\$445	\$700	\$775	\$950
Paralegals						
1) Kirkland & Ellis LLP	6	\$275	\$291	\$393	\$445	\$445
2) Akin Gump Strauss Hauer & Feld LLP	8	\$300	\$345	\$360	\$396	\$435
3) Skadden, Arps, Slate, Meagher, & Flom LLP	1	\$450	\$450	\$450	\$450	\$450
4) Latham & Watkins LLP	7	\$250	\$265	\$375	\$475	\$505
5) Paul Hastings LLP	9	\$235	\$290	\$460	\$495	\$520
6) Davis Polk & Wardwell LLP	7	\$325	\$388	\$450	\$450	\$450
7) Kramer Levin Naftalis & Frankel LLP	4	\$420	\$428	\$435	\$440	\$440
8) Sidley Austin LLP	3	\$390	\$390	\$390	\$433	\$475
9) Morrison & Foerster LLP	4	\$375	\$409	\$423	\$426	\$430
10) Proskauer Rose LLP	19	\$225	\$268	\$320	\$450	\$505
11) Milbank LLP	10	\$240	\$320	\$353	\$373	\$375
12) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	2	\$350	\$364	\$378	\$391	\$405
13) Jones Day	9	\$250	\$300	\$300	\$350	\$400
14) Quinn Emanuel Urquhart & Sullivan, LLP	5	\$350	\$355	\$355	\$405	\$405
15) Kasowitz Benson Torres LLP	6	\$103	\$224	\$288	\$310	\$315
16) O'Melveny & Meyers LLP	3	\$395	\$395	\$395	\$395	\$395

	Count	Low Rate (%Diff.)	Percentile Rate (%Diff.)	Median Rate (%Diff.)	Percentile Rate (%Diff.)	High Rate (%Diff.)
All Partners						
All Firms Sampled	253	\$840 (+20%)	\$1,215 (+47%)	\$1,355 (+46%)	\$1,565 (+53%)	\$1,983 (+65%)
Labaton Sucharow LLP	25	\$700	\$825	\$925	\$1,025	\$1,200
Senior Partners						
All Firms Sampled	214	\$840 (+2%)	\$1,246 (+38%)	\$1,400 (+44%)	\$1,575 (+48%)	\$1,983 (+65%)
Labaton Sucharow LLP	20	\$825	\$900	\$975	\$1,063	\$1,200
Mid-Level Partners						
All Firms Sampled	21	\$1,025 (+46%)	\$1,125 (+55%)	\$1,215 (+57%)	\$1,360 (+70%)	\$1,655 (+107%)
Labaton Sucharow LLP	5	\$700	\$725	\$775	\$800	\$800
Junior Partners						
All Firms Sampled	18	\$960 #DIV/0!	\$1,120 #DIV/0!	\$1,185 #DIV/0!	\$1,255 #DIV/0!	\$1,595 #DIV/0!
Labaton Sucharow LLP	0	\$0	\$0	\$0	\$0	\$0
Of Counsel						
All Firms Sampled	105	\$850 (+70%)	\$995 (+68%)	\$1,110 (+67%)	\$1,295 (+82%)	\$1,560 (+60%)
Labaton Sucharow LLP	18	\$500	\$594	\$663	\$713	\$975
All Associates						
All Firms Sampled	374	\$445 (+11%)	\$698 (+64%)	\$855 (+80%)	\$995 (+99%)	\$2,017 (+267%)
Labaton Sucharow LLP	21	\$400	\$425	\$475	\$500	\$550
Senior Associates						
All Firms Sampled	120	\$445 (-11%)	\$871 (+64%)	\$995 (+81%)	\$1,076 (+96%)	\$1,195 (+117%)
Labaton Sucharow LLP	6	\$500	\$531	\$550	\$550	\$550
Mid-Level Associates						
All Firms Sampled	107	\$500 (+11%)	\$825 (+83%)	\$925 (+95%)	\$993 (+109%)	\$2,017 (+325%)
Labaton Sucharow LLP	9	\$450	\$450	\$475	\$475	\$475
Junior Associates						
All Firms Sampled	148	\$450 (+13%)	\$610 (+53%)	\$700 (+65%)	\$788 (+85%)	\$1,095 (+158%)
Labaton Sucharow LLP	6	\$400	\$400	\$425	\$425	\$425
Paralegals						
All Firms Sampled	103	\$103 (-44%)	\$300 (-16%)	\$375 (+21%)	\$440 (+26%)	\$520 (+24%)
Labaton Sucharow LLP	19	\$185	\$358	\$310	\$350	\$420

Exhibit 6

25 January 2022



Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review

Over 10% of New Federal Filings Were Related to Special Purpose Acquisition Companies
Substantially Fewer Merger Objections Filed, Leading to a Decline in Aggregate New Filings
Total Resolutions, Average and Median Settlement Values Declined

By Janeen McIntosh and Svetlana Starykh

Foreword

I am excited to share NERA's Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review with you. This year's edition builds on work carried out over three decades by many members of NERA's Securities and Finance Practice. This year's report continues our analyses of trends in filings and settlements and presents new analyses related to current topics such as special purpose acquisition companies. Although space does not permit us to present all the analyses the authors have undertaken while working on this year's edition or to provide details on the statistical analysis of settlement amounts, we hope you will contact us if you want to learn more about our research or our work related to securities litigations. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope you find it informative.

Dr. David Tabak
Managing Director

A handwritten signature in white ink, appearing to read 'D. Tabak', is positioned below the typed name and title.

Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review

Over 10% of New Federal Filings Were Related to Special Purpose Acquisition Companies
Substantially Fewer Merger Objections Filed, Leading to a Decline in Aggregate New Filings
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By Janeen McIntosh and Svetlana Starykh¹

25 January 2022

Introduction

For the first time since 2016, fewer than 300 new federal securities class action suits were filed.² There were 205 cases filed in 2021, a decline from the 321 suits filed in 2020. Although substantially lower than the number of cases filed annually between 2017 and 2019, the 2021 level is well within the pre-2017 historical range. The decline in the aggregate number of new cases filed was driven by the notable decrease in the number of merger-objection suits in 2021. More specifically, new merger-objection filings declined by more than 85% between 2020 and 2021. Of the new cases filed in 2021, over 30% were filed against defendants in the electronic technology and services sector and 40% were filed in the Second Circuit. The most common allegation included in the complaints was misled future performance while the proportion of cases with an allegation related to merger-integration issues doubled, driven primarily by the numerous filings related to special purpose acquisition companies. In 2021, there were 20 securities class action cases filed with a COVID-19-related claim alleged in the complaint, a decrease from the 33 suits filed in 2020.

Of the 239 cases resolved in 2021, 153 were dismissed and 86 resolved through a settlement. This is a decline in total dismissed cases and total resolutions relative to 2020. Compared to 2020, there was an increase in both dismissed and settled non-merger-objection cases. There was a substantial decrease in merger-objection cases dismissed and one more such suit settled than in 2020. This decline in the number of dismissed merger-objection cases not only offset the increase in standard case resolutions, but also led to a lower aggregate number of cases resolved in 2021.

An evaluation of securities class action suits filed and resolved between 1 January 2000 and 31 December 2021 reveals the vast majority had a motion to dismiss filed. Of the 96% of cases with a motion to dismiss filed, a decision was reached in 73% of the cases prior to resolution of the case. Of the cases with a decision on a motion to dismiss, approximately 56% were granted. Among the same group of cases, a motion for class certification was filed in only 16% of the securities class actions. Of that 16%, a decision was reached in 56% of the cases prior to the case resolution, with the motion for class certification granted in 83% of the cases with a decision.

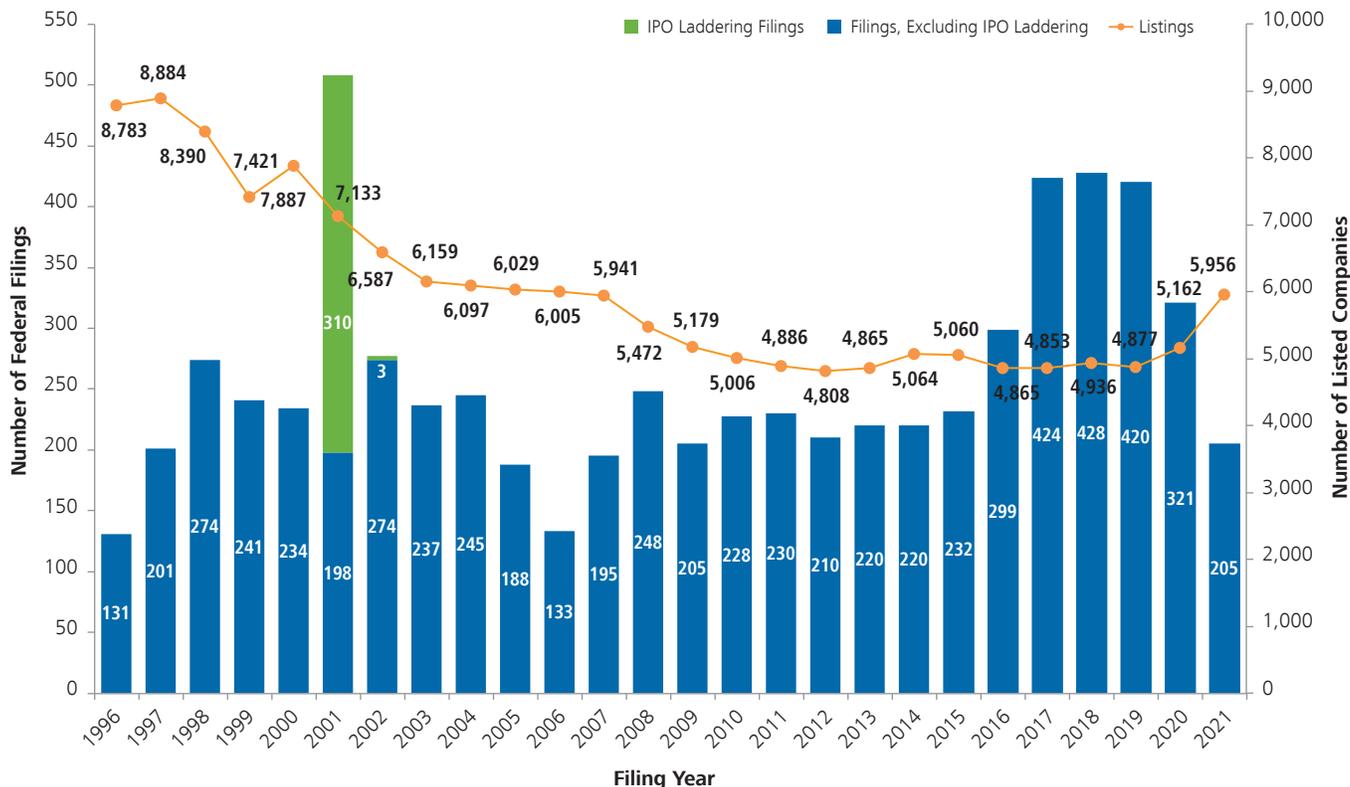
In 2021, aggregate settlements amounted to \$1.8 billion, with more than 50% of this amount associated with the top 10 highest settlements for the year. The average settlement value decreased by over 50% in 2021 to \$21 million, the lowest recorded average in the last 10 years. Given that there were no “mega” settlements (settlements of \$1 billion or greater) in 2021, the average settlement value after excluding “mega” settlements remains unchanged at \$21 million. For 2021, the median settlement value was \$8 million, the lowest recorded median value since 2017. The median annual settlement value for 2021 is approximately 40% lower than the inflation-adjusted median value observed in the prior three years.

Trends in Filings

Following the passage of PSLRA in 1996, there have been over 100 federal securities class action (SCA) suits filed each year. With the exception of 2001, when numerous IPO laddering cases were filed, there were fewer than 300 new cases filed annually between 1996 and 2016. In 2017, there were substantially more new suits filed, with more than 415 annual cases recorded—a trend that continued through 2019. This uptick in filings was mostly due to the considerable increase in merger-objection cases. However, in both 2020 and 2021, this higher annual level of new cases filed did not persist.³

For the second consecutive year, new securities class action filings declined, falling to the lowest level since 2009. In 2021, there were 205 new cases filed, which is more than 50% lower than the annual levels of filings recorded each year between 2017 and 2019. See Figure 1.

Figure 1. **Federal Filings and Number of Companies Listed in the United States**
January 1996–December 2021

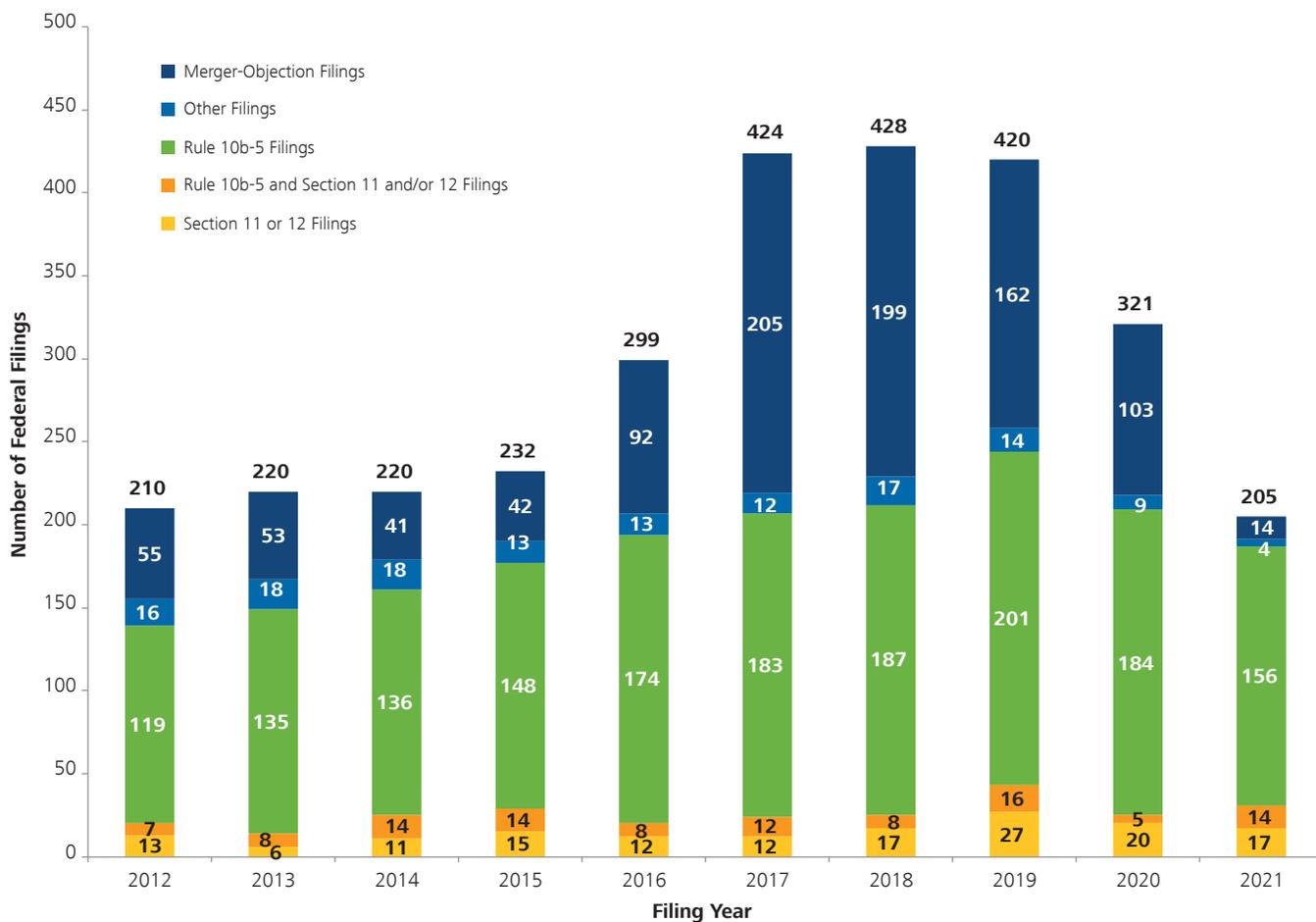


Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data obtained from World Federation of Exchanges (WFE). The 2021 listings data is as of September 2021.

In addition to analyzing trends in aggregate filings, we also evaluated the number of filings relative to the number of companies listed on the NYSE and Nasdaq exchanges. There were 5,956 listed companies as of September 2021, which represents a 15% increase over the 2020 level and a noteworthy change from the minor year-to-year fluctuations observed between 2016 and 2019.

Even though there was a significant decrease in new federal SCA filings in 2021, the decline was not consistent across all case types. While new filings of Rule 10b-5, Section 11, and/or Section 12 cases (standard cases) increased, new filings of merger objections, Rule 10b-5 only, Section 11 and/or 12 only, and other SCA cases declined. The most notable was the decline in merger-objection filings, which decreased by more than 85% from 103 new filings in 2020 to only 14 new filings in 2021. See Figure 2.

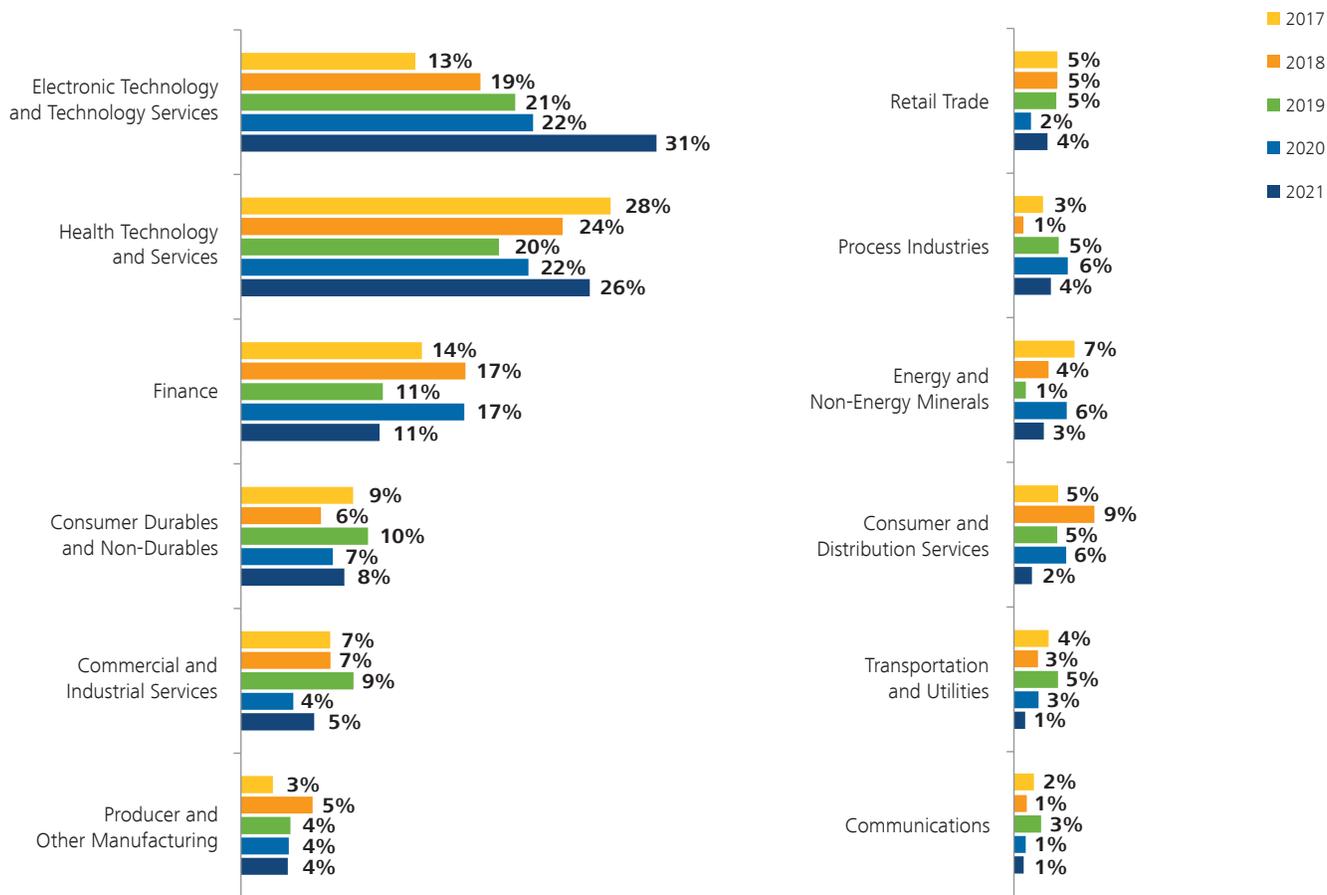
Figure 2. **Federal Filings by Type**
January 2012–December 2021



Since 2018, the percentage of securities class action suits filed against defendants in the electronic technology and services sector has shown steady growth. Of the new cases filed in 2017, less than 15% were filed against defendants in the electronic technology and services sector compared to over 30% against defendants in the same sector in 2021. Between 2019 and 2021, the percentage of securities class action suits filed against defendants in the health technology and services sector also increased from 20% to 26%. See Figure 3.

Figure 3. **Percentage of Federal Filings by Sector and Year**

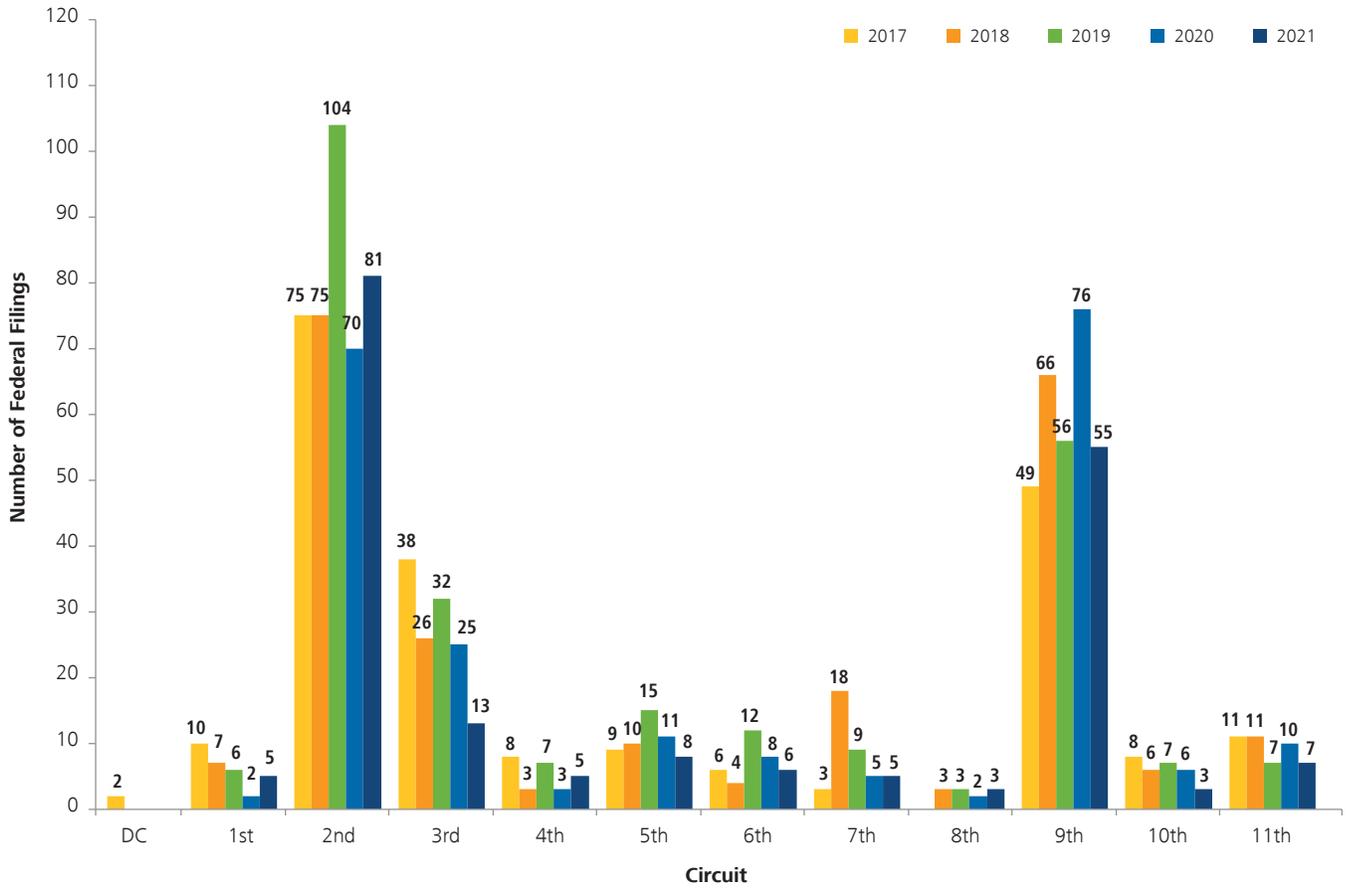
Excludes Merger Objections
January 2017–December 2021



Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

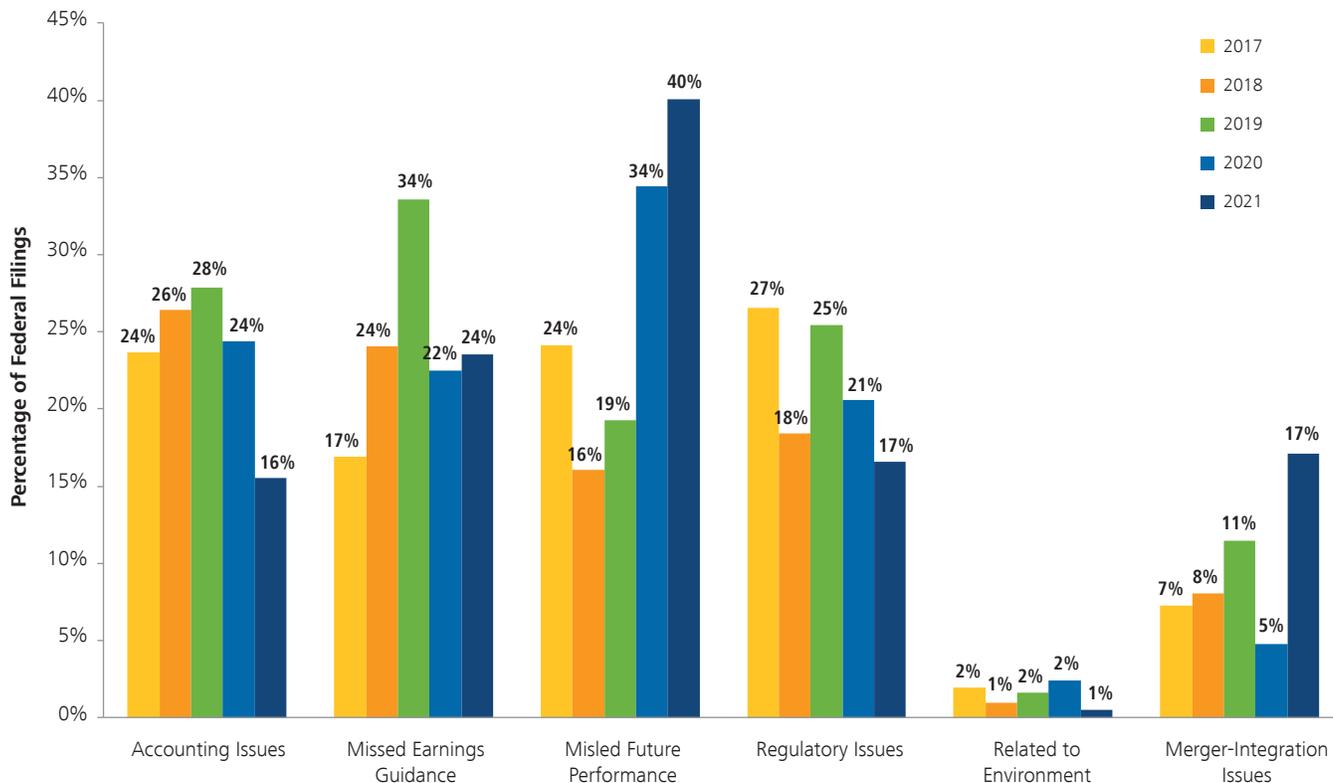
In 2020, we observed a spike in new federal securities class action filings in the Ninth Circuit. This pattern did not persist in 2021. In 2021, the Second Circuit received the highest number of new SCA cases filed while the number of filings in the Ninth Circuit returned to pre-2020 levels. However, the number of new filings in the Third Circuit declined to a five-year low with fewer than 15 cases filed in this circuit in 2021. See Figure 4.

Figure 4. **Federal Filings by Circuit and Year**
 Excludes Merger Objections
 January 2017–December 2021



Of the new federal securities class action cases filed in 2021, 40% alleged violations related to misleading future performance, the most common alleged violation for the year.⁴ Allegations of violations related to missed earnings guidance continue to be a common allegation, with 24% of cases involving this claim. The percentage of cases alleging violations of accounting issues and regulatory issues declined in 2021, each occurring in less than 20% of new cases filed. In 2021, there was an uptick in the number of SCA filings with an allegation related to merger-integration issues included in the complaint. This increase was driven by the substantial number of cases involving special purpose acquisition companies (SPAC) filed in 2021. Excluding these SPAC cases, only 5% of cases included an allegation related to merger-integration issues. See Figure 5.

Figure 5. **Allegations**
 Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
 January 2017–December 2021



Event-Driven and Special Cases

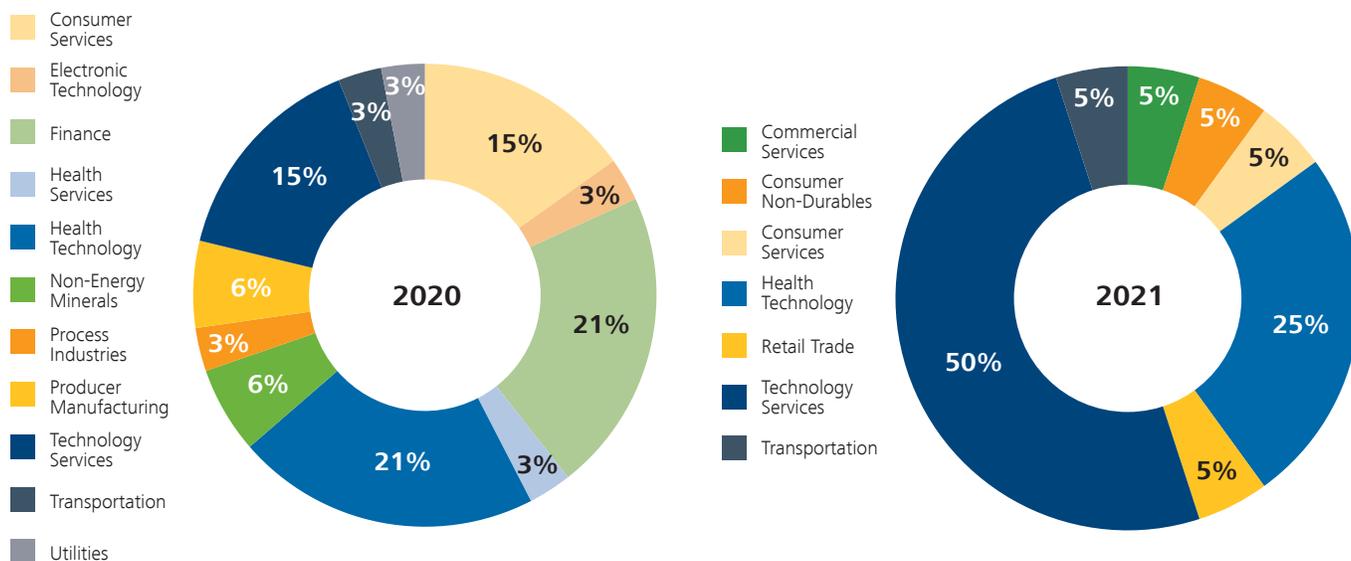
As part of our annual review process, we identify potential development areas for securities class action filings and review any new trends on previously identified areas.⁵ Below, we summarize some of these areas for the last three years.

COVID-19

The first federal securities class action suit with claims related to COVID-19 included in the complaint was filed in March 2020. Since then, there have been a total of 52 additional suits. In 2021, there were 20 securities class action cases filed with a COVID-19-related claim, a decrease from the 33 suits filed in 2020. While the Ninth Circuit was the jurisdiction with the highest percentage of COVID-19-related filings in 2020, the Second Circuit was the most common venue in 2021.

Of the 2021 cases filed with a COVID-19-related claim in the complaint, 50% were against defendants in the technology services economic sector. Among the 2020 cases filed with a COVID-19 claim, only 15% were against defendants within this sector. See Figure 6.

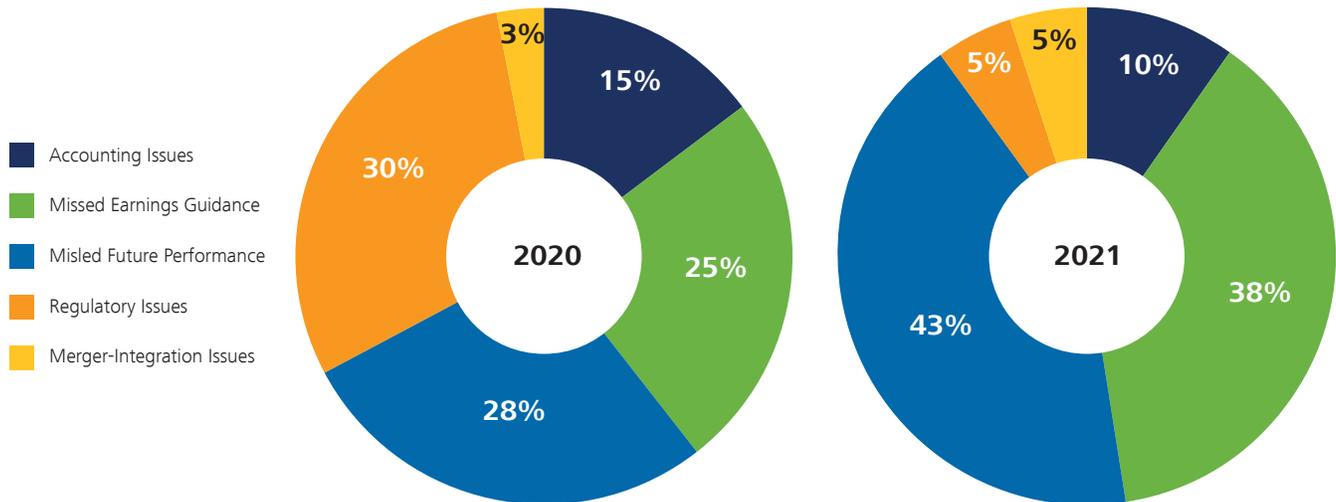
Figure 6. **Percentage of COVID-19-Related Federal Filings by Sector and Year**
March 2020–December 2021



Note: Due to rounding, percentages may not add to 100%.

In 2020, a violation related to regulatory issues was the most common allegation among the COVID-19-related cases. However, in 2021, only one case with a COVID-19 claim included an allegation of regulatory issues. In contrast, the most common allegation included in the COVID-19-related suits filed in 2021 related to future performance. See Figure 7.

Figure 7. **Percentage of COVID-19-Related Federal Filings by Allegation and Year**
March 2020–December 2021



Note: Due to rounding, percentages may not add to 100%.

SPAC

In 2021, numerous federal cases were filed related to special purpose acquisition companies (SPACs). Between January 2021 and December 2021, a total of 24 cases related to SPACs were filed, a substantial increase from the one case filed in 2020.

These suits were filed against defendants in a number of sectors, with defendants in the consumer durables, technology services, and finance sectors being the most frequently targeted in 2020–2021. See Figure 8.

Figure 8. **Number of SPAC-Related Federal Filings by Sector**
December 2020–December 2021



Of the 25 SPAC cases filed in 2020 and 2021, all but one included an allegation related to merger-integration issues. Claims related to misleading earnings guidance were found in 11 of the 25 SPAC cases. In total, these suits included 49 allegations, or an average of approximately two allegations per suit. See Figure 9.

Figure 9. **Number of SPAC-Related Federal Filings by Allegation**
December 2020–December 2021

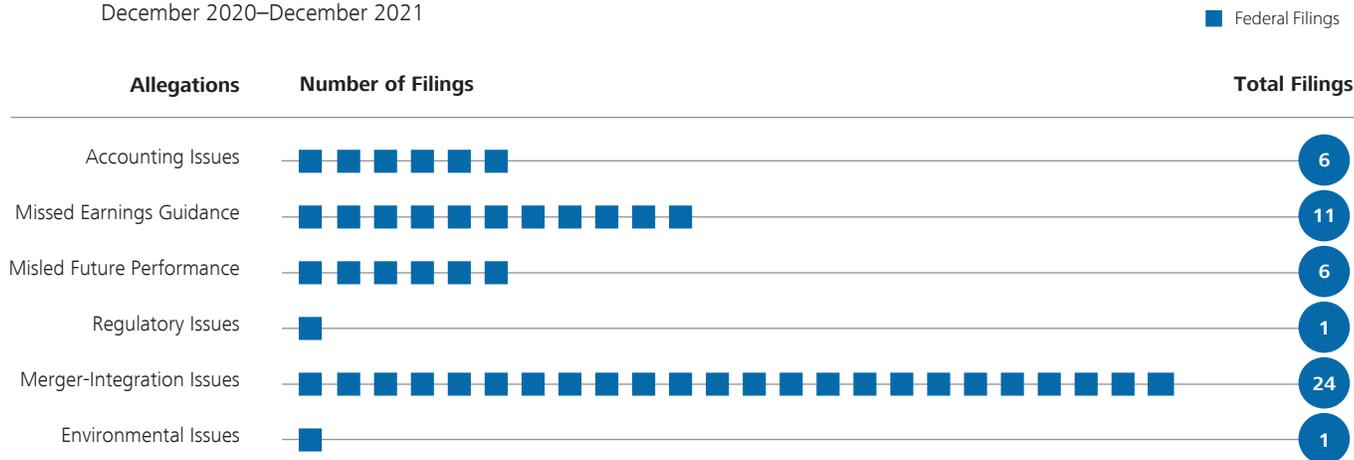
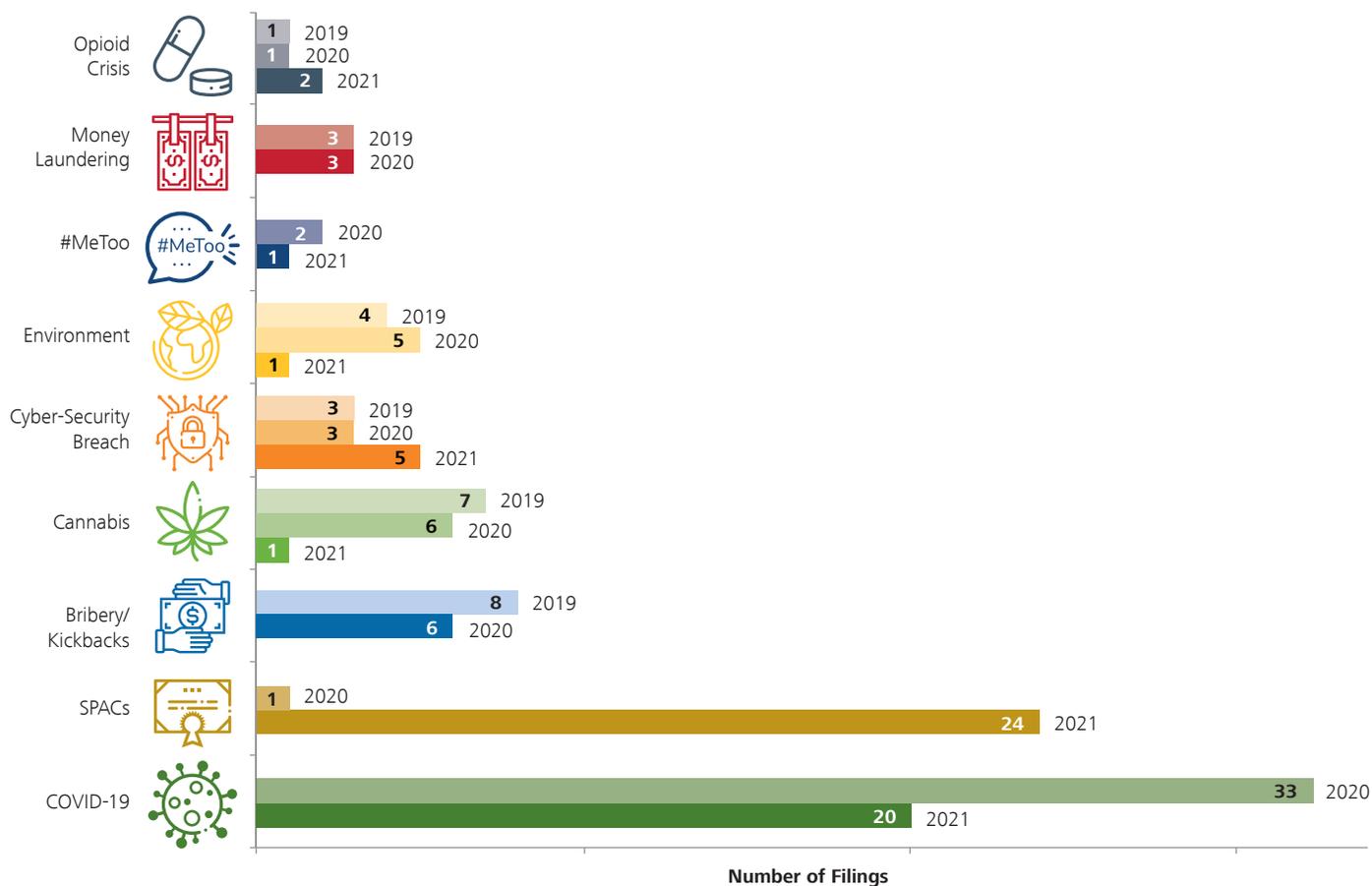


Figure 10. **Event-Driven and Other Special Cases by Filing Year**
January 2019–December 2021



Bribery/Kickbacks

In 2019 and 2020, there were eight and six bribery/kickback-related securities class action cases filed, respectively. However, in 2021, there were no such cases filed. See Figure 10.

Cannabis

Over the 2019–2020 period, 13 cases were filed against defendants in the cannabis industry. In 2021, only one such securities class action case was filed. See Figure 10.

Cybersecurity Breach

Unlike some other development or special interest areas, securities class action filings related to a cybersecurity breach continued to be filed in 2021. In both 2019 and 2020 individually, three cases were filed related to a cybersecurity breach. While still only a handful of cases, there was an increase in 2021 with five such cases filed. See Figure 10.

Environment

In 2021, there was one environment-related case filed. This is a decrease from the five cases filed in 2020 and the four cases filed in 2019. See Figure 10.

Money Laundering

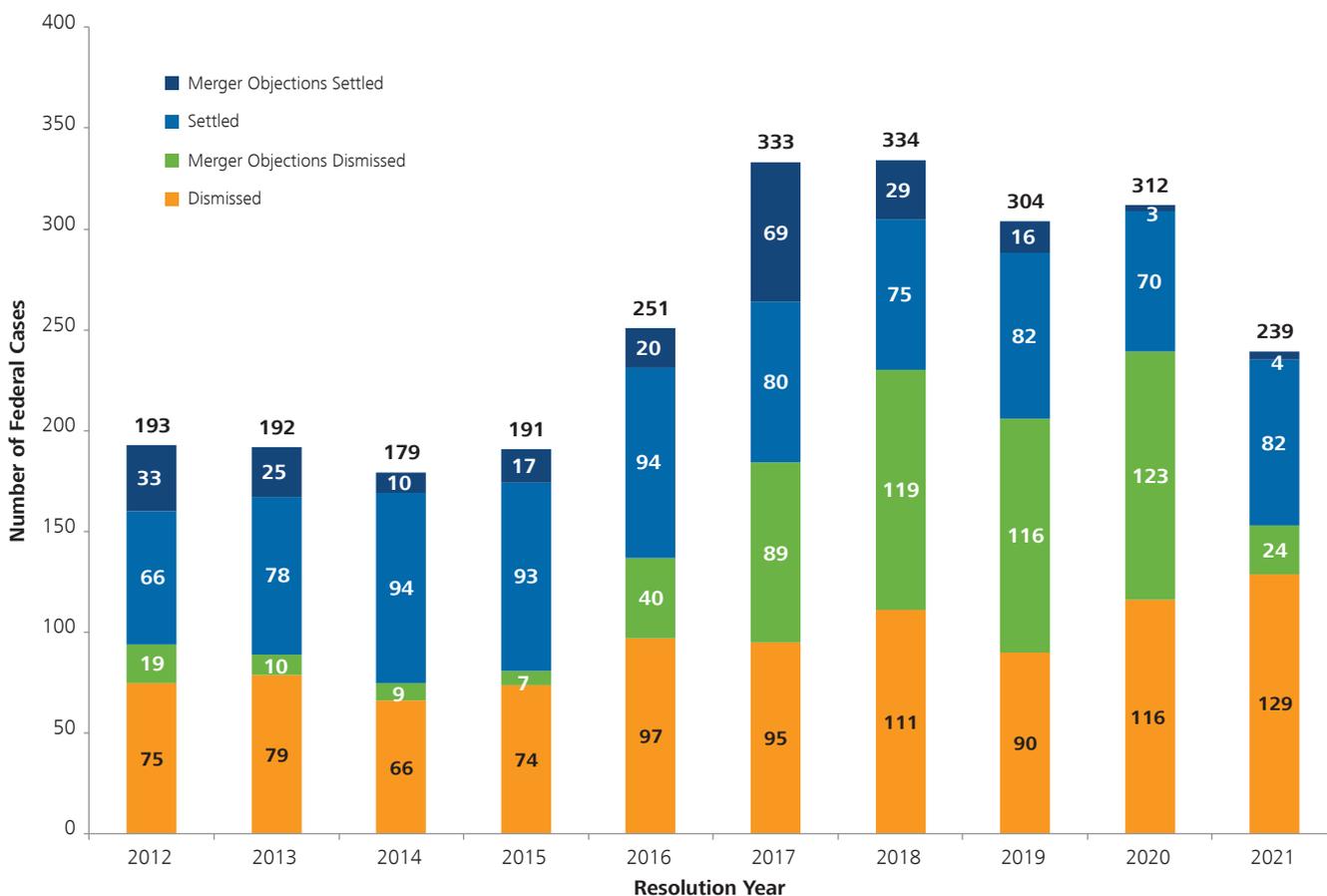
In total, six cases with claims of money laundering were filed in the 2019–2020 period, with three cases filed each year. No cases with money laundering claims were filed in 2021. See Figure 10.

Trends in Resolutions

Resolutions consist of both dismissed and settled cases.⁶ In any one year, the aggregate number of resolutions may be affected by changes in either or both categories. For our analysis, we review changes within these categories as well as the trends for merger objections and non-merger-objection cases separately. In addition, we review the current status of securities class action suits filed in the last 10 years.

In 2021, 239 cases were resolved, the lowest recorded level of resolutions since 2015. Of those, 153 were dismissed and 86 resolved through a settlement. This is a decrease in both aggregate resolutions and dismissals compared to 2020. However, compared to the pre-2017 resolutions, the 239 cases resolved is well within the historical range of annual resolutions. See Figure 11.

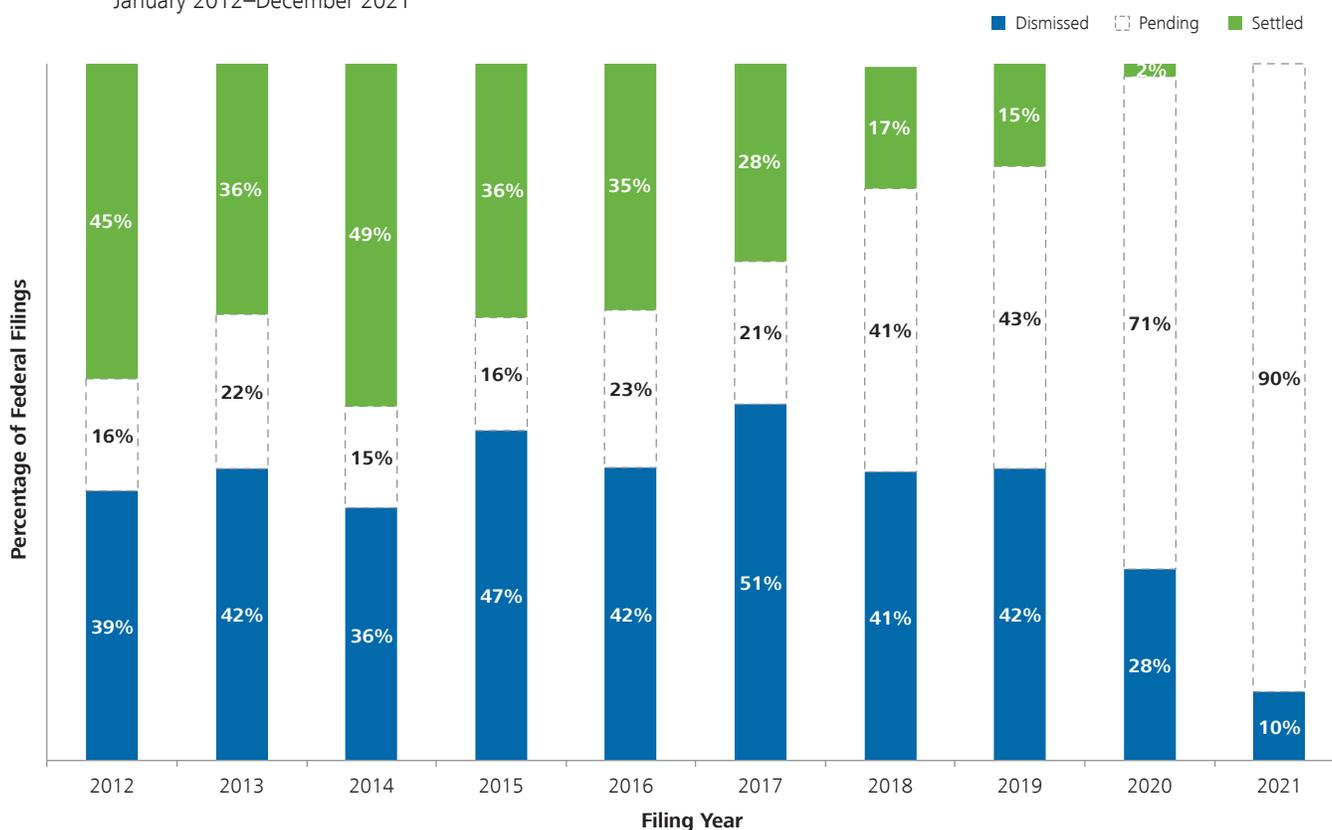
Figure 11. **Number of Resolved Cases: Dismissed or Settled**
January 2012–December 2021



A review of the resolution pattern by type of case reveals differing trends. Although not a substantial increase, the number of non-merger-objection resolutions in 2021 was the highest recorded in the last 10 years. While there was a modest increase in both the number of non-merger-objection suits dismissed and settled relative to 2020, there was a decrease in dismissed merger-objection cases. In fact, the number of merger-objection suits dismissed in 2021 was more than 80% fewer than the number of similar suits dismissed in 2020. This decline in the number of dismissed merger-objection suits was more than sufficient to offset the increase in standard case resolutions, resulting in a lower aggregate number of cases resolved in 2021.

For each filing year since 2015, more cases have been resolved in favor of the defendant than have been settled. This is consistent with historical trends, which have indicated that settlements typically occur later in the litigation process. Reviewing cases filed in 2020, as of December 2020, 6% were dismissed and 94% remained pending.⁷ For the same group of cases, as of December 2021, 28% were dismissed and only 2% were settled. Of the cases filed in 2021, a higher proportion of cases were dismissed in the year of filing than the cases filed in 2020, with 10% dismissed as of year-end 2021. See Figure 12.

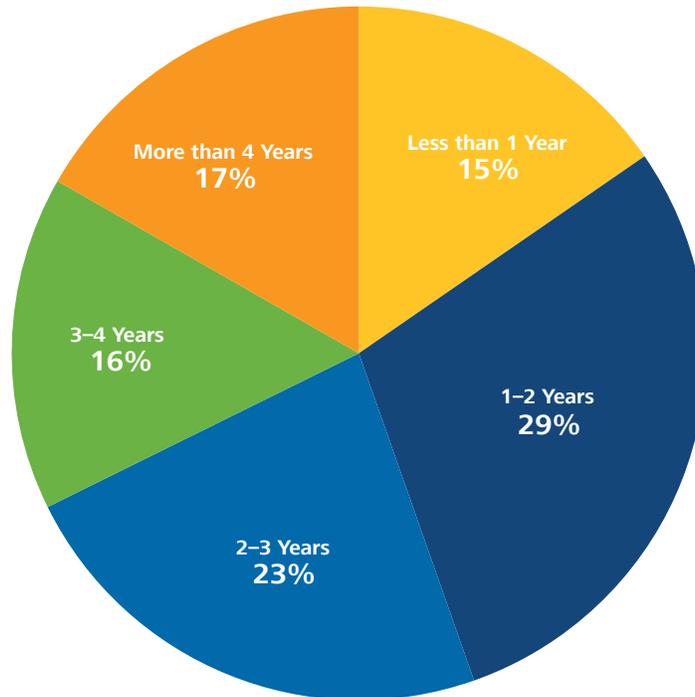
Figure 12. **Status of Cases as Percentage of Federal Filings by Filing Year**
 Excludes Merger Objections and Verdicts
 January 2012–December 2021



Note: Dismissals may include dismissals without prejudice and dismissals under appeal.

While 83% of cases resolve in four years or less, over half of cases are resolved between one and three years after filing.⁸ See Figure 13.

Figure 13. **Time from First Complaint Filing to Resolution**
 Excludes Merger Objections and Laddering Cases
 Cases Filed January 2003–December 2017 and Resolved January 2003–December 2021



“The number of merger-objection suits dismissed in 2021 was more than 80% fewer than the number of similar suits dismissed in 2020. This decline in the number of dismissed merger-objection suits was more than sufficient to offset the increase in standard case resolutions, resulting in a lower aggregate number of cases resolved in 2021.”

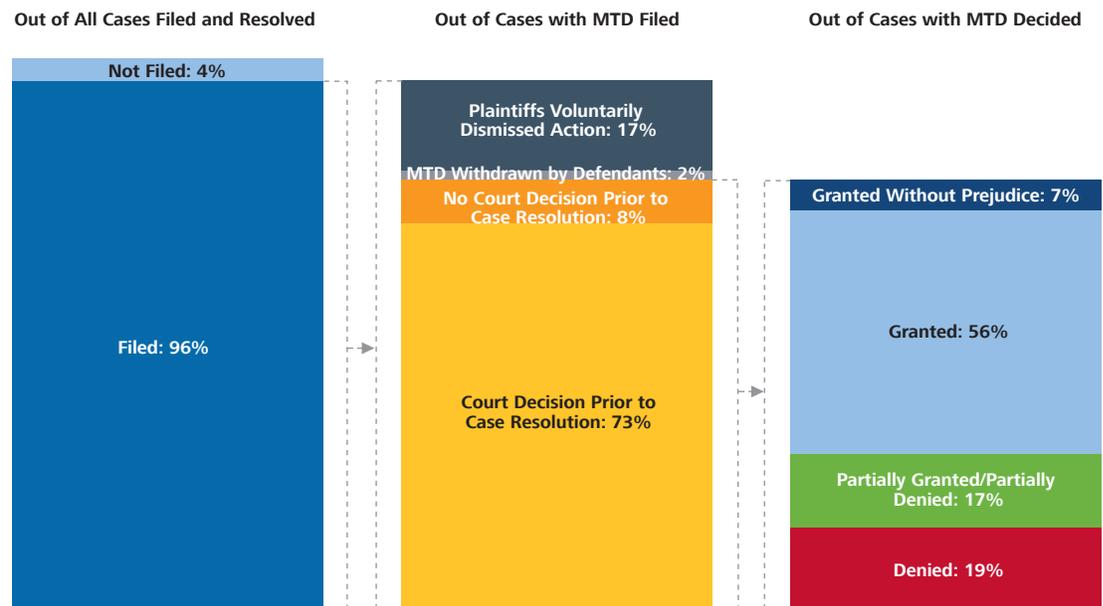
Analysis of Motions

In addition to tracking filing and resolution information for federal securities class actions, NERA also tracks decisions on motions to dismiss and motions for class certification, and the status of any motion as of the resolution of each case.⁹

Motion to Dismiss

Of the securities class action cases filed and resolved between 1 January 2012 and 31 December 2021, a motion to dismiss was filed in 96%. Among those, a decision was reached in 73% of cases. Of the cases with a decision on a motion to dismiss, approximately 56% were granted while only 19% were denied. Lastly, of the 96% of cases with a motion to dismiss filed, plaintiffs voluntarily dismissed the action in 17%, while the motion to dismiss was withdrawn by defendants only in an additional 2%. See Figure 14.

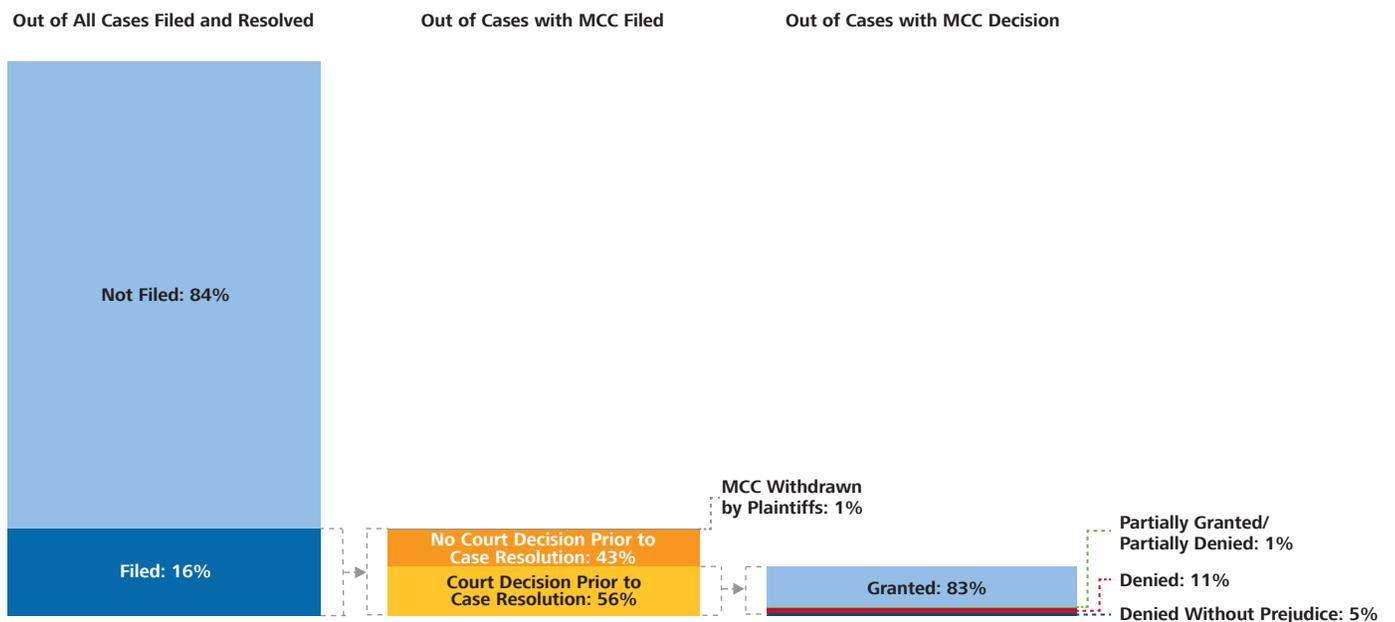
Figure 14. **Filing and Resolutions of Motions to Dismiss**
Cases Filed and Resolved January 2012–December 2021



Motion for Class Certification

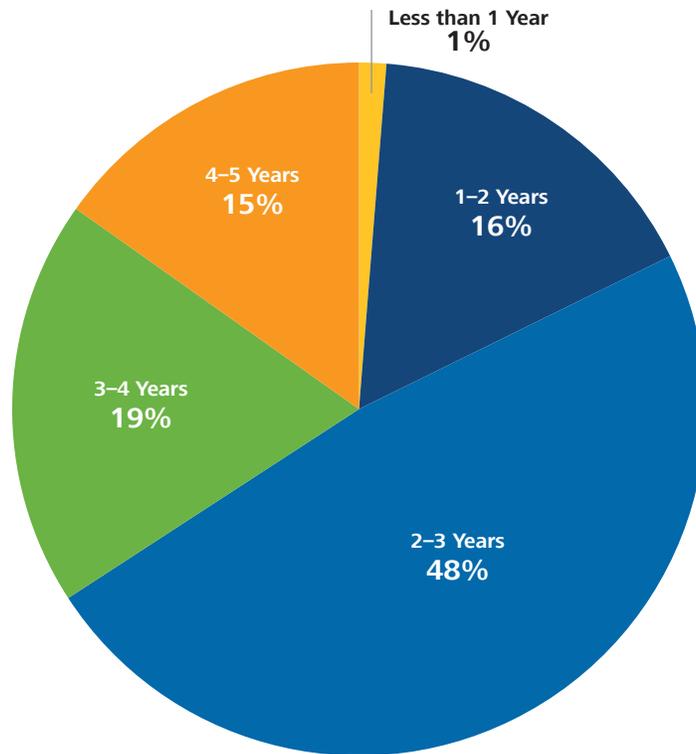
A motion for class certification was filed in less than 20% of the securities class action suits filed and resolved between 1 January 2012 and 31 December 2021. This is partly due to the fact that a substantial number of cases are either dismissed or settled before the class-certification stage of the case is reached. A decision was reached in 56% of the cases where a motion for class certification was filed, with the motion being withdrawn by plaintiffs in an additional 1% of the cases. Among the cases with a decision, the motion for class certification was granted in 83% and partially granted and partially denied in an additional 1% of cases. See Figure 15.

Figure 15. **Filing and Resolutions of Motions for Class Certification**
Cases Filed and Resolved January 2012–December 2021



Approximately half of decisions on motions for class certification occur between two and three years after the filing of the first complaint. See Figure 16.

Figure 16. **Time from First Complaint Filing to Class Certification Decision**
Cases Filed and Resolved January 2012–December 2021

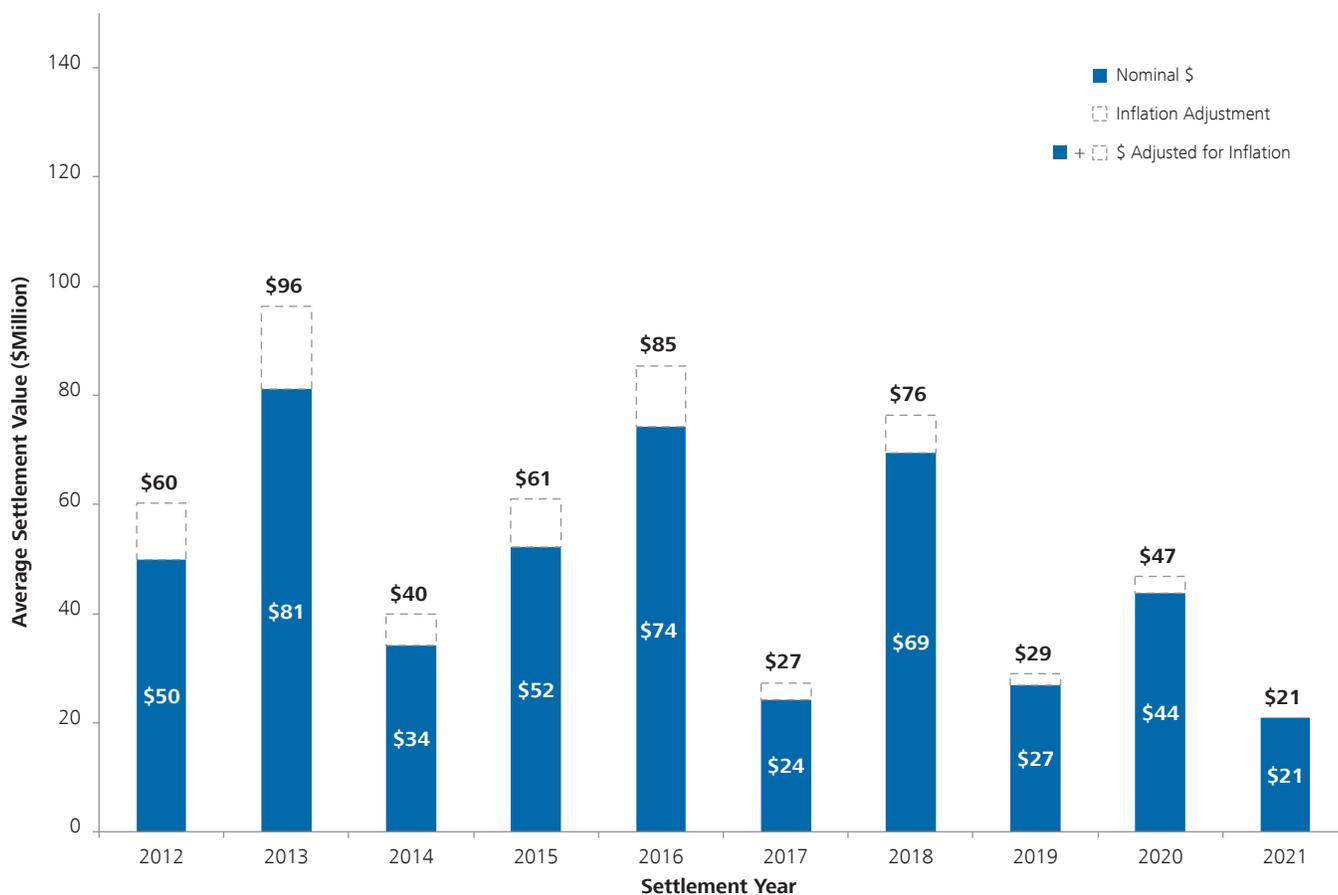


“A motion for class certification was filed in less than 20% of the securities class action suits filed and resolved between 1 January 2012 and 31 December 2021.”

Trends in Settlement Values

In 2021, aggregate settlements amounted to \$1.8 billion. This amount is \$400 million lower than the inflation-adjusted \$2.2 billion aggregate settlement amount in 2019, and considerably lower than the inflation-adjusted amounts of \$3.1 billion and \$5.2 billion in 2020 and 2018, respectively. Trends in settlement values can be evaluated using a variety of metrics, including distributions of settlement values, average settlement values, and median settlement values. While annual average settlement values can be a helpful statistic, these values may be impacted by one or, in some cases, a few very high settlement amounts. Unlike averages, the median settlement value is unaffected by these very high “outlier” settlement amounts and gives insight into the most frequent settlement amounts. To understand what more “typical” cases look like, we also analyze the average and median settlement values for cases with a settlement amount under \$1 billion, thus excluding these “outlier” settlement amounts. For the analysis of settlement values, our data is limited to non-merger-objection cases with positive settlement values.¹⁰

Figure 17. **Average Settlement Value**
Excludes Merger Objections and Settlements for \$0 to the Class
January 2012–December 2021

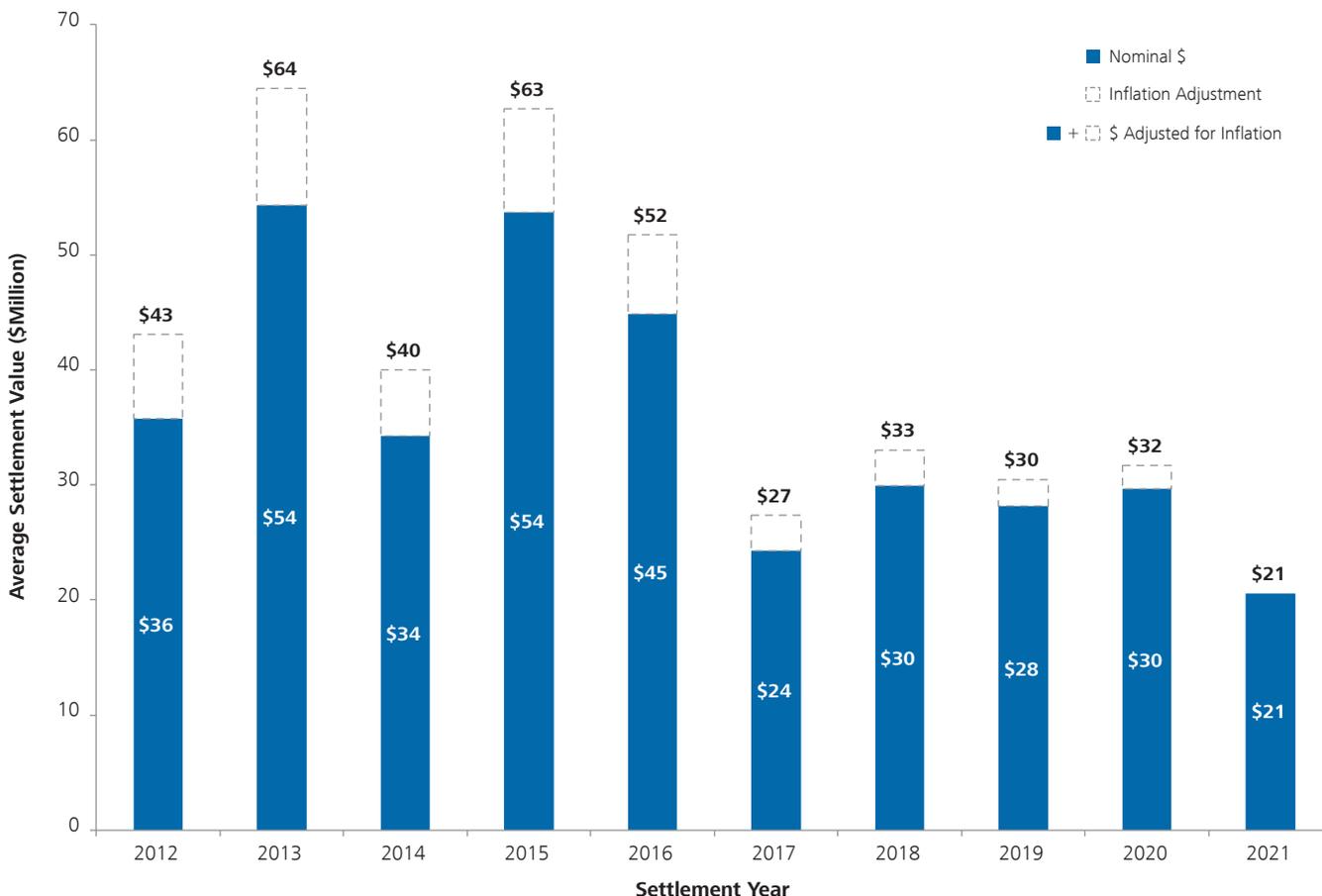


The average settlement value in 2021 was \$21 million, which is more than 50% lower than the 2020 inflation-adjusted average of \$47 million and marks the lowest recorded average in the last 10 years. The inflation-adjusted average settlement value has ranged from a low of \$21 million in 2021 to a high of inflation-adjusted \$96 million in 2013, partly due to the presence or absence of one or two “outlier” or “mega” settlements, which for this purpose are single case settlements of \$1 billion or higher. See Figure 17. Unlike in 2020 when there was one “mega” settlement, there were no cases resolved with a settlement amount above \$1 billion in 2021. In fact, the highest recorded settlement amount in 2021 was \$155 million.

Once settlements greater than \$1 billion are excluded, the inflation-adjusted annual average settlement values trend is more stable, ranging from \$21 million to \$33 million in the last five years. In this group of settlements, the average settlement value for 2021 was \$21 million, still the lowest annual average within the most recent 10 years. See Figure 18.

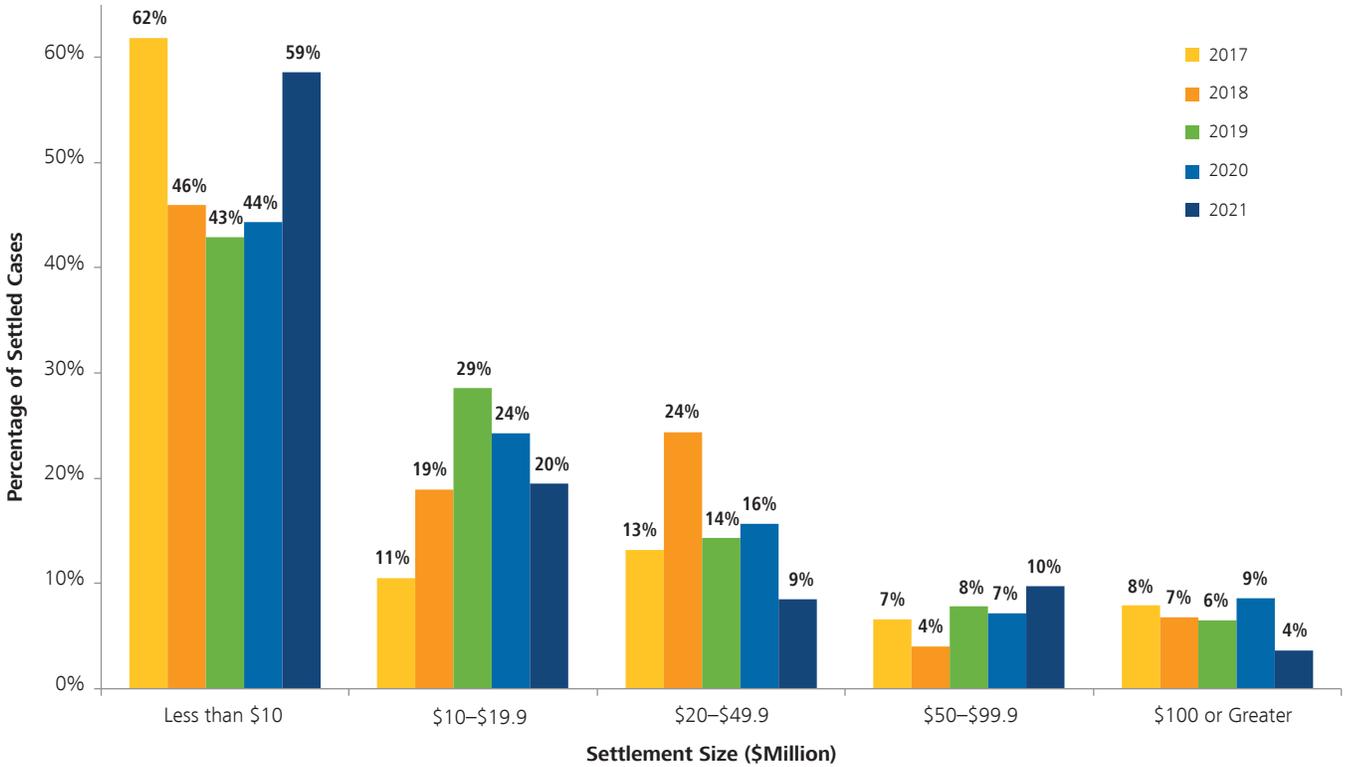
Figure 18. **Average Settlement Value**

Excludes Settlements over \$1 Billion, Merger Objections, and Settlements for \$0 to the Class
January 2012–December 2021



While there was a shift upward in the annual distribution of nominal settlement values between 2017 and 2020, this trend did not persist in 2021. Instead, in 2021, nearly 60% of cases resolved for settlement amounts less than \$10 million. This increase in the proportion of cases settling for lower values in 2021 was accompanied by a decrease in the proportion of cases resolving for \$100 million or greater, with fewer than 5% of settlements falling in this range. See Figure 19.

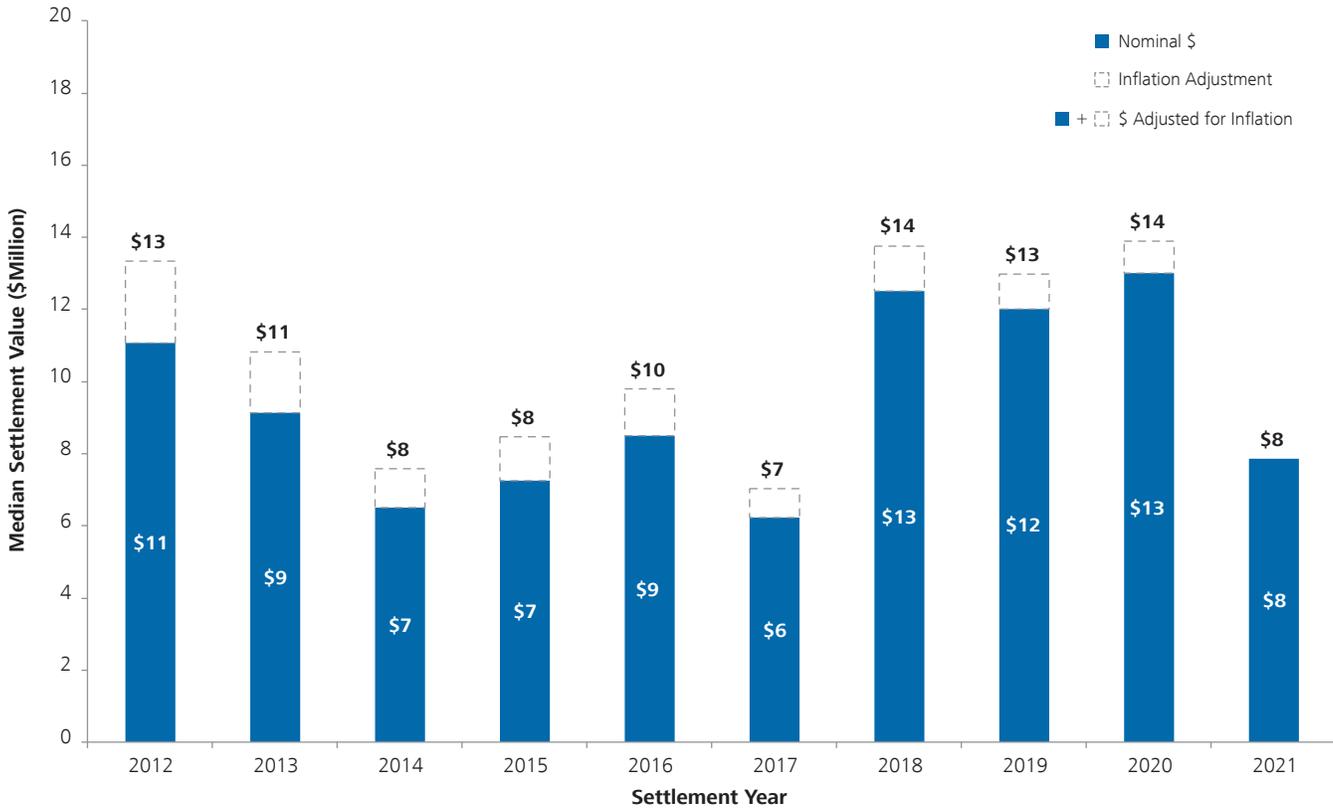
Figure 19. **Distribution of Settlement Values**
 Excludes Merger Objections and Settlements for \$0 to the Class
 January 2017–December 2021



The median annual settlement value for 2021 is approximately 40% lower than the inflation-adjusted median value observed in 2018, 2019, and 2020. For 2021, the median settlement value was \$8 million, the lowest recorded median value since 2017. See Figure 20.

Figure 20. **Median Settlement Value**

Excludes Settlements over \$1 Billion, Merger Objections, and Settlements for \$0 to the Class
January 2012–December 2021



Top Settlements in 2021

Table 1 summarizes the 10 largest settlements reached in securities class action suits between 1 January 2021 and 31 December 2021. In total, the 10 largest settlements accounted for more than 50% of the aggregate settlement amount reached in 2021. Six of the top 10 settlements were reached with defendants in the health technology and services or technology services economic sectors. The Second Circuit was the most common circuit for these cases, accounting for four of the top 10 settlements.

Table 1. **Top 10 2021 Securities Class Action Settlements**

Ranking	Defendant	Filing Date	Settlement Date	Total Settlement Value (\$Million)	Plaintiffs' Attorneys' Fees and Expenses Value (\$Million)	Circuit	Economic Sector
1	Snap, Inc.	16 May 17	09 Mar 21	\$154.7	\$41.0	9th	Technology Services
2	DaVita Inc.	1 Feb 17	30 Mar 21	\$135.0	\$41.0	10th	Health Services
3	Allergan plc (f/k/a Actavis plc)	22 Dec 16	17 Nov 21	\$130.0	\$35.2	3rd	Health Technology
4	Tableau Software, Inc.	28 Jul 17	14 Sep 21	\$95.0	\$27.7	2nd	Technology Services
5	Cognizant Technology Solutions Corp.	5 Oct 16	20 Dec 21	\$95.0	\$19.5	3rd	Technology Services
6	The Southern Company	20 Jan 17	05 Feb 21	\$87.5	\$24.9	11th	Utilities
7	MetLife, Inc.	12 Jan 12	14 Apr 21	\$84.0	\$23.5	2nd	Finance
8	Towers Watson & Co.	21 Nov 17	21 May 21	\$75.0	\$13.7	4th	Commercial Services
9	CannTrust Holdings Inc.	10 Jul 19	02 Dec 21	\$66.4	\$0	2nd	Health Technology
10	Chemical and Mining Company of Chile Inc.	19 Mar 15	26 Apr 21	\$62.5	\$12.1	2nd	Process Industries
	Total			\$985.1	\$238.5		

Note: Fees only, expenses are not available yet.

Table 2 summarizes the 10 largest federal securities class action settlements since the passage of PSLRA. Since the Petrobras settlement in 2018, the settlements in this list have all been above \$1 billion, ranging from \$1.1 billion to \$7.2 billion.

Table 2. **Top 10 Federal Securities Class Action Settlements** (As of 31 December 2021)

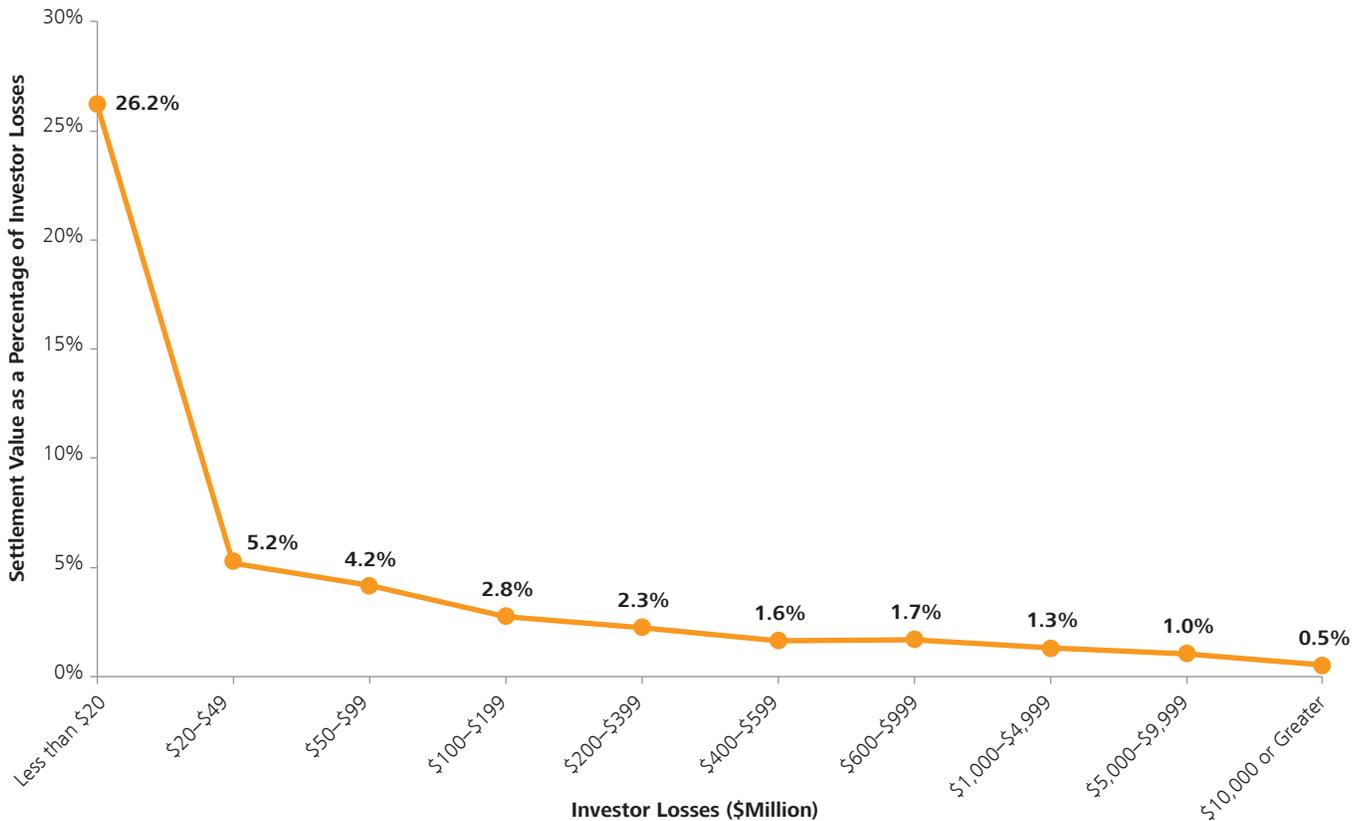
Ranking	Defendant	Filing Date	Settlement Year(s)	Total Settlement Value (\$Million)	Codefendant Settlements		Plaintiffs' Attorneys' Fees and Expenses Value (\$Million)	Circuit	Economic Sector
					Financial Institutions Value (\$Million)	Accounting Firms Value (\$Million)			
1	ENRON Corp.	22 Oct 01	2003–2010	\$7,242	\$6,903	\$73	\$798	5th	Industrial Services
2	WorldCom, Inc.	30 Apr 02	2004–2005	\$6,196	\$6,004	\$103	\$530	2nd	Communications
3	Cendant Corp.	16 Apr 98	2000	\$3,692	\$342	\$467	\$324	3rd	Finance
4	Tyco International, Ltd.	23 Aug 02	2007	\$3,200	No codefendant	\$225	\$493	1st	Producer Manufacturing
5	Petroleo Brasileiro S.A.- Petrobras	8 Dec 14	2018	\$3,000	\$0	\$50	\$205	2nd	Energy Minerals
6	AOL Time Warner Inc.	18 Jul 02	2006	\$2,650	No codefendant	\$100	\$151	2nd	Consumer Services
7	Bank of America Corp.	21 Jan 09	2013	\$2,425	No codefendant	No codefendant	\$177	2nd	Finance
8	Household International, Inc.	19 Aug 02	2006–2016	\$1,577	Dismissed	Dismissed	\$427	7th	Finance
9	Nortel Networks	2 Mar 01	2006	\$1,143	No codefendant	\$0	\$94	2nd	Electronic Technology
10	Royal Ahold, NV	25 Feb 03	2006	\$1,100	\$0	\$0	\$170	2nd	Retail trade
Total				\$32,224	\$13,249	\$1,017	\$3,368		

NERA-Defined Investor Losses

To estimate the potential aggregate loss to investors as a result of purchasing the defendant's stock during the alleged class period, NERA has developed its own proprietary variable, NERA-Defined Investor Losses, using publicly available data. The NERA-Defined Investor Losses measure is constructed assuming investors had invested in stocks during the class period whose performance was comparable to that of the S&P 500 Index. Over the years, NERA has reviewed and examined more than 2,000 settlements and found, of the variables analyzed, this proprietary variable is the most powerful predictor of settlement amount.¹¹

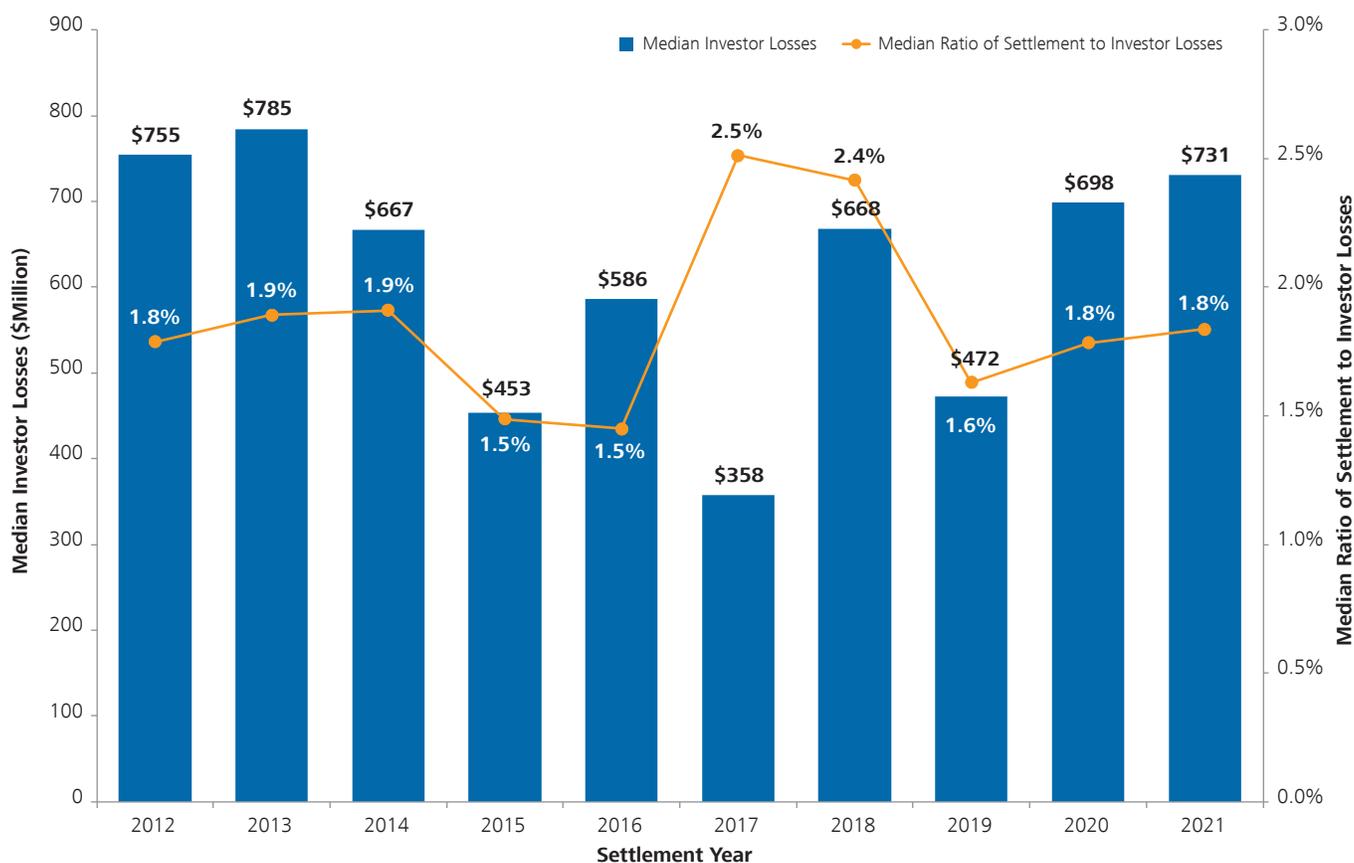
While settlement values are highly correlated with Investor Losses, the relationship between settlement amount and Investor Losses is not linear. More specifically, the ratio is higher for smaller cases than for cases with larger NERA-Defined Investor Losses. See Figure 21.

Figure 21. **Median Settlement Value as a Percentage of NERA-Defined Investor Losses**
By Investor Losses
Cases Filed and Setted December 2012–December 2021



The median Investor Losses for cases settled in 2021 was \$731 million, the highest recorded value since 2013, but less than 5% higher than the 2020 value. Over the last 10 years, the annual median Investor Losses have ranged from a high of \$785 million to a low of \$358 million. Following an uptick in the median ratio of settlement amount to Investor Losses in 2017 to 2.5%, the ratio declined through 2019, with only modest increases in both 2020 and 2021. See Figure 22.

Figure 22. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**
January 2012–December 2021

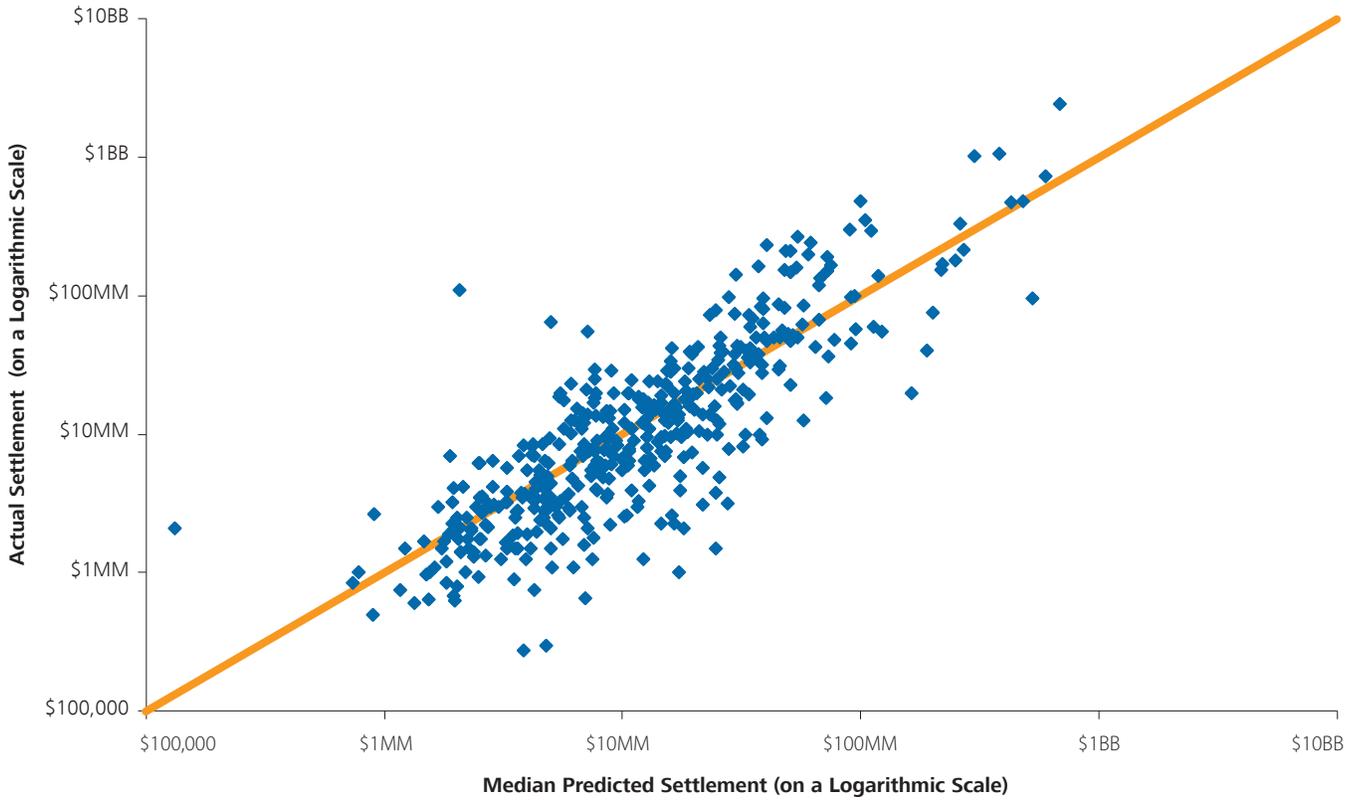


In analyzing drivers of settlement amounts, NERA has identified the following key factors:

- NERA-Defined Investor Losses, as defined above;
- The market capitalization of the issuer immediately after the end of the class period;
- The types of securities, in addition to common stock, alleged to have been affected by the fraud;
- Variables that serve as a proxy for the merit of plaintiffs' allegations (such as whether the company has already been sanctioned by a governmental or regulatory agency or paid a fine in connection with the allegations);
- The stage of litigation at the time of settlement; and
- Whether an institution or public pension fund is lead or named plaintiff.

Among cases settled between December 2012 and September 2021, these factors account for a substantial fraction of the variation observed in actual settlements. See Figure 23.

Figure 23. **Predicted vs. Actual Settlements**
 Investor Losses Using S&P 500 Index
 Cases Settled December 2012–September 2021

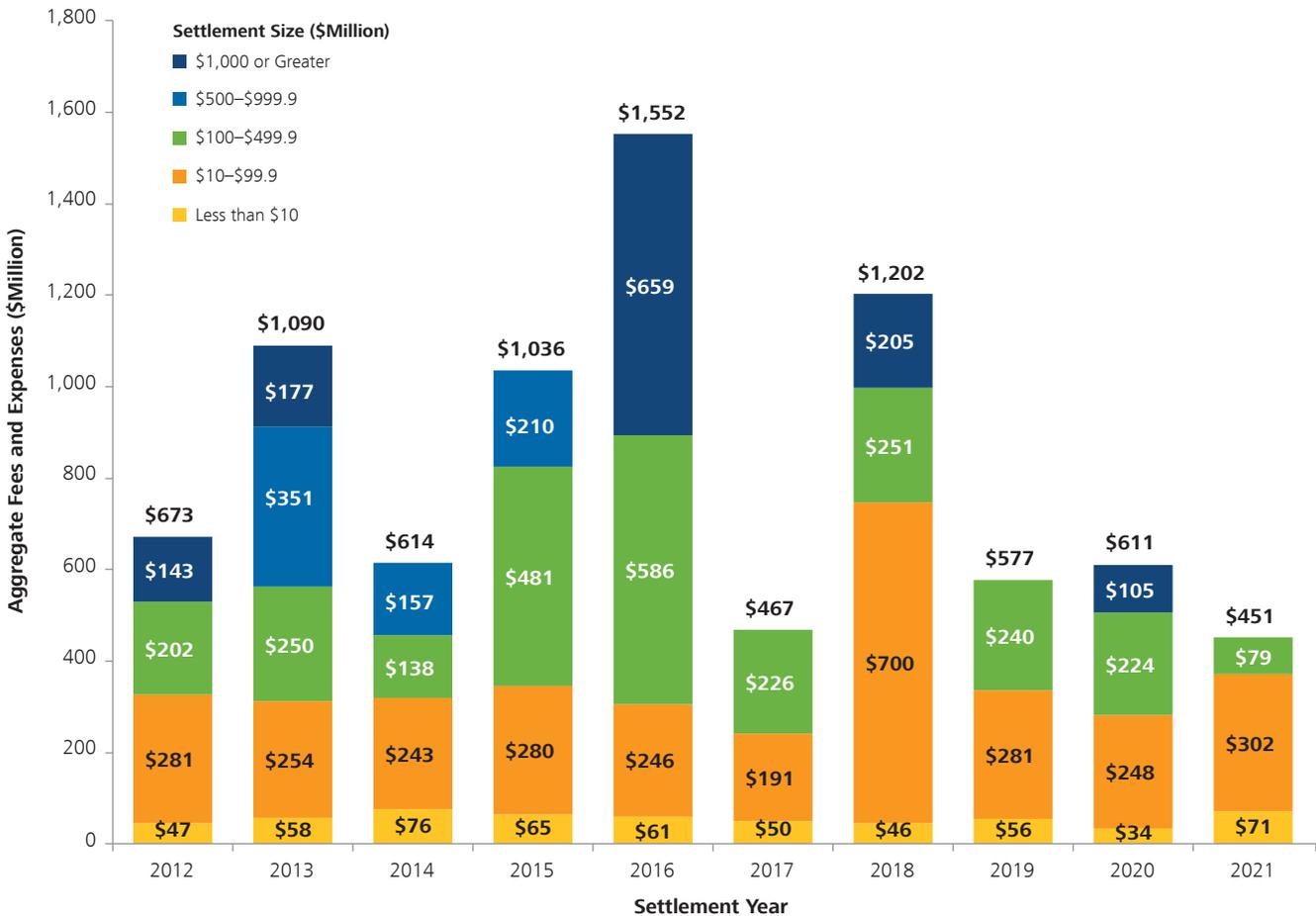


Trends in Plaintiffs’ Attorneys’ Fees and Expenses

Plaintiffs’ attorneys’ fees and expenses related to work on securities class action suits have varied substantially over time by settlement size. However, the median of plaintiffs’ attorneys’ fees and expenses as a percentage of settlement amount has been fairly consistent since 1996.

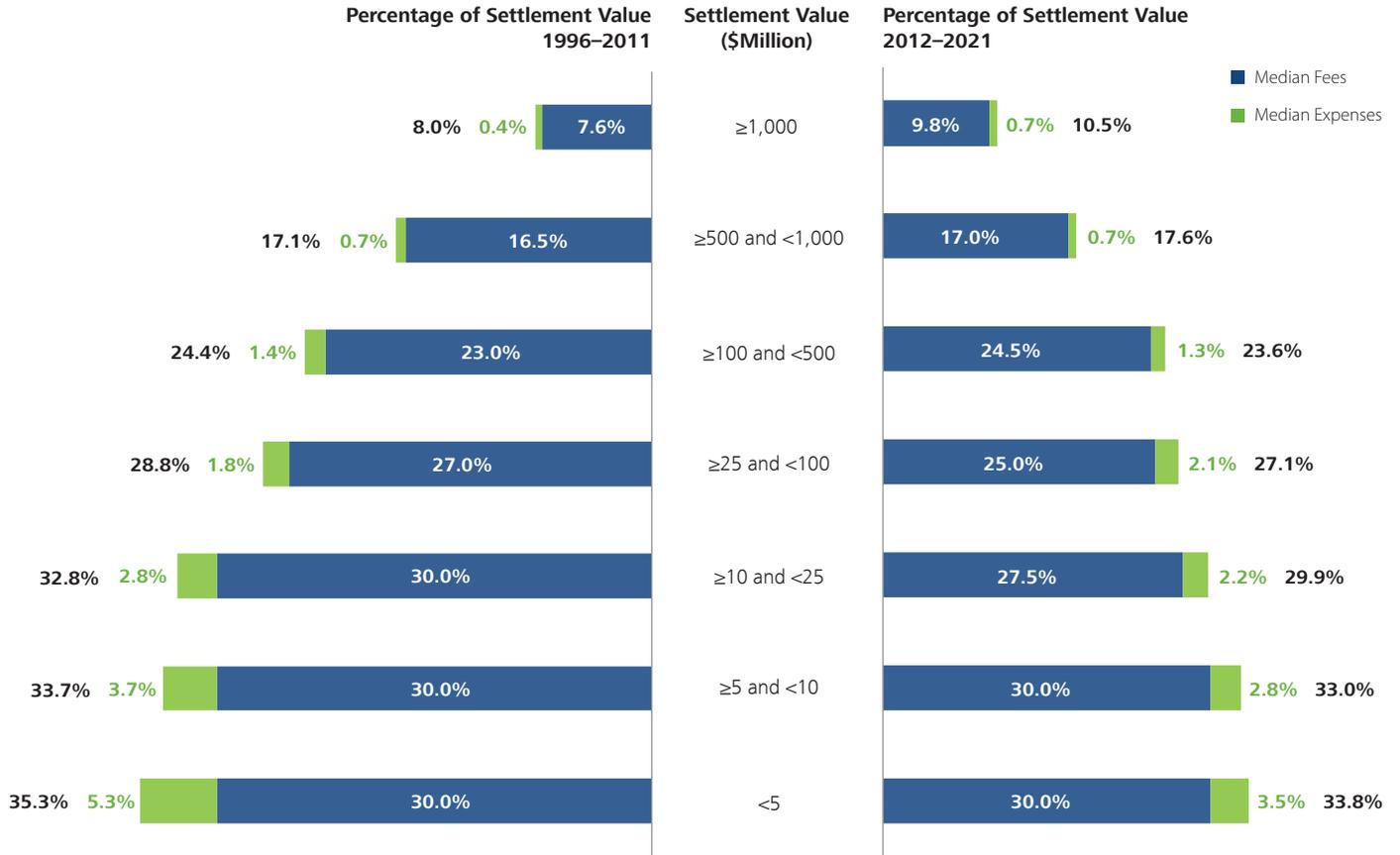
Between 2012 and 2020, the annual aggregate plaintiffs’ attorneys’ fees and expenses ranged from a low of \$467 million in 2017 to a high of \$1.6 billion in 2016. For 2021, the aggregate plaintiffs’ attorneys’ fees and expenses associated with settled cases was \$451 million. Given the absence of any settlements above \$500 million in 2021, similar to 2019, there were no plaintiffs’ attorneys’ fees and expenses associated with settlements of \$500 million or higher. And while there was an increase in the aggregate fees and expenses for settlements under \$100 million, there was an offsetting decrease in the aggregate fees and expenses for settlements between \$100 million and \$500 million. See Figure 24.

Figure 24. **Aggregate Plaintiffs’ Attorneys’ Fees and Expenses by Settlement Size**
January 2012–December 2021



As settlement size increases, fees and expenses represent a declining percentage of settlement value. More specifically, while the percentage is only 10.5% for cases that settled for over \$1 billion in the last 10 years, for cases with settlement amounts under \$5 million, fees and expenses represent 34% of the settlement. See Figure 25.

Figure 25. **Median of Plaintiffs' Attorneys' Fees and Expenses by Size of Settlement**
Excludes Merger Objections and Settlements for \$0 to the Class



Conclusion

New securities class action cases filed declined to 205 in 2021, the lowest number of annual filings in the last 10 years but well within the historical range. This decline in total filings was driven primarily by the 85% decrease in merger-objection cases between 2020 and 2021. Due to the numerous filings related to SPACs, the percentage of cases alleging a violation related to merger integration issues increased to 17% while violations related to misled future performance, the most common allegation, were included in 40% of the 2021 suits filed. In 2021, there was a decline in total resolutions, resulting from a notable decrease in the number of merger-objection cases dismissed.

Of the 96% of cases with a motion to dismiss filed, a decision was reached in 73% of the cases prior to resolution of the case, with the motion to dismiss granted in approximately 56% of these cases. Among cases with a motion for class certification filed, a decision was reached in 56% prior to the case resolution, with the motion for class certification granted in 83% of the cases with a decision.

Aggregate settlements in 2021 amounted to \$1.8 billion, the lowest total in the 2018–2021 period. No cases resolved with a settlement amount of \$1 billion or higher in the last year. The average settlement value for all non-merger-objection cases with positive settlement values, and cases of less than \$1 billion, decreased in 2021 to \$21 million. The median settlement value showed a similar trend, declining by approximately 40% to \$8 million.

Notes

- 1 This edition of NERA's report on "Recent Trends in Securities Class Action Litigation" expands on previous work by our colleagues Lucy P. Allen, Dr. Vinita Juneja, Dr. Denise Neumann Martin, Dr. Jordan Milev, Robert Patton, Dr. Stephanie Planchich, and others. The authors thank Dr. David Tabak and Benjamin Seggerson for helpful comments on this edition. We thank researchers in NERA's Securities and Finance Practice for their valuable assistance. These individuals receive credit for improving this report; any errors and omissions are those of the authors. NERA's proprietary securities class action database and all analyses reflected in this report are limited to federal case filings and resolutions.
- 2 Data for this report were collected from multiple sources, including Institutional Shareholder Services, complaints, case dockets, Dow Jones Factiva, Bloomberg Finance, FactSet Research Systems, Nasdaq, Intercontinental Exchange, US Securities and Exchange Commission (SEC) filings, and public press reports.
- 3 NERA tracks class actions involving securities that have been filed in federal courts. Most of these cases allege violations of federal securities laws; others allege violations of common law, including breach of fiduciary duty, as with some merger-objection cases; still others are filed in federal court under foreign or state law. If multiple actions are filed against the same defendant, are related to the same allegations, and are in the same circuit, we treat them as a single filing. However, the first two actions filed in different circuits are treated as separate filings. If cases filed in different circuits are consolidated, we revise our count to reflect the consolidation. Therefore, case counts for a particular year may change over time. Different assumptions for consolidating filings would probably lead to counts that are directionally similar but may, in certain circumstances, lead observers to draw a different conclusion about short-term trends in filings.
- 4 Most securities class action complaints include multiple allegations. For this analysis, all allegations from the complaint are included and, as such, the total number of allegations exceeds the total number of filings.
- 5 It is important to note that, due to the small number of cases in some of these categories, the findings summarized here may be driven by one or two cases.
- 6 Here the word "dismissed" is used as shorthand for all cases resolved without settlement; it includes cases in which a motion to dismiss was granted (and not appealed or appealed unsuccessfully), voluntary dismissals, cases terminated by a successful motion for summary judgment, or an unsuccessful motion for class certification.
- 7 See Janeen McIntosh and Svetlana Starykh, "Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review," NERA Economic Consulting, p. 13, Figure 11, available at <https://www.nera.com/publications/archive/2021/recent-trends-in-securities-class-action-litigation--2020-full-y.html>.
- 8 Analyses in this section exclude IPO laddering cases and merger-objection cases.
- 9 NERA's analysis of motions only includes securities class action suits involving common stock, with or without other securities, and an allegation of Rule 10b-5 violation alone or accompanied by Section 11, and/or Section 12 violation.
- 10 For our analysis, NERA includes settlements that have had the first hearing of approval of case settlement by the court. This means we do not include partial settlements or tentative settlements that have been announced by plaintiffs and/or defendants. When evaluating trends in average and median settlement values, we limit our data to non-merger-objection cases with settlements of more than \$0 to the class.
- 11 NERA-Defined Investor Losses is only calculable for cases involving allegations of damages to common stock over a defined class period. As a result, we have not calculated this metric for cases such as merger objections.

About NERA

NERA Economic Consulting (www.nera.com) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For more than six decades, we have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real-world industry experience to issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. Continuing our legacy as the first international economic consultancy, NERA serves clients from major cities across North America, Europe, and Asia Pacific.

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Exhibit 7



CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Securities Class Action Settlements

2021 Review and Analysis

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Analyses in this report are based on 2,013 securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2021. See page 16 for a detailed description of the research sample. For purposes of this report and related research, a settlement refers to a negotiated agreement between the parties to a securities class action that is publicly announced to potential class members by means of a settlement notice.

2021 Highlights

While the number of settlements increased in 2021 to a 10-year high, several key metrics declined below recent levels. The median total settlement amount decreased to \$8.3 million. And, reversing a trend observed in recent years, median “simplified tiered damages” were 42% below the 2020 median value.

- There were 87 settlements, totaling \$1.8 billion, in 2021. [\(page 3\)](#)
- The median settlement of \$8.3 million fell 22% from 2020 (adjusted for inflation). [\(page 4\)](#)
- Almost 60% of cases (51) settled for less than \$10 million, and of these, 14 cases settled for less than \$2 million. [\(page 4\)](#)
- There were three mega settlements (equal to or greater than \$100 million), ranging from \$130 million to \$187.5 million. [\(page 3\)](#)
- Median “simplified tiered damages” (among cases with Rule 10b-5 claims) was the lowest since 2017 and the second lowest in the last decade. [\(page 5\)](#)
- In 2021, the number of settlements in cases with only Section 11 and/or Section 12(a)(2) claims (‘33 Act claims) was nearly double the annual average from 2017 to 2020. [\(page 7\)](#)
- The proportion of settled cases alleging Generally Accepted Accounting Principles (GAAP) violations in Rule 10b-5 cases was 32%, a record low among all post-Reform Act years. [\(page 9\)](#)
- The rate of settled cases involving a corresponding action by the U.S. Securities and Exchange Commission (SEC) was the lowest in the past decade. [\(page 11\)](#)
- The median time from filing to settlement hearing date was 2.6 years, compared to 3.0 years for 2012 to 2020. [\(page 13\)](#)

Figure 1: Settlement Statistics

(Dollars in millions)

	2016–2020	2019	2020	2021
Number of Settlements	395	75	77	87
Total Amount	\$20,486.9	\$2,227.5	\$4,395.2	\$1,787.7
Minimum	\$0.3	\$0.5	\$0.3	\$0.6
Median	\$9.9	\$11.7	\$10.6	\$8.3
Average	\$51.9	\$29.7	\$57.1	\$20.5
Maximum	\$3,237.5	\$413.0	\$1,266.9	\$187.5

Note: Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented.

Author Commentary

Findings

There was no slowdown in settlement activity in 2021, even with the backdrop of the COVID-19 pandemic, as the number of securities class action settlements increased to a 10-year high. Since the typical duration from case filing to settlement is approximately three years, the uptick in 2021 settlements is consistent with the unprecedented number of case filings in 2017–2019,¹ which is when the majority of these settled cases were filed.

The record number of cases settled in 2021, however, did not translate into higher total settlement dollars. Both total settlement dollars and median settlement amount declined to their lowest levels since 2017, reflecting an increase in the proportion of smaller settlements (i.e., less than \$10 million) compared to prior years.

The decline in settlement sizes can largely be attributed to lower estimates of our proxy for economic losses borne by shareholders, or “simplified tiered damages.” Moreover, median issuer defendant total assets were more than 45% smaller for cases settled in 2021 compared to those settled in 2020.

Weaker cases may have contributed to the reduced settlement values as well. For example, the proportion of settled cases alleging a GAAP violation or involving a related SEC action were at record-low levels. Both of these factors are typically associated with higher settlement amounts and are sometimes considered proxies for stronger cases.² In addition, the frequency of other factors that our research finds are associated with higher settlement amounts, such as the involvement of an institutional investor as lead plaintiff or the presence of a parallel derivative action, were among the lowest observed in the last decade.

The mix of cases that settled in 2021 had smaller estimates of potential shareholder losses and lacked many of the plus factors that often contribute to higher settlement outcomes.

Dr. Laarni T. Bulan
Principal, Cornerstone Research

Similarly, our research finds that the number of docket entries—a proxy for the time and effort expended by plaintiff counsel and/or case complexity—is positively associated with settlement amounts. The average number of docket entries for cases settled in 2021 was the lowest in the last five years.

Undeterred by the challenges of the pandemic, securities class action settlements occurred in larger numbers and were resolved more quickly than observed in prior years. The increase in the number of settlements also reflects the unusually high rate of case filings when many of these settled cases were first initiated.

Dr. Laura E. Simmons
Senior Advisor, Cornerstone Research

Looking Ahead

We expect heightened settlement activity to continue in upcoming years given the elevated number of case filings in 2018–2020 compared to earlier years,³ assuming no increases in dismissal rates. The higher number of smaller settlements observed in 2021 could also continue due to the decline in the median disclosure dollar loss (another proxy for shareholder losses) among case filings during the same time frame (2018–2020).

Several recent trends in case allegations have been observed in case filings since 2017, such as allegations related to cybersecurity, cryptocurrency, cannabis, COVID-19, and special purpose acquisition companies (SPACs).⁴ We continue to see a small number of these cases settling, but a large portion remains active. In addition, the spike in SPAC filings in 2021, as shown in Cornerstone Research’s *Securities Class Action Filings—2021 Year in Review*, is likely to affect settlement trends in future years.

—Laarni T. Bulan and Laura E. Simmons

Total Settlement Dollars

As has been observed in prior years, the presence or absence of just a few very large settlements can have an outsized effect on total reported settlement dollars.

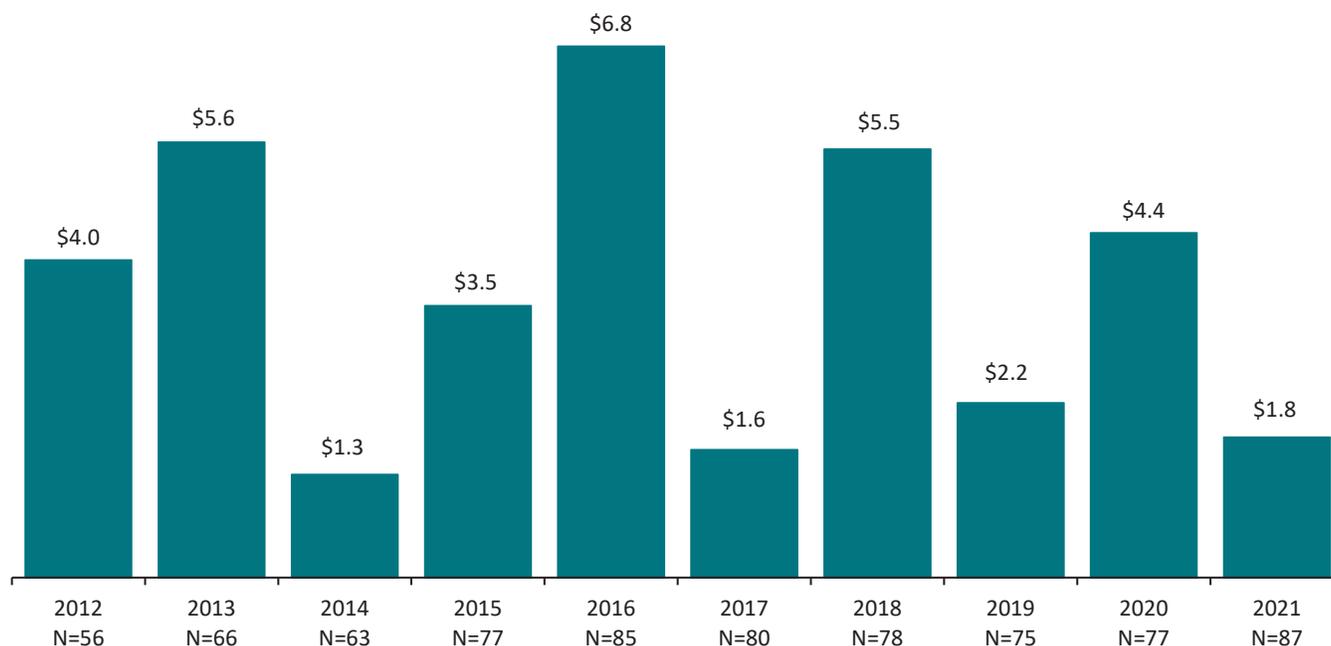
- In 2021, the absence of these very large settlements contributed to a nearly 60% decline in total settlement dollars from the prior year (adjusted for inflation).
- There were three mega settlements (equal to or greater than \$100 million) in 2021, ranging from \$130 million to \$187.5 million. The maximum settlement value of \$187.5 million in 2021 is the lowest maximum value in the last decade.

The number of settlements in 2021 reached a 10-year high.

- Only 25% of total settlement dollars in 2021 came from mega settlements, the lowest percentage in the last decade. (See Appendix 4 for additional information on mega settlements.)
- The number of settlements in 2021 (87 cases) represented a 19% increase from the prior nine-year average (73 cases).

Figure 2: Total Settlement Dollars 2012–2021

(Dollars in billions)



Note: Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented. “N” refers to the number of cases.

Settlement Size

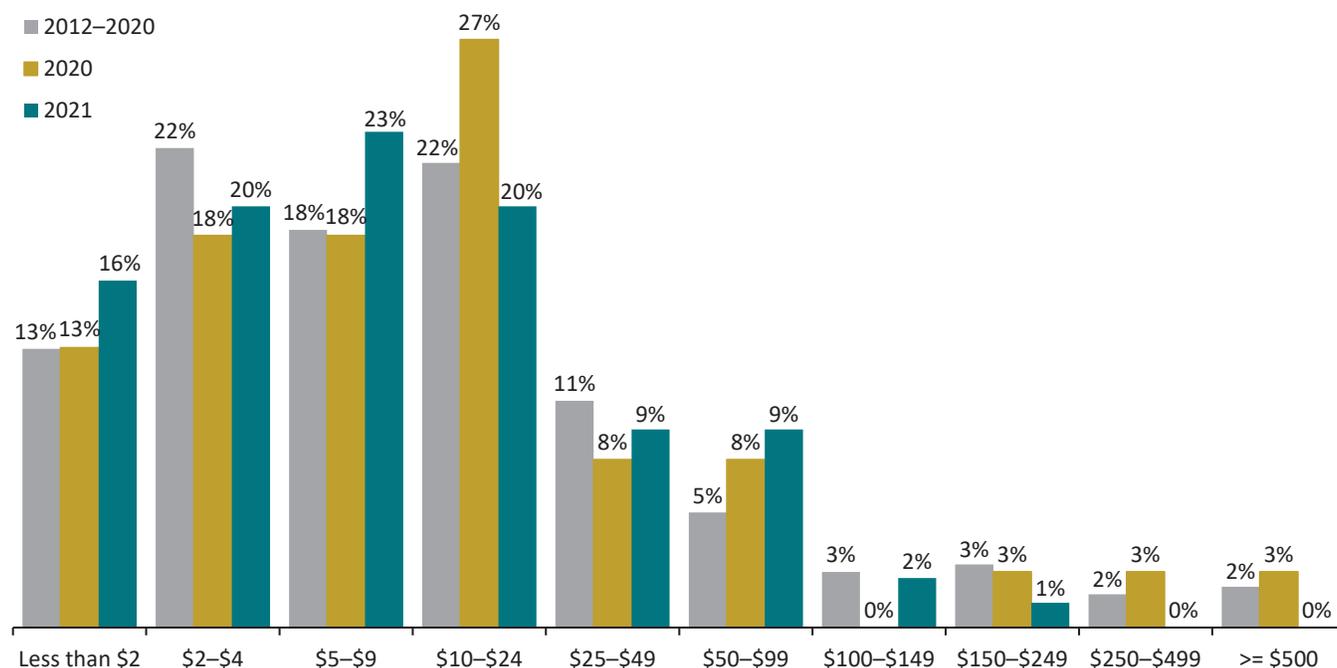
- The median settlement amount in 2021 was \$8.3 million, a 22% decline from 2020 (adjusted for inflation), and a 10% decline from the 2012–2020 median.
- There were 14 cases that settled for less than \$2 million in 2021 (historically referred to by commentators as nuisance suits).⁵ This compares to an annual average of 10 such settlements during the 2012–2020 period.
- Both the average settlement and median settlement amounts in 2021 were the lowest since 2017. (See Appendix 1 for an analysis of settlements by percentiles.)

Nearly 60% of settlements in 2021 were for less than \$10 million.

- As noted in prior research, three law firms (The Rosen Law Firm, Pomerantz LLP, and Glancy Prongay & Murray LLP) have accounted for more than half of securities class action filings in recent years, and those filings have been dismissed at a higher rate overall than those with other lead plaintiff counsel.⁶ For cases that progressed to a settlement in 2021 with one or more of these three firms acting as lead counsel, the median settlement amount was 76% lower than the median for cases involving other lead plaintiff counsel. These three firms were involved as lead counsel in 31 settled cases in 2021, compared to 19 in 2020.

Figure 3: Distribution of Settlements 2012–2021

(Dollars in millions)



Type of Claim

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

“Simplified tiered damages” uses simplifying assumptions to estimate per-share damages and trading behavior for cases involving Rule 10b-5 claims. It provides a measure of potential shareholder losses that allows for consistency across a large volume of cases, thus enabling the identification and analysis of potential trends.⁷

Cornerstone Research’s prediction model finds this measure to be the most important factor in predicting settlement amounts.⁸ However, this measure is not intended to represent actual economic losses borne by shareholders. Determining any such losses for a given case requires more in-depth economic analysis.

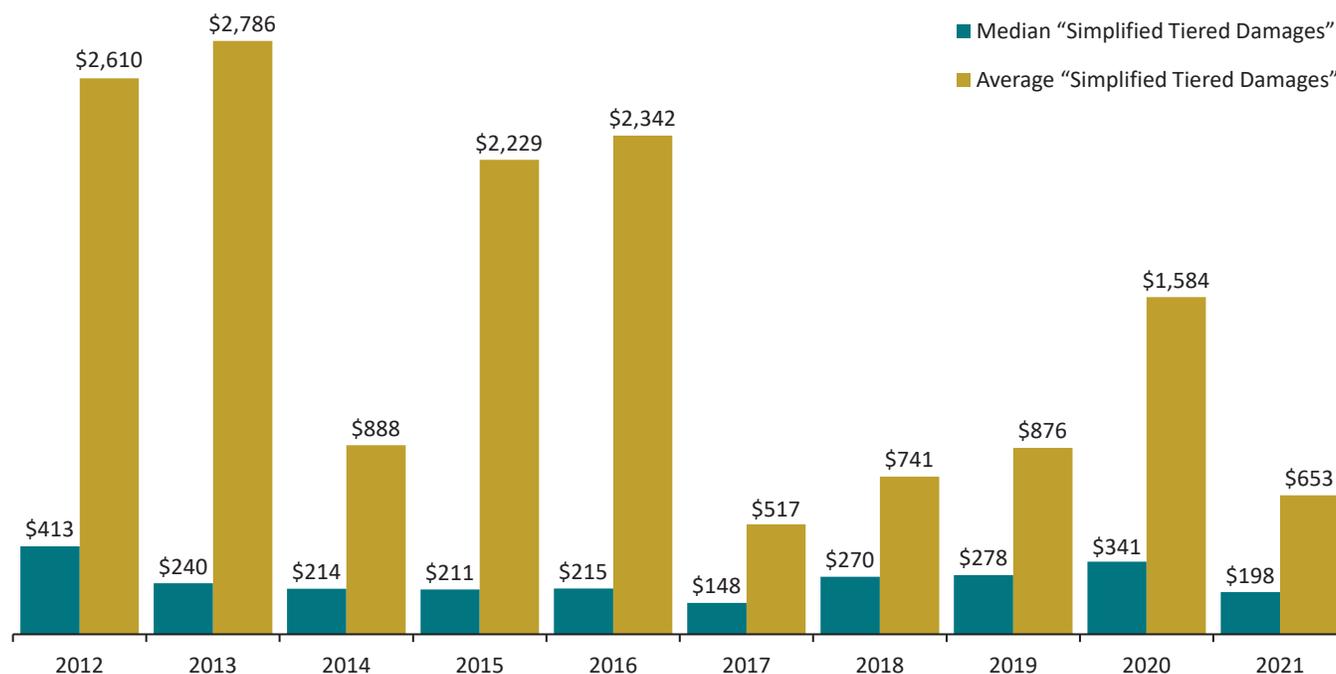
- Similar to settlement amounts, the average “simplified tiered damages” in 2021 declined to the lowest level since 2017. (See Appendix 5 for additional information on median and average settlements as a percentage of “simplified tiered damages.”)

Median “simplified tiered damages” was the lowest since 2017 and the second lowest in the last decade.

- Median values provide the midpoint in a series of observations and are less affected than averages by outlier data. The decrease in median “simplified tiered damages” in 2021 indicates a decline in the number of larger cases relative to 2020 (e.g., cases with “simplified tiered damages” exceeding \$250 million).
- Smaller “simplified tiered damages” are typically associated with smaller issuer defendants (measured by total assets or market capitalization of the issuer). However, the median market capitalization of issuer defendants⁹ in settled cases increased 30% over 2020, in part reflecting the upward market trend through the end of 2021.

Figure 4: Median and Average “Simplified Tiered Damages” in Rule 10b-5 Cases 2012–2021

(Dollars in millions)

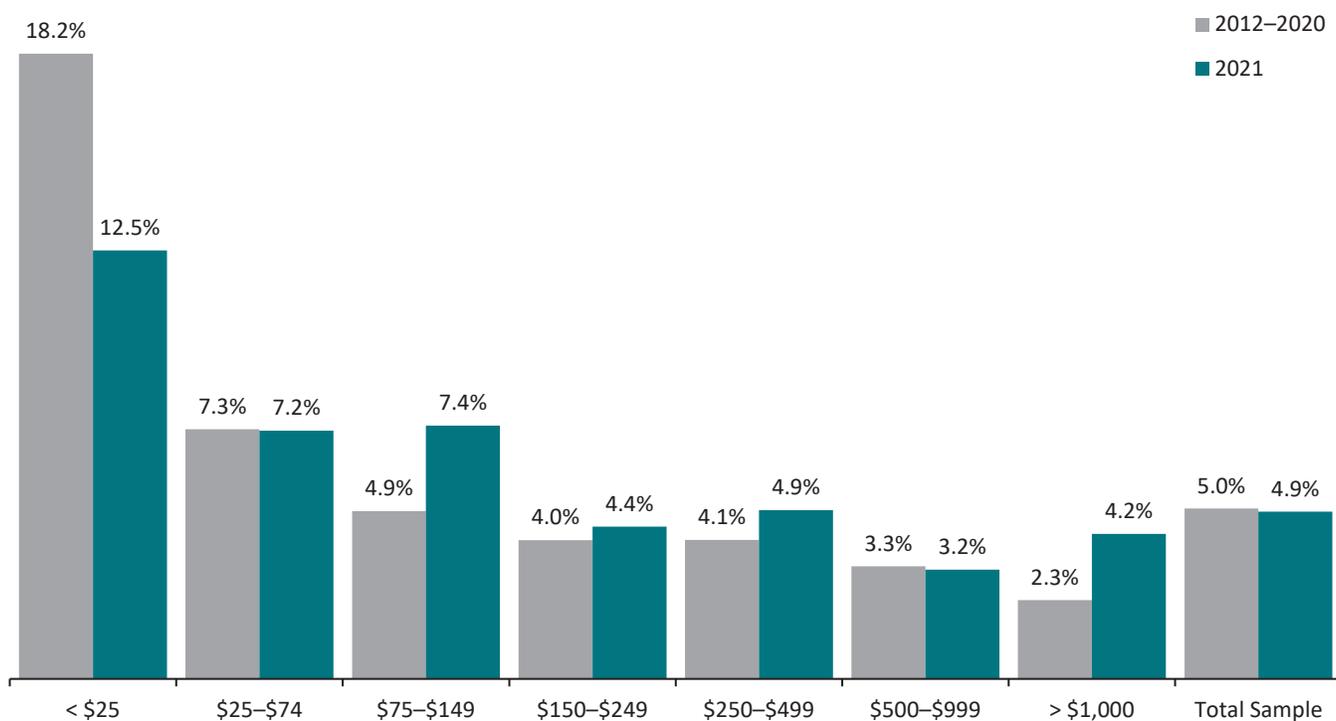


Note: “Simplified tiered damages” are adjusted for inflation based on class period end dates for common stock only; 2021 dollar equivalent figures are presented. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

- Cases with larger “simplified tiered damages” are more likely to be associated with factors such as institutional lead plaintiffs, related SEC actions, or criminal charges. (See *Analysis of Settlement Characteristics on pages 9–12 for additional discussion of these factors.*)
- Among cases with Rule 10b-5 claims, the median class period length declined 20% in 2021 from the median class period length observed in 2020, explaining, in part, the relatively low median “simplified tiered damages.”
- Fourteen settlements in 2021 had “simplified tiered damages” less than \$25 million, the largest proportion of such cases in more than 15 years.
- Cases with less than \$25 million in “simplified tiered damages” typically settle more quickly. In 2021, these cases settled within 2.5 years on average, compared to about four years for cases with “simplified tiered damages” greater than \$500 million.
- Half of the cases settled in 2021 with “simplified tiered damages” of less than \$25 million involved issuers that had been delisted from a major exchange and/or declared bankruptcy prior to settlement.
- Very large cases (more than \$1 billion in “simplified tiered damages”) typically settle for a smaller percentage of such damages. However, compared to cases with “simplified tiered damages” between \$150 million and \$1 billion, this pattern did not hold in 2021.

Figure 5: Median Settlements as a Percentage of “Simplified Tiered Damages” by Damages Ranges in Rule 10b-5 Cases 2012–2021

(Dollars in millions)



Note: Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

'33 Act Claims and "Simplified Statutory Damages"

For '33 Act claim cases—those involving only Section 11 and/or Section 12(a)(2) claims—shareholder losses are estimated using a model in which the statutory loss is the difference between the statutory purchase price and the statutory sales price, referred to here as "simplified statutory damages." Only the offered shares are assumed to be eligible for damages.¹⁰

"Simplified statutory damages" are typically smaller than "simplified tiered damages," in part reflecting differences in the methodologies used to estimate alleged damages per share, as well as differences in the shares eligible to be damaged. As such, settlements as a percentage of "simplified statutory damages" may be higher than the percentages observed among Rule 10b-5 settlements.

- However, for the first time since 2014, the median settlement as a percentage of "simplified statutory damages" was lower than the median settlement as a percentage of "simplified tiered damages." In 2021, the median settlement as a percentage of "simplified statutory damages" was 4.4%, 10% lower than the median "simplified tiered damages" of 4.9%. (See Appendix 6 for additional information on median and average settlements as a percentage of "simplified statutory damages.")

The median settlement value for '33 Act claim cases in 2021 was \$8.4 million, largely unchanged from 2020 (\$8.6 million).

- In 2021, the number of settlements in cases with only '33 Act claims was nearly double the annual average from 2017 to 2020.
- Cases involving '33 Act claims typically resolve more quickly than cases involving Rule 10b-5 (Exchange Act) claims. In 2021, however, the median interval from filing date to settlement hearing date for both case types narrowed to within 10%.

Figure 6: Settlements by Nature of Claims
2012–2021

(Dollars in millions)

	Number of Settlements	Median Settlement	Median "Simplified Statutory Damages"	Median Settlement as a Percentage of "Simplified Statutory Damages"
Section 11 and/or Section 12(a)(2) Only	77	\$8.9	\$142.2	7.6%

	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Both Rule 10b-5 and Section 11 and/or Section 12(a)(2)	116	\$16.0	\$406.9	6.1%
Rule 10b-5 Only	543	\$7.9	\$215.2	4.8%

Note: Settlement dollars and damages are adjusted for inflation; 2021 dollar equivalent figures are presented.

- More than 80% of cases with only '33 Act claims involved an initial public offering (IPO).
- In 2021, 88% of the settled '33 Act claim cases involved an underwriter (or underwriters) as a named codefendant.
- Among those cases with identifiable contributions, D&O liability insurance provided, on average, more than 90% of the total settlement fund for '33 Act claim cases from 2012 to 2021.¹¹
- Median “simplified statutory damages” in 2021 was the highest since 2014, and double the median in 2020.

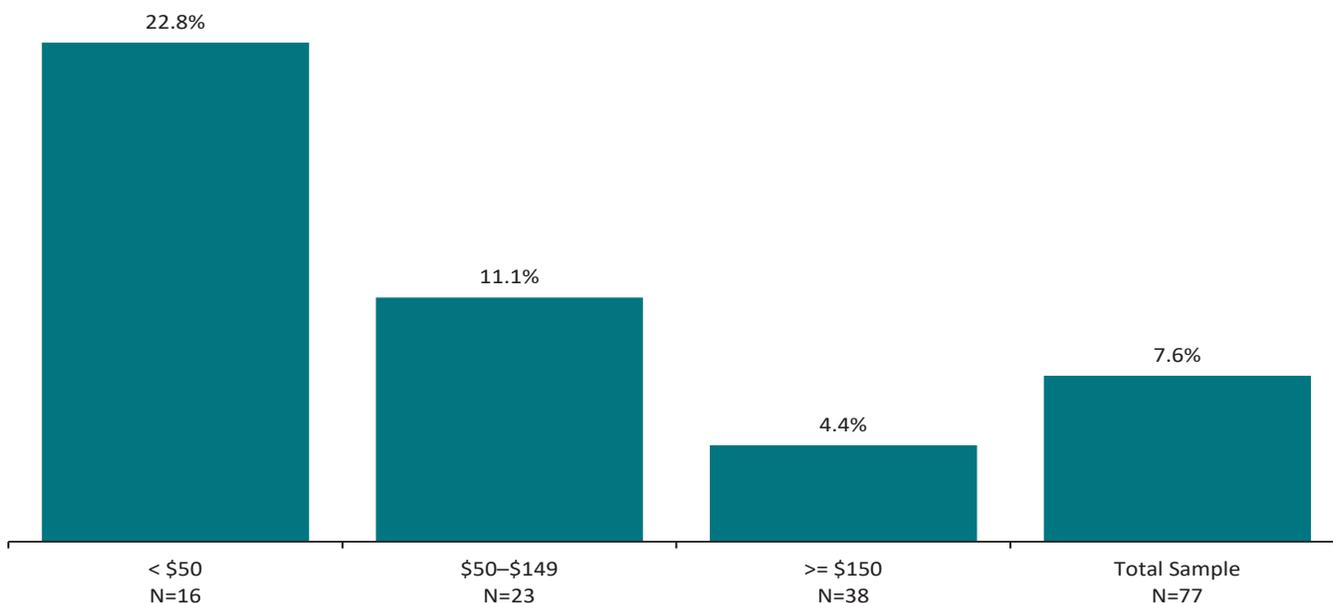
As noted in previous reports, the March 2018 U.S. Supreme Court decision in *Cyan Inc. v. Beaver County Employees Retirement Fund (Cyan)* held that '33 Act claim securities class actions could be brought in state court. While '33 Act claim cases had often been brought in state courts before

Cyan, filing rates in state courts increased substantially following this ruling. This trend reversed, however, following the March 2020 Delaware Supreme Court decision in *Salzberg v. Sciabacucchi* upholding the validity of federal forum-selection provisions in corporate charters.¹²

- In 2021, among '33 Act claim only cases filed post-*Cyan* but prior to the *Sciabacucchi* ruling, 13 have settled, six of which were filed in state court.¹³
- In the years since the *Cyan* decision, an increase in the number of overlapping or parallel suits has been observed—for example, a '33 Act claim case filed in state court that is related to a Rule 10b-5 claim case filed in federal court.¹⁴ The number of these overlapping suits that settled in 2021 was nearly triple the average from 2017 to 2020.

Figure 7: Median Settlements as a Percentage of “Simplified Statutory Damages” by Damages Ranges in '33 Act Claim Cases 2012–2021

(Dollars in millions)



Jurisdictions of Settlements of '33 Act Claim Cases

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
State Court	1	1	0	2	4	5	4	4	7	6
Federal Court	3	7	2	3	6	3	4	5	1	10

Note: “N” refers to the number of cases. Table does not include parallel suits.

Analysis of Settlement Characteristics

GAAP Violations

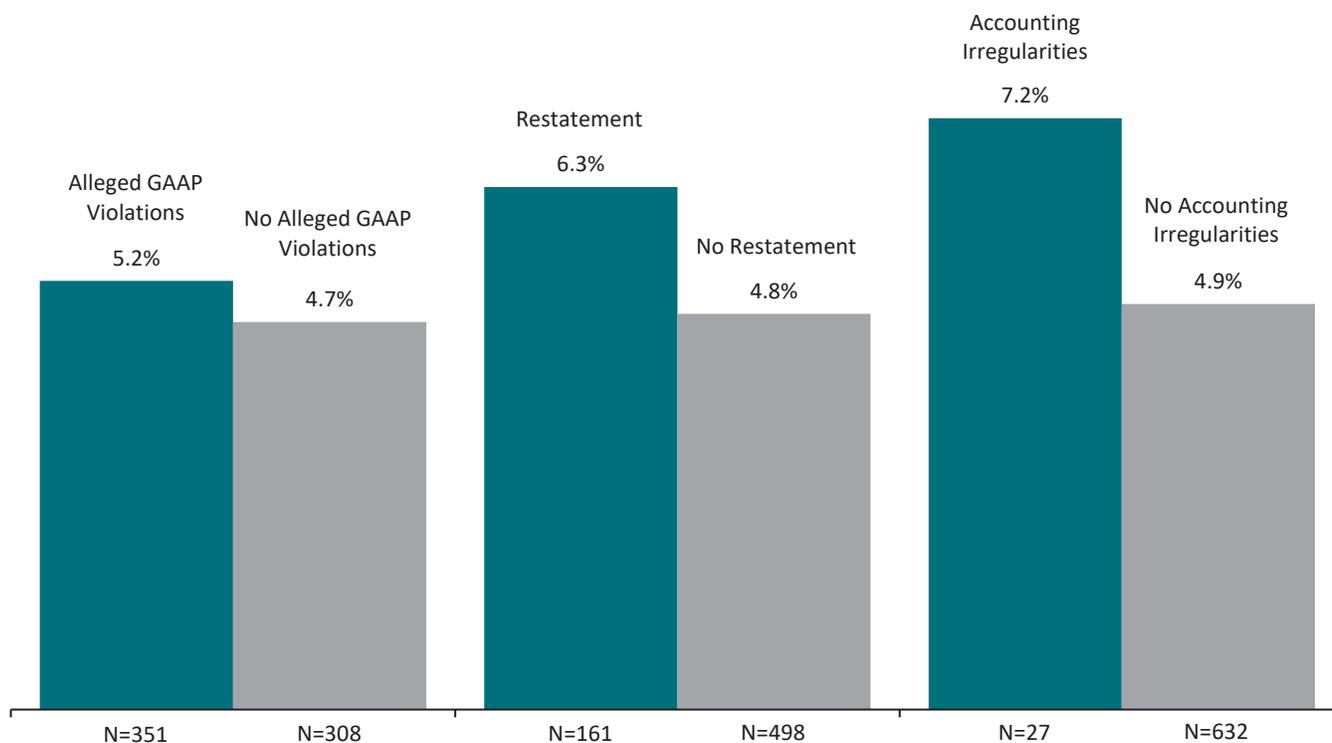
This analysis examines allegations of GAAP violations in settlements of securities class actions involving Rule 10b-5 claims, including two sub-categories of GAAP violations—financial statement restatements and accounting irregularities.¹⁵ For further details regarding settlements of accounting cases, see Cornerstone Research’s annual report on *Accounting Class Action Filings and Settlements*.¹⁶

- In 2021, median “simplified tiered damages” for cases involving GAAP allegations were 38% higher than the 2012–2020 median for such cases.
- As this research has observed, settlements as a percentage of “simplified tiered damages” for cases involving GAAP allegations are typically higher than for non-GAAP cases. This is true even as the rate of accounting allegations has declined in recent years. For example, only 14% of settlements in 2021 involved a restatement of financial statements.

- The frequency of an outside auditor codefendant has declined substantially in recent years. In 2021, an outside auditor was a codefendant in just 3% of settlements.
- The frequency of reported accounting irregularities among settlements from 2017 to 2021 was also low, at just 3.5% of cases. Of those cases, more than 50% also involved criminal charges/indictments related to the allegations in the class action.

The proportion of settled cases in 2021 with Rule 10b-5 claims alleging GAAP violations was 32%, an all-time low among all post-Reform Act years.

Figure 8: Median Settlements as a Percentage of “Simplified Tiered Damages” and Allegations of GAAP Violations 2012–2021



Note: “N” refers to the number of cases.

Derivative Actions

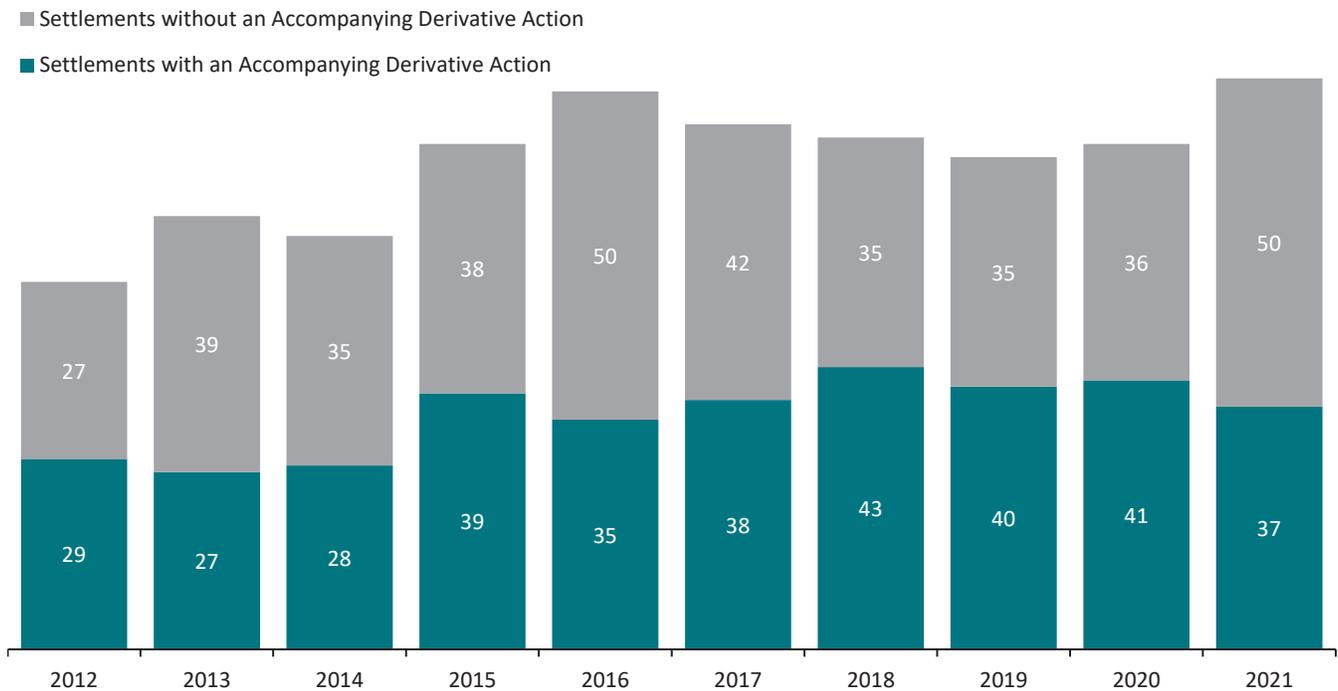
Historically, settled cases involving an accompanying derivative action have been associated with both larger cases (measured by “simplified tiered damages”) and larger settlement amounts. For example, from 2012 to 2020, the median settlement for cases with an accompanying derivative action was nearly 45% higher than for cases without a derivative action.

- However, in 2021, the median settlement for cases with an accompanying derivative action was \$8.5 million compared to \$7.5 million for cases without a derivative action, a difference of 13%.
- In 2021, median “simplified tiered damages” for settled cases with an accompanying derivative action was more than double the median for cases without an accompanying derivative action.

In 2021, 43% of settled cases involved an accompanying derivative action, the lowest rate in the last five years.

- For cases settled during 2017–2021, nearly one-third of parallel derivative suits were filed in Delaware. California and New York were the next most common venues for such actions, representing 22% and 13% of such settlements, respectively.

Figure 9: Frequency of Derivative Actions 2012–2021

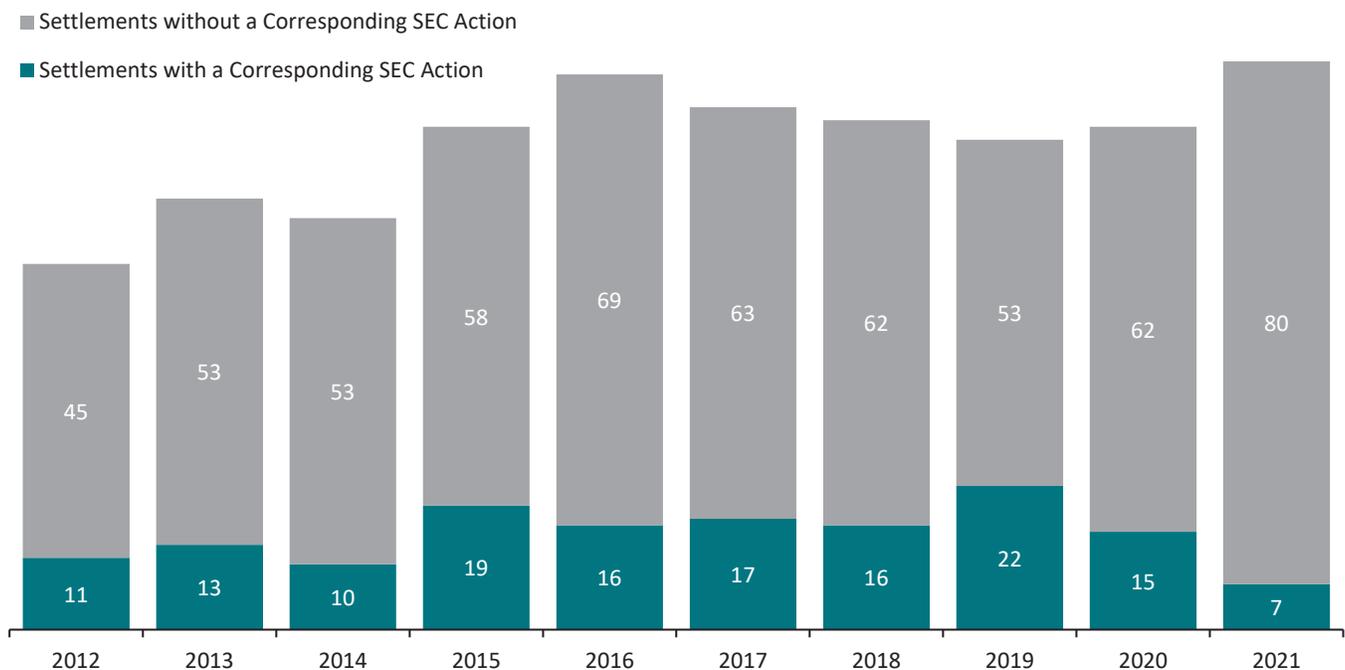


Corresponding SEC Actions

- Cases with an SEC action related to the allegations are typically associated with substantially higher settlement amounts.¹⁷
- In 2021, median settlement amounts for cases that involved a corresponding SEC action were double the median for cases without such an action.
- Settled cases in 2021 with a corresponding SEC action took more than 30% longer to reach settlement compared to cases without such an action. (See page 13 for additional discussion.)
- The dramatic decline in corresponding SEC actions (Figure 10) may reflect, in part, the decline in SEC enforcement activity during the filing date years associated with 2021 settlements. For additional details, see Cornerstone Research’s *SEC Enforcement Activity: Public Company and Subsidiaries—FY 2021 Update*.
- Cases involving corresponding SEC actions may also include related criminal charges in connection with the allegations covered by the underlying class action. From 2017 to 2021, 40% of settled cases with an SEC action had related criminal charges.¹⁸

In 2021, the number of settled cases involving a corresponding SEC action was the lowest in the past decade

Figure 10: Frequency of SEC Actions
 2012–2021



Institutional Investors

As is well known, increasing institutional participation in litigation as lead plaintiffs was a focus of the Reform Act.¹⁹ Institutional investors are often involved in larger cases, that is, cases with higher “simplified tiered damages” and higher total assets.

- In 2021, for cases involving an institutional investor as lead plaintiff, median “simplified tiered damages” and median total assets were six times and 11 times higher, respectively, than the median values for cases without an institutional investor in a lead role.
- The involvement of an institutional investor as a lead plaintiff is correlated with specific law firms serving as lead plaintiff counsel. For example, over the last five years, an institutional investor served as lead plaintiff in 86% of the settled cases in which Robbins Geller Rudman & Dowd LLP and/or Bernstein Litowitz Berger & Grossman LLP served as lead plaintiff counsel. In comparison, an institutional investor served as lead plaintiff in only 15% of cases in which The Rosen Law Firm, Pomerantz, or Glancy served as lead counsel.

Since passage of the Reform Act, public pension plans have been the most frequent type of institutional lead plaintiff, and the presence of a public pension acting as a lead

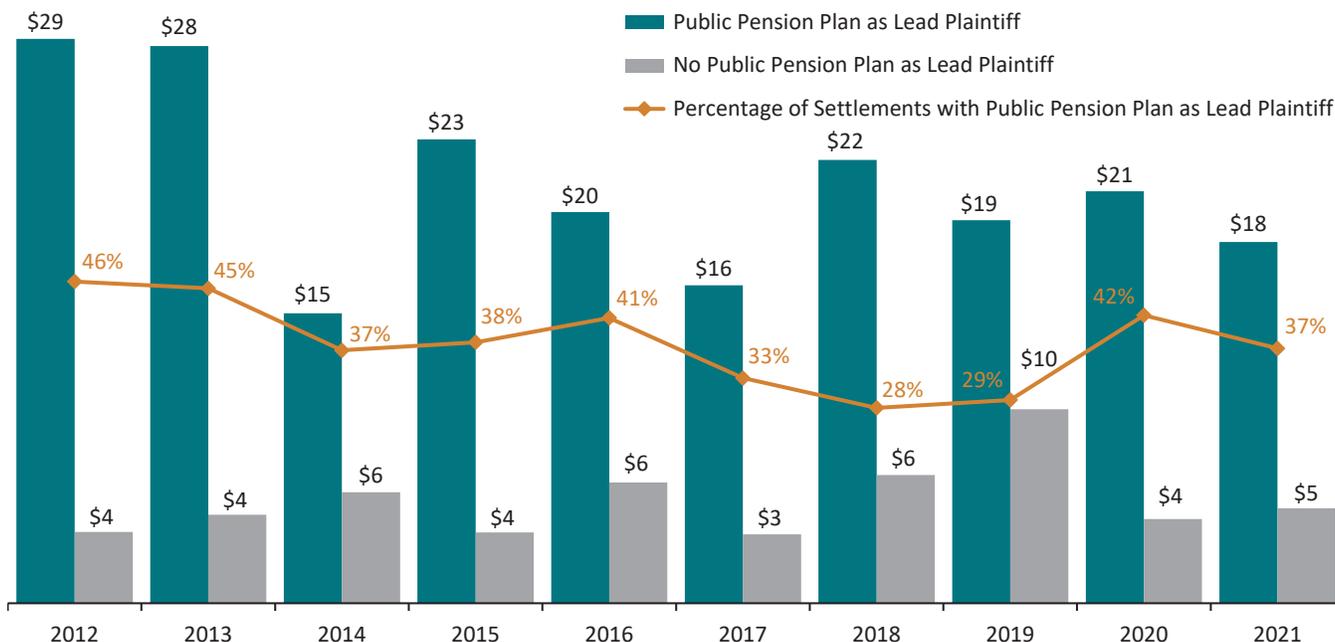
plaintiff is associated with higher settlement amounts. (See page 15 for further discussion of factors that influence settlement outcomes.)

- For example, for cases settled in 2021, public pension plans served as lead plaintiffs in almost 76% of cases involving institutions, while union funds appeared as lead plaintiffs in less than 10% of these cases.
- Public pensions are also more likely to be lead plaintiffs in cases involving more established publicly traded issuers. In 2021 settled cases, the median age from IPO to the filing date for cases with a public pension lead plaintiff was more than 8.5 years compared to a median of 4.3 years for cases without a public pension lead.

Among cases settled in 2021, institutional investor lead plaintiff appointments were among the lowest in more than 15 years.

Figure 11: Median Settlement Amounts and Public Pension Plans 2012–2021

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented.

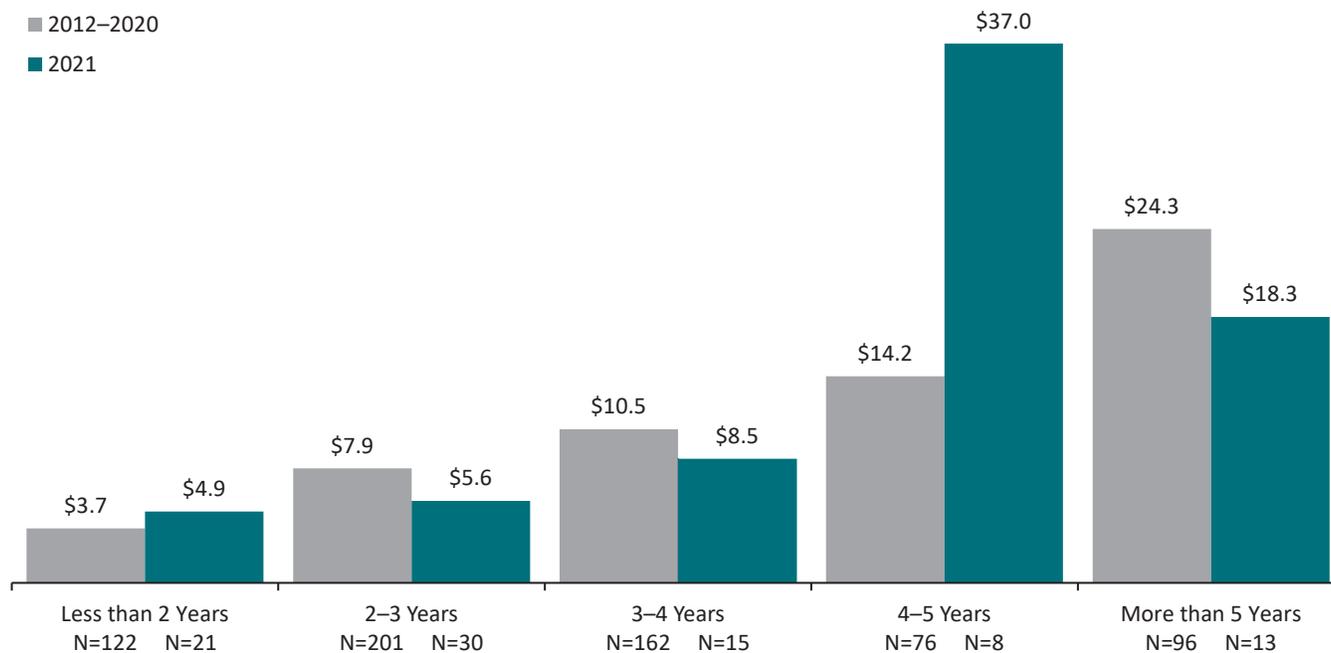
Time to Settlement and Case Complexity

- The median time from filing to settlement hearing date was 2.6 years for 2021 settlements, compared to 3.0 years for 2012–2020 settlements. This decline in the time to reach settlement was largely driven by the Ninth Circuit, where the median time to settlement declined by almost 40% in 2021.
- Larger cases (as measured by “simplified tiered damages”) often take longer to resolve. Consistent with this, in 2021 all three mega settlements took at least three years to reach a settlement hearing date.
- In 2021, for cases that took at least three years to settle, median “simplified tiered damages” were more than five times higher for settlements with an institutional lead plaintiff than for those without an institutional lead plaintiff.
- Reflecting both the smaller dollar amounts and the shorter interval from filing date to settlement hearing date among 2021 settlements, the number of docket entries for these cases declined, on average, 26% from the prior year.²⁰

Over 55% of cases in 2021 reached a settlement hearing date within three years of filing, compared to under 45% in 2020.

Figure 12: Median Settlement by Duration from Filing Date to Settlement Hearing Date 2012–2021

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented. “N” refers to the number of cases.

Case Stage at the Time of Settlement

In collaboration with Stanford Securities Litigation Analytics (SSLA),²¹ this report analyzes settlements in relation to the stage in the litigation process at the time of settlement.

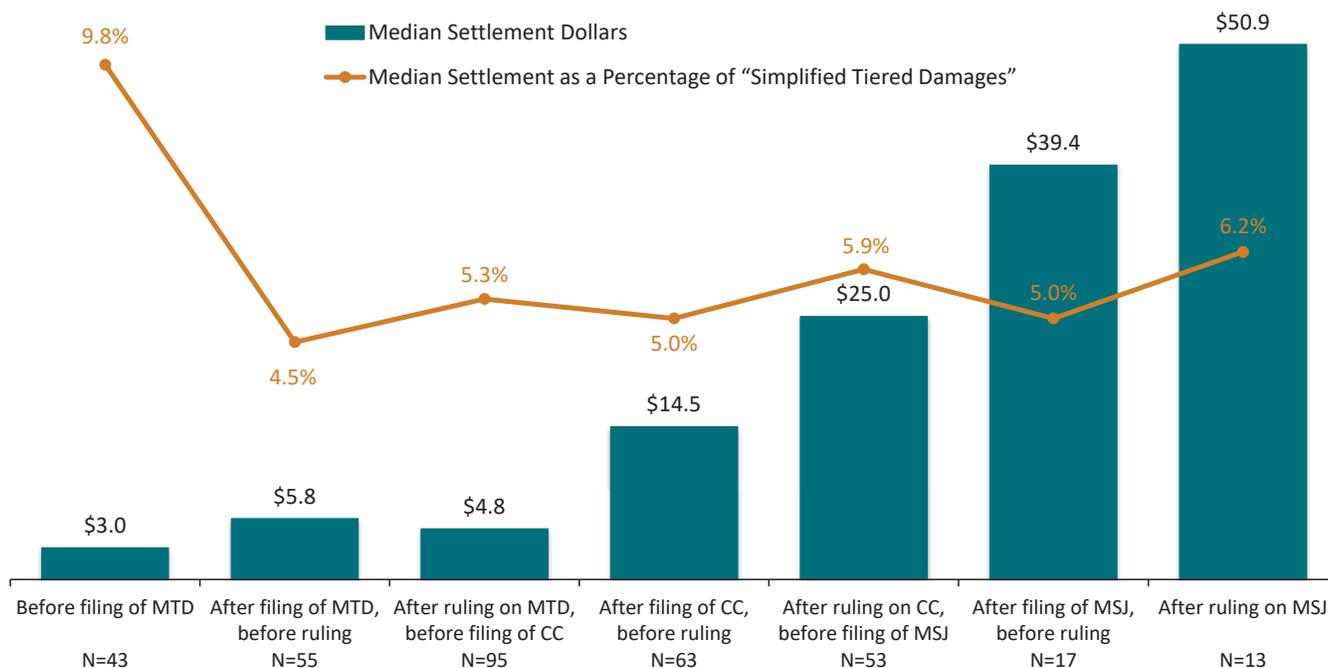
- Despite the overall smaller size of cases settled in 2021 and the shorter time to reach settlement, the stage at which cases settled remained largely unchanged. For example, in 2021, more than 60% of cases were resolved before a motion for class certification was filed, compared to 57% for 2017–2020 settlements.
- Similarly, approximately 20% of settlements in 2021 reached settlement sometime after a ruling on a motion for class certification, compared to 24% for 2017–2020 settlements.

- In 2021, cases that settled after a motion for class certification was filed were substantially larger than cases that settled at earlier stages. In particular, median “simplified tiered damages” for cases settling after a motion for class certification had been filed was more than eight times the median for cases that resolved prior to such a motion.
- Cases settling at later stages in 2021 were also larger in terms of issuer size. Specifically, the median issuer-reported total assets for 2021 cases that settled after the filing of a motion for summary judgment was more than five times the median for cases that settled prior to such a motion being filed.

Once a motion for class certification was filed, the median interval to the settlement hearing date for 2021 settlements was around 1.5 years.

Figure 13: Median Settlement Dollars and Resolution Stage at Time of Settlement 2017–2021

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented. “N” refers to the number of cases. MTD refers to “motion to dismiss,” CC refers to “class certification,” and MSJ refers to “motion for summary judgment.” This analysis is limited to cases alleging Rule 10b-5 claims.

Cornerstone Research's Settlement Prediction Analysis

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

Determinants of Settlement Outcomes

Based on the research sample of cases that settled from January 2006 through December 2021, the factors that were important determinants of settlement amounts included the following:

- “Simplified tiered damages”
- Maximum Dollar Loss (MDL)—market capitalization change from its class period peak to post-disclosure value
- Most recently reported total assets of the issuer defendant firm
- Number of entries on the lead case docket
- Whether there were accounting allegations
- Whether there was a corresponding SEC action against the issuer, other defendants, or related parties
- Whether there were criminal charges against the issuer, other defendants, or related parties with similar allegations to those included in the underlying class action complaint
- Whether there was an accompanying derivative action
- Whether an outside auditor was named as a codefendant

- Whether Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims
- Whether the issuer defendant was distressed
- Whether a public pension was a lead plaintiff
- Whether securities, in addition to common stock, were included in the alleged class

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

Settlements were also higher in cases involving accounting allegations, a corresponding SEC action, criminal charges, an accompanying derivative action, a public pension involved as lead plaintiff, an outside auditor named as a codefendant, or securities in addition to common stock included in the alleged class.

Settlements were lower if the issuer was distressed.

More than 74% of the variation in settlement amounts can be explained by the factors discussed above.

Research Sample

- The database compiled for this report is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. The sample contains cases alleging fraudulent inflation in the price of a corporation's common stock.
- Cases with alleged classes of only bondholders, preferred stockholders, etc., cases alleging fraudulent depression in price, and mergers and acquisitions cases are excluded. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes 2,013 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2021. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).²²
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.²³ Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.²⁴

Data Sources

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

Endnotes

- ¹ *Securities Class Action Filings—2021 Year in Review*, Cornerstone Research (2022).
- ² See, for example, Stephen J. Choi, “Do the Merits Matter Less after the Private Securities Litigation Reform Act?,” *Journal of Law, Economics, and Organization* 23, no. 3 (2007).
- ³ *Securities Class Action Filings—2021 Year in Review*, Cornerstone Research (2022).
- ⁴ *Securities Class Action Filings—2021 Year in Review*, Cornerstone Research (2022).
- ⁵ See, for example, Stephen J. Choi, Karen K. Nelson, and Adam C. Pritchard, “The Screening Effect of the Private Securities Litigation Reform Act,” Law & Economics Working Paper, University of Michigan Law School (2007).
- ⁶ *Securities Class Action Filings—2021 Year in Review*, Cornerstone Research (2022).
- ⁷ The “simplified tiered damages” approach used for purposes of this settlement research does not examine the mix of information associated with the specific dates listed in the plan of allocation, but simply applies the stock price movements on those dates to an estimate of the “true value” of the stock during the alleged class period (or “value line”). This proxy for damages utilizes an estimate of the number of shares damaged based on reported trading volume and the number of shares outstanding. Specifically, reported trading volume is adjusted using volume reduction assumptions based on the exchange on which the issuer defendant’s common stock is listed. No adjustments are made to the underlying float for institutional holdings, insider trades, or short-selling activity during the alleged class period. Because of these and other simplifying assumptions, the damages measures used in settlement outcome modeling may be overstated relative to damages estimates developed in conjunction with case-specific economic analysis.
- ⁸ Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, *Estimating Damages in Settlement Outcome Modeling*, Cornerstone Research (2017).
- ⁹ Median market capitalization as of the most recent quarter-end prior to the settlement hearing date.
- ¹⁰ The statutory purchase price is the lesser of the security offering price or the security purchase price. Prior to the first complaint filing date, the statutory sales price is the price at which the security was sold. After the first complaint filing date, the statutory sales price is the greater of the security sales price or the security price on the first complaint filing date. Similar to “simplified tiered damages,” the estimation of “simplified statutory damages” makes no adjustments to the underlying float for institutional holdings, insider trades, or short-selling activity.
- ¹¹ Based on data for cases where the amount contributed by the D&O liability insurer was verified in settlement materials and/or the issuer defendant’s SEC filings—approximately 83% of all ‘33 Act claims cases. Data are supplemented with additional observations from the SSLA.
- ¹² *Securities Class Action Filings—2021 Year in Review*, Cornerstone Research (2022).
- ¹³ This calculation excludes settlements with both ‘33 Act claims filed in state court and Rule 10b-5 claims filed in federal court.
- ¹⁴ In some instances, the federal action also includes ‘33 Act claims.
- ¹⁵ The three categories of accounting issues analyzed in Figure 8 of this report are (1) GAAP violations; (2) restatements—cases involving a restatement (or announcement of a restatement) of financial statements; and (3) accounting irregularities—cases in which the defendant has reported the occurrence of accounting irregularities (intentional misstatements or omissions) in its financial statements.
- ¹⁶ *Accounting Class Action Filings and Settlements—2021 Review and Analysis*, Cornerstone Research (2022), forthcoming in spring 2022.
- ¹⁷ As noted previously, it could be that the merits in such cases are stronger, or simply that the presence of a corresponding SEC action provides plaintiffs with increased leverage when negotiating a settlement. For purposes of this research, an SEC action is evidenced by the presence of a litigation release or an administrative proceeding posted on www.sec.gov involving the issuer defendant or other named defendants with allegations similar to those in the underlying class action complaint.
- ¹⁸ Identification of a criminal charge and/or criminal indictment based on review of SEC filings and public press. For purposes of this research, criminal charges and/or indictments are collectively referred to as “criminal charges.”
- ¹⁹ See, for example, Michael A. Perino, “Have Institutional Fiduciaries Improved Securities Class Actions? A Review of the Empirical Literature on the PSLRA’s Lead Plaintiff Provision,” St. John’s Legal Studies Research Paper No. 12-0021 (2012).
- ²⁰ Docket entries reflect the number of entries on the court docket for events in the litigation and have been used in prior research as a proxy for the amount of plaintiff attorney effort involved in resolving securities cases. See Laura Simmons, “The Importance of Merit-Based Factors in the Resolution of 10b-5 Litigation,” University of North Carolina at Chapel Hill Doctoral Dissertation (1996); Michael A. Perino, “Institutional Activism through Litigation: An Empirical Analysis of Public Pension Fund Participation in Securities Class Actions,” St. John’s Legal Studies Research Paper No. 06-0055 (2006).
- ²¹ Stanford Securities Litigation Analytics (SSLA) tracks and collects data on private shareholder securities litigation and public enforcements brought by the SEC and the U.S. Department of Justice. The SSLA dataset includes all traditional class actions, SEC actions, and DOJ criminal actions filed since 2000. Available on a subscription basis at <https://sla.law.stanford.edu/>.
- ²² Available on a subscription basis. For further details see <https://www.issgovernance.com/securities-class-action-services/>.
- ²³ Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.
- ²⁴ This categorization is based on the timing of the settlement hearing date. If a new partial settlement equals or exceeds 50% of the then-current settlement fund amount, the entirety of the settlement amount is re-categorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50% of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

Appendices

Appendix 1: Settlement Percentiles

(Dollars in millions)

	Average	10th	25th	Median	75th	90th
2012	\$72.3	\$1.4	\$3.2	\$11.1	\$41.9	\$135.7
2013	\$84.1	\$2.2	\$3.5	\$7.6	\$25.8	\$96.0
2014	\$20.9	\$1.9	\$3.3	\$6.9	\$15.1	\$57.2
2015	\$45.0	\$1.5	\$2.5	\$7.4	\$18.6	\$107.5
2016	\$79.7	\$2.1	\$4.7	\$9.7	\$37.3	\$164.8
2017	\$20.4	\$1.7	\$2.9	\$5.8	\$16.9	\$39.2
2018	\$70.0	\$1.6	\$3.9	\$12.1	\$26.7	\$53.0
2019	\$29.7	\$1.6	\$6.0	\$11.7	\$21.2	\$53.0
2020	\$57.1	\$1.5	\$3.5	\$10.6	\$20.9	\$55.7
2021	\$20.5	\$1.7	\$3.1	\$8.3	\$17.9	\$58.6

Note: Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented.

Appendix 2: Settlements by Select Industry Sectors 2012–2021

(Dollars in millions)

Industry	Number of Settlements	Median Settlement	Median “Simplified Tiered Damages”	Median Settlement as a Percentage of “Simplified Tiered Damages”
Financial	99	\$16.2	\$409.5	5.1%
Technology	101	\$8.6	\$228.9	4.7%
Pharmaceuticals	107	\$7.0	\$215.2	4.7%
Retail	37	\$10.5	\$254.7	4.3%
Telecommunications	23	\$9.3	\$278.8	5.4%
Healthcare	19	\$12.3	\$152.8	6.7%

Note: Settlement dollars and “simplified tiered damages” are adjusted for inflation; 2021 dollar equivalent figures are presented. “Simplified tiered damages” are calculated only for cases involving Rule 10b-5 claims.

Appendix 3: Settlements by Federal Circuit Court 2012–2021

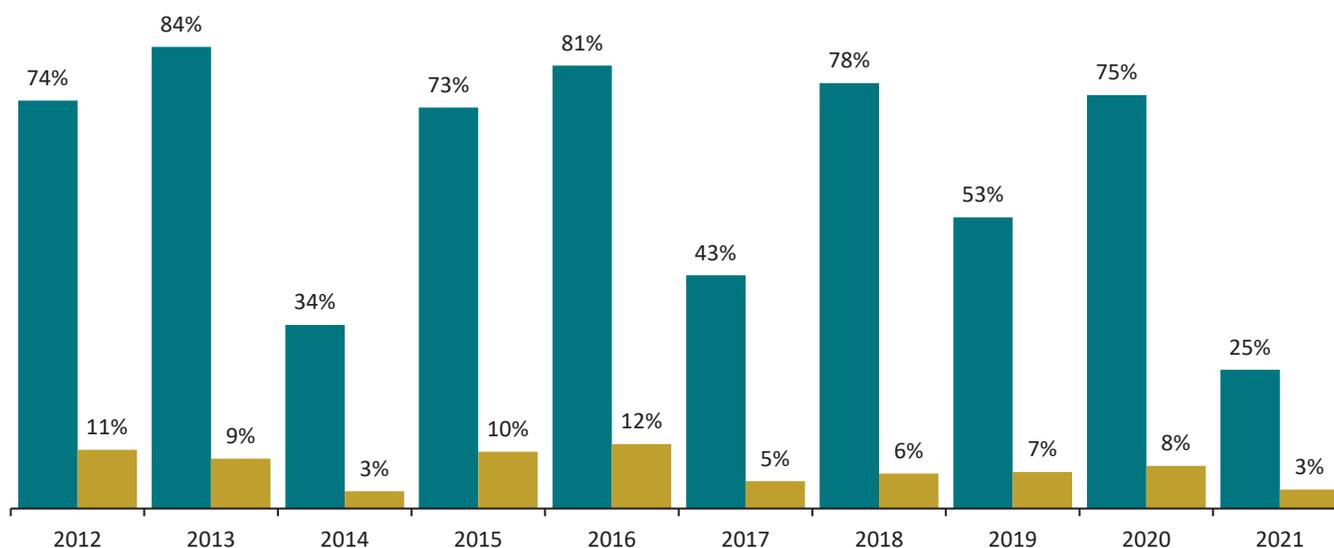
(Dollars in millions)

Circuit	Number of Settlements	Median Settlement	Median Settlement as a Percentage of “Simplified Tiered Damages”
First	20	\$10.8	3.2%
Second	192	\$9.3	5.1%
Third	65	\$7.0	5.6%
Fourth	24	\$20.1	4.1%
Fifth	36	\$9.9	5.0%
Sixth	30	\$13.3	7.4%
Seventh	35	\$14.2	3.9%
Eighth	13	\$14.7	6.8%
Ninth	183	\$6.9	4.9%
Tenth	17	\$8.5	5.3%
Eleventh	38	\$11.0	4.9%
DC	4	\$24.8	2.2%

Note: Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented. Settlements as a percentage of “simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims.

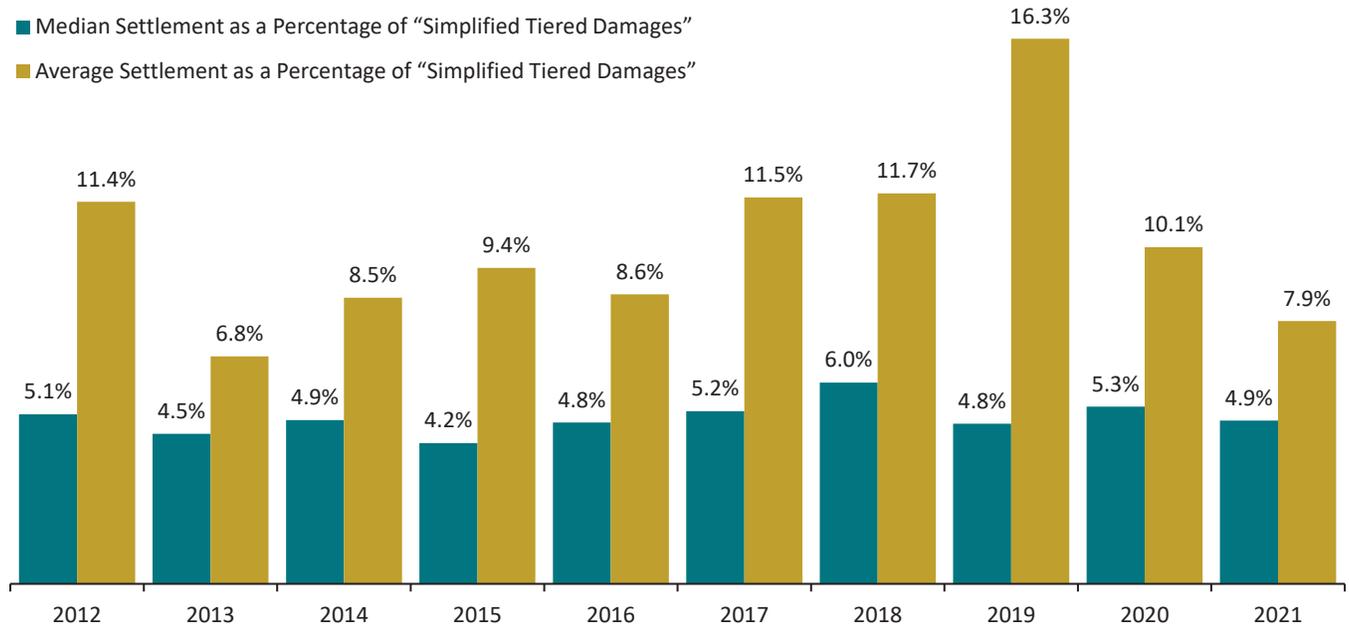
Appendix 4: Mega Settlements 2012–2021

- Total Mega Settlement Dollars as a Percentage of All Settlement Dollars
- Number of Mega Settlements as a Percentage of All Settlements



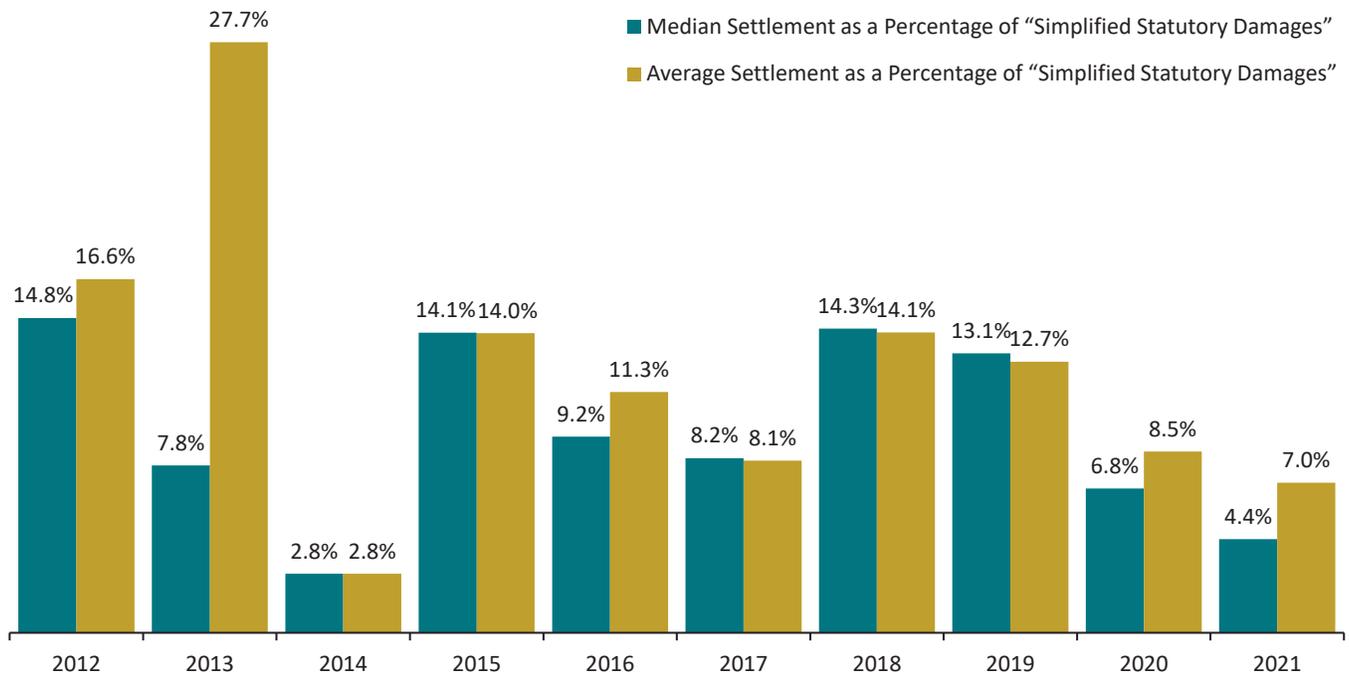
Note: Mega settlements are defined as total settlement funds equal to or greater than \$100 million. Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented.

**Appendix 5: Median and Average Settlements as a Percentage of “Simplified Tiered Damages”
2012–2021**



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

**Appendix 6: Median and Average Settlements as a Percentage of “Simplified Statutory Damages”
2012–2021**

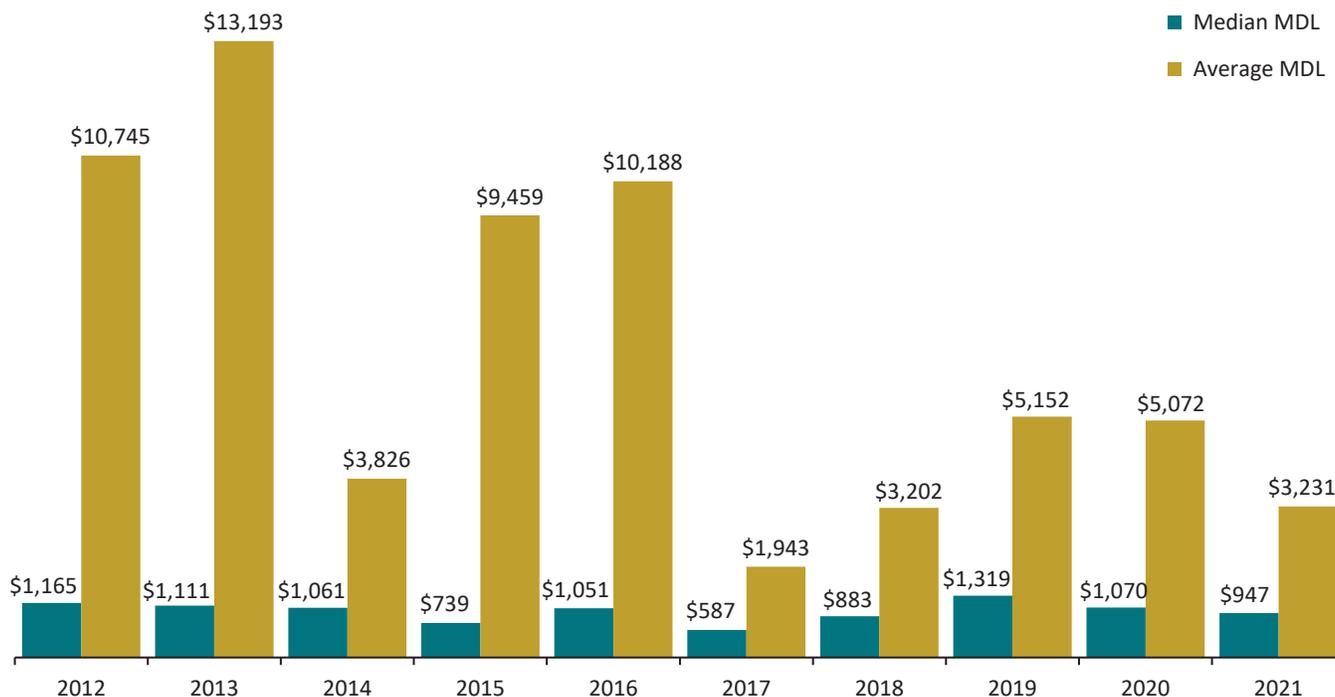


Note: “Simplified statutory damages” are calculated only for cases alleging Section 11 (’33 Act) claims and no Rule 10b-5 claims.

Appendix 7: Median and Average Maximum Dollar Loss (MDL)

2012–2021

(Dollars in millions)

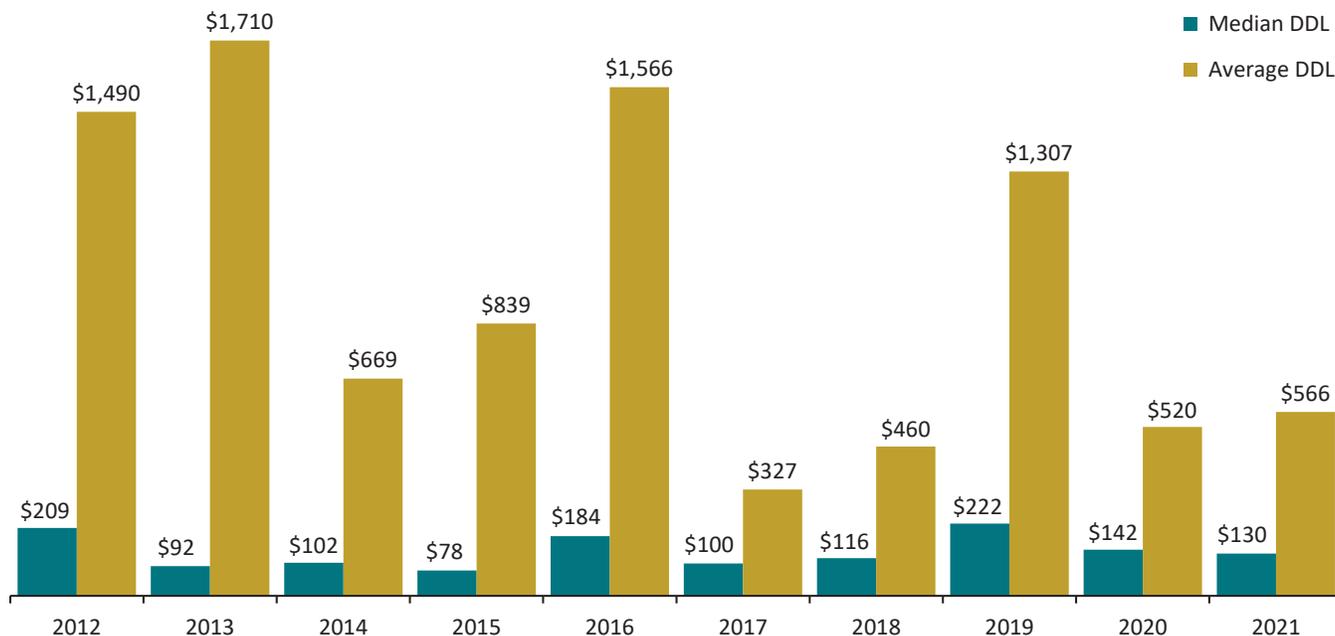


Note: MDL is adjusted for inflation based on class period end dates; 2021 dollar equivalents are presented. MDL is the dollar value change in the defendant firm's market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period.

Appendix 8: Median and Average Disclosure Dollar Loss (DDL)

2012–2021

(Dollars in millions)



Note: DDL is adjusted for inflation based on class period end dates; 2021 dollar equivalents are presented. DDL is the dollar value change in the defendant firm's market capitalization between the trading day immediately preceding the end of the class period and the trading day immediately following the end of the class period. This analysis excludes cases alleging '33 Act claims only.

Appendix 9: Median Docket Entries by “Simplified Tiered Damages” Range
2012–2021

(Dollars in millions)



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

About the Authors

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Laarni Bulan is a principal in Cornerstone Research's Boston office, where she specializes in finance. Her work has focused on securities and other complex litigation addressing class certification, damages, and loss causation issues, firm valuation, and corporate governance, executive compensation, and risk management issues. She has also consulted on cases related to insider trading, market manipulation and trading behavior, financial institutions and the credit crisis, derivatives, foreign exchange, and securities clearing and settlement.

Dr. Bulan has published several academic articles in peer-reviewed journals. Her research covers topics in dividend policy, capital structure, executive compensation, corporate governance, and real options. Prior to joining Cornerstone Research, Dr. Bulan had a joint appointment at Brandeis University as an assistant professor of finance in its International Business School and in the economics department.

Laura E. Simmons

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

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

The authors gratefully acknowledge the research efforts and significant contributions of their colleagues at Cornerstone Research in the writing and preparation of this annual update.

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Exhibit 8

Compendium of Unreported Cases

<i>Ark. Tchr. Ret. Sys. v. Bankrate</i> , No. 13-cv-7183, slip op. (S.D.N.Y. Nov. 25, 2014).....	1
<i>Cornwell v. Credit Suisse Grp.</i> , No. 08-cv-03758, slip op. (S.D.N.Y. July 20, 2011)	2
<i>In re Extreme Networks Inc. Sec. Litig.</i> No. 15-cv-048883, slip op. No. 182 (N.D. Cal. July 22, 2019).....	3
<i>In re Extreme Networks Inc. Sec. Litig.</i> No. 15-cv-048883, slip op. No. 183 (N.D. Cal. July 22, 2019).....	4
<i>In re LaBranche Sec. Litig.</i> , No. 03-CV-8201, slip op. (S.D.N.Y. Jan. 22, 2009).....	5
<i>Patel v. L-3 Commc'ns Holdings, Inc.</i> , No. 14-cv-06038, slip op. (S.D.N.Y. Aug. 17, 2017).....	6
<i>In re Silvercorp Metals Inc. Sec. Litig.</i> , No. 12-cv-09456-JSR, slip op. (S.D.N.Y. Feb. 13, 2015)	7
<i>Stein v. Eagle Bancorp, Inc., et al.</i> , No. 1:19-cv-06873, slip op. (S.D.N.Y. Feb 10, 2022).....	8
<i>In re TeleTech Litig.</i> , No. 1:08-cv-00913, slip op. (S.D.N.Y. June 11, 2010)	9

TAB 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARKANSAS TEACHER RETIREMENT SYSTEM
and FRESNO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION, Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

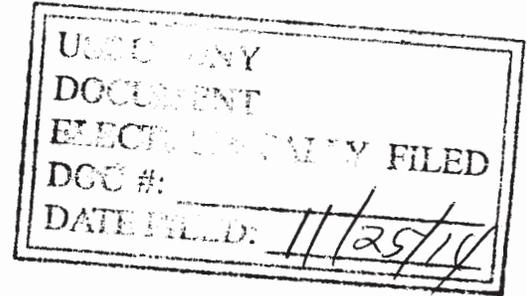
v.

BANKRATE, INC. et al.,

Defendants.

Case No. 13-cv-7183 (JSR)

ECF CASE



ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter came on for hearing on November 21, 2014 (the "Settlement Hearing") on Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who or which could be identified with reasonable effort, except those persons or entities excluded from the definition of the Settlement Class, and that a summary notice of the hearing substantially in the form approved by the Court was published in *Investor's Business Daily* and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and Litigation Expenses requested,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Amended Stipulation and Agreement of Settlement dated September 17, 2014 (ECF No. 73-1) (the "Amended

Stipulation”) and all terms not otherwise defined herein shall have the same meanings as set forth in the Amended Stipulation.

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

3. Notice of Lead Counsel’s motion for attorneys’ fees and reimbursement of Litigation Expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for attorneys’ fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Lead Counsel is hereby awarded attorneys’ fees in the amount of 25 % of the Settlement Fund, net of Court-awarded expenses, and \$ 194,426.83 in reimbursement of litigation expenses (which fees and expenses shall be paid from the Settlement Fund), which sums the Court finds to be fair and reasonable.

5. Lead Counsel shall be paid 50% of the attorneys’ fees awarded and 100% of the approved expenses immediately upon entry of this Order. Payment of the balance of the attorneys’ fees awarded shall be made to Lead Counsel when distribution of the Net Settlement Fund to claimants has been very substantially completed.

6. In making this award of attorneys’ fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of \$18,000,000 in cash that has been funded into escrow pursuant to the terms of the Amended Stipulation, and that numerous

Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Lead Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as fair and reasonable by Lead Plaintiffs, who are institutional investors that oversaw the prosecution and resolution of the Action;

(c) Copies of the Notice were mailed to over 35,000 potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed 25% of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed \$300,000, and there were no objections to the requested attorneys' fees and expenses;

(d) Lead Counsel has conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(e) The Action raised a number of complex issues;

(f) Had Lead Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the other members of the Settlement Class may have recovered less or nothing from Defendants;

(g) Lead Counsel devoted over 5,100 hours, with a lodestar value of approximately \$2,485,000, to achieve the Settlement; and

(h) The amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

7. Lead Plaintiff Arkansas Teacher Retirement System is hereby awarded \$ 4,270.22 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.

8. Lead Plaintiff Fresno County Employees' Retirement Association is hereby awarded \$ 850.67 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.

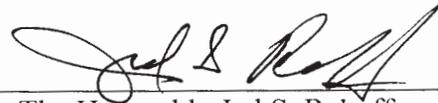
9. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.

10. Exclusive jurisdiction is hereby retained over the parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Amended Stipulation and this Order.

11. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Amended Stipulation.

12. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this 21st day of November, 2014.



The Honorable Jed S. Rakoff
United States District Judge

TAB 2

THIS MATTER having come before the Court on July 18, 2011, on the motion of Lead Plaintiffs' counsel for an award of attorneys' fees and expenses incurred in the Action; 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. All of the capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement dated March 7, 2011.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Settlement Class who have not timely and validly requested exclusion.

3. Counsel for the Lead Plaintiffs are entitled to a fee paid out of the common fund created for the benefit of the Settlement Class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). In class action suits where a fund is recovered and fees are awarded therefrom by the court, the Supreme Court has indicated that computing fees as a percentage of the common fund recovered is the proper approach. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Second Circuit recognizes the propriety of the percentage-of-the-fund method when awarding fees. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005).

4. Lead Plaintiffs' counsel have moved for an award of attorneys' fees of 27.5% of the Settlement Fund, plus interest.

5. This Court adopts the percentage-of-recovery method of awarding fees in this case, and concludes that the percentage of the benefit is the proper method for awarding attorneys' fees in this case.

6. The Court hereby awards attorneys' fees of 27.5% of the Settlement Fund, plus interest at the same rate as earned on the Settlement Fund. The Court finds the fee award to be fair and reasonable. The Court further finds that a fee award of 27.5% of the Settlement Fund is consistent with awards made in similar cases.

7. Said fees shall be allocated among plaintiffs' counsel by Co-Lead Counsel in manner which, in their good faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Action.

8. The Court hereby awards expenses in an aggregate amount of \$285,072.62, plus interest.

9. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered each of the applicable factors set forth in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). In evaluating the *Goldberger* factors, the Court finds that:

(a) Counsel for Lead Plaintiffs expended considerable effort and resources over the course of the Action researching, investigating and prosecuting Lead Plaintiffs' claims. Lead Plaintiffs' counsel have represented that they have reviewed tens of thousands of pages of documents, interviewed witnesses and opposed legally and factually complex motions to dismiss. The parties also engaged in settlement negotiations that lasted several months. The services provided by Lead Plaintiffs' counsel were efficient and highly successful, resulting in an outstanding recovery for the Settlement Class without the substantial expense, risk and delay of continued litigation. Such efficiency and effectiveness supports the requested fee percentage.

(b) Cases brought under the federal securities laws are notably difficult and notoriously uncertain. *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. MDL 1500, 2006 U.S. Dist. LEXIS 17588, at *31 (S.D.N.Y. Apr. 6, 2006). "[S]ecurities actions have become more

difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000). Despite the novelty and difficulty of the issues raised, and the procedural posture of the case, Lead Plaintiffs' counsel secured an excellent result for the Settlement Class.

(c) The recovery obtained and the backgrounds of the lawyers involved in the lawsuit are the best evidence that the quality of Lead Plaintiffs' counsel's representation of the Settlement Class supports the requested fee. Lead Plaintiffs' counsel demonstrated that notwithstanding the barriers erected by the PSLRA, they would develop evidence to support a convincing case. Based upon Lead Plaintiffs' counsel's diligent efforts on behalf of the Settlement Class, as well as their skill and reputations, Lead Plaintiffs' counsel were able to negotiate a very favorable result for the Settlement Class. Lead Plaintiffs' counsel are among the most experienced and skilled practitioners in the securities litigation field, and have unparalleled experience and capabilities as preeminent class action specialists. Their efforts in efficiently bringing the Action to a successful conclusion against the Defendants are the best indicator of the experience and ability of the attorneys involved. In addition, Defendants were represented by highly experienced lawyers from a prominent firm. The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by plaintiffs' attorneys. The ability of Lead Plaintiffs' counsel to obtain such a favorable settlement for the Settlement Class in the face of such formidable opposition confirms the superior quality of their representation and the reasonableness of the fee request.

(d) The requested fee of 27.5% of the settlement is within the range normally awarded in cases of this nature.

(e) Public policy supports the requested fee, because the private attorney general role is “vital to the continued enforcement and effectiveness of the Securities Acts.” *Taft v. Ackermans*, No. 02 Civ. 7951(PKL), 2007 U.S. Dist. LEXIS 9144, at *33 (S.D.N.Y. Jan. 31, 2007) (citation omitted).

(f) Lead Plaintiffs’ counsel’s total lodestar is \$4,049,631.50. A 27.5% fee represents a multiplier of 4.7. Given the public policy and judicial economy interests that support the expeditious settlement of cases, *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002), the requested fee is reasonable.

10. The awarded attorneys’ fees and expenses, and interest earned thereon, shall be paid to Co-Lead Counsel from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Settlement Agreement and in particular ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

Dated: New York, NY

18 July, 2011



THE HONORABLE VICTOR MARRERO
UNITED STATES DISTRICT JUDGE
aw

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2011, I submitted the foregoing to orders and judgments@nysd.uscourts.gov and e-mailed to the e-mail addresses denoted on the Court's Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 11, 2011.

s/ Ellen Gusikoff Stewart

ELLEN GUSIKOFF STEWART

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TAB 3

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

In re EXTREME NETWORKS, INC.
SECURITIES LITIGATION

Case No. [15-cv-04883-BLF](#)

**ORDER GRANTING LEAD
PLAINTIFF’S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND PLAN OF
ALLOCATION; GRANTING LEAD
COUNSEL’S MOTION FOR AN
AWARD OF ATTORNEYS’ FEES AND
PAYMENT OF EXPENSES**

[Re: ECF 172, 173]

United States District Court
Northern District of California

On June 27, 2019, the Court heard (1) Lead Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of Allocation (Appr. Mot., ECF 172), and (2) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Payment of Expenses (Fees Mot., ECF 173). For the reasons discussed below and those stated on the record at the hearing on the motions, the motions are GRANTED.

I. BACKGROUND

A. Facts

This is a putative class action for securities fraud brought against Extreme Networks, Inc. (“Extreme”) and its officers Charles W. Berger, John T. Kurtzweil, and Kenneth B. Arola (“Individual Defendants”) (collectively with Extreme, “Defendants”). Founded in 1966, Extreme is a Delaware corporation with its principal offices in San Jose, California. See First Am. Compl. (“FAC”) ¶ 2, 32, ECF 105. Extreme develops and sells network infrastructure equipment such as wired and wireless devices for accessing the Internet, as well as related software. *Id.* ¶ 2. The Individual Defendants were officers and directors of Extreme during the time relevant to this

1 litigation. Defendant Charles W. Berger was Extreme’s President and Chief Executive Officer
2 (“CEO”) and a member of Extreme’s Board of Directors from April 2013 until April 19, 2015.
3 *Id.* ¶ 34. Defendant John T. Kurtzweil was Extreme’s Chief Financial Officer (“CFO”) and Senior
4 Vice President from June 29, 2012 until June 1, 2014. *Id.* ¶ 35. From June 2, 2014 until
5 September 30, 2014, Kurtzweil served as Special Assistant to the CEO. *Id.* Defendant Kenneth
6 B. Arola was the Company’s CFO and Senior Vice President from June 2, 2014 through May
7 2016. *Id.* ¶ 36.

8 The First Amended Complaint (“FAC”) alleges that Defendants misrepresented to
9 investors the success of Extreme’s post-acquisition integration with its former competitor,
10 Enterasys Networks, Inc. (“Enterasys”), as well as developments in Extreme’s “key partnership”
11 with Lenovo Group Ltd. (“Lenovo”). *See, e.g., id.* ¶¶ 1–18. Defendants’ positive representations
12 to investors about the resulting “synergies” from the Enterasys integration and benefits of the
13 Lenovo partnership—including a commitment that cost savings from these arrangements would
14 lead to double-digit revenue growth and a 10% operating margin by June 2015—caused Extreme’s
15 stock price to rise. *Id.* ¶¶ 17–19. Extreme’s stock price then dropped when Extreme reported
16 disappointing financial results at various points between February 2014 and the end of the Class
17 Period on April 9, 2015. *Id.* ¶¶ 20–22.

18 Relying on six confidential witnesses (“CWs”), Lead Plaintiff Arkansas Teacher
19 Retirement System (“ATRS” or “Lead Plaintiff”) alleged that Defendants knew or recklessly
20 disregarded material adverse facts regarding the lack of any integration plan for the Enterasys
21 merger, which was not “on track” or “complete” as represented. *Id.* ¶ 13. ATRS also pointed to
22 accounts from CWs that the Lenovo partnership was largely unproductive, in direct contrast to
23 Defendants’ representations to the market. *Id.* ¶ 17. According to ATRS, Defendants’ false
24 statements caused Extreme’s stock to trade at artificially inflated prices between September 12,
25 2013, and April 9, 2015 (the “Class Period”), reaching a high of \$8.14 per share on January 23,
26 2014. *Id.* ¶ 19. ATRS alleges that four partial corrective disclosures by Defendants announcing
27 revenue shortfalls, guidance misses, and turnovers of Extreme executives, caused the stock price
28 to plummet as the undisclosed risks relating to Enterasys integration and Lenovo partnership

1 materialized. *Id.* ¶ 20–22.

2 Defendants have agreed to pay \$7,000,000 in cash, to secure a settlement of the claims in
3 the Action and related claims that could have been brought (“Released Claims”).

4 **B. Procedural History**

5 This litigation has a long history of nearly four years. In October of 2015, two securities
6 class action complaints were filed on behalf of individuals who invested in Extreme during the
7 relevant time period.¹ On December 1, 2015, the Court granted the parties’ stipulation to
8 consolidate the two actions. ECF 18. On June 28, 2016, the Court appointed ATRS as Lead
9 Plaintiff, Labaton Sucharow LLP as Lead Counsel, and Berman DeValerio² as Liaison Counsel to
10 represent the putative class. ECF 75.

11 On September 26, 2016, ATRS filed a Consolidated Class Action Complaint on behalf of
12 all investors who purchased the publicly traded common stock of Extreme and/or exchange-traded
13 options on such common stock during the Class Period. *See* Consol. Compl. ¶ 1, ECF 87. Prior to
14 filing the Consolidated Complaint, Lead Counsel conducted extensive factual investigation,
15 including reviewing SEC documents, press releases, and other publicly available information, as
16 well as reviewing research reports issued by financial analysts and other public data. Villegas
17 Decl. ISO Final Appr. (“Villegas Decl.”) ¶ 17, ECF 174. Lead Counsel also interviewed former
18 employees of Extreme and other persons with relevant knowledge and consulted with an
19 economics expert for loss causation and damages. *Id.* The Consolidated Complaint asserted two
20 causes of action, based on the facts described above: (1) violation of § 10(b) of the Securities
21 Exchange Act of 1934 and Rule 10b-5 against all Defendants; and (2) violation of § 20(a) of the
22 Securities Exchange Act of 1934 against the Individual Defendants for liability as control persons
23 of Extreme. *See generally* Consol. Compl.

24 On November 10, 2016, Defendants moved to dismiss the Consolidated Complaint. *See*
25 ECF 89. On April 17, 2017, the Court granted Defendants’ motion with leave to amend because

26 _____
27 ¹ *See Hong v. Extreme Networks, Inc., et al.*, No. 5:15-cv-04883-BLF, Compl., ECF 1 (Oct. 23,
28 2015); and *Kasprzak v. Extreme Networks, Inc., et al.*, No. 5:15-cv-04975-BLF, Compl., ECF 1
(Oct. 29, 2015).

² Berman DeValerio has since been renamed Berman Tabacco.

1 ATRS had failed to adequately plead that Defendants made any false or misleading statements and
2 that they did so with scienter. *See* ECF 102 at 42. On May 29, 2017, ATRS filed its First
3 Amended Complaint, asserting the same two causes of action for securities violations against the
4 same Defendants, focusing their amended factual allegations on statements that the Court had
5 indicated were actionable. *See generally* FAC. Prior to filing the FAC, ATRS contacted 148
6 former employees of Extreme and interviewed 24 of those employees. Villegas Decl. ¶ 25. ATRS
7 also consulted with an expert in the field of executive compensation. *Id.* On July 10, 2017,
8 Defendants filed a motion to dismiss the FAC. *See* ECF 107. On March 21, 2018, the Court
9 granted in part and denied in part Defendants’ motion to dismiss, finding that ATRS stated a claim
10 under Section 10(b) and Rule 10b-5 against all Defendants except Kurtzweil and that ATRS stated
11 a claim under Section 20(a) against the Individual Defendants. On June 21, 2018, more than one
12 and a half years after the Consolidated Complaint was filed and over two and a half years after the
13 lawsuit’s inception, Defendants answered the FAC. *See* ECF 145.

14 The parties then engaged in some discovery, including numerous requests for production
15 and interrogatories and their responses, as well as depositions. Lead Plaintiff served eighty-seven
16 requests for the production of documents on Defendants on April 30, 2018. Villegas Decl. ¶ 33.
17 Defendants served responses and objections to Lead Plaintiff’s document requests on June 14,
18 2018. *Id.* The parties exchanged initial disclosures on May 21, 2018. *Id.* And the parties met and
19 conferred extensively regarding the production of electronically stored information and a
20 protective order governing the disclosures in the action. *Id.* ¶ 34.

21 Concurrently with discovery, the parties engaged in mediation and settlement discussions.
22 On July 18, 2018, the parties attended an in-person mediation with Robert A. Meyer, Esq. (“Mr.
23 Meyer”), an experienced mediator. *Id.* ¶¶ 35–36. The initial mediation was preceded by the
24 exchange of mediation statements and Defendants’ production of approximately 1,270 pages of
25 documents, including Board of Director minutes and presentations, which Lead Counsel reviewed.
26 *Id.* ¶¶ 36–37. Following rigorous arm’s length negotiations led by Mr. Meyer, the parties accepted
27 a mediator’s proposal on August 17, 2018. *Id.* ¶ 38. On September 26, 2018, the parties entered
28 into a settlement term sheet, and on November 30, 2018, ATRS filed the finalized settlement

1 agreement in support of its motion seeking preliminary approval of the settlement. *See* ECF 155,
2 156-1.

3 C. Settlement Agreement, Allocation Plan, and Notice Plan

4 On March 13, 2019, the Court granted ATRS's motion for preliminary approval of class
5 action settlement and approved the forms of notice to the Settlement Class. *See* ECF 167. The
6 class includes "all persons and entities that purchased or otherwise acquired the publicly traded
7 common stock and exchange-traded call options, and/or sold put options, of Extreme Networks,
8 Inc. during the period from September 12, 2013 through April 9, 2015, inclusive, and who were
9 damaged thereby." *See* ECF 156-1 ("Agreement") at 10 ¶ hh. Under the Settlement Agreement,
10 Extreme has agreed to provide a settlement fund in the amount of \$7 million. *See* Agreement at
11 10 ¶ gg, 13 ¶ 6. Of the \$7 million, the Settlement Class will receive what remains after subtracting
12 the cost of any attorney's fees and expenses, notice and administration costs, Lead Plaintiff's
13 service awards, and applicable taxes (the "Net Settlement Fund"). Villegas Decl. ¶ 62; Agreement
14 ¶ 26. The Net Settlement Fund will be distributed among claimants on a *pro rata* basis based on
15 "Recognized Loss" formulas tied to claimants' potential damages and developed by ATRS's
16 expert. Settlement Agreement ¶¶ 22–26; Villegas Decl. ¶ 63; ECF 167 ¶¶ 48–57. Each claimant's
17 calculated recognized loss will be compared to the aggregate recognized loss of all claimants to
18 determine that claimant's *pro rata* share of the settlement fund. Villegas Decl. ¶ 64. Because the
19 Court dismissed claims prior to February 5, 2014, but the class covers individuals who purchased
20 shares prior to that date, those individuals' claims will be calculated using 20% of the alleged
21 artificial inflation of the share prices. *Id.* ¶ 63.

22 The Court preliminarily approved, and the Settlement Administrator ("KCC") and the
23 parties complied with, the following notice process: KCC obtained the names and addresses of
24 potential settlement class members from listings provided by Extreme's transfer agent and from
25 banks, brokers, and other nominees. Villegas Decl. ¶ 42; Villegas Decl., Ex. 2 ¶¶ 1–7, ECF 174-2.
26 KCC sent by first-class mail notice packets (containing the notice and claim form) to settlement
27 class members and potential nominees (third-party purchasers who may have purchased shares on
28 behalf of potential claimants). Villegas Decl. ¶ 42; Villegas Decl., Ex. 2 ¶¶ 4–7. As of June 4,

1 2019, KCC had mailed 27,972 notice packets. Suppl. Decl. of Lance Cavallo ¶ 2, ECF 177. The
2 summary notice was also published in *Investor's Business Daily* and disseminated over *PR*
3 *Newswire*. Villegas Decl. ¶ 43. KCC also created and maintained a settlement website. Villegas
4 Decl., Ex. 2 ¶ 10.

5 The Agreement (and approved notice plan) contemplates a process for direct payments to
6 the class members. First, class members needed to submit by June 6, 2019 a simple claim form
7 for their shares purchased during the class period. Villegas Decl. ¶ 61; ECF 167. The direct mail
8 and website notices informed members of the opportunity to opt out through a simple form.
9 Requests for exclusions or objections needed to be filed by May 23, 2019. Villegas Decl. ¶ 45;
10 ECF 167. Once KCC has processed submitted claims and provided claimants with an opportunity
11 to cure deficiencies or challenge rejection determinations, payment distributions will be made to
12 eligible claimants through PayPal (for all payments below \$10.00 and for payments between
13 \$10.00 and \$100.00 for those who elect this option), or by check. Villegas Decl. ¶ 65. At least six
14 months after the initial distribution of the funds, any funds remaining will be redistributed to those
15 who have previously cashed their checks. *Id.* This process will be repeated until the remaining
16 sum is no longer economically feasible to distribute. At that time, Lead Counsel will request with
17 the Court that the unclaimed balance be distributed to a *Cy Pres* Recipient: Consumer Federation
18 of America (“CFA”). *Id.* CFA is a national non-profit consumer advocacy organization for
19 investor protection; it has been approved as a *Cy pres* beneficiary in several securities cases in
20 California. *Id.* ¶ 66.

21 As of June 4, 2019, 1,244 valid claims had been submitted, representing over 66,777,000
22 shares of common stock purchased during the class period. Villegas Decl., Ex. 2 ¶¶ 5–6. Of
23 those claims, 888 were filed by or on behalf of institutions and 356 claims were submitted by or
24 on behalf of individuals. *Id.* ¶ 5.

25 On June 20, 2019, the Court held a hearing on the motions. Counsel represented on the
26 record at the hearing that a total of 3,845 claims had been received, constituting a response rate of
27 approximately 14 percent. Counsel also represented that of these claims, over 3,000 had been
28 filed by or on behalf of institutions and approximately 400 by or on behalf of individuals. The

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 Northern District of California

1 deadline to submit claims had passed, but Counsel was continuing to accept claims through an
 2 informal grace period. At the hearing, this Court ordered Lead Counsel to post by June 21, 2019 a
 3 firm grace period termination date of June 28, 2019 on the website maintained by KCC, and to
 4 accept only claims filed before that date as determined by postmark and email timestamp. Only
 5 two requests for exclusion were received by June 20, 2019, one of which was deemed invalid for
 6 failing to provide the requisite information and neglecting to cure the deficiency when notified by
 7 KCC that the exclusion request was invalid. Villegas Decl., Ex. 2 ¶ 3. There were no objectors
 8 before the deadline and no objectors appeared at the hearing. *Id.* Counsel represented on the
 9 record at the hearing that initial distribution was expected to commence in December 2019. The
 10 Court indicated on the record that both motions would be granted. On the day of the hearing, the
 11 Court issued an order approving the Plan of Allocation. ECF 180.

12 **II. MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

13 In order to grant final approval of the class action settlement, the Court must determine
 14 that (1) the class meets the requirements for certification under Federal Rule of Civil Procedure
 15 23, and (2) the settlement reached on behalf of the class is fair, reasonable, and adequate. *See*
 16 *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003) (“Especially in the context of a case in
 17 which the parties reach a settlement agreement prior to class certification, courts must peruse the
 18 proposed compromise to ratify both the propriety of the certification and the fairness of the
 19 settlement.”).

20 **A. The Class Meets the Requirements for Certification under Rule 23**

21 A class action is maintainable only if it meets the four requirements of Rule 23(a):

- 22 (1) the class is so numerous that joinder of all members is impracticable;
- 23 (2) there are questions of law or fact common to the class;
- 24 (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- 25 (4) the representative parties will fairly and adequately protect the interests of the class.

26
 27
 28 Fed. R. Civ. P. 23(a). In a settlement-only certification context, the “specifications of the Rule—

1 those designed to protect absentees by blocking unwarranted or overbroad class definitions—
2 demand undiluted, even heightened, attention.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591,
3 620 (1997).

4 In addition to satisfying the Rule 23(a) requirements, “parties seeking class certification
5 must show that the action is maintainable under Rule 23(b)(1), (2), or (3).” *Id.* at 614. Plaintiffs
6 seek certification under Rule 23(b)(3), which requires that (1) “questions of law or fact common to
7 class members predominate over any questions affecting only individual members” and (2) “a
8 class action is superior to other available methods for fairly and efficiently adjudicating the
9 controversy.” Fed. R. Civ. P. 23(b)(3).

10 The Court concluded that these requirements were satisfied when it granted preliminary
11 approval of the class action settlement. *See* ECF 167. The Court is not aware of any new facts
12 which would alter that conclusion. However, the Court reviews the Rule 23 requirements again
13 briefly, as follows.

14 Turning first to the Rule 23(a) prerequisites, the Court has no difficulty concluding that
15 because the class contains thousands of members (3,845 claims filed as of the June 20, 2019
16 hearing), joinder of all class members would be impracticable. The commonality requirement is
17 met because the key issues in the case are the same for all class members, including, for example,
18 whether Defendants misrepresented material facts or omitted material facts for publicly traded
19 stocks in violation of the law and whether these alleged actions artificially inflated the stock price.
20 *See* Villegas Decl. ¶ 31. ATRS’s claims are typical of those of the class, as it advances the same
21 claims, shares identical legal theories, and allegedly experienced losses from Extreme’s
22 misrepresentations. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998) (typicality
23 requires only that the claims of the class representatives be “reasonably co-extensive with those of
24 absent class members”). Finally, to determine ATRS’s adequacy, the Court “must resolve two
25 questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other
26 class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously
27 on behalf of the class?” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011)
28 (internal quotation marks and citation omitted). The Court has no reservations regarding the

1 abilities of Class Counsel or their zeal in representing the class, and the record discloses no
2 conflict of interest which would preclude ATRS from acting as class representative. *See* Villegas
3 Decl. ¶¶ 4, 16, 101.

4 With respect to Rule 23(b)(3), the “predominance inquiry tests whether proposed classes
5 are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623.
6 The common questions in this case which would be subject to common proof include whether
7 Defendants misrepresented material facts or omitted material facts for publicly traded stocks in
8 violation of the law, whether Defendants had a duty to disclose alleged material omissions or acted
9 with scienter, and whether the market price of Extreme’s common stock during the class period
10 was artificially inflated due to the alleged material omissions and/or misrepresentations. Villegas
11 Decl. ¶ 31; *see generally* ECF 130. These questions predominate. Moreover, given this
12 commonality, and the number of potential class members, the Court concludes that a class action
13 is a superior mechanism for adjudicating the claims at issue.

14 Accordingly, the Court concludes that the requirements of Rule 23 are met and that
15 certification of the class for settlement purposes is appropriate. Plaintiff Arkansas Teacher
16 Retirement System is hereby appointed as class representative and Labaton Sucharow LLP is
17 appointed class counsel.

18 **B. The Settlement is Fundamentally Fair, Adequate, and Reasonable**

19 Federal Rule of Civil Procedure 23(e) “requires the district court to determine whether a
20 proposed settlement is fundamentally fair, adequate, and reasonable.” *Hanlon*, 150 F.3d at 1026.
21 In the Ninth Circuit, courts use a multi-factor balancing test to analyze whether a given settlement
22 is fair, adequate and reasonable. That test includes the following factors:

23 the strength of the plaintiffs’ case; the risk, expense, complexity, and likely
24 duration of further litigation; the risk of maintaining class action status throughout
25 the trial; the amount offered in settlement; the extent of discovery completed and
26 the stage of the proceedings; the experience and views of counsel; the presence of a
governmental participant; and the reaction of the class members to the proposed
settlement.

27 *Id.* at 1026–27; *see also Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (discussing
28 *Hanlon* factors).

1 Recent amendments to Rule 23 require the district court to consider a similar list of factors
2 before approving a settlement, including whether:

3 (A) the class representatives and class counsel have adequately represented the class;

4 (B) the proposal was negotiated at arm’s length;

5 (C) the relief provided for the class is adequate, taking into account:

6 (i) the costs, risks, and delay of trial and appeal;

7 (ii) the effectiveness of any proposed method of distributing relief to the
8 class, including the method of processing class-member claims;

9 (iii) the terms of any proposed award of attorney’s fees, including timing of
10 payment; and

11 (iv) any agreement required to be identified under Rule 23(e)(3);

12 (D) the proposal treats class members equitably relative to each other.

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

14 In the Advisory Committee notes to the amendment, the Advisory Committee states that
15 “[c]ourts have generated lists of factors to shed light” on whether a proposed class-action
16 settlement is “fair, reasonable, and adequate.” Advisory Committee Notes to 2018 Amendments,
17 Fed. R. Civ. P. 23(e)(2) (“2018 R23 Advisory Notes”). The notes of the Advisory Committee
18 explain that the enumerated, specific factors added to Rule 23(e)(2) are not intended to “displace”
19 any factors currently used by the courts, but instead aim to focus the court and attorneys on “the
20 core concerns of procedure and substance that should guide the decision whether to approve the
21 proposal.” *Id.*; *cf. United States v. Vonn*, 535 U.S. 55, 64 n.6 (2002) (“[T]he Advisory Committee
22 Notes provide a reliable source of insight into the meaning of a rule . . .”). Accordingly, the
23 Court applies the framework set forth in Rule 23 with guidance from the Ninth Circuit’s
24 precedent, bearing in mind the Advisory Committee’s instruction not to let “[t]he sheer number of
25 factors” distract the Court and parties from the “central concerns” underlying Rule 23(e)(2).

26 Because this settlement occurs before formal class certification, the Court must also ensure
27 that the class settlement is not the “product of collusion among the negotiating parties.” *In re*
28 *Bluetooth Headset Prods. Liab. Litig.*, 654 F. 3d 935, 946–47 (9th Cir. 2011).

1 Class Counsel have adequately represented the class. In its Preliminary Approval Order, the Court
2 found no evidence of a conflict between class representatives or counsel and the rest of the class.
3 ECF 167 ¶ 3. No contrary evidence has emerged. Similarly, the Court found that counsel has
4 vigorously prosecuted this action through dispositive motion practice, extensive initial discovery,
5 and formal mediation. *See* Villegas Decl. ¶¶ 3–39, 90–91. Counsel possessed sufficient
6 information to make an informed decision about the settlement, and its preliminary approval
7 motion included information regarding settlement outcomes of similar cases, further indicating
8 that counsel had adequate information from which to negotiate the settlement. *See* 2018 R23
9 Advisory Notes. The Court finds that counsel has continued to represent the class diligently by
10 complying with the notice plan and settlement procedures. *See* Villegas Decl. ¶¶ 40–45. ATRS
11 likewise actively participated in the prosecution of this case, including reviewing filings and
12 discovery, and attending and participating in settlement negotiations. *See* ECF 174-1. Thus, the
13 Court finds the adequacy of representation weighs in favor of approval.

14 The Settlement was also the product of arm’s length negotiations through mediation
15 sessions and follow-up communications supervised by an experienced mediator. Villegas Decl. ¶¶
16 35–36. Pursuant to Ninth Circuit precedent, the Court must examine the Settlement for additional
17 indicia of collusion that would undermine a *prima facie* arm’s length negotiation. Because the
18 Settlement was reached prior to class certification, there is “greater potential for a breach of
19 fiduciary duty owed the class during settlement,” and the Court must examine the risk of collusion
20 with “an even higher level of scrutiny for evidence of collusion or other conflicts of interest.” *In*
21 *re Bluetooth*, 654 F.3d at 946. Signs of collusion may include (a) disproportionate distributions of
22 settlement funds to counsel; (b) negotiation of attorney’s fees separate from the class fund (a
23 “clear sailing” provision); or (c) an arrangement for funds not awarded to revert to the defendants.
24 *Id.* If multiple indicia of implicit collusion are present, the district court has a heightened
25 obligation to assure that fees are not unreasonably high. *Id.* (quoting *Staton*, 327 F.3d at 965).

26 There is no evidence that the parties colluded here. Counsel’s fee request is proportionate
27 to the settlement fund, there is no clear sailing provision, and no funds revert to Defendants. *See*
28 *generally* Agreement. Further, the Court finds that the requested fees are in fact reasonable, to be

1 discussed in greater detail below. This factor weighs in favor of approval.

2 Rules 23(e)(2)(C)–(D) specify factors for conducting a “substantive” review of the
3 proposed settlement. The Court discusses each of the enumerated factors in turn.

4 *a. Strength of Plaintiffs’ Case and Risk of Continuing Litigation*

5 In assessing “the costs, risks, and delay of trial and appeal,” Fed R. Civ. P. 23(e)(2)(C)(i),
6 courts in the Ninth Circuit evaluate “the strength of the plaintiffs’ case; the risk, expense,
7 complexity, and likely duration of further litigation; [and] the risk of maintaining class action
8 status throughout the trial.” *Hanlon*, 150 F.3d at 1026. The Court finds that ATRS faced
9 significant obstacles in this case, including needing to survive multiple motions to dismiss that
10 raised important and complicated issues. The class would have faced similar risks at trial. As set
11 forth in ATRS’s motion, these obstacles included challenges to the material falsity of each alleged
12 misstatement, class certification challenges, loss causation and damages challenges, and the risks
13 inherent in a “battle of the experts” of complex economic theories in a jury trial. Appr. Mot. at 6–
14 14. Throughout the litigation and mediation, Defendants raised many substantive, potentially
15 meritorious defenses to the claims; indeed, the Court narrowed the claims significantly through the
16 motions to dismiss phase. *See* Villegas Decl. ¶¶ 46–60. Securities actions in particular are often
17 long, hard-fought, complicated, and extremely difficult to win.

18 The Court finds this factor weighs in favor of approval.

19 *b. Effectiveness of Distribution Method, Terms of Attorney’s Fees, and
20 Supplemental Agreements*

21 The Court must likewise consider “the effectiveness of [the] proposed method of
22 distributing relief to the class.” Fed. R. Civ. P. 23(e)(2)(C)(ii). The Court has already approved
23 the Plan of Allocation and has determined that it is reasonable and effective. ECF 180. The
24 “terms of [the] proposed award of attorney’s fees,” Fed. R. Civ. P. 23(e)(2)(C)(iii), are reasonable
25 as discussed below. There are no supplemental agreements. This factor weighs in favor of
26 approval.

27 *c. Equitable Treatment of Class Members*

28 Rule 23 also requires consideration of whether “the proposal treats class members
equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(C)(i). Consistent with this instruction,

1 the Court considers whether the proposal “improperly grant[s] preferential treatment to class
2 representatives or segments of the class.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078,
3 1079 (N.D. Cal. 2007) (citation omitted). Under the Agreement, class members who have
4 submitted timely claims will receive payments on a *pro rata* basis based on the value of their
5 original claim and the number of claims filed. Villegas Decl. ¶¶ 63–66. In granting preliminary
6 approval, the Court found that this proposed allocation did not constitute improper preferential
7 treatment. ECF 180. The Court adheres to its view that the allocation plan is equitable.
8 Moreover, the service award ATRS seeks is reasonable and does not constitute inequitable
9 treatment of class members. *See Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958–59 (9th Cir.
10 2009). This factor weighs in favor of approval.

11 *d. Settlement Amount*

12 “The relief that the settlement is expected to provide to class members is a central
13 concern,” though it is not enumerated among the factors of Rule 23(e). 2018 R23 Advisory Notes.
14 Thus, the Court considers “the amount offered in the settlement.” *Hanlon*, 150 F.3d at 1026.
15 Crucial to the determination of adequacy is the ratio of “plaintiffs’ expected recovery balanced
16 against the value of the settlement offer.” *In re Tableware*, 484 F. Supp. 2d at 1080. However,
17 “[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential
18 recovery does not per se render the settlement inadequate or unfair.” *Officers for Justice*, 688 F.2d
19 at 628.

20 Here, the \$7 million fund represents a substantial recovery for the class. Experts have
21 calculated that the maximum potential damages in this action is \$74 million to \$140 million, with
22 a recovery as low as \$13 million to \$36 million if Defendants’ disaggregation arguments had
23 succeeded. *See* Villegas Decl. ¶ 5. The gross settlement amount thus represents a recovery of
24 between 5% and 9.5% of non-disaggregated damages and between 19% to 54% if disaggregated
25 arguments are credited. *Id.* Other courts have found similar recoveries to be fair and reasonable.
26 *See, e.g., In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2007); *Int’l Bhd. of*
27 *Elec. Workers Local 697 Pension Fund v. Int’l Game Tech., Inc.*, No. 3:09-cv-00419-MMD, 2012
28 WL 5199742, at *3 (D. Nev. Oct. 19, 2012) (finding 3.5% recovery to be within “the median

1 recovery in securities class actions settled in the last few years”).

2 Accordingly, the amount of the settlement also weighs in favor of approval.

3 *e. Counsel’s Experience*

4 The Court also considers “the experience and views of counsel.” *Hanlon*, 150 F. 3d at
5 1026. Labaton Sucharow has extensive experience representing plaintiffs in securities and
6 financial class action lawsuits. *See generally* Villegas Decl., Ex. 3, ECF 174-3. That such
7 experienced counsel advocate in favor of the settlement weighs in favor of approval.

8 **C. Objections**

9 “[T]he absence of a large number of objections to a proposed class action settlement raises
10 a strong presumption that the terms of a proposed class settlement action are favorable to the class
11 members.” *Omnivision*, 559 F. Supp. 2d at 1043 (citation omitted). Here, Class Counsel and the
12 Court received zero objections. Cavallo Suppl. Decl. ¶ 3. Many potential class members are
13 sophisticated institutional investors; the lack of objections from such institutions indicates that the
14 settlement is fair and reasonable. *See In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 382
15 (S.D.N.Y. 2013); *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 629 (E.D. Pa. 2004).
16 Likewise, there were only two requests for exclusion, one of which KCC deemed invalid. *See id.*
17 ¶ 3. This positive response from the class confirms that the settlement is fair and reasonable.

18 * * *

19 Balancing the relevant factors, the Court finds the settlement fair and reasonable under
20 Rule 23(e) and *Hanlon*.

21 **D. CONCLUSION**

22 For the foregoing reasons, and after considering the record as a whole, the Court finds that
23 notice of the proposed settlement was adequate, the settlement was not the result of collusion, and
24 the settlement is fair, adequate, and reasonable.

25 Lead Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of
26 Allocation is GRANTED.

1 **III. MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND PAYMENT OF**
2 **EXPENSES**

3 ATRS seeks an award of attorneys’ fees totaling \$1.75 million, reimbursement of litigation
4 costs and expenses in the amount of \$167,200, and a service award of \$2,180.80 for ATRS. The
5 Court also considers the reasonableness of the Settlement Administrator’s requested costs.

6 **A. Attorneys’ Fees and Expenses**

7 **1. Legal Standard**

8 “While attorneys’ fees and costs may be awarded in a certified class action where so
9 authorized by law or the parties’ agreement, Fed. R. Civ. P. 23(h), courts have an independent
10 obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have
11 already agreed to an amount.” *In re Bluetooth*, 654 F.3d at 941. “Where a settlement produces a
12 common fund for the benefit of the entire class,” as here, “courts have discretion to employ either
13 the lodestar method or the percentage-of-recovery method” to determine the reasonableness of
14 attorneys’ fees. *Id.* at 942.

15 Under the percentage-of-recovery method, the attorneys are awarded fees in the amount of
16 a percentage of the common fund recovered for the class. *Id.* Courts applying this method
17 “typically calculate 25% of the fund as the benchmark for a reasonable fee award, providing
18 adequate explanation in the record of any special circumstances justifying a departure.” *Id.*
19 (internal quotation marks omitted). However, “[t]he benchmark percentage should be adjusted, or
20 replaced by a lodestar calculation, when special circumstances indicate that the percentage
21 recovery would be either too small or too large in light of the hours devoted to the case or other
22 relevant factors.” *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.3d 1301, 1311 (9th
23 Cir. 2011). Relevant factors to a determination of the percentage ultimately awarded include “(1)
24 the results achieved; (2) the risk of litigation; (3) the skill required and quality of work; (4) the
25 contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made
26 in similar cases.” *Tarlecki v. bebe Stores, Inc.*, No. C 05-1777 MHP, 2009 WL 3720872, at *4
27 (N.D. Cal. Nov. 3, 2009).

28 Under the lodestar method, attorneys’ fees are “calculated by multiplying the number of
 hours the prevailing party reasonably expended on the litigation (as supported by adequate

1 documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.”
2 *In re Bluetooth*, 654 F.3d at 941. This amount may be increased or decreased by a multiplier that
3 reflects factors such as “the quality of representation, the benefit obtained for the class, the
4 complexity and novelty of the issues presented, and the risk of nonpayment.” *Id.* at 942.

5 In common fund cases, a lodestar calculation may provide a cross-check on the
6 reasonableness of a percentage award. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir.
7 2002). Where the attorneys’ investment in the case “is minimal, as in the case of an early
8 settlement, the lodestar calculation may convince a court that a lower percentage is reasonable.”
9 *Id.* “Similarly, the lodestar calculation can be helpful in suggesting a higher percentage when
10 litigation has been protracted.” *Id.* Thus even when the primary basis of the fee award is the
11 percentage method, “the lodestar may provide a useful perspective on the reasonableness of a
12 given percentage award.” *Id.* “The lodestar cross-check calculation need entail neither
13 mathematical precision nor bean counting. . . . [Courts] may rely on summaries submitted by the
14 attorneys and need not review actual billing records.” *Covillo v. Specialtys Cafe*, No. C-11-
15 00594-DMR, 2014 WL 954516, at *6 (N.D. Cal. Mar. 6, 2014) (internal quotation marks and
16 citation omitted).

17 An attorney is also entitled to “recover as part of the award of attorney’s fees those out-of-
18 pocket expenses that would normally be charged to a fee paying client.” *Harris v. Marhoefer*, 24
19 F.3d 16, 19 (9th Cir. 1994) (internal quotation marks and citation omitted).

20 2. Discussion

21 ATRS seeks an award of attorneys’ fees totaling \$1.75 million, which represents 25% of
22 the \$7 million gross Settlement Fund, as well as litigation expenses and costs in the amount of
23 \$167,200. *See Fees Mot* at 1.

24 Addressing expenses first, the Court does not hesitate to approve an award in the requested
25 amount of \$167,200. Class Counsel have submitted an itemized list of expenses by category of
26 expense incurred through April 15, 2019, totaling \$164,647.87, excluding Settlement
27 Administration fees. *See ECF 174-3, Ex. C.* The Court has reviewed the list and finds the
28 expenses to be reasonable.

1 The Court likewise is satisfied that the request for attorneys’ fees is reasonable. Using the
2 percentage-of-recovery method, the Court starts at the 25% benchmark. *See In re Bluetooth*, 654
3 F.3d at 942. ATRS requests 25%, given the exceptional results achieved, the risks of the
4 litigation, the fine quality of Class Counsel’s work, and the contingent nature of the fee. Courts
5 have awarded comparable percentages in similar cases. *See Villegas Decl.*; *Destefano v. Zynga,*
6 *Inc.*, No. 12-cv-04007-JSC, 2016 WL 537946, at *23 (N.D. Cal. Feb. 11, 2016) (25%);
7 *Omnivision*, 559 F. Supp. 2d at 1049 (28%). As of April 15, 2019, Labaton Sucharow expended
8 5,778.7 hours litigating this action. *Villegas Decl.*, Ex. 3 ¶ 6 & Ex. A. A lodestar cross-check
9 confirms the reasonableness of the requested fees, which amounts to a 0.53 multiplier of the
10 lodestar in the amount of \$3,260,714.50. *Id.* Courts have found that “[m]ultipliers of 1 to 4 are
11 commonly found to be appropriate in common fund cases.” *Aboudi v. T-Mobile USA, Inc.*, No.
12 12-CV-2169-BTM, 2015 WL 4923602, at *7 (S.D. Cal. Aug. 18, 2015); *see also Petersen v. CJ*
13 *Am., Inc.*, No. 14-CV-2570-DMS, 2016 WL 5719823, at *1 (S.D. Cal. Sept. 30, 2016) (awarding
14 1.12 multiplier and recognizing that “the majority of fee awards in the district courts in the Ninth
15 Circuit are 1.5 to 3 times higher than lodestar”). Thus, a multiplier below 1.0 is below the range
16 typically awarded by courts and is presumptively reasonable.

17 Lead Plaintiff’s motion for attorneys’ fees and expenses is GRANTED. ATRS is awarded
18 expenses in the amount of \$167,200 and attorneys’ fees in the amount of \$1.75 million.

19 **B. Incentive Award**

20 Lead Plaintiff ATRS requests an incentive award in the amount of \$2,180.80. The Private
21 Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(4), limits a class representative’s
22 recovery to an amount “equal, on a per share basis, to the portion of the final judgment or
23 settlement awarded to all other members of the class,” but also provides that “[n]othing in this
24 paragraph shall be construed to limit the award of reasonable costs and expenses (including lost
25 wages) directly relating to the representation of the class to any representative party serving on
26 behalf of a class.” Incentive awards “are discretionary . . . and are intended to compensate class
27 representatives for work done on behalf of the class, to make up for financial or reputational risk
28 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private

1 attorney general.” *Rodriguez*, 563 F.3d at 958–59 (internal citation omitted).

2 “Incentive awards typically range from \$2,000 to \$10,000.” *Bellinghausen v. Tractor*
3 *Supply Co.*, 306 F.R.D. 245, 267 (N.D. Cal. 2015). Service awards as high as \$5,000 are
4 presumptively reasonable in this judicial district. *See, e.g., Camberis v. Ocwen Loan Serv. LLC*,
5 Case No. 14-cv-02970-EMC2015 WL 7995534, at *3 (N.D. Cal. Dec. 7, 2015). ATRS’s
6 participation in this case was substantial and was essential to obtaining the considerable monetary
7 recovery which will be enjoyed by each class member. *See Villegas Decl.*, Ex. 1 ¶¶ 8–11. Two
8 representatives of ATRS expended 25 hours supervising and participating in the litigation and
9 their requested award is directly tied to their normal hourly rates. *Id.* ¶¶ 10–11. Given the amount
10 of time and assistance ATRS put into the case and the success of the recovery, an incentive award
11 in the amount of \$2,180.80 is proportional to the class members’ recoveries. *See Hayes v.*
12 *MagnaChip Semiconductor Corp.*, No.14-cv-01160-JST, 2016 WL 6902856 at *10 (N.D. Cal.
13 Nov. 21, 2016) (noting that \$5,000 incentive awards are presumptively reasonable in the 9th
14 Circuit); *In re Am. Apparel S’holder Litig.*, No. CV 10-06352 MMM, 2014 WL 10212865, at *34
15 (C.D. Cal. July 28, 2014) (awarding an incentive award of \$6,600 in a securities class action).

16 The Court concludes that the requested \$2,180.80 incentive award is appropriate in this
17 case.

18 C. Settlement Administrator Costs

19 The Court also holds that it is appropriate to award KCC its costs. In its preliminary
20 approval order, the Court held that Lead Counsel may pay KCC its costs in an amount not to
21 exceed \$500,000. *See* ECF 167 ¶ 20. To date, ATRS has not submitted evidence regarding the
22 total final costs requested by KCC. Given the somewhat complex nature of the allocation plan,
23 the Court approves the awarding of costs to KCC in an amount not to exceed \$500,000 subject to
24 ATRS submitting an accounting of such costs with a request that the Court approve the final
25 amount. ATRS shall submit such a request by administrative motion **within 14 days of KCC’s**
26 **final accounting**. If KCC does not reach this cap, the excess funds shall be distributed to the class
27 claimants according to the provisions of the Agreement if practicable or distributed through *Cy*
28 *Pres.*

United States District Court
Northern District of California

1 **IV. ORDER**

2 For the reasons discussed above,

- 3 (1) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of
4 Allocation is GRANTED; and
5 (2) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses
6 is GRANTED. ATRS is awarded attorneys' fees in the amount of \$1.75 million,
7 costs and expenses in the amount of \$167,200, and a service award in the amount
8 of \$2,180.80.
9 (3) The Settlement Administrator costs are APPROVED in an amount not to exceed
10 \$500,000.

11 Without affecting the finality of this Order and accompanying Judgment in any way, the
12 Court retains jurisdiction over (1) implementation and enforcement of the Settlement Agreement
13 until each and every act agreed to be performed by the parties pursuant to the Settlement
14 Agreement has been performed; (2) any other actions necessary to conclude the Settlement and to
15 administer, effectuate, interpret, and monitor compliance with the provisions of the Settlement
16 Agreement; and (3) all parties to this action and Settlement class members for the purpose of
17 implementing and enforcing the Settlement Agreement. Within 21 days after the distribution of
18 the settlement funds and payment of attorneys' fees, the parties shall file a Post-Distribution
19 Accounting in accordance with this District's Procedural Guidance for Class Action Settlements.
20 The parties must seek approval from the Court for any *Cy Pres* distributions.

21
22
23 **IT IS SO ORDERED.**

24 Dated: July 22, 2019



25
26 BETH LABSON FREEMAN
United States District Judge

TAB 4

1 **LABATON SUCHAROW LLP**
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5 acoquin@labaton.com

6 *Counsel for Lead Plaintiff and Lead Counsel*
7 *for the Class*

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11 Facsimile: (415) 433-6382
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12 cpoppler@bermantabacco.com

13
14 *Liaison Counsel for the Class*

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN JOSE DIVISION**

18 In re EXTREME NETWORKS, INC.
19 SECURITIES LITIGATION
20
21 This Document Relates to:
22 All Actions.
23

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

CLASS ACTION

~~PROPOSED~~ **FINAL ORDER AND JUDGMENT** AS MODIFIED

24 **WHEREAS:**

25 A. As of November 30, 2018, Arkansas Teacher Retirement System (“ATRS” or
26 “Lead Plaintiff”), on behalf of itself and all other members of the proposed Settlement Class, on
27

1 the one hand, and Extreme Networks, Inc. (“Extreme” or “the Company”), Charles W. Berger,
2 Kenneth B. Arola, and John T. Kurtzweil (collectively, the “Individual Defendants,” and with the
3 Company, “Defendants”), on the other, by and through their counsel of record in the above-
4 captioned litigation (the “Action”), entered into a Stipulation and Agreement of Settlement (the
5 “Stipulation”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure
6 and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed
7 settlement of the Action and the claims alleged in the Amended Consolidated Class Action
8 Complaint, filed on June 2, 2017, on the merits and with prejudice (the “Settlement”);

9
10 B. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement,
11 Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of
12 Settlement, entered March 13, 2019 (the “Preliminary Approval Order”), the Court scheduled a
13 hearing for June 20, 2019, at 1:30 p.m. (the “Settlement Hearing”) to, among other things: (i)
14 determine whether the proposed Settlement of the Action on the terms and conditions provided
15 for in the Stipulation is fair, reasonable, and adequate, and should be approved by the Court; (ii)
16 determine whether a judgment as provided for in the Stipulation should be entered; and (iii) rule
17 on Lead Counsel’s Fee and Expense Application;

18
19 C. The Court ordered that the Notice of Pendency of Class Action, Proposed
20 Settlement, and Motion for Attorneys’ Fees and Expenses (the “Notice”) and a Proof of Claim
21 and Release form (“Proof of Claim”), substantially in the forms attached to the Preliminary
22 Approval Order as Exhibits 1 and 2, respectively, be mailed by first-class mail, postage prepaid,
23 on or before ten (10) business days after the date of entry of the Preliminary Approval Order
24 (“Notice Date”) to all potential Settlement Class Members who could be identified through
25 reasonable effort, and that a Summary Notice of Pendency of Class Action, Proposed Settlement,
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1 and Motion for Attorneys' Fees and Expenses (the "Summary Notice"), substantially in the form
2 attached to the Preliminary Approval Order as Exhibit 3, be published in *Investor's Business*
3 *Daily* and transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date;

4 D. The Notice and the Summary Notice advised potential Settlement Class Members
5 of the date, time, place, and purpose of the Settlement Hearing. The Notice further advised that
6 any objections to the Settlement were required to be filed with the Court and served on counsel
7 for the Parties such that they were received by May 23, 2019;

8 E. The provisions of the Preliminary Approval Order as to notice were complied
9 with;

10 F. On May 9, 2019, Lead Plaintiff moved for final approval of the Settlement, as set
11 forth in the Preliminary Approval Order. The Settlement Hearing was duly held before this
12 Court on June 20, 2019, at which time all interested Persons were afforded the opportunity to be
13 heard; and
14

15 G. This Court has duly considered Lead Plaintiff's motion, the affidavits,
16 declarations, memoranda of law submitted in support thereof, the Stipulation, and all of the
17 submissions and arguments presented with respect to the proposed Settlement;

18 NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND
19 DECREED that:
20

21 1. This Judgment incorporates and makes a part hereof: (i) the Stipulation filed with
22 the Court on November 30, 2018; and (ii) the Notice, which was filed with the Court on May 9,
23 2019. Capitalized terms not defined in this Judgment shall have the meaning set forth in the
24 Stipulation.
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1 2. This Court has jurisdiction over the subject matter of the Action and over all
2 parties to the Action, including all Settlement Class Members.

3 3. The Court hereby affirms its determinations in the Preliminary Approval Order
4 and finally certifies, for purposes of the Settlement only, pursuant to Rules 23(a) and (b)(3) of
5 the Federal Rules of Civil Procedure, the Settlement Class of: all persons and entities that
6 purchased or otherwise acquired the publicly traded common stock and exchange-traded call
7 options, and/or sold put options, of Extreme Networks, Inc. during the period from September
8 12, 2013 through April 9, 2015, inclusive, and who were damaged thereby. Excluded from the
9 Settlement Class are: (i) the Defendants; (ii) the officers and directors of the Company during the
10 Class Period; (iii) the Company's subsidiaries and affiliates; (iv) the Company's employee
11 retirement and benefit plan(s) and their participants or beneficiaries, to the extent they made
12 purchases through such plan(s); (v) members of the immediate families of the Individual
13 Defendants and the officers and directors of the Company during the Class Period; (vi) any entity
14 in which any Defendant has or had a controlling interest; and (vii) the legal representatives,
15 heirs, successors, and assigns of any such excluded party. Also excluded from the Settlement
16 Class are those Persons listed on the annexed Exhibit A as having submitted an exclusion request
17 allowed by the Court.

18 4. Pursuant to Fed. R. Civ. P. 23, and for purposes of the Settlement only, the Court
19 hereby re-affirms its determinations in the Preliminary Approval Order and finally certifies
20 ATRS as Class Representative for the Settlement Class; and finally appoints the law firm of
21 Labaton Sucharow LLP as Class Counsel for the Settlement Class and the law firm of Berman
22 Tabacco as Liaison Counsel for the Settlement Class.
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1 5. The Court finds that the mailing and publication of the Notice, Summary Notice,
2 and Proof of Claim: (i) complied with the Preliminary Approval Order; (ii) constituted the best
3 notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated
4 to apprise Settlement Class Members of the effect of the Settlement, of the proposed Plan of
5 Allocation, of Lead Counsel’s request for an award of attorney’s fees and payment of litigation
6 expenses incurred in connection with the prosecution of the Action, of Settlement Class
7 Members’ right to object or seek exclusion from the Settlement Class, and of their right to appear
8 at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons
9 entitled to receive notice of the proposed Settlement; and (v) satisfied the notice requirements of
10 Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the
11 Due Process Clause), and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §
12 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”).
13
14

15 6. There have been no objections to the Settlement.

16 7. In light of the benefits to the Settlement Class, the complexity, expense and
17 possible duration of further litigation against Defendants, the risks of establishing liability and
18 damages, and the costs of continued litigation, the Court hereby fully and finally approves the
19 Settlement as set forth in the Stipulation in all respects, and finds that the Settlement is, in all
20 respects, fair, reasonable and adequate, and in the best interests of Lead Plaintiff and the
21 Settlement Class. This Court further finds the Settlement set forth in the Stipulation is the result
22 of arm’s-length negotiations between experienced counsel representing the interests of Lead
23 Plaintiff, the Settlement Class, and Defendants. The Settlement shall be consummated in
24 accordance with the terms and provisions of the Stipulation.
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1 8. The Amended Consolidated Class Action Complaint, filed on June 2, 2017, is
2 dismissed in its entirety, with prejudice, and without costs to any Party, except as otherwise
3 provided in the Stipulation.

4 9. The Court finds that during the course of the Action, the Parties and their
5 respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of
6 Civil Procedure.

7 10. Upon the Effective Date of the Settlement, Lead Plaintiff and each and every
8 other Settlement Class Member, on behalf of themselves and each of their respective heirs,
9 executors, trustees, administrators, predecessors, successors, and assigns, shall be deemed to
10 have fully, finally, and forever waived, released, discharged, and dismissed each and every one
11 of the Released Claims against each and every one of the Released Defendant Parties and shall
12 forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any
13 and all of the Released Claims against any and all of the Released Defendant Parties.

14 11. Upon the Effective Date of the Settlement, Defendants, on behalf of themselves
15 and each of their respective heirs, executors, trustees, administrators, predecessors, successors,
16 and assigns, shall be deemed to have fully, finally, and forever waived, released, discharged, and
17 dismissed each and every one of the Released Defendants' Claims against each and every one of
18 the Released Plaintiff Parties and shall forever be barred and enjoined from commencing,
19 instituting, prosecuting, or maintaining any and all of the Released Defendants' Claims against
20 any and all of the Released Plaintiff Parties.

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

1 13. This Judgment and the Stipulation, whether or not consummated, and any
2 discussion, negotiation, proceeding, or agreement relating to the Stipulation, the Settlement, and
3 any matter arising in connection with settlement discussions or negotiations, proceedings, or
4 agreements, shall not be offered or received against or to the prejudice of the Parties or their
5 respective counsel, for any purpose other than in an action to enforce the terms hereof, and in
6 particular:

7
8 (a) do not constitute, and shall not be offered or received against or to the
9 prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any
10 presumption, concession, or admission by Defendants with respect to the truth of any allegation
11 by Lead Plaintiff and the Settlement Class, or the validity of any claim that has been or could
12 have been asserted in the Action or in any litigation, including but not limited to the Released
13 Claims, or of any liability, damages, negligence, fault or wrongdoing of Defendants or any
14 person or entity whatsoever;

15
16 (a) do not constitute, and shall not be offered or received against or to the
17 prejudice of Defendants as evidence of a presumption, concession, or admission of any fault,
18 misrepresentation, or omission with respect to any statement or written document approved or
19 made by Defendants, or against or to the prejudice of Lead Plaintiff, or any other member of the
20 Settlement Class as evidence of any infirmity in the claims of Lead Plaintiff, or the other
21 members of the Settlement Class;

22
23 (b) do not constitute, and shall not be offered or received against or to the
24 prejudice of Defendants, Lead Plaintiff, any other member of the Settlement Class, or their
25 respective counsel, as evidence of a presumption, concession, or admission with respect to any
26 liability, damages, negligence, fault, infirmity, or wrongdoing, or in any way referred to for any
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1 other reason against or to the prejudice of any of the Defendants, Lead Plaintiff, other members
2 of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative
3 action or proceeding, other than such proceedings as may be necessary to effectuate the
4 provisions of the Stipulation;

5 (c) do not constitute, and shall not be construed against Defendants, Lead
6 Plaintiff, or any other member of the Settlement Class, as an admission or concession that the
7 consideration to be given hereunder represents the amount that could be or would have been
8 recovered after trial; and

9 (d) do not constitute, and shall not be construed as or received in evidence as
10 an admission, concession, or presumption against Lead Plaintiff, or any other member of the
11 Settlement Class that any of their claims are without merit or infirm or that damages recoverable
12 under the Complaint would not have exceeded the Settlement Amount.

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14
15 14. The administration of the Settlement, and the decision of all disputed questions of
16 law and fact with respect to the validity of any claim or right of any Person to participate in the
17 distribution of the Net Settlement Fund, shall remain under the authority of this Court.

18 15. In the event that the Settlement does not become effective in accordance with the
19 terms of the Stipulation, then this Judgment shall be rendered null and void to the extent
20 provided by and in accordance with the Stipulation and shall be vacated, and in such event, all
21 orders entered and releases delivered in connection herewith shall be null and void to the extent
22 provided by and in accordance with the Stipulation.

23
24 16. Without further order of the Court, the Parties may agree to reasonable extensions
25 of time to carry out any of the provisions of the Stipulation.

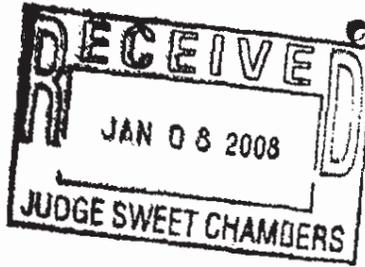
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EXHIBIT A

1. Walter Jitner, Napa, CA

TAB 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



COURTESY COPY

In re LABRANCHE SECURITIES
LITIGATION

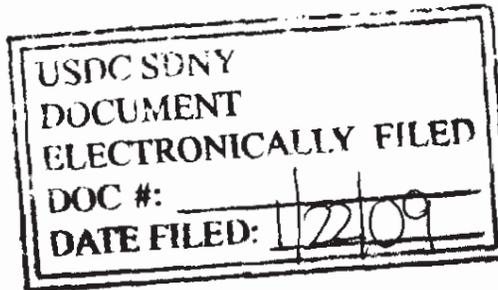
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: Civil Action No. 03-CV-8201(RWS)
:
: CLASS ACTION

This Document Relates To:

ALL ACTIONS.

: [~~PROPOSED~~] ORDER AWARDING LEAD
: PLAINTIFFS' COUNSEL'S ATTORNEYS'
: FEES AND EXPENSES AND
: REIMBURSEMENT OF LEAD
x PLAINTIFFS' TIME AND EXPENSES

A handwritten mark in the right margin, resembling a stylized number '2' or a signature flourish.



This matter having come before the Court on January 21, 2009, on the motion of Lead Plaintiffs' Counsel for an award of attorneys' fees and expenses incurred in the Litigation, 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 September 18, 2008 (the "Stipulation"), and filed with the Court.
2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Class who have not timely and validly requested exclusion.
3. The Court hereby awards Lead Plaintiffs' Counsel attorneys' fees of 30% of the Settlement Fund, plus interest thereon as defined in the Stipulation, plus litigation expenses in the amount of \$145,612.93, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.
4. The fees and expenses shall be allocated among all counsel representing the Class in a manner which, in Lead Plaintiffs' Counsel's good-faith judgment, reflects each such counsel's contribution to the institution, prosecution and resolution of the Litigation.
5. The awarded attorneys' fees and expenses and interest earned thereon shall immediately be paid to Lead Plaintiffs' Counsel subject to the terms, conditions and obligations of the Stipulation, and in particular ¶21 thereof which terms, conditions and obligations are incorporated herein.

6. The Court hereby awards the sum of \$5,000 to each of the Lead Plaintiffs pursuant to 15 U.S.C. §77z-1(a)(4) of the Private Securities Litigation Reform Act of 1995.

SO ORDERED:



THE HONORABLE ROBERT W. SWEET
UNITED STATES DISTRICT JUDGE

1-21-09

TAB 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/17/17

ZUBAIR PATEL, Individually and on Behalf : Civil Action No. 1:14-cv-06038-VEC
of All Others Similarly Situated, : **(Consolidated)**
 :
Plaintiff, : CLASS ACTION
 :
vs. : ~~REVISED [PROPOSED] ORDER~~
 : AWARDING ATTORNEYS' FEES AND
L-3 COMMUNICATIONS HOLDINGS, INC., : EXPENSES AND AWARDS TO LEAD
et al., : PLAINTIFFS PURSUANT TO 15 U.S.C.
 : §78u-4(a)(4)
Defendants. :

X

This matter having come before the Court on August 16, 2017, on the motion of Lead Counsel for an award of attorneys' fees and expenses (the "Fee Motion"), the Court, having considered all papers filed and proceedings conducted herein, having found the Settlement of this Litigation 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. This Order incorporates by reference the definitions in the Stipulation of Settlement dated February 22, 2017 (the "Stipulation"), and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.

3. Notice of Lead Counsel's Fee Motion was given to all Class Members who could be located with reasonable effort. The form and method of notifying the Class of the Fee Motion met the requirements of Rule 23 of the Federal Rules of Civil Procedure and 15 U.S.C. §78u-4(a)(7), the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. The Court hereby awards Lead Counsel attorneys' fees of 25% of the Settlement Fund (or \$8,625,000), plus expenses in the amount of \$475,980.74, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

5. The fees and expenses shall be allocated amongst Lead Plaintiffs' Counsel in a manner that Lead Counsel in good faith believes reflects the contributions of such counsel to the prosecution and settlement of the Litigation.

6. The awarded attorneys' fees and expenses and interest earned thereon, shall be paid to Lead Counsel subject to the terms, conditions, and obligations of the Stipulation, and in particular, ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

7. In making this award of fees and expenses to Lead Counsel, the Court has considered and found that:

(a) the Settlement has created a fund of \$34,500,000 in cash that is already on deposit, and numerous Class Members who submit, or have submitted, valid Proof of Claim and Release forms will benefit from the Settlement created by Lead Counsel;

(b) over 47,000 copies of the Notice were disseminated to Class Members indicating that Lead Counsel would move for attorneys' fees in the amount of 25% of the Settlement Fund and for expenses in an amount not to exceed \$600,000, and no objections to the fees or expenses were filed by Class Members;

(c) Lead Counsel has pursued the Litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(d) Lead Counsel has expended substantial time and effort pursuing the Litigation on behalf of the Class;

(e) Lead Counsel pursued the Litigation on a contingent basis, having received no compensation during the Litigation, and any fee amount has been contingent on the result achieved;

(f) the Litigation involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(g) had Lead Counsel not achieved the Settlement, there would remain a significant risk that the Class may have recovered less or nothing from Defendants;

(h) Lead Counsel has devoted over 8,500 hours, with a lodestar value of \$4,391,423.50, to achieve the Settlement;

(i) public policy concerns favor the award of reasonable attorneys' fees and expenses in securities class action litigation; and

(j) the attorneys' fees and expenses awarded are fair and reasonable and consistent with awards in similar cases within the Second Circuit.

8. Any appeal or any challenge affecting this Court's approval regarding the Fee Motion shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

9. Pursuant to 15 U.S.C §78u-4(a)(4), the Court awards the following amounts to Lead Plaintiffs for the time they spent directly related to their representation of the Class: \$390.00 to City of Pontiac General Employees' Retirement System, \$860.00 to Local 1205 Pension Plan, and \$1,000.00 to City of Taylor Police and Fire Retirement System.

10. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided in the Stipulation and shall be vacated in accordance with the Stipulation.

IT IS SO ORDERED.

DATED: August 17, 2017



THE HONORABLE VALERIE E. CAPRONI
UNITED STATES DISTRICT JUDGE

TAB 7

(C) On October 23, 2014, Lead Plaintiffs, acting on behalf of themselves and a proposed Settlement Class, entered into a Stipulation with Settling Defendants to settle this Action on the terms provided therein.

(D) Pursuant to the Preliminary Approval Order entered on November 12/2014, this Court scheduled a Settlement Hearing for February 9, 2015, at 4:00 p.m., to, *inter alia*, determine: (a) whether the proposed Settlement was fair, reasonable, and adequate, and should be approved by the Court; and (b) whether a judgment substantially in the form hereof should be entered herein (the "Final Approval Hearing").

(E) The Court has received affidavit(s) and/or declaration(s) attesting to compliance with the terms of the Preliminary Approval Order, including the mailing of the Notice and publication of the Publication Notice.

(F) Due to adequate notice having been given to the Settlement Class as required by the Preliminary Approval Order, and the Court having held a Settlement Hearing on February 9, 2015 and the Court having considered all papers filed and proceedings in this Action and otherwise being fully informed of the matters herein, and good cause appearing,

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

1. The provisions of the Stipulation, including definitions of the terms used therein, are hereby incorporated by reference as through fully set forth herein. All capitalized terms used herein have the meanings set forth and defined in the Stipulation.

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

3. For purposes of Settlement only, and pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), this Action is certified as a class action on behalf of the following persons (the “Settlement Class” or the “Class”):

All persons or entities that purchased Silvercorp common stock on the NYSE market between May 20, 2009 and September 13, 2011 (both dates inclusive). Excluded from the Settlement Class are Defendants, the current officers and directors of Silvercorp, the former officers and directors of Silvercorp, and members of any of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

4. Also excluded from the Settlement Class are all persons and/or entities who excluded themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice, their names appearing on Exhibit A hereto. They are not bound by this Order and Final Judgment (the “Judgment”), and may not make any claim with respect to or receive any benefit from the Settlement. Such excluded persons and/or entities may not pursue any Settlement Class Claims on behalf of those who are bound by this Judgment.

5. The Court affirms its finding that the prerequisites for a class action under Rule 23 (a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied, and certifies the above Settlement Class solely for purposes of this Settlement, finding that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Lead Plaintiffs are typical of the claims of the Settlement Class; (d) Lead Plaintiffs have fairly and adequately represented the interests of the Settlement Class; (e) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

6. Based on the finding that Lead Plaintiffs have fairly and adequately represented the interests of the Settlement Class, the Court affirms its appointment of Lead Plaintiffs as the class representatives for the Settlement Class. The Court finds that Lead Counsel have fairly and adequately represented the interests of the Settlement Class, and affirms its appointment of Lead Counsel as class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

7. This Court finds that the distribution of the Notice and the publication of the Publication Notice, and the notice methodology, all implemented in accordance with the terms of the Settlement Stipulation and the Court's Preliminary Approval Order:

(a) Constituted the best practicable notice to Settlement Class Members under the circumstances of this Action;

(b) Were reasonably calculated, under the circumstances, to apprise Settlement Class Members of: (i) the proposed Settlement of this Action; (ii) their right to exclude themselves from the Settlement Class; (iii) their right to object to any aspect of the proposed Settlement; (iv) their right to appear at the Settlement Hearing, either on their own or through counsel hired at their own expense, if they did not excluded themselves from the Settlement Class; and (v) the binding effect of the proceedings, rulings, orders, and judgments in this Action, whether favorable or unfavorable, on all persons not excluded from the Settlement Class;

(c) Were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice; and

(d) Fully satisfied all applicable requirements of the Federal Rules of Civil Procedure (including Rules 23(c) and (d)), the United States Constitution (including the Due Process Clause), the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), the

Private Securities Litigation Reform Act of 1995, the Rules of Court, and any other applicable law.

8. The terms and provisions of the Stipulation were negotiated by the parties at arm's length and were entered into by the parties in good faith.

9. The Settlement set forth in the Stipulation is fully and finally approved as fair, reasonable, adequate, and in the best interests of the Settlement Class taking into account, *inter alia*, the benefits to the Settlement Class; the complexity, expense, and possible duration of further litigation; the risks of establishing liability and damages; and the costs of continued litigation. It shall be consummated in accordance with the terms and provisions therein, and the Lead Plaintiffs and the Settlement Class Members, and all and each of them, are hereby bound by the terms of the Settlement as set forth in the Stipulation.

10. The Plan of Allocation, as described in the Notice and Publication Notice, is hereby approved as fair, reasonable and adequate. Any order, proceeding, appeal, modification or change relating to the Plan of Allocation or the Fee and Expense Award shall in no way disturb or affect the finality of this Judgment, and shall be considered separate from this Judgment.

11. Upon the Effective Date, Lead Plaintiffs and Settlement Class Members (whether or not they submit a Proof of Claim or share in the Net Settlement Fund), on behalf of themselves and their heirs, executors, administrators and assigns, and any person(s) they represent, shall be deemed by this Order to have, and shall have, released, waived, dismissed, and forever discharged the Settlement Class Claims, and shall be deemed by this Order to be, and shall be forever enjoined from prosecuting each and every one of the Settlement Class Claims.

12. Upon the Effective Date, Settling Defendants, on behalf themselves and their heirs, executors, administrators, insurers, reinsurers, and assigns, and any person(s) they represent, shall

be deemed by this Order to have, and shall have, released, waived, dismissed, and forever discharged the Defendant Claims, and shall be deemed by this Order to be, and shall be forever enjoined from prosecuting each and every one of the Defendant Claims.

13. The Settlement Consideration having been paid to the Escrow Account by Settling Defendants, the Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the Settlement Fund is distributed or returned to the Defendants pursuant to the Stipulation and/or further order of this Court.

14. The Settling Defendants and all former defendants have denied, and continue to deny, any and all allegations and claims asserted in the Action, and the Settling Defendants have represented that they entered into the Settlement solely in order to eliminate the burden, expense, and uncertainties of further litigation. This Judgment, whether or not it becomes Final, and any statements made or proceedings taken pursuant to it:

(a) Is not, shall not be deemed to be, and may not be argued to be or offered or received against any of the Released Parties as evidence of, or construed as evidence of any presumption, concession, or admission by any of the Released Parties with respect to the truth of any fact alleged by the Lead Plaintiffs in this Action or the validity of any claim that has been or could have been asserted against any of the Released Parties in this Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in this Action or in any litigation, or of any liability, negligence, fault, or other wrongdoing of any kind by any of the Released Parties.

(b) Is not, shall not be deemed to be, and may not be argued to be or offered or received against any of the Released Parties as evidence of, or construed as evidence of any presumption, concession, or admission of any fault, misrepresentation, or omission

with respect to any statement or written document approved or made by any of the Released Parties, or against the Lead Plaintiffs or any Settlement Class Member as evidence of, or construed as evidence of any infirmity of the claims alleged by the Lead Plaintiffs.

(c) Is not, shall not be deemed to be, and may not be argued to be or offered or received against any of the Released Parties, the Lead Plaintiffs, or any Settlement Class Member as evidence of, or construed as evidence of any presumption, concession, or admission by any of the Released Parties, the Lead Plaintiffs, or any Settlement Class Member with respect to any liability, negligence, fault, or wrongdoing as against any of the Released Parties, the Lead Plaintiffs, or any Settlement Class Member in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation or this Judgment, provided, however, that, the Released Parties, the Lead Plaintiffs, and any Settlement Class Member may use it to effectuate the liability protection granted them by the Stipulation and may file this Judgment in any action brought against them to support an argument, defense, or counterclaim based on principles of res judicata, collateral estoppel, release, good faith-settlement, judgment bar, reduction, or any theory of claim or issue preclusion (or similar argument, defense, or counterclaim);

(d) Is not, shall not be deemed to be, and may not be argued to be or offered or received against any of the Released Parties as evidence of, or construed as evidence of any presumption, concession, or admission by any of the Released Parties that the Settlement Consideration represents the amount which could or would have been received after trial;

(e) Is not, shall not be deemed to be, and may not be argued to be or offered or received against Lead Plaintiffs or any Settlement Class Member as evidence of, or construed as evidence of any presumption, concession, or admission by any of the Lead Plaintiffs or any Settlement Class Member that any of their claims are without merit, or that any defenses asserted by Defendants or any former defendants in this Action have any merit, or that damages recoverable in this Action would not have exceeded the Settlement Fund; and

(f) Is not, shall not be deemed to be, and may not be argued to be or offered or received as evidence of, or construed as evidence of any presumption, concession, or admission that class certification is appropriate in this Action, except for purposes of this Settlement.

15. No person shall have any claim against Lead Plaintiffs, Lead Counsel, the Settlement Administrator, the Escrow Agent or any other agent designated by Lead Counsel based on distribution determinations or claim rejections made substantially in accordance with this Stipulation and the Settlement, the Plan of Allocation, or further orders of the Court, except in the case of fraud or willful misconduct. No person shall have any claim under any circumstances against the Released Parties, based on any distributions, determinations, claim rejections or the design, terms, or implementation of the Plan of Allocation.

16. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, 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.

17. The Parties are hereby authorized, without further approval of the Court, to unanimously agree to and adopt in writing such amendments, modifications, and expansions of the Stipulation and all exhibits attached thereto, provided that such amendments, modifications, and expansions of the Stipulation are done in accordance with the terms of Paragraph 48 of the Stipulation, are not materially inconsistent with this Judgment, and do not materially limit the rights of the Settlement Class Members under the Stipulation. This Court finds that during the course of this Action, all Parties, Lead Counsel and counsel to the Settling Defendants at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

18. Lead Counsel are awarded attorneys' fees in the amount of three million five hundred thousand U.S. dollars (USD\$3,500,000.00) and reimbursement of expenses, including experts' fees and expenses, in the amount of two hundred twenty-six thousand, nine hundred thirty-three U.S. dollars and ninety-three cents (USD\$226,933.93), such amounts to be paid from out of the Settlement Fund. Lead Plaintiffs Dale Hachiya and Charles A Burnes are awarded the sum of twelve thousand five hundred U.S. dollars (USD\$12,500.00) each, as reasonable costs and expenses directly relating to the representation of the Class as provided in 15 U.S.C. § 78u-4(a)(4), such amounts to be paid from the Settlement Fund.

19. The attorneys' fees and expenses awarded herein shall be payable from the Settlement Fund, 50% payable ten (10) business days after entry of this Judgment and 50% payable upon distribution of the Settlement fund proceeds to the Class.

20. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement and any award or distribution from the Settlement Fund, including interest earned thereon; (b) disposition of the Net Settlement Fund; (c) hearing and determining applications for attorneys' fees, costs, interest and

reimbursement of expenses in the Action; and (d) all parties for the purpose of construing, enforcing and administering the Settlement.

21. This Action and all Settlement Class Claims are dismissed with prejudice. The parties are to bear their own costs, except as otherwise provided in the Stipulation or this Judgment.

22. The provisions of this Judgment constitute a full and complete adjudication of the matters considered and adjudged herein, and the Court determines that there is no just reason for delay in the entry of this Judgment. The Clerk is hereby directed to immediately enter this Judgment.

SO ORDERED in the Southern District of New York on 2/11, 2015.



THE HON. JED S. RAKOFF
UNITED STATES DISTRICT JUDGE

Exhibit A

Persons Excluded From The Settlement

- (1) Richard G. Byerly, 3315 Cargill Street, Pittsburgh, PA 15219;
- (2) Dmitry I. Kamenev, 1075 Myrtle Street, Apt. 13, Los Alamos, NM 87544.

TAB 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHIVA STEIN, Individually and On Behalf
of All Others Similarly Situated,

Plaintiff,

v.

EAGLE BANCORP, INC., SUSAN G.
RIEL, RONALD D. PAUL, CHARLES D.
LEVINGSTON, JAMES H. LANGMEAD,
and LAURENCE E. BENSIGNOR,

Defendants.

Case No. 1:19-cv-06873-LGS

**ORDER AWARDING ATTORNEYS' FEES
AND REIMBURSEMENT OF LITIGATION EXPENSES**

This matter came on for hearing on January 20, 2022 (the “Settlement Hearing”) on Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was provided to all Settlement Class Members who or which could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *Investor’s Business Daily* and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys’ fees and litigation expenses requested,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated June 28, 2021 (ECF No. 72-1, “Stipulation”) and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.
2. The Court has jurisdiction to enter this Order and over the subject matter of the action and all parties to this action, including all Settlement Class Members.
3. Notice of Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for an award of attorneys’ fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Per Lead Counsel's motion for attorneys' fees as amended by its letter of January 27, 2022 (Dkt. Nos 85, 101), Lead Counsel are hereby awarded attorneys' fees in the amount of \$2,250,000, which is 30% of the 7.5 million settlement amount, and \$71,121.58 in reimbursement of counsel's out-of-pocket litigation expenses, which fees and expenses shall be paid from the Settlement Fund. The Court finds these sums to be fair and reasonable. Half of the fee award and all of the expense reimbursement are payable immediately, and the remaining half of the fee award is payable upon substantial distribution to the Settlement Class upon prior written notice to the Court.

5. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of \$7,500,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Lead Counsel and other Plaintiffs' Counsel;

(b) Approximately 35,448 Notice Packets, consisting of the Notice and Claim Form, were mailed to potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not exceed 33 $\frac{1}{3}$ % of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed \$105,000. There were no objections to the requested attorneys' fees and reimbursement of Litigation Expenses;

(c) Lead Counsel has conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(d) The Action raised a number of complex issues;

(e) Had Lead Counsel not achieved the Settlement there would remain a significant risk that Plaintiffs and the other members of the Settlement Class may have recovered less than the Settlement Amount, or nothing at all, from Defendants;

(f) Plaintiffs' Counsel devoted at least 2,164.10 hours through December 14, 2021, with a lodestar value of approximately \$1,531,095.00 and a lodestar multiplier of 1.47, to achieve the Settlement; and

(g) The amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

6. Lead Plaintiff Danilee Cassinelli, as Trustee of the Danilee Cassinelli Trust DTD 7-23-93 is hereby awarded \$7,500 from the Settlement Fund as reimbursement for her reasonable costs and expenses directly related to her representation of the Settlement Class.

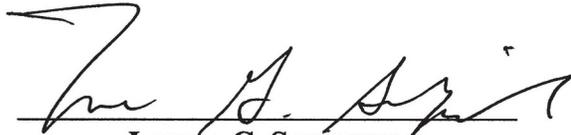
7. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.

8. Exclusive jurisdiction is hereby retained over the parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order.

9. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Settlement.

10. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

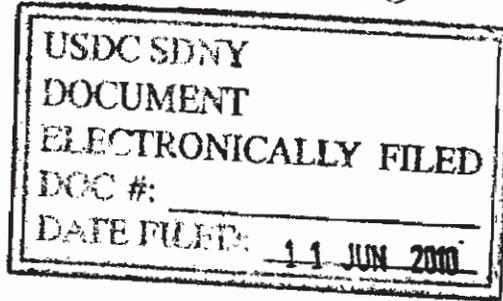
SO ORDERED this 10th day of February, 2022.

— 
LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

TAB 9

Swain

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



_____ X
In re TELETECH LITIGATION :

Master File No. 1:08-cv-00913-LTS

_____ :
This Document Relates To: :

CLASS ACTION

ALL ACTIONS. :
_____ X

[Signature]
[PROPOSED] ORDER AWARDING LEAD COUNSEL'S ATTORNEYS' FEES AND EXPENSES

This matter having come before the Court on June 11, 2010, on the motion of Lead Counsel for an award of attorneys' fees and expenses incurred in the Litigation, 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 October 21, 2009 (the "Stipulation"), and filed with the Court.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Class who have not timely and validly requested exclusion.

3. The Court hereby awards Lead Counsel attorneys' fees of 30% of the Settlement Fund, plus litigation expenses in the amount of \$108,156.05, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid, pursuant to 15 U.S.C. §78u-4(a)(6). The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

4. The fees and expenses shall be allocated among Lead Plaintiff's 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.

5. The awarded attorneys' fees and expenses and interest earned thereon shall immediately be paid to Lead Counsel subject to the terms, conditions, and obligations of the Stipulation, and in particular ¶6.2 thereof which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

DATED: June 11, 2010



THE HONORABLE LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE



CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2010, I submitted the foregoing to orders and judgments@nysd.uscourts.gov and e-mailed to the e-mail addresses denoted on the Court's Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 4, 2010.

s/ Ellen Gusikoff Stewart

ELLEN GUSIKOFF STEWART

ROBBINS GELLER RUDMAN
& DOWD LLP

655 West Broadway, Suite 1900
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